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REPORT OF THE WORKING GROUP ON A DRAFT CONVENTION AGAINST
TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

Chairman-Rapporteur: Mr. J.H. Burgers (Netherlands)

GE.83-11304

INTRODUCTION

1. On the recommendation of the Commission on Human Rights in its resolution 1982/44, the Economic and Social Council, by its resolution 1982/38 of 7 May 1982, authorized the meeting of an open-ended Working Group for a period of one week prior to the thirty-ninth session of the Commission in order to complete the work on a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, with a view to the submission of the draft, together with provisions for the effective implementation of the future convention, to the thirty-eighth session of the General Assembly.
2. As authorized by the Commission at its meeting on 31 January 1983, the Group held supplementary meetings during the session. A total of 12 meetings were held from 24 to 28 January, on 31 January and on 24 February 1983.
3. At the first meeting on 24 January 1983, Mr. Jan Herman Burgers (Netherlands) was re-elected Chairman-Rapporteur by acclamation.

DOCUMENTS

4. The Working Group had before it the following documents: E/1980/13, paragraphs 201-209 (report of the 1980 Working Group); E/1981/25, paragraphs 180-189 (report of the 1981 Working Group); E/CN.4/1982/L.40 (report of the 1982 Working Group); E/CN.4/1285 (draft convention submitted by Sweden); E/CN.4/WG.1/WP.1 (revised draft submitted by Sweden); E/CN.4/1409 (draft provisional protocol submitted by Costa Rica); E/CN.4/1427 (draft preamble and proposed final provisions submitted by Sweden); E/CN.4/1493 (revised draft relating to implementation clauses submitted by Sweden); and E/CN.4/1983/WG.2/2 (draft articles relating to the implementation of the convention, submitted by the Chairman-Rapporteur). During the present session, members of the Working Group submitted 15 working papers (E/CN.4/1983/WG.2/WP.1-15).

CONSIDERATION OF THE PREAMBLE

5. The Working Group considered the preamble on the basis of the proposal submitted by the Government of Sweden in document E/CN.4/1427 of 2 December 1980.
6. During consideration of the Preamble, some delegations raised the question of the title of the draft convention, which in the Swedish proposals was formulated as "International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". One member expressed the view that the draft convention related principally to criminal law and procedure and that this should be reflected in the title of the instrument. Another member observed that in the view of his Government the subject-matter of the convention should be understood within the context of the agenda item under which it had always been discussed, namely "The question of the human rights of all persons subjected to any form of detention or imprisonment". The delegation of Sweden pointed out that the subject-matter of the convention had been defined in the mandate given to the Commission by General Assembly resolution 32/62 of 8 December 1977, requesting the Commission "to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment in the light of the principles embodied in the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". According to the delegation of Sweden, the subject-matter of the draft convention had no limitations other than those which followed from that mandate, which had been confirmed by subsequent resolutions of the General Assembly.

7. The draft preamble as contained in document E/CN.4/1427 read:

"The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)),

Desiring to convert the principles of the Declaration into binding treaty obligations and to adopt a system for their effective implementation,

Have agreed as follows:"

...

8. With respect to the first two paragraphs, it was pointed out that the second paragraph partially duplicated the first. Among several proposals for eliminating such duplication, the suggested deletion of the words "of the inherent dignity and" in the first paragraph appeared to be generally acceptable.

9. With regard to the third paragraph, suggestions were made for including a reference to the principle of non-discrimination, either as set out in article 55 of the Charter or as expressed in article 2, paragraph 1, of the International Covenant on Civil and Political Rights. The proposal of one delegate to mention article 55 of the Charter explicitly received general support.

10. Several members of the Group expressed the view that the formulation of the sixth paragraph was not satisfactory, one delegate suggesting the following alternative, which obtained general support:

"Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world."

11. In the light of this discussion, the Chairman-Rapporteur submitted a revised set of draft preambular clauses (WP.14); these were adopted on second reading by the Working Group at its 11th meeting. The text of the preambular clauses as adopted is reproduced in the annex to this report.

12. One delegation proposed the following additional paragraph for insertion in the preamble:

"Recognizing that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention."

It was felt that this proposal deserved careful consideration at a later stage.

CONSIDERATION OF SUBSTANTIVE ARTICLES

13. The Working Group continued its consideration of the remaining parts of the draft substantive articles upon which decisions had not been reached during the preceding sessions, namely article 3, paragraph 2; article 5, paragraph 2; article 6, paragraph 4; article 7; and article 16, paragraph 1.

Article 3

14. Article 3 of the draft, of which only the first paragraph had been adopted, read as follows:

"1. No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

[2. For the purpose of determining whether there are such grounds all relevant considerations shall be taken into account, including, where applicable, the existence in the State concerned of a consistent pattern of gross violations of human rights, such as those resulting from a State policy of apartheid, racial discrimination or genocide, colonialism or neo-colonialism, the suppression of national liberation movements or the occupation of foreign territory.]"

15. The observer for the United Nations High Commissioner for Refugees made a statement in connection with the principle of non-refoulement. He pointed out that the application of this principle was not necessarily dependent on general characteristics of the situation in the State concerned but might also be required by considerations relating to the individual case. He felt that the present wording of the second paragraph did not emphasize sufficiently that the situation of the individual should be the ultimate determining factor. The Chairman-Rapporteur observed that the word "including" in the proposed second paragraph made it clear that, apart from the possible existence of consistent patterns of gross violations of human rights, other relevant considerations should also be taken into account.

