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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 1984/21 of 6 March 1984, entitled "draft convention against torture and other cruel, inhuman or degrading treatment or punishment", the Commission on Human Rights decided to transmit to the General Assembly, through the Economic and Social Council, the report of the Working Group on a draft convention against torture (E/CN.4/1984/72) as well as the summary records of the Commission's debate on this item during its fortieth session (E/CN.4/1984/SR.32-34 and 42). In the same resolution, the Commission requested the Secretary-General to bring the documents referred to above to the attention of the Governments of all States and to invite these Governments to communicate to him, preferably before 1 September 1984, their comments on the draft convention contained in the annex to the Working Group's report. The Commission requested the Secretary-General to submit the comments received from Governments to the General Assembly at its thirty-ninth session.

2. As at 21 September 1984, the following Governments had sent replies: Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Hungary, Ireland, Italy, Netherlands, Norway, Portugal, Sweden, Switzerland, Tonga, United Kingdom of Great Britain and Northern Ireland and United States of America.

3. Any information which may be received after the above-mentioned date will be included in addenda to the present document.

II. REPLIES RECEIVED FROM GOVERNMENTS

AUSTRALIA

[Original: English]

[14 June 1984]

1. The Australian Government remains gravely disturbed by the extent of the practice of torture world wide and the fact that through the existing international machinery it has not yet proved possible effectively to deal with it. Australia has been consistently active in international efforts directed towards eradicating this abhorrent phenomenon. In particular, Australian delegations have participated actively over a number of years in discussions and negotiations in the Commission on Human Rights Working Group set up to draft a convention against torture and other cruel, inhuman or degrading treatment or punishment.

2. The Australian Government wishes to record its strong support for the draft convention produced by the Working Group which has now been transferred by resolution 1984/21 of the fortieth session of the Commission on Human Rights to the United Nations General Assembly for its adoption. Australia wishes also to emphasize the critical importance of mandatory implementation provisions to the effectiveness of the convention and the need to remove the brackets around draft articles 19 and 20, leaving these articles as they stand.

3. The Australian Government encourages all Governments to support adoption of the draft convention when it is considered by the General Assembly at its thirty-ninth session.

BELGIUM

[Original: French]

[24 August 1984]

1. Belgium is pleased to note that, after years of intense debate and difficult negotiations, the Commission on Human Rights has fulfilled the mandate conferred on it by the General Assembly in its resolution 36/62 of 8 December 1977. The General Assembly believing that further international efforts were needed to ensure adequate protection for all against torture and other cruel, inhuman or degrading treatment or punishment, requested the Commission, seven years ago, to draw up a draft convention on this subject.

2. Resolution 1984/21, in which the Commission on Human Rights decided to transmit the text of a draft Convention to the General Assembly, may therefore be considered one of the major achievements of the fortieth session of the Commission. It constitutes a new and significant step in the international community's struggle against the scourge of torture and inhuman treatment. Belgium consequently attaches great importance to this draft convention. In view of the fact that the text was negotiated over a number of years and that the final consensus was obtained through the constructive attitude of the various participants in the Working Group, Belgium is of the opinion that this draft, in its present form, is most satisfactory.

3. Nevertheless, it is a compromise text and Belgium would have liked to see certain passages worded differently, such as article 1, paragraph 1 (last line), of the draft convention, where the notion of "lawful sanctions" is imprecise and thus constitutes an even broader "escape clause" than article 1 of 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 and the main source of inspiration for the draft convention. However, in the light of the above considerations and taking into account that any compromise forms a delicate whole, Belgium is prepared to accept the draft convention, as submitted to the General Assembly.

4. However, this consent is given on condition that the two articles that have not yet met with general agreement are retained as they stand. Belgium, like several other States Members of the United Nations, considers that a specific convention against torture and other inhuman treatment has no raison d'être unless it contains an implementation system that is more effective in scope than those that already exist in this area. At present, torture and other cruel, inhuman or degrading treatment or punishment are already prohibited by a number of international instruments, namely the Universal Declaration on Human Rights of 1948, the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977,

the International Covenant on Civil and Political Rights of 1966 and the above-mentioned Declaration against torture, of 1975, as well as several regional conventions on human rights. The international community can therefore no longer be content with condemning these practices but must set up an international control system, capable of reducing to a minimum or even eliminating the phenomenon. The prohibitions accepted by States in solemn international texts should be accompanied by measures enabling their actual implementation to be verified.

5. This is why Belgium thinks that articles 19 and 20, relating to the submission and consideration of States' reports and arrangements for inquiries, should form an integral part of the system of obligatory enforcement of the Convention in such a way as to apply to all States parties. In Belgium's view, the purpose of these provisions is not to violate national sovereignty, or to seek to interfere in the internal affairs of States parties, but to provide the Convention with an appropriate mechanism for ensuring the application of one of the most fundamental norms of international law, namely "pacta sunt servanda".

