



General Assembly

Distr.
GENERAL

A/39/499/Add.1
24 October 1984

ORIGINAL: ARABIC/ENGLISH/
FRENCH/SPANISH

Thirty-ninth session
Agenda item 99

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

Report of the Secretary-General

Addendum

CONTENTS

	<u>Page</u>
REPLIES RECEIVED FROM GOVERNMENTS	2
Austria	2
Burundi	2
Cyprus	3
Greece	4
Iraq	8
Luxembourg	8
New Zealand	9
Panama	9
Spain	11
Yugoslavia	12

REPLIES RECEIVED FROM GOVERNMENTS

AUSTRIA

[Original: English]

[5 October 1984]

1. The Government of Austria, like many other Governments, is deeply and gravely disturbed by the continuing practice of torture throughout the world and by the fact that existing international instruments and the machinery provided therein have not been able to eradicate torture. Austria has been supporting all efforts aimed at the eradication of torture and other cruel, inhuman or degrading treatment or punishment. In this context, it has to be pointed out that Austrian delegations have been participating actively in negotiations of the past years leading to the draft convention now under consideration.

2. The Government of Austria is aware that the existing draft instrument constitutes a compromise between a series of proposals and suggestions forwarded by a number of delegations and, therefore, does not provide for as strong an implementation machinery as the Austrian Government would have wished to be set up by the envisaged convention.

3. The Government of Austria, nevertheless, wishes to put on record its support for the draft convention elaborated by the Working Group set up by the Human Rights Commission.

4. In conclusion, the Government of Austria wishes to emphasize the decisive importance of mandatory implementation provisions to the effectiveness of the convention. Without even those minimal implementation provisions, the draft would fail to make a contribution to the promotion of human rights going beyond existing international instruments

BURUNDI

[Original: French]

[3 August 1984]

1. We cannot praise this draft convention too highly. However, some remarks are called for on certain articles.

2. In paragraph 1 of article 3, where it is stated that "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", mention is made only of "torture", and not of any other form of cruel treatment.

3. Articles 5, 6 and 7 advocate a universal jurisdiction. Our Government while recognizing the intrinsic merits of this concept, has some doubts about its practical implementation.
4. The State party concerned would not always be willing to submit to such a jurisdiction or to its rulings. The status of the individual as a subject of international law remains a moot point; an international jurisdiction, with no means of enforcement, would in practice have limited powers. Such a jurisdiction might apply moral sanctions, but its scope for direct action would be limited.
5. Our Government considers that the solution lies in the good will of the individual States Parties to the convention, who alone command the necessary powers to ensure the enforcement of law in all its ramifications. It is therefore up to these States to enact the necessary legislation for the punishment of torture and other reprehensible acts.
6. Article 20, paragraph 1, provides for the committee receiving "information which appears to it to contain reliable indications that torture is being systematically practised in the territory of a State Party". This paragraph raises the question of the sources of such reliable information and the criteria which the Committee should apply in considering any information it might receive.
7. Nevertheless, the inquiry system provided for in article 20 marks a step forward in practical arrangements for enforcing international instruments.

CYPRUS

[Original: English]

[11 October 1984]

1. In spite of the fact that torture and other cruel, inhuman or degrading treatment or punishment is prohibited world-wide, still with great regret it is noticed that torture practices continue to occur in many countries. Thus, the adoption of a new international instrument is more imperative now than ever.
2. It is our stand that certain articles of the convention could be improved, so as to cover other acts of cruel, inhuman or degrading treatment, as is the case with article 3 of the convention; however, in view of the general consensus reached at the meeting held at Geneva, it is not desirable to make any amendments at this stage and thus, give the opportunity of reopening discussion.
3. Furthermore, it is our stand that the draft convention, the product of detailed discussions in the Working Group and now pending before the United Nations General Assembly for adoption, should be accepted as a whole, particularly as regards the implementation provisions contained in articles 19 and 20 which should be made mandatory and not optional.

GREECE

[Original: English]

[10 October 1984]

1. Greece attaches the greatest importance to the fight against the heinous act of torture. The adoption of a bill against torture by the Greek Parliament, which will complete existing legislation, is imminent. A translation of this bill is enclosed. Greece has strongly supported the drafting of the convention against torture and other cruel, inhuman or degrading treatment or punishment and considers the present draft a milestone and a decisive step forward. The draft is in many ways a remarkable document. Greece emphasizes in particular its satisfaction with the implementation system and the adoption of mandatory international jurisdiction. However, the draft convention is far from an ideal or a flawless text. Indeed, it is fraught with minor weaknesses and is characterized by a certain lack of precision on a number of issues. Nevertheless, Greece realizes that any international legal instrument of this kind is necessarily and inevitably a product of compromise. It took six years of strenuous efforts to overcome the multiple and unforeseen impediments to the drafting of this convention, which, in our view, is long overdue in a world where the abhorrent practice of torture continues unabated.