16. Several delegations favoured deletion of the second paragraph as being superfluous and/or lending itself to abusive interpretations. In this context, some delegates also referred to the remarks made by the observer for the UNHCR. Other delegates, however, considered it important to keep the proposed illustrative list of gross violations of human rights, which had in their view well-established precedents in United Nations resolutions. Some delegations who opposed deletion of paragraph 2, stated that they would favour deletion of article 3 in its entirety. Reference was made to the statements of certain delegations during earlier sessions of the Working Group, indicating that their States, at the time of signature or ratification of the convention or accession thereto, might wish to declare that they did not consider themselves bound by article 3 of the convention.

17. Various proposals were made for amending the proposed paragraph 2, including the ending of the paragraph with the words "taken into account", or the deletion of all the words after "gross violations of human rights". One delegate suggested retaining paragraph 2 up to and including the word "apartheid", in view of the extreme gravity of this crime against humanity which was recognized as such by the United Nations. Some members considered that, if the provisions of paragraph 2 were retained references to other types of gross violations should be added, such as all forms of religious intolerance, denial of freedom of expression and denial of the right to form and join trade unions. Another proposal was the insertion at an appropriate place of the words "of a systematic practice of arbitrary arrest or detention".

18. Since no consensus could be reached on any of the above proposals, the Working Group decided that paragraph 2 should provisionally be retained between square brackets and that the matter should be reconsidered at a later stage.

Articles 5, 6 and 7

19. The texts of articles 5, 6 and 7 of the draft convention as they emerged from the debates at previous sessions of the Working Group are reproduced in the annex to this report.

20. The Working Group considered again the system of universal jurisdiction included in draft articles 5, 6 and 7. The discussions indicated that there had been no fundamental change of position compared with the 1982 session of the Working Group.

21. Most speakers were in favour of the principle of universal jurisdiction, holding it to be essential in securing the effectiveness of the Convention. Territorial jurisdiction would not suffice to punish torture effectively as a State policy, under the definition of article 1. Reference was made in this context to the arguments set out in the report of the 1982 Working Group.

22. Some delegations maintained their opposition or reservations to the proposed system of universal jurisdiction. In their view, such provisions could not be harmonized with certain principles of their penal legislation, and would give rise to difficulties with regard to the availability of evidence as well as in other respects. Reference was made here again to the arguments set out in the report

of the 1982 Working Group. Other delegations, while attaching importance to the system of universal jurisdiction, expressed the view that it was necessary to avoid abuses so as to afford greater guarantees to a State whose national has been incriminated. In this connection, the delegation of Senegal proposed the insertion in article 5 of a provision reading as follows:

"Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender, who has been prosecuted or convicted by the State in which the offence was committed, is present under its jurisdiction and that State does not extradite him by virtue of article 3, paragraph 1."
(E/CN.4/1983/WG.2/WP.13)

23. The representative of Brazil proposed, in a spirit of compromise, a modified system under which the principle of universal jurisdiction would apply under certain conditions and on a subsidiary basis, only if the States of territorial or national jurisdiction did not request extradition within a set period or if such a request were desired. The amended texts proposed by the representative of Brazil (E/CN.4/1983/WG.2/WP.12) read as follows:

"Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State.

(b) When the alleged offender is a national of that State.

(c) When the victim is a national of that State if that State considers it appropriate.

(d) in the case referred to in article 6, under the conditions established in that article.

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law."

"Article 6

1. Any State which has no jurisdiction under article 5 (a), (b) or (c) in whose territory a person alleged to have committed any offence referred to in article 4 is present, upon being satisfied after the examination of information available to it, that the circumstances so warrant, shall take the offender into custody or take other legal measures to ensure his presence.

2. Such State shall immediately make a preliminary inquiry into the facts and notify States that may have jurisdiction under articles 5 (a), (b) or (c).

3. If any of those States indicates its intent to exercise jurisdiction it may request extradition of the alleged offender which will be processed according to article 8.

4. If the extradition is not requested within 60 days, or if the extradition is denied, the State referred to in paragraph 1 shall establish its own jurisdiction over the case.

5. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with representatives of the State of which he is a national, or, if he is a stateless person, with a representative of the State where he usually resides."

"Article 7

1. Any State which establishes its jurisdiction under article 5 shall submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall proceed in the same manner as in the case of an ordinary offence of a serious nature under the law of that State.

3. In the cases of jurisdiction established under article 5 (d), the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the case of jurisdiction established under article 5 (a), (b) and (c).

4. Any person regarding whom proceedings are instituted shall be guaranteed fair treatment at all the steps of the proceedings."

24. Some representatives stated, as a preliminary comment, that such a proposal might constitute a good basis for compromise and deserved careful study. One delegation observed that its Government preferred to adhere as closely as possible to the formulations used in earlier treaties such as the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, and the International Convention against the Taking of Hostages. The Working Group decided that the Brazilian proposals should be reconsidered at a later stage.

Article 16

25. The text of article 16 of the draft Convention, as it emerged from the debates of the preceding sessions of the Working Group, is reproduced in the annex to the present report. Article 16 was reconsidered at the current session of the Working Group in order to decide whether to maintain or to delete in paragraph 1 the reference to article 14, regarding compensation to victims.

26. As during previous sessions, some speakers strongly favoured the reference to article 14. Other delegates opposed the reference to article 14, fearing that the concept of "cruel, inhuman or degrading treatment or punishment" was too imprecise as a basis for an enforceable right to compensation and would lead to difficulties of interpretation and possible abuses.

27. Since no consensus could be reached, the Working Group decided to maintain the square brackets around the reference to article 14 in article 16. Article 16 was therefore retained as it had emerged from the previous year's discussions.