6. Belgium hopes that the General Assembly will be in a position to adopt the draft convention at its forthcoming session, thereby paving the way at last for an effective onslaught by the international community on one of the most revolting practices known to mankind.

BRAZIL

[Original: English]

[23 August 1984]

The Brazilian Government has no comment to present, at this stage, on the draft convention against torture and other cruel, inhuman or degrading treatment of punishment.

CANADA

[Original: English]

[8 August 1984]

1. The Government of Canada strongly supports international action against torture and other cruel, inhuman or degrading treatment or punishment. It considers that a draft convention on this subject should not merely represent a reiteration of the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but must contain provisions aimed at effective implementation and monitoring of the protections and standards envisaged in the convention. Pursuant to this position, the Government of Canada firmly supports the inclusion in the convention of article 19, paragraphs 3 and 4, and article 20 which appear in square brackets in

the text submitted by the Commission on Human Rights to the General Assembly for its consideration.

2. The Government of Canada wishes to commend the Commission on Human Rights for accomplishing the task of drafting this convention and expresses the hope that the convention can be adopted and proclaimed during the thirty-ninth session of the General Assembly.

DENMARK

[Original: English]

[3 August 1984]

1. It is a generally accepted principle that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This principle is maintained in the Universal Declaration of Human Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and numerous other international legal instruments.

2. Nevertheless, evidence of practices of torture and other forms of inhuman or degrading treatment continues to be reported from various parts of the world. No continent is free from this evil which is a flagrant denial of human dignity.

3. The preparation and adoption of a convention against torture and other cruel, inhuman or degrading treatment or punishment, which was initiated by the General Assembly in its resolution 32/62, is therefore a matter of utmost importance, which should be accorded the highest possible priority by the Assembly.

4. The draft convention submitted by the Commission on Human Rights is the result of long and difficult negotiations. It is a carefully worked out compromise. It may not be fully satisfactory to all Governments but, as a compromise text adopted by consensus, it is acceptable to Denmark.

5. Two issues remain open. No consensus was reached as to whether the committee to be established under the convention should be competent to make "comments and suggestions" in relation to the implementation reports by Governments. Consequently, article 19, paragraphs 3 and 4, remain in square brackets.

6. Furthermore, no final agreement was reached with regard to the mandatory nature of the competence of the committee to initiate inquiries as to the occurrence of systematic torture practices. Article 20, which sets out a mandatory inquiry procedure, is therefore placed between square brackets.

7. Denmark attaches particular importance to the adoption of effective implementation provisions. The two outstanding issues are important features of an implementation system which would imply significant progress in relation to existing international law. It is the firm opinion of the Danish Government that

the two sets of brackets should be lifted and the text of the convention adopted as it stands.

8. In order to safeguard the credibility of the efforts of the United Nations in the fundamental field of human rights, the Danish Government considers that the convention against torture and other cruel, inhuman or degrading treatment or punishment should be speedily adopted. It is hoped that debates on issues, which were settled by the compromise text adopted by consensus and submitted by the Commission on Human Rights, will not be reopened, thereby postponing even further the adoption of this important international instrument.

FINLAND

[Original: English]

[11 September 1984]

1. The Government of Finland has attached great importance to the draft convention against torture and other cruel, inhuman or degrading treatment or punishment since the work was initiated by Sweden in 1977. In 1978, the Finnish Government presented its detailed views on the matter in response to a request by the Secretary-General. In that reply, contained in document A/33/196/Add.1, it was stated that the Government of Finland had given a unilateral declaration on its intention to comply with the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That commitment notwithstanding, the principles reflected in the Declaration had been observed in Finland over a long period of time.

2. Thus, it is only natural that in the framework of the open-ended Working Group on this matter established by the Commission on Human Rights, Finland has taken an active interest in the preparations of a convention and has contributed to the work since becoming a member of the Human Rights Commission in 1983.

3. The position which the Government of Finland has assumed in this regard is based on the conviction that the adoption of a convention against torture and other cruel, inhuman or degrading treatment or punishment would be a major step in the international efforts to promote human rights. It is a generally accepted principle, established i.a. in the Universal Declaration of Human Rights, that no one shall be subjected to torture. Thus, the purpose of a convention would essentially be to implement existing norms. Finland, therefore, attaches great importance to the adoption of provisions for effective implementation.