2. Greece is therefore prepared to accept the draft convention against the act of torture as it stands and would like to see it adopted at the earliest possible date.

Appendix

Bill for the penal punishment of torture

ARTICLE 1

Article 137 A is added to the special section of chapter A of the Penal Code entitled "Offences against the existing system of government". The said article is the following:

Article 137 A: Torture and other abuses of human dignity

1. A public official, civil or military, whose duties include prosecution, investigation, examination of criminal offences, breaches of discipline, enforcement of penalties, protection or guardianship of a person, is subject to imprisonment if, in the course of his duties, he inflicts torture on any person under his authority with the purpose of: (a) obtaining from him or from a third person a confession, a testimony, information or a statement, in particular one denouncing or approving a political or any other type of ideology; (b) punishing; and (c) intimidating him or third persons. A public official, civil or military, is subject to the same punishment, when, under orders of his superiors or on his own initiative, he usurps such powers and performs the duties mentioned in the above paragraph.
2. The act of torture consists of any systematic infliction of acute physical pain or physical exhaustion endangering the health of a person or psychological pain leading to severe psychological injury, as well as any illegal use of chemicals, drugs or other natural or artificial means capable of bending the victim's will.
3. A minimum of two years' imprisonment is set for cases not explicitly mentioned in paragraph 2, unless stricter punishment is provided for. These include bodily harm, health damage, exercise of illegal physical and psychological violence and any other commensurate severe abuse of human dignity committed by persons under the circumstances and purposes provided for in paragraph 1. Abuses of human dignity include in particular: (a) the use of a lie detector; (b) extended solitary confinement; (c) sexual harassment.
4. The spirit of the present article does not include acts or consequences related to the lawful execution of punishments or to any lawful restriction of freedom or other lawful measure of procedural enforcement.

ARTICLE 2

Article 137 B is added to the special section of chapter A of the Penal Code entitled "Offences against the existing system of government". The said article provides as follows:

Article 137 B: Special cases

1. The acts of the first paragraph of the previous article are punishable by a minimum of 10 years' imprisonment:

(a) If methods or means of systematic torture are used, in particular, beatings on the victim's soles, electroshock, fictitious execution or the use of hallucinatory substances;

(b) If they result in serious bodily damage to the victims;

(c) If the perpetrator commits these acts on a regular basis or if circumstances indicate that he is exceptionally dangerous;

(d) If the perpetrator, in his capacity as a superior, gave the orders to commit the act.

2. The acts of paragraph 3 of the previous article are punished by imprisonment of up to 10 years, when cases (b), (c) or (d) of the previous paragraph apply.

3. Should the above acts result in the death of the victim, life imprisonment is imposed.

ARTICLE 3

Article 137 C is added to the Penal Code entitled "Offences against the existing system of government". The said article is the following:

Article 137 C: Accessory penalties

1. The conviction for acts of articles 137 A and 137 B entails ipso jure deprivation of political rights: permanent in the case of conviction for life imprisonment, a minimum of 10 years in case of imprisonment and a minimum of five years in case of imprisonment when no other provision exists entailing more severe deprivation. It also results in incapacity to acquire attributes provided in case 1 of article 63: permanent in cases of confinement and 10 years in cases of imprisonment.

ARTICLE 4

Article 137 D is added to the Penal Code entitled "Offences against the existing system of government". The said article is the following:

Article 137 D: General provisions

1. A state of emergency cannot exclude the illegal character of the acts of articles 137 A and 137 B.

2. A superior's order concerning the acts of articles 137 A and 137 B cannot exclude their ill character.

3. In the event that the acts of articles 137 A and 137 B are carried out during a period of a non-democratically elected Government, the date of prescription begins only with the restoration of legitimate authority.

4. The victim of the acts of articles 137 A and 137 B is entitled to claim from the offender as well as from the State - both of which are liable in toto for the damages suffered - due compensation for psychological and moral injuries.

ARTICLE 5

At the end of article 239 (a) of the Penal Code, the following phrase is added: "provided the act is not more severely punished according to articles 137 A and 137 B".

ARTICLE 6

The present law enters into force as of the date of its publication in the Official Gazette.