CONSIDERATION OF PROVISIONS RELATING TO IMPLEMENTATION

28. In 1982, the Working Group had discussed the questions concerning implementation on the basis of a set of revised draft articles submitted by the Government of Sweden and contained in document E/CN.4/1493 of 31 December 1981 (later reproduced as Annex II of the report of the 1982 Working Group, pages 24-29). Taking that discussion into account, the Chairman-Rapporteur of the Working Group submitted in December 1982, together with an explanatory note, the text of four draft articles relating to the implementation of the convention. The four draft articles and the explanatory note were reproduced in document E/CN.4/1983/WG.2/2 of 4 January 1983. Draft articles 17 and 18 contained a revised set of provisions concerning the nature and the composition of the implementation organ. In drawing up those two draft articles, the Chairman-Rapporteur had taken into account the corresponding provisions of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and the 1979 Convention on the Elimination of All Forms of Discrimination against Women. Draft articles 19 and 20 reflected the outcome of the discussions that had taken place in the 1982 Working Group with regard to article 29 of the Swedish draft, concerning reporting by States parties, and article 30 of the Swedish draft, concerning enquiries about the occurrence of systematic torture practices.

29. The Working Group agreed to discuss the question of the nature and composition of the implementation organ, the question of reporting by States parties and the question of enquiries on the basis of the draft articles contained in document E/CN.4/1983/WG.2/2. On the other hand, the Group discussed the question of complaint procedures and the question of annual reporting by the implementation organ on the basis of articles 31, 32, 33 and 34 of the Swedish draft.

30. In the course of the consideration of these draft articles by the Working Group, some delegations expressed the view that the implementation system of the draft convention should have an optional character. In this context, the delegation of the Union of Soviet Socialist Republics proposed to include all implementation provisions in an optional protocol, pointing out that the inclusion of such provisions in the convention against torture was not necessary for those States which were already bound by the implementation provisions of the International Covenant on Civil and Political Rights, and that therefore the proposed Committee against Torture would not have much work to do. Moreover, since it was the intention to draw up a draft convention that could obtain worldwide support, it should be borne in mind that it might be easier for some States to consider becoming a party to the convention if this would not contain mandatory implementation provisions. The delegation of the Ukrainian Soviet Socialist Republic, in a spirit of compromise, proposed to retain the implementation provisions in the draft convention itself but to amend those articles in such a way that they would bind only those States parties which would have made statements on the necessity of creating the implementation body and on recognizing its competence. The corresponding alternative suggestions of the Ukrainian SSR for article 17, paragraphs 1, 2, 3, 4 and 7, article 19, paragraphs 1 and 2, and article 20, paragraph 1, are contained in document E/CN.4/1983/WG.2/WP.5.

31. During the discussion of the above-mentioned proposals, most delegations took the position that the provisions of the draft convention concerning the nature and composition of the implementation organ, concerning reporting by States parties and concerning enquiries should have a mandatory character. In the view of some of these delegations optionality was only acceptable with regard to the proposed complaint procedures. Other delegations expressed the view that all implementation

provisions to be included in the Convention must be mandatory in character as the effectiveness of the Convention depends on the strength of its implementation provisions. To make implementation optional was tantamount to allowing a qualified commitment to the struggle against torture. Moreover it could lead to varying degrees of obligation on States parties in this regard. On the other hand, some delegations shared the view that the implementation system, or at any rate those parts of it which related to enquiries, should be optional. Certain other delegations indicated that they were not yet able to take a definite position in this matter.

Nature and composition of the implementation organ

32. Draft article 17 as submitted by the Chairman-Rapporteur (E/CN.4/1983/WG.2/2) read as follows:

"1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of nine experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States parties. Each State party may nominate one person from among its own nationals. States parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. A least four months before the date of each election the Secretary-General of the United Nations shall address a letter to the States parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States parties which have nominated them, and shall submit it to the States parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of four of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these four members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.

6. For the filling of casual vacancies, the State party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals subject to the approval of the Committee.

7. The members of the Committee shall receive emoluments as well as compensation for their expenses while they are in performance of Committee functions, on such terms and conditions as the biennial meetings of States parties may decide. The States parties shall be responsible for these emoluments and expenses in the same proportions as their contributions to the general budget of the United Nations."

33. The alternative suggestions of the Ukrainian SSR (E/CN.4/1983/WG.2/WP.5) entailed the following amendments to this draft article:

Paragraph 1: At the beginning of the first sentence, add: "On an optional basis". In the third sentence, after "States Parties" insert: "which had made statements recognizing the status of the Committee".

Paragraph 2: In the first sentence, insert "the above-mentioned" before "States Parties". Replace the second and third sentences up to the words "the usefulness" by the following: "Each of those States parties may nominate one person from among its own nationals, bearing in mind".

Paragraph 3: In the first sentence, after "States Parties" insert: "which recognized the status of the Committee". In the second sentence, replace "two thirds of the States Parties" by "two thirds of the mentioned States Parties", and replace "representatives of States Parties" by "representatives of corresponding States Parties".

Paragraph 4: In the second sentence, after "States Parties" insert: "which recognized the status of the Committee". At the end of the third sentence, replace "submit it to the States Parties" by "submit it to them".

Paragraph 7: In the first sentence, after "Committee functions" insert: "from means of the States Parties which recognized the status of the Committee"; replace "meetings of States Parties" by "meetings of corresponding States Parties". Delete the second sentence.