4. As to the procedure to be followed in the consideration of the draft convention by the General Assembly, the Finnish Government strongly favours urgent action in this matter. This means i.a. that the draft text as a whole should not be reopened in the General Assembly but that the Assembly should rather concentrate its efforts on solving the questions that still remain open. Adequate time and facilities for informal consultations to this end should be ensured.

FRANCE

[Original: French]

[20 September 1984]

1. France unequivocally condemns torture, which is an intolerable practice and an affront to dignity and to the human conscience. It believes that it is the duty of the international community to adopt, in a convention, provisions which will permit effective efforts to combat such revolting practices as torture.

2. France, which played a very active role within the Commission on Human Rights in the Working Group on a draft convention against torture, attaches great importance to the adoption of the draft convention by the General Assembly this very year.

3. The French Government is in full agreement with all the provisions adopted and hopes, in this connection, that the Assembly will adopt the whole of the text transmitted by the Commission on Human Rights, including articles 19 and 20.

4. In addition, it attaches particular importance to articles 5 to 7 concerning universal jurisdictional competence. In its opinion, this competence significantly enhances the convention and will permit the attainment of its essential objective - action to combat torture and to punish those who engage in it, regardless of the State party in which they are located.

HUNGARY

[Original: English]

[10 May 1984]

1. The Government of the Hungarian People's Republic is of the firm view that torture and other similar cruel treatment of human beings are gross violations of human rights and fundamental freedoms. Particularly alarming is the mass and flagrant nature of the violations of these fundamental human rights by the policy of apartheid, racial discrimination, colonialism, neo-colonialism and genocide. Effective and universal measures have always been advocated by the Hungarian People's Republic at all international forums against these unlawful phenomena and practices. Consequently, it supports the noble efforts undertaken by the United Nations to this effect. This position of principle has guided the Hungarian Government in following the work of the Commission on Human Rights on the draft convention against torture and other cruel, inhuman and degrading treatment or punishment with great attention and expectation.

2. In the Hungarian People's Republic, torture and other cruel treatments being alien to socialist society, are incompatible with its political and legal system. Torture is explicitly prohibited by the Constitution, the Penal Code and the Act on Criminal Procedure. Consequently torture is a severely punishable offence.

3. The Hungarian Government has, inter alia, fully respected and promoted the relevant provisions of the International Covenant on Civil and Political Rights and it is determined to act likewise in the future. The reporting of the obligations of the Government undertaken by becoming a State Party to this Covenant reflects in unequivocal terms that article 7 of the Covenant is also given full effect in Hungary.

4. The Government of the Hungarian People's Republic has been looking forward with great expectation to the work carried out by the Commission on Human Rights in elaborating the draft convention against torture and other cruel, inhuman or degrading treatment or punishment. While appreciating the work accomplished by the Commission, it believes that the time has not come yet for the General Assembly to adopt a convention on the subject. There remain major issues to be decided, and it is desirable to reach the widest possible agreement on all provisions of the draft convention for the international community to succeed in combating torture and other cruel treatment effectively.

5. Therefore, the Hungarian Government urges general agreement on the outstanding issues, before a convention is adopted by the United Nations.

6. In order to facilitate the elaboration of a viable, effective and universal convention on the subject, the Hungarian Government wishes to put forward the following suggestions:

(a) Were a committee against torture established, its functions should be in line with those of other similar committees established under various conventions, such as the Commission on Human Rights or the Committee on the Elimination of Racial Discrimination;

(b) The inquiry procedure, as envisaged in article 20 of the draft convention, is at variance with the well-established principles of contemporary international law, in particular, respect for the sovereignty of States and non-interference in the internal affairs of States. Therefore, the Hungarian Government cannot accept the current wording of article 20 of the draft convention. It shares, however, the view that this article should have an optional character.

7. The Government of the Hungarian People's Republic is prepared to offer its co-operation in overcoming the difficulties of drafting a convention against torture. The most appropriate way of action to this end should be renewed consideration of the draft convention in the Commission on Human Rights with the aim of achieving general agreement on the text of the convention as a whole.

IRELAND

[Original: English]

[4 September 1984]

1. Ireland looks forward to the adoption by the United Nations General Assembly of a convention against torture and other forms of cruel, inhuman or degrading treatment or punishment. Ireland views the adoption of this instrument to be an important step in the international legal protection of fundamental human rights, as laid down in the Universal Declaration of Human Rights.

2. The draft convention has taken six years to prepare at working group level at the Commission on Human Rights. All involved in preparing the draft will acknowledge the degree of compromise which went with shaping the text that has emerged for consideration by the General Assembly.