IRAQ

[Original: Arabic]

[4 October 1984]

The provisions of the draft convention which prohibit torture and make it an offence conform generally in spirit with the provisions of the Iraqi Constitution and Iraqi legislation in force. However, the Iraqi Government wishes to make the following observations:

1. The title of the draft is comprehensive. What is meant by "torture" is defined in part I, article 1, paragraph 1, but the concept of "cruel, inhuman or degrading treatment or punishment" remains undefined.
2. The Iraqi Government considers that, in the last sentence of article 1, paragraph 1, the word "measures" should be inserted after the word "sanctions".
3. Article 3 provides broad grounds for non-extradition of persons whose extradition is requested under agreements concluded and rules recognized in that regard; in addition, there may also be negative effects on international relations.
4. The Iraqi Government has some reservation with regard to articles 5, 6 and 7 of the draft convention.
5. Article 8 is, in general, without justification, because the offence of torture is an offence like all other offences and the general rules relating to extradition apply to it.
6. Article 20 of the draft contains provisions which infringe on the sovereignty of the State and interfere in its internal affairs, which is unacceptable.

LUXEMBOURG

[Original: French]

[5 October 1984]

1. Luxembourg wishes to express great satisfaction with the fact that the Commission on Human Rights, in accordance with the mandate entrusted to it by the thirty-second session of the General Assembly, has drawn up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, and has transmitted it to the General Assembly.
2. Luxembourg believes that this document represents an important stage in the efforts of the international community to put an end to the abhorrent practice of torture and inhuman treatment.

3. Luxembourg naturally attaches high priority to the matter and expresses the hope that this important convention will enter into force without undue delay.
4. Luxembourg is cognizant of the fact that the text of the convention has been drawn up only after hard and long negotiations. Even though it contains some expressions which we would have preferred to see formulated with greater exactness and precision, Luxembourg is pleased to announce that it is able to accept the text as submitted to the General Assembly.
5. Luxembourg is, indeed, aware that this compromise text is a fragile work which cannot be altered without risking the collapse of the whole carefully constructed edifice.
6. An essential condition for this consent, however, is that articles 19 and 20 of the draft, relating to the submission and consideration of reports from States and the establishment of an inquiry system - on which there is still no general agreement - should be kept in their present form and become an integral part of the mandatory implementation system applicable to all States which accede to the convention.
7. The Government of Luxembourg hopes that the General Assembly will be able to adopt this convention as quickly as possible so that the international community may take effective action to combat one of the oldest scourges of humanity.

NEW ZEALAND

[Original: English]

[5 October 1984]

The New Zealand Government has given careful consideration to the text of the draft convention and supports its adoption by the General Assembly in its present form. This statement, however, does not prejudice New Zealand's right to comment further on the text if it deems it appropriate to do so.

PANAMA

[Original: Spanish]

[9 October 1984]

1. The corner-stone of the prison system of the Republic of Panama may be found in article 28 of the national Constitution, which reads as follows:

"Article 28: The prison system is based on principles of security, rehabilitation and social protection. The use of measures injurious to the physical, mental or moral integrity of prisoners is prohibited.

"Provision shall be made for the training of prisoners in trades which will enable them to re-enter society as useful members.

"Prisoners who are minors shall be subject to a special system of custody, protection and education."

2. The prohibition of measures which are injurious to the physical, mental or moral integrity of prisoners, added to the fact that the Republic of Panama, by Act No. 15 of 28 October 1977, ratified the American Convention on Human Rights of the Organization of American States, known as the Pact of San José, demonstrates the interest which the Government of the Republic of Panama has in establishing machinery which, at the international level, would protect the inviolability of the individual and the innate rights of the human person.

3. It is undeniable that respect for the physical integrity of the individual is a basic principle of the rule of law and, in that connection, the Republic of Panama welcomes the efforts made by the United Nations Commission on Human Rights to provide the international community with a convention which would offer more effective protection to individuals threatened with torture and other cruel, inhuman or degrading treatment or punishment.

4. The provisions of the draft convention under consideration would have great legal and political value, and would thus help to solve the problem of safeguarding the inviolability of the individual. Nevertheless it should be noted that, in the case of the Republic of Panama, most of the principles contained in the draft are already incorporated in its legislation.

5. First, reference should be made to article 160 of the Penal Code, which defines the crime of torture in the following manner:

"Article 160: Any public official who subjects a prisoner to undue hardship or coercion shall be punished by a term of 6 to 20 months' imprisonment. If the ill-treatment