34. With regard to draft article 17, paragraph 1, some speakers wondered whether the proposed number of nine Committee members was not too small. Taking into account the rules contained in draft article 18 that "five members shall constitute a quorum" and that "decisions ... shall be made by a majority vote of the members present" it was pointed out that a Committee decision might sometimes be supported by only three members. Moreover, the number of nine might make it difficult to reflect equitably the geographical distribution of the States parties. It was suggested that the number might be raised to 11. On the other hand, one speaker expressed himself in favour of a very simple implementation organ which in his view could very well consist of only five members. It was further pointed out that any increase in the size of the Committee would considerably increase the costs involved. The Chairman-Rapporteur informed the Working Group that there had been a mistake in draft article 18 stating that "five members shall constitute a quorum"; it should actually be read as "six", and implied that any decisions of the Committee should have the support of at least four members. In the course of the discussion there appeared to be no majority in the Working Group in favour of any number other than nine.

35. With regard to draft article 17, paragraph 2, some speakers proposed to delete the restriction that a State party may nominate a person only "from among its own nationals". Most delegations, however, felt that this restriction should be maintained.

36. Draft article 17, paragraph 6, was not satisfactory in the view of several members of the Working Group, although they recognized that the paragraph had been taken verbatim from the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and the 1979 Convention on the Elimination of All Forms of Discrimination against Women. Ideally, vacancies should be filled by the same system as was used for designating the original members, namely through election by the States parties. This was the system followed in articles 33 and 34 of the International Covenant on Civil and Political Rights. If for pragmatic reasons a simpler system were chosen, it was felt that the appointment of another expert by the State party concerned should not be subject to the approval of the Committee but rather to the approval of the majority of the States parties. This might be effected by giving the States parties the opportunity to object to the proposed appointment in writing within a specified period of time. It was observed further that the expression "casual vacancies" was insufficiently precise. For a more precise description, wording might be adopted from article 33 of the Covenant.

37. In the light of these comments the Chairman-Rapporteur submitted to the Working Group the following new text for draft article 17, paragraph 6 (E/CN.4/1983/WG.2/WP.9):

"6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State party which nominated him shall appoint another expert from among its nationals for the remainder of his term, subject to the approval of the majority of the States parties. The approval shall be considered given unless half or more of the States parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment."

38. In general, it was felt that this new text corresponded with the observations that had been made in respect of the earlier proposal. For editorial reasons, it was recommended to insert the words "to serve" before "for the remainder of his term". During the discussion of this new text several members expressed the view that, in the case of a temporary absence of an elected expert, his Government should not be free to designate an alternate, and in particular not a government representative, to perform the duties of the elected expert. Some speakers recommended the inclusion of a specific sentence to that effect in the proposed paragraph. The Chairman-Rapporteur observed that this was not necessary because, in his view, the wording of the paragraph already clearly excluded such a designation of temporary alternates.

39. Draft article 17, paragraph 7, elicited several comments from members of the Working Group. The last part of the proposed paragraph, reading "in the same proportions as their contributions to the general budget of the United Nations" was considered inappropriate: it was felt that the States parties should themselves decide upon the apportionment of costs; moreover it was conceivable that a

State party to the convention would not be a member of the United Nations. Questions were asked about the existing practices concerning the payment of emoluments and compensation of expenses to members of such organs as the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women. Several speakers expressed a preference for the formula contained in article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination which reads: "States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties". Other speakers stated a preference for a formulation which would avoid any implication that States parties would be responsible in equal shares for meeting the costs of the Committee.

40. At the 8th meeting of the Working Group, the Assistant Secretary-General, Centre for Human Rights, replied to questions concerning financial matters in connection with draft articles 17 and 18. He informed the Working Group that, under article 35 of the Covenant, members of the Human Rights Committee were paid honorariums and travel and subsistence expenses out of the United Nations regular budget while under article 8 (6) of the International Convention on the Elimination of All Forms of Racial Discrimination, members of the Convention did not receive honorariums. Their travel and subsistence expenses were paid not by the United Nations, but by the States parties according to a formula devised by the Assembly of States parties, under which 50 per cent of the expenses was divided in accordance with the scale of contributions to the United Nations Budget and 50 per cent was shared equally among States parties.

41. In the light of the comments that had been made by members of the Working Group, the Chairman-Rapporteur submitted the following new text for draft article 17, paragraph 7 (E/CN.4/1983/WG.2/WP.9):

"7. The expenses of the members of the Committee while they are in performance of Committee duties shall be borne by the States parties in accordance with schemes of apportionment to be determined by the biennial meetings of States parties."

42. The Chairman-Rapporteur explained that he had not used the above-mentioned formula of the International Convention on the Elimination of All Forms of Racial Discrimination because he feared that such formula might be misunderstood to mean that the expenses of each Committee member should be borne exclusively by the State party who nominated him. Some speakers considered that the new text, although a step in the right direction, was still too complicated. They retained their preference for the formula of the International Convention on the Elimination of All Forms of Racial Discrimination and did not think that there was a real risk of misinterpretation as mentioned by the Chairman-Rapporteur.

43. Draft article 18 as submitted by the Chairman-Rapporteur (E/CN.4/1983/WG.2/2) read as follows:

"1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) five members shall constitute a quorum;

(b) decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure."

44. The Chairman-Rapporteur informed the Working Group that an error was contained in the second paragraph of the draft article: instead of "five members shall constitute a quorum" the text should read "six members shall constitute a quorum".

45. The discussion of draft article 18 concentrated on financial aspects. The delegation of the United States proposed to add to this article a new final paragraph as follows (E/CN.4/1983/WG.2/WP.2):

"The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above."

46. In this connection the United Nations Secretariat was invited to inform the Working Group whether separate calculations could be made of those parts of general expenses of the United Nations for staff and facilities which were directly related to the purposes referred to in paragraph 3 of draft article 18. The Assistant Secretary-General, Centre for Human Rights, informed the Working Group that such separate calculations could possibly be made but that they would require some time, since conference costs were expressed globally in the United Nations Programme-Budget.