3. The efforts made to come to agreement on this draft convention represent the degree of importance attached by the international community to formulating effective international legal protection against torture and other forms of cruel, inhuman or degrading treatment or punishment. While Ireland may not be totally satisfied with all the detailed provisions of the draft instrument, on the grounds that certain provisions could be strengthened to provide greater protection, it is felt that the compromise achieved at the Commission on Human Rights is of great value and worth maintaining.

4. Ireland notes that the Working Group was unable to adopt in full only two provisions of the draft convention (articles 19 and 20). It is hoped that these articles will be adopted by the General Assembly and will include effective and mandatory implementation procedures, as envisaged in the draft that will be before the General Assembly.

ITALY

[Original: English]

[20 September 1984]

1. The Italian Government is deeply disturbed by the occurrence in many parts of the world of the practice of torture and other cruel, inhuman or degrading treatment or punishment, which are among the most abhorrent violations of human rights. This extremely serious situation, which persists in spite of the repeated prohibitions of torture stated by various international instruments, is an undeniable sign of the urgent need to strengthen the existing machinery for the effective protection of human rights.

2. The Italian Government therefore welcomes the conclusion of the long work done by the Commission on Human Rights to draw up, as requested by the General Assembly in 1977, a draft convention against torture. It also welcomes the Commission's

unanimous decision to transmit the text to the General Assembly, and strongly hopes that, at its current session, the Assembly will accord high priority to the consideration of the draft convention.

3. The documentation transmitted to the General Assembly together with the draft convention clearly shows that the proposed text is the outcome of intensive discussion and difficult negotiations on various points and that on almost all of them compromise was finally reached, so that only two provisions of the draft convention, namely, article 19, paragraphs 3 and 4, and article 20, remain open and are before the Assembly in square brackets. Both articles deal with effective and mandatory implementation provisions to which the Italian Government attaches particular importance as essential features of a convention against torture and similar abominable practices.

4. Article 19 enables the committee to be established to make on each report of the States Parties to the convention such comments or suggestions as it may consider appropriate; to forward them to the State Party concerned; and, at its discretion, to include them, together with the observations received from the State Party, in its annual report to the General Assembly. The Italian Government is firmly of the opinion that these provisions would render more effective the dialogue which develops between the committee and each reporting State during the consideration of the latter's reports on the implementation of the convention. The gravity of torture and other similar treatment or punishment does require implementation provisions more advanced than those established by article 40 of the International Covenant on Civil and Political Rights and the Optional Protocol thereto.

5. Article 20 establishes implementation provisions intended to seek the co-operation of single States Parties to the convention if the committee to be established receives reliable indications that torture is systematically practised in their territories. The co-operation of each State Party concerned may develop from the minimum of submitting to the committee its own observations to the extent of co-operating in a confidential inquiry made by one or more of the committee members and of permitting a visit to its territory. These forms of co-operation are similar to those envisaged by previously established procedures of and decisions taken by the United Nations since the 1970s when dealing with specific situations of violations of human rights. For this reason, the Italian Government is firmly of the opinion that the provisions established by article 20 of the draft convention should be a mandatory part of the convention.

6. As to other articles of the draft convention, the Italian Government notes that some of the compromises achieved are not considered by it as fully satisfactory. In particular, it is perplexed by the definition of torture contained in article 1, paragraph 1, above all in relation to the concept of "lawful sanctions" which, in any case, must be understood as referring also to international law.

7. However, the Italian Government, in the light of all foregoing comments, is prepared to accept the draft convention in its entirety, taking into consideration that it deals with a subject of utmost importance which requires greatest attention and urgent action by the United Nations.

NETHERLANDS

[Original: English]

[17 July 1984]

1. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment has been incorporated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and numerous other multilateral declarations and conventions. However, in spite of this undisputed norm of international law, torture practices continue to occur in many places in the world. This makes it necessary to find ways and means to strengthen the existing prohibition of torture. One way of strengthening that prohibition consists of further standard-setting in this field.

2. A first important step on this road was the adoption by the United Nations General Assembly in 1975 of the Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. Two years later, the Assembly adopted resolution 32/62, in which it requested the Commission on Human Rights to draw up a draft convention in the light of the principles embodied in the 1975 Declaration.

3. The Netherlands was a co-sponsor of that resolution. In 1984, as a member of the Commission on Human Rights, it also co-sponsored the resolution by which the Commission transmitted to the General Assembly a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, contained in the annex to the Commission's Working Group on this subject.

4. The Netherlands Government welcomes the result of the work undertaken by the Commission on Human Rights in response to the Assembly's request of 1977. It notes with satisfaction that, as far as torture is concerned, most of the principles embodied in the 1975 Declaration have been incorporated as legal obligations in the draft convention transmitted to the General Assembly. It also notes with satisfaction that the draft convention contains a number of provisions which go beyond the contents of the Declaration.