47. Some delegations supported the amendment proposed by the United States. The view was expressed that it was not appropriate for the United Nations to bear un-reimbursed expenses for an entity existing outside of the United Nations and which United Nations members were not legally committed to finance or support. On the other hand, many delegations stated that they could not accept the amendment. It was pointed out that the proposed rule might make it difficult for the less affluent States to decide to become parties to the convention. Moreover, this rule might give the impression that the United Nations attach less value to the struggle against torture than to such purposes as the elimination of racial discrimination and discrimination against women.

Measures of international implementation

48. Draft article 19 as submitted by the Chairman-Rapporteur (E/CN.4/1983/WG.2/2) read as follows:

"1. The States Parties undertake to submit to the Secretary-General of the United Nations reports on the measures they have taken to give effect to their undertakings under this Convention:

(a) within one year of the entry into force of this Convention for the State Party concerned; and

(b) whenever any new measures have been taken; and

(c) when the Committee so requests.

2. Such reports shall be considered by the Committee, which shall transmit them with such comments or suggestions as it may consider appropriate to the States Parties. The Committee may also transmit such comments or suggestions to the United Nations Commission on Human Rights along with copies of the reports it has received from the States Parties.

3. The States Parties may submit to the Committee observations on any comments or suggestions that may be made in accordance with paragraph 2."

49. The alternative suggestions of the Ukrainian SSR (E/CN.4/1983/WG.2/WP.5) entailed the following amendments to this draft article:

Paragraph 1: At the beginning of the paragraph, after "The States Parties" insert: "Which announced their recognition of the Committee's status".

Paragraph 2: At the end of the first sentence, insert "corresponding" before "State Parties".

50. With regard to draft article 19, paragraph 1, the delegation of Australia expressed the view that the requirement under (b) to submit reports "whenever any new measures have been taken" would place too heavy a burden on many of the States parties. It therefore proposed to replace this requirement by a requirement to submit supplementary reports periodically, for instance every five years. Several other delegations also expressed a preference for a periodical reporting system. On the other hand, a number of delegations pointed out that the existing obligations for periodical reporting under United Nations instruments were already burdensome for many countries.

51. The Australian delegation submitted several informal suggestions for a reformulation of draft article 19, paragraph 1. In the light of the discussion the Chairman-Rapporteur (E/CN.4/1983/WG.2/WP.1 and WP.3) submitted consolidated proposals (E/CN.4/1983/WG.2/WP.7). The final version of the text submitted by the Chairman-Rapporteur, which seemed to meet with no objections from the Working Group, read as follows:

"1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request."

52. In the course of the discussion on draft article 19, paragraph 1, one delegation raised the question whether the word "measures" in this provision had a narrower scope than the expression "legislative, judicial, administrative or other measures" used both in the International Convention on the Elimination of All Forms of Racial Discrimination and in the Convention on the Elimination of All Forms of Discrimination against Women. There was no dissent from the opinion expressed by the Chairman-Rapporteur that the word "measures" in this draft article was not limited in scope and included legislative as well as judicial, administrative and other measures.

53. Draft article 19, paragraphs 2 and 3, elicited comments from several members of the Working Group. In the view of the delegation of Australia, the text did not make clear whether the reports could lead to a dialogue between the Committee and the State party concerned. It would be valuable if the Committee would address its comments or suggestions on the report in the first place to the reporting State party itself, which might respond to the Committee with any observations it thought fit. Thereafter the Committee might decide whether to communicate such comments or suggestions, together with the reactions of the State party concerned, to other international bodies.

54. The Australian delegation submitted an informal suggestion for a reformulation of article 19, paragraphs 2 and 3 (E/CN.4/1983/WG.2/WP.1). Certain other delegations also made suggestions concerning the drafting of these provisions. In the light of the discussion, the Chairman-Rapporteur submitted new text proposals (E/CN.4/1983/WG.2/WP.7) which formed the basis of a further exchange of views. The final version of the text submitted by the Chairman-Rapporteur, which seemed to meet with no objection from the Working Group, read as follows:

"2. The Secretary-General shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such comments or suggestions on the report as it may consider appropriate, and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article"

55. Draft article 20 as submitted by the Chairman-Rapporteur (E/CN.4/1983/WG.2/2) read as follows:

"1. If the Committee receives information from any source which in its view appears to indicate that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to submit observations with regard to the information concerned.

2. On the basis of all relevant information available to the Committee, including any observations which may have been submitted by the State Party concerned, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential enquiry and to report to the Committee urgently.

3. An enquiry made in accordance with paragraph 2 may include a visit to the territory of the State Party concerned, unless the Government of that State Party when informed of the intended visit, does not give its consent.

4. After examining the report of its member or members submitted in accordance with paragraph 2, the Committee may transmit to the State Party concerned any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee under this article shall be confidential."

56. The alternative suggestions of the Ukrainian SSR (E/CN.4/1983/WG.2/WP.5) entailed the following amendment to this draft article:

Paragraph 1: After "territory of a State Party" insert "which announced its recognition of the Committee's status".

57. With regard to draft article 20, paragraph 1, a number of suggestions were made in favour of including a requirement of reliability in the text, for instance by specifying that the information should be reliable, or that the source should be reliable. A suggestion in favour of replacing the words "which in its view appears to indicate that" by the words "which appears to it to contain reliable indications that" seemed to be generally acceptable to the Working Group. At the same time, several speakers felt that the words "from any source" could be deleted. Paragraph 1, as it emerged from the discussion, therefore read as follows:

"1. If the Committee receives information which appears to it to contain reliable indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to submit observations with regard to the information concerned."