5. For example, the draft convention does not only state that no exceptional circumstances whatsoever (such as a threat of war or internal political instability) can justify torture, but it also states explicitly that no order from a superior officer or a public authority may be invoked as a justification for torture. The draft provides that no State Party shall expel, return 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. In more precise terms than those of the Declaration, the draft convention provides that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment shall be included in the rules and instructions issued in regard to the duties and functions of both civil and military law enforcement personnel, as well as medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention or imprisonment.

6. One importrant aspect in which the draft convention goes beyond the 1975 Declaration relates to criminal proceedings in connection with acts of torture, attempts to commit torture and acts which constitute complicity or participation in torture. With respect to such offences, the draft contains provisions for the establishment and exercise of jurisdiction and concerning extradition and mutual assistance among States in connection with criminal proceedings. The most far-reaching of these provisions obliges the State in whose territory a person suspected of such an offence is found, to submit the case to its competent authorities for the purpose of prosecution if it does not extradite him, even if the alleged offender is not its national and if the offence was committed abroad.

7. The Netherlands Government attaches particular importance to the implementation system of the draft convention. The Government has always held the view that the value of a specific convention against torture would depend to a large degree on the inclusion of effective implementation provisions that would go beyond the provisions contained in the International Covenant on Civil and Political Rights and the Optional Protocol thereto. For that reason it submitted, in 1981, proposals to that effect to the Working Group of the Commission on Human Rights. Taking into consideration that these proposals did not obtain sufficient support in the Working Group, the Government can accept the implementation articles set out in the present draft convention, provided that the provisions of articles 19 and 20 which still stand between square brackets are retained.

8. The definition of torture contained in the draft convention refines in some respects the definition contained in the 1975 Declaration. The Netherlands Government wishes to make two observations with regard to this definition, as set out in article 1, paragraph 1, of the draft. The list of purposes mentioned in the first sentence is an illustrative list, not an exhaustive one. The word "lawful" in the second sentence must be understood as referring to compatibility with both national and international law.

9. The Netherlands Government highly appreciates the constructive atmosphere which has characterized the discussions in the Working Group of the Commission on Human Rights. It is aware of the fact that the draft convention now transmitted to the General Assembly is the outcome of intensive and prolonged deliberations and may be considered the best possible text. Therefore the Government is prepared to accept in its entirety the present draft convention against torture and other cruel, inhuman or degrading treatment or punishment.

10. The Netherlands Government would regard early adoption of the convention by the General Assembly as an important step in the combat against the evil of torture. Taking into account that almost seven years have passed since the Assembly requested the Commission on Human Rights to draw up a draft convention for this purpose, the Government strongly hopes that the General Assembly will decide at its next session on the definitive text, in order to open the convention for signature and ratification.

NORWAY

[Original: English]

[21 August 1984]

1. The Norwegian Government considers the draft convention against torture as an important factor in the United Nations work in the field of human rights. The adoption of the draft convention, at the earliest possible date, must be considered as a useful tool in the combating of torture which is still being practised in all regions of the world. For these reasons, the Norwegian Government supports the adoption, as soon as possible, and preferably at the forthcoming session of the General Assembly, of a convention against torture, containing specific substantive obligations and effective measures of implementation.

2. In assessing the draft convention against torture presented by the Commission on Human Rights, account must be taken of the lengthy and conscientious work of the Working Group set up by the Commission to prepare the draft. After several years of discussion, the Working Group succeeded in submitting a draft mainly based on consensus. The Norwegian Government fully supports the results reached by the Working Group, and is willing to accept it as a whole, even though it would have wished to see different solutions applied on some minor questions. In this respect, the Norwegian Government would like to express its support for the statements by Canada and other delegations in paragraphs 14 and 44 of the report of the Working Group (E/CN.4/1984/72). Taking into account, however, that the draft presented by the Working Group is the result of a broad compromise, where all participants have given concessions, the Norwegian Government is willing to accept the draft as it now stands, without amendments, in order to obtain a speedy adoption of the convention. Since the text of the draft is based on compromises reached after lengthy discussions of the open-ended Working Group, it seems advisable to accept these and avoid a reopening of the discussions.

3. When considering the draft convention as a whole, and its usefulness in the universal struggle against torture, the content of the draft must be compared to the already existing rules of international law relating to torture, in particular the relevant provisions of the International Covenant on Civil and Political Rights. In this respect, the Norwegian Government finds it of utmost importance that a new convention against torture contain new substantial elements compared with the rules already in force. A mere repetition, although somewhat more detailed, of already established rules should not be considered as satisfactory. In this respect, the draft convention contains two elements which the Norwegian Government considers to be of utmost importance, namely the provisions on universal jurisdiction and a system of effective implementation.

4. As concerns the few items where the Working Group was not able to reach consensus (article 19, paragraphs 3 and 4, and article 20 of the draft convention), the Norwegian Government will express its support for the texts submitted between square brackets in both articles. As regards article 19, the Norwegian Government supports the idea that the committee which will be set up under the convention, should be given the competence to make "comments or suggestions" on the reports submitted by Governments of States Parties to the convention.

5. As stated in the paragraph 3 above, effective implementation measures must be considered as one of the two most important elements of the new convention against torture. In establishing this system of implementation, a general aim should be to create new measures additional to those already existing in other international instruments on human rights. The rules on implementation in the draft convention against torture consist in a large part of known elements from conventions adopted earlier, first of all the International Covenant on Civil and Political Rights, inter alia, a system of State reports, and procedures for State complaints and individual complaints. The only article which introduced some new elements into the implementation system, is article 20, and for this reason the Norwegian Government finds this article to be essential. As an ultimate resort, the committee should have competence to start an inquiry when there are reliable indications that torture is being systematically practised in the territory of a contracting State. The Norwegian Government considers that this procedure should apply to all contracting States as a mandatory part of the convention.

6. The draft convention has no provisions on its field of application. In paragraph 5 of the report of the Working Group (E/CN.4/1984/72), the representative of the United States stated his understanding that the convention was never intended to apply to armed conflicts and thus supersede the 1949 Geneva Conventions on humanitarian law in armed conflicts and the 1977 Protocols Additional thereto. He stated his further understanding that incidents covered by the Geneva Conventions and Protocols thereto would not fall within the scope of the convention against torture and that to consider otherwise would result in an overlap of the different treaties which would undermine the objective of eradicating torture. This understanding seems relevant in relation to international armed conflicts as defined in common article 2 of the 1949 Geneva Convention and article 1, paragraph 4, of the First Additional Protocol. For these kinds of armed conflicts, the Geneva Conventions and the First Additional Protocol established a system of universal jurisdiction and of implementation that must be considered equal to the system of the convention against torture. As concerns internal armed conflicts, however, these are governed by the Second Additional Protocol of 1977, where no provisions of universal jurisdiction are to be found, and where the systems of implementation are far less developed. For these reasons, it could be argued that the convention against torture should apply in all other cases than in international armed conflicts, as defined by the 1949 Geneva Conventions and the First Additional Protocol thereto.

PORTUGAL

[Original: English]

[11 September 1984]

The contents of the draft convention against torture and other cruel, inhuman or degrading treatment or punishment, presented by the Economic and Social Council, are in accordance with the precepts and principles of the Portuguese judicial order and of the Constitution of the Portuguese Republic.

SWEDEN

[Original: English]

[18 June 1984]

1. In the opinion of the Swedish Government, the work on a convention against torture is important and urgent, and the adoption of such a convention would significantly strengthen the international protection of human rights, provided that the convention would impose specific substantive obligations on the contracting States and contain effective rules for the implementation of these obligations.

2. The draft convention which has now emerged from the discussion in the Working Group of the Commission on Human Rights is the result of long and difficult negotiations and is a compromise text. As a compromise it is, of course, not entirely satisfactory to any Government. The Swedish Government would also have preferred other solutions to a number of the problems involved but believes at the same time that it would be very difficult, or even impossible, to draft a different text which could gain wider support or be accepted by consensus. In any case, it does not seem desirable to reopen the discussion of the numerous points which have already been discussed at length within the Working Group and on which compromises were finally found within that Group. For these reasons, Sweden is prepared to accept the text which has now been transmitted to the General Assembly.

3. In regard to two articles, however, i.e., articles 19, and 20 of the draft convention, no consensus could be reached in the Working Group, and the Swedish Government therefore wishes to comment specifically on these two points.

4. Articles 19 and 20 deal with the important elements in the system for the implementation of the convention, and as stated above, it is the opinion of the Swedish Government that effective international implementation should be one of the basic features of the new convention.

5. As regards article 19, the question is whether the committee which will be set up under the convention with the task, inter alia, of examining the reports submitted by Governments should be competent to make "comments or suggestions" on such reports. The Swedish Government considers that the committee should be given such competence.

6. As regards article 20, the Swedish Government considers it to be an essential part of the implementation system that the committee should be able, as an ultimate resort, to institute an inquiry, if there are reliable indications that torture is being systematically practised in the territory of a contracting State. In view of the importance of such a procedure within the implementation system, the Swedish Government is firmly of the opinion that it should apply to all contracting States and, consequently, be a mandatory part of the convention.