58. With regard to draft article 20, paragraph 2, it was pointed out that the Committee should give special attention to the observations submitted by the State party concerned. The Chairman-Rapporteur suggested the following reformulation (E/CN.4/1983/WG.2/WP.4) which seemed to be generally acceptable to the Working Group:

"2. Taking into account any observations which may have been submitted by the State Party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential enquiry and to report to the Committee urgently."

59. With regard to draft article 20, paragraph 3, several speakers felt that the last part of this paragraph, beginning with "unless the Government", was not satisfactory. One delegation proposed to replace this part by the simple formula "in agreement with the State Party concerned", which could form the beginning of the sentence. Moreover it was stressed that the Committee should always seek the co-operation of the State party concerned when it had decided to initiate an enquiry. In the light of these remarks the Chairman-Rapporteur suggested the following reformulation (E/CN.4/1983/WG.2/WP.4) which seemed to be generally acceptable to the Working Group:

"3. If an enquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an enquiry may include a visit to its territory."

60. With regard to draft article 20, paragraph 4, it was observed that the Committee, if it had any comments or suggestions, should always transmit these comments or suggestions to the State party concerned. Moreover, some delegations felt that the Committee should first of all transmit to that State party the report of the enquiry itself. Other delegations pointed out that it would not always be possible to transmit the entire report in case the identity of informants ought to be protected. On the other hand, the Working Group agreed that the State party concerned was entitled to be informed of the findings of the enquiry. In the light of this discussion, the Chairman-Rapporteur submitted the following reformulation (E/CN.4/1983/WG.2/WP.4) which seemed to be generally acceptable to the Working Group:

"4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation."

61. With regard to draft article 20, paragraph 5, all delegations agreed that the proceedings referred to in paragraphs 1-4 should remain confidential as long as they were in progress. On the other hand, some delegations proposed that, after such proceedings had been finalized in respect of a particular case, the Committee should have the possibility of including a summary account of the enquiry in its annual report. This idea was further discussed on the basis of a draft text submitted by the Chairman-Rapporteur (E/CN.4/1983/WG.2/WP.4). Paragraph 5, as it emerged from the discussion, read as follows:

"5. All the proceedings of the Committee referred to in the paragraphs 1-4 shall be confidential. After such proceedings have been completed with regard to an enquiry made in accordance with paragraph 2, the Committee may, at its discretion, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article"

62. It should be borne in mind that the discussion of the text of draft articles 17, 18, 19 and 20, as reflected in paragraphs 32-62 of this report, was without prejudice to the question as to whether these implementation provisions, and in particular the provisions of article 20, should have a mandatory or an optional character. With regard to this question, reference is made to paragraphs 30 and 31 of this report.

63. The Working Group discussed the question of complaint procedures on the basis of articles 31, 32 and 33 of the Swedish draft, contained in document E/CN.4/1493 as well as in Annex II of the report of the 1982 Working Group. The Chairman-Rapporteur reminded the Group of the views reflected in paragraph 79 of the report of the 1982 Working Group. The Swedish delegation informed the Group that it wished to maintain those proposals. One delegation stated that its Government could accept the inclusion of an optional State complaint procedure in the draft convention, as proposed by Sweden, but that it could not accept a mandatory State complaint procedure. One delegation

spoke strongly in favour of including the optional individual complaint procedure in the draft convention. As to the State complaint procedure, the same delegation was prepared to consider its exclusion from the draft convention in the event of a satisfactory provision concerning settlement of disputes being included in the draft. The optional complaint procedures as proposed by Sweden were left for later consideration.

64. In connection with the complaint procedures proposed by Sweden, one delegation reminded the Working Group of its proposal, reflected in paragraph 81 of the report of the 1982 Working Group, to include in the draft convention a mandatory conciliation procedure for disputes between States. It was agreed to come back to this proposal in the context of the consideration of the final clauses.

65. The Working Group considered the question of annual reporting by the implementation organ on the basis of article 34 of the Swedish draft, which read as follows:

"The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, an annual report on its activities."

66. It was observed that the Committee should address its annual reports in the first place to the States parties. On the other hand, it was not considered necessary that the submission of annual reports to the General Assembly should be made through the intermediary of the Economic and Social Council; in this connection reference was made to the International Convention on the Elimination of All Forms of Racial Discrimination which did not contain such a provision. The Chairman-Rapporteur submitted the following new text for an article on annual reporting (E/CN.4/1983/WG.2/WP.8):

"The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations."

67. The new text proposed by the Chairman-Rapporteur met with no objections from the Working Group. The delegation of the Ukrainian SSR remarked that, if its proposals were accepted for making the implementation system an optional one, the States parties in this draft article should of course be specified as "the States Parties which recognized the status of the Committee".

68. With the agreement of the Swedish delegation, the Working Group decided that in the annex of its report to the Commission the implementation articles proposed by Sweden, as far as they did not relate to the optional complaint procedures, would be replaced by the draft articles submitted by the Chairman-Rapporteur, adapted in the light of the discussions thereon (confer E/CN.4/1983/WG.2/WP.11).

CONSIDERATION OF FINAL CLAUSES

69. The Working Group had before it the draft final clauses submitted by the Government of Sweden in document E/CN.4/1427 of 2 December 1980. These draft clauses read as follows:

Article A

1. The present Convention is open for signature by all States at United Nations Headquarters in New York.
2. Any State which does not sign the Convention before its entry into force may accede to it.