7. The Swedish Government hopes that the General Assembly will deal speedily with the draft convention transmitted to it by the Commission on Human Rights and that

it will find it possible to adopt the convention without delay. This would undoubtedly be a significant contribution to the international efforts to eliminate a particularly serious type of violation of human rights, which is generally condemned but is nevertheless widely practised.

SWITZERLAND

[Original: French]

[28 August 1984]

1. The strengthening of the prohibition against torture through effective international measures is, for Switzerland, a priority objective in the quest for improved protection of persons deprived of their liberty. That is why the Swiss Government firmly supported the initiative taken by the Commission on Human Rights at its thirty-fourth session, in 1978, to establish a working group responsible for preparing a draft convention against torture and other cruel, inhuman or degrading treatment or punishment. In this same spirit Switzerland participated from the outset, as an observer, in the deliberations of this working group.

2. The draft convention is the result of long and difficult negotiations, but the results finally achieved by the Commission on Human Rights this year are, on the whole, positive. On a number of points, the draft indeed strengthens existing international law by imposing on States the obligation to take a whole series of steps intended to ensure the prevention and punishment of acts of torture, as well as the protection of persons deprived of their liberty against these acts and the compensation of any victims. Moreover, the draft provides for an international implementation system which should to some extent ensure the effectiveness of this convention. It also leaves intact the régime set up by the 1949 Geneva Conventions and their Additional Protocols, and does not affect the role played in this context by the International Committee of the Red Cross.

3. The draft convention is a compromise text which was adopted by consensus by the Commission on Human Rights after six years of discussions. The various concessions made on this text should make it acceptable to the international community as a whole. In the opinion of the Swiss Government, a reopening of the discussion at the forthcoming session of the General Assembly - on all the provisions of the draft accepted by the Commission on Human Rights would make it extremely difficult to achieve a consensus on a new text and would only delay the adoption of the convention.

4. The Swiss Government is therefore able to accept the draft convention drawn up by the Commission on Human Rights, although it does not consider this text to be entirely satisfactory on all points, particularly with regard to the international mechanism for monitoring implementation of the convention.

5. In the opinion of the Swiss Government, the more stringent the system to monitor implementation of the convention, the greater the protection against torture of persons deprived of their liberty. In this regard, articles 17 to 24 of

the draft are compromise texts representing a minimum to which the Swiss Government can subscribe, for these provisions reconcile, although imperfectly, two essential imperatives: the establishment of the most effective possible monitoring machinery and the need to ensure acceptance of the convention by the largest possible number of States.

6. Only two provisions of the draft, namely article 19, paragraphs 3 and 4, and article 20, which deal with the implementation system were not accepted by a consensus in the Commission on Human Rights. The Swiss Government feels that the Committee against Torture provided for in the draft should automatically have the powers stipulated in article 19, paragraphs 3 and 4, and article 20, as they would enable the Committee to play an effective role in the struggle against torture throughout the world. A convention against torture and other cruel, inhuman or degrading treatment or punishment that did not contain these two provisions would not represent sufficient progress beyond the current state of international law.

7. The Swiss Government hopes that the General Assembly will be able this year to adopt the draft convention transmitted to it by the Commission on Human Rights. There is an urgent need to reinforce the prohibition against torture through effective international measures to achieve greater protection of persons deprived of their liberty against this type of serious violation of human rights.

TONGA

[Original: English]

[1 June 1984]

Article 3

"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".

1. The Tonga Government endorses the view that it might wish to declare at the time of signature or ratification of the convention or accession thereto that it does not consider itself bound by article 3 in so far as that article might not be compatible with obligation towards States not parties to the convention under extradition treaties concluded before the date of the signature of the convention.

Articles 5, 6, 7, 16 and 17 to 24

2. The Government of Tonga reserves its final position with respect to the questions listed below (covered by the above articles), and the deliberations concerning other elements of the draft convention:

(a) Universal criminal jurisdiction,

(b) States Parties ensuring that the victims not only of torture but also of

other acts of cruel, inhuman or degrading treatment or punishment obtain redress and have an enforceable right to fair and adequate compensation,

(c) Provisions relating to implementation.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]

[21 September 1984]

1. The United Kingdom abhors the practice of torture and all forms of cruel, inhuman or degrading treatment. The United Kingdom regards the work done by the Commission on Human Rights on the drafting of a convention against torture and other cruel, inhuman or degrading treatment or punishment as an important landmark in the continuing effort to eliminate torture wherever it occurs.