Article B

1. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article C

1. The present Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article D

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article E

The Secretary-General of the United Nations shall inform all States of the following particulars:

- (a) Signatures, ratifications and accessions under articles A and B;
- (b) The date of entry into force of the present Convention under article C;
- (c) Notification under article D.

Article F

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States."

70. The Australian delegation submitted to the Working Group a proposal for the inclusion of a provision concerning the obligations of federal or non-unitary States (E/CN.4/1983/WG.2/WP.6). The proposed draft article read as follows:

"The obligations of a Federal or non-unitary State Party which has a system of government under which executive, judicial and legislative powers are distributed or shared between the federal authority and the constituent states, provinces or cantons, shall be the same as for non-federal states but the provisions of the convention may be implemented by the State Party through its federal, constituent state, provincial or canton authorities, having regard to their respective constitutional powers and arrangements concerning their exercise."

71. The Netherlands delegation submitted to the Working Group a proposal for the inclusion of a provision concerning the settlement of disputes (E/CN.4/1983/WG.2/WP.10). The proposed draft article read as follows:

"Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

72. During the general debate on the final clauses, it was recalled that, at the previous session, a proposal had been made to include a compulsory system of conciliation in the draft convention. Furthermore, the view was expressed that the convention should contain an article on denunciation.

Articles A, B and C

73. A contradiction was observed between the provisions of article A and article C, since according to article A, paragraph 2, accession to the convention would only be possible after its entry into force, whereas article C envisaged the possibility of accessions before the entry into force. Various suggestions were made for solving this contradiction. One method would be to delete the words "or accession" in article C, paragraph 1 and the second line of paragraph 2. Another method would be to specify in article A, paragraph 1, that the convention would be open for signature during a limited time period only, in which case article C could remain unchanged. Several members of the Working Group preferred a third solution, namely to keep the convention open for signature indefinitely, as in the Swedish proposal, but to open it for accession right from the beginning.

74. With regard to article C, the discussions referred mainly to the number of ratifications or accessions required for the entry into force of the convention.

From the point of view of some delegations, the draft convention should set a high threshold, as had been done in the Covenants, requiring a minimum of thirty-five ratifications or accessions. Other delegations considered a high threshold neither necessary nor desirable. Reference was made to the Optional Protocol to the International Covenant on Civil and Political Rights, which required only ten ratifications or accessions for entry into force. Several speakers recommended the following example of the Convention on the Elimination of All Forms of Discrimination against Women, which required twenty ratifications or accessions. It was decided to postpone consideration of this question.

Article D

75. Several delegations stated that they preferred provisions concerning a procedure for amending the convention in place of the proposed provisions for revision of the convention, which seemed to refer to an over-all review. Apart from this question, several speakers favoured amending paragraph 2 so as to allow the States parties, rather than the General Assembly, to decide on steps to be taken after a request for revision or amendment had been made. One delegation pointed out that the Swedish proposal was based on the precedents of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, and preferred to keep the text as proposed.

Article E

76. It was pointed out that, if an article on denunciation were to be inserted in the draft convention, the proposed article should be complemented to include notifications of denunciation. It was further observed that the article should explicitly refer to the entry into force of amendments, if a procedure for revision or amending were included in the convention.

Article F

77. Article F did not give rise to any comments.

Provision concerning federal or non-unitary States

78. The Australian delegation, in introducing its proposal for a provision concerning the obligations of federal or non-unitary States (WP.6), emphasized that the proposal was made in order to assist implementation of the convention in a federal structure, while fully recognizing and preserving the obligations of federal States to implement the convention in its entirety.

79. In a first exchange of views on the proposal, several members of the Working Group took part who were themselves representatives of federal States. One delegate expressed support for the proposal on the basis that it could provide practical assistance to, at least, some federal States in becoming parties to the convention, while not detracting from the obligations undertaken by such States. Other speakers observed that, although the clause proposed by Australia was not necessary for their own States, they appreciated the underlying reasons for the proposal. One speaker suggested that the question of implementing appropriate measures to meet obligations under the convention was an internal matter for the State party concerned. Another speaker queried whether the issue might be better

dealt with by a clause similar to article 50 of the International Covenant on Civil and Political Rights. The representative of Australia agreed that the question of appropriate measures for implementation of the obligations of the convention was a matter for individual State parties. However, the Australian proposal was directed to assisting implementation in federal States through recognition of traditional divisions of powers. In the view of the Australian delegation this was a practical matter of importance, not addressed in Article 50 of the Covenant, and would assist federal States in achieving early ratification of the convention. Several speakers indicated that they wished to give the Australian proposal further study and consequently it was agreed that the matter should be considered further at a later stage.

Provision concerning the settlement of disputes

80. The Netherlands delegation, in introducing its proposal for a provision concerning the settlement of disputes (E/CN.4/1983/WP.2/WP.10), stated that the draft article followed the example of article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination. Some delegations expressed support for the idea underlying the Netherlands proposal. On the other hand, one delegation stated that a second paragraph should be added, enabling States parties, at the time of signature or ratification of the convention or accession thereto, to declare that they did not consider themselves bound by the provision concerning the referring of disputes to the International Court of Justice. As time did not permit a full discussion of the Netherlands proposal, it was decided that the matter should be reconsidered at a later stage.

Revised set of final clauses

81. In the light of the discussions that had taken place, the Chairman-Rapporteur submitted to the Working Group at its eleventh meeting a revised set of clauses concerning signature, ratification, accession, entry into force, amending and denunciation (E/CN.4/1983/WG.2/WP.15). The text of these draft clauses read as follows:

"Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the [twentieth] instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the [twentieth] instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 29

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article 30

The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this Convention or acceded to it, of the following particulars:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27, and the date of the entry into force of any amendments under article 28;
- (c) Denunciations under article 29."

82. In introducing the above-mentioned proposals, the Chairman-Rapporteur pointed out that they did not cover the whole field of possible final clauses. In particular they did not deal with the question of the obligations of federal States nor with the question of settlement of disputes, for which other proposals were under consideration. Due to lack of time, the Working Group was not able to formally adopt any of the proposed final clauses. However, with the agreement of the Swedish delegation, the Working Group decided that in the annex of its report to the Commission the part on final clauses should consist of the draft articles contained in document E/CN.4/1983/WG.2/WP.15 and a draft article identical with article F contained in document E/CN.4/1427.

83. On 24 February 1983, the Working Group adopted its report without a vote.

ANNEX

Explanatory note

The Annex contains a compilation of draft provisions adopted during working group sessions in 1979, 1980, 1981, 1982 and 1983, draft provisions proposed by Sweden which have not yet been adopted, and draft provisions as they emerged from the discussions and which the Working Group decided to include in the Annex as a basis for further consideration. All provisions which were not formally adopted have been placed between square brackets.

The Annex does not give a complete inventory of all proposals that have been tabled in the Working Group concerning the text of the draft convention. As to such proposals tabled in 1983, reference is made to paragraphs 12, 22, 23, 33, 45, 49, 56, 70 and 71 of the Report.

In respect of the different parts of the draft convention reproduced in the Annex, the following can be observed.

The preambular part contains seven preambular clauses adopted by the Working Group in 1983.

Part I contains 16 substantive articles as they emerged from earlier discussions. Most of these provisions have already been adopted. Decisions are still pending with regard to the draft articles 3, 5, 6, 7 and 16.

Part II contains eight articles relating to implementation of the convention. The draft articles 17, 18, 19, 20 and 24 are based on proposals submitted by the Chairman-Rapporteur in 1983, adapted in the light of the discussions thereon. The draft articles 21, 22 and 23 are identical with the draft articles 31, 32 and 33 proposed by Sweden in 1981 (document E/CN.4/1493).

Part III contains seven final clauses. The draft articles 25, 26, 27, 28, 29 and 30 are based on proposals submitted by the Chairman-Rapporteur in 1983. Draft article 31 is identical with draft article F proposed by Sweden in 1980 (document E/CN.4/1427).

ANNEX

Draft convention against torture and other cruel,
inhuman or degrading treatment or punishment

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

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

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

Part I

Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. ["For the purpose of determining whether there are such grounds all relevant considerations shall be taken into account including, where applicable, the existence in the State concerned of a consistent pattern of gross violations of human rights, such as those resulting from a State policy of apartheid, racial discrimination or genocide, colonialism or neo-colonialism, the suppression of national liberation movements or the occupation of foreign territory."]

"Remark: Some delegations indicated that their States might wish, at the time of signature or ratification of the Convention or accession thereto, to declare that they did not consider themselves bound by article 3 of the Convention, in so far as that article might not be compatible with obligations towards States not Party to the Convention under extradition treaties concluded before the date of the signature of the Convention."

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. */
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

*/ The term "complicity" includes "encubrimiento" in the Spanish text.

In the Spanish text

[Add at the end of para. 1: "o encubrimiento de la tortura".]

In the French text

[Add a foot-note reading: "le terme 'complicité' comprend 'encubrimiento' dans la texte espagnol".]

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

[2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.]

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.

[4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.]

Article 7

[1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.]

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture be redressed and have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12, 13 and [14] shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

Part II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of nine experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States parties. Each State party may nominate one person from among its own nationals. States parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States parties which have nominated them, and shall submit it to the States parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of four of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these four members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States parties. The approval shall be considered given unless half or more of the States parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

Article 18

[1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) six members shall constitute a quorum;

(b) decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.]

Article 19

[1. The States parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.

2. The Secretary-General shall transmit the reports to all States parties.

3. Each report shall be considered by the Committee which may make such comments or suggestions on the report as it may consider appropriate, and shall forward these to the State party concerned. That State party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State party concerned, in its annual report made in accordance with article 24.]

Article 20

[1. If the Committee receives information which appears to it to contain reliable indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State party concerned. In agreement with that State party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in the paragraphs 1-4 shall be confidential. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, at its discretion, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.]

Article 21

[1. A State party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the present Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State party considers that another State party is not giving effect to the provisions of the present Convention, it may, by written communication, bring the matter to the attention of that State party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of the present Convention.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.

(f) In any matter referred to it under this article, the Committee may call upon the States parties concerned, referred to in subparagraph (b), to supply any relevant information.

(g) The States parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report:

- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts: the written submissions and record of the oral submissions made by the States parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States parties concerned.

2. The provisions of this article shall come into force when five States parties to the present Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article: no further communication by any State party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.]

Article 22

1. A State party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State party to the Convention which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State party to the present Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State party concerned.
5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that
 - (a) the same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
 - (b) the individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of the present Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State party concerned and to the individual.
8. The provisions of this article shall come into force when five States parties to the present Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.

Article 23

[The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.]

Article 24

[The Committee shall submit an annual report on its activities under this Convention to the States parties and to the General Assembly of the United Nations.]

Part III

Article 25

- [1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.]

Article 26

[This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.]

Article 27

- [1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the [twentieth] instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the [twentieth] instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.]

Article 28

- [1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.]

Article 29

[A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.]

Article 30

[The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this Convention or acceded to it, of the following particulars:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27, and the date of the entry into force of any amendments under article 28;
- (c) Denunciations under Article 29.]

Article 31

[1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.]