2. The United Kingdom does not regard the draft in its latest form as altogether ideal. In particular, the United Kingdom believes that the exclusion of pain or suffering deriving from lawful sanctions from article 1 of the convention is undesirable. It should be understood that any such sanctions must be lawful under international as well as national law. The United Kingdom would also have wished the concept of purely gratuitous torture, unfortunately not an unknown phenomenon, to be included in the list of motivations for torture given in article 1 of the draft convention.

3. In addition, it is the view of the United Kingdom that, in certain aspects, the definition of torture contained in article 1 of the draft convention is rather loose and susceptible to subjective interpretation. The United Kingdom believes, for example, that it would be difficult for courts to assess the concept of mental suffering, particularly when linked to a motive such as discrimination.

4. Nevertheless, the United Kingdom recognizes that, in discussion at working group level at the Commission on Human Rights, participating States adopted a constructive approach based on readiness to accept compromise. The United Kingdom is prepared to accept the text adopted at the Commission on Human Rights, though not fully satisfied that that text is ideal, in the interests of securing the earliest possible adoption of a convention against the abhorrent practice of torture.

5. With regard to the square bracketted passages in articles 19 and 20, the United Kingdom favours the inclusion of provisions designed to ensure that the proposed committee has an effective role to play in monitoring compliance with the convention.

UNITED STATES OF AMERICA

[Original: English]

[18 September 1984]

1. The United States Government welcomes the receipt of the draft convention against torture and other cruel, inhuman or degrading treatment or punishment which is included as an annex to the report of the Working Group of the Commission on Human Rights appearing in document E/CN.4/1984/72. The successful completion of the draft convention by the Working Group of the Commission on Human Rights after long, thoroughgoing negotiations constituted an outstanding achievement.

2. The Universal Declaration of Human Rights (article 5) proclaims that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The practice of torture or related treatment constitutes one of the most flagrant of human rights abuses which can be perpetrated against the individual person. It is outrageous and unacceptable that in today's world instances of torture and other forms of cruel, inhuman or degrading treatment or punishment are all too frequent occurrences in numerous countries. The mandate of the Charter of the United Nations to promote and encourage respect for human rights requires that the United Nations devote priority attention to the development of effective measures to strengthen the capacity of the world community to combat this evil. To this end, the draft convention could prove to be a major new instrument of control. Prompt action by the General Assembly to approve the draft convention should be taken.

3. Representatives of the United States Government participated actively throughout the sessions of the Working Group of the Commission on Human Rights which were devoted to the preparation of the draft convention. During the course of these negotiations, United States representatives made a number of declarations and interpretive statements which are contained in the official records of the negotiations, a part of the legislative history of the convention. The United States Government, in expressing its support for the draft convention and for approval of it by the United Nations General Assembly, maintains all of the declarations and interpretive statements made on its behalf throughout the course of the negotiations.

4. On this occasion, it would be appropriate to reiterate the views of the United States Government on two elements of the draft convention which the United States Government considers to be essential if the convention is to serve as an effective instrument. First, the United States Government considers it of utmost importance that the draft convention contain provisions which provide adequately for universal jurisdiction. In the opinion of the United States Government, the formulations now contained in articles 5, 6, and 7 are fully satisfactory. They represent the product of careful and thorough study of a complex matter and constitute the best compromise of varying points of view. The provisions of the three articles achieve the desired result of a workable, effective system of universal criminal jurisdiction. Second, the United States Government attaches equal importance to the inclusion in the draft convention on adequate provisions of its

implementation. In the opinion of the United States Government, the implementation system now included in part II of the convention, centering upon a committee against torture to be established under the convention, represents a well-conceived, adequately circumscribed scheme which contains the minimal elements necessary for assuring effective control over compliance with the convention. The United States Government in particular strongly supports the retention of articles 19 and 20 in their entirety, including those provisions which appear in the report of the Working Group.

5. A final comment concerns the definition of the term "torture" which appears in article 1. The United States Government understands this proposed definition as covering torture done for any motive or purpose and not only for the reasons set out in the illustrative list contained in article 1. The reference to "lawful sanctions" in the second sentence of paragraph 1 of article 1 must be understood to mean sanctions which are "lawful" under both national and international law.

6. The United States Government considers that the draft convention prepared by the Working Group after seven years of arduous negotiations which has been submitted by the Commission on Human Rights to the General Assembly for its adoption constitutes the best possible draft, fairly representing a carefully considered composite of various views. The United States Government supports the recommendation of the Commission on Human Rights that the General Assembly consider the draft convention as a matter of priority, with a view to its early adoption. The United States Government is prepared to offer its strong support to a resolution to be adopted by the General Assembly, at its thirty-ninth session, by which the Assembly would adopt in its entirety, without change, the draft convention against torture and other cruel, inhuman or degrading treatment or punishment as prepared by the Working Group of the Commission on Human Rights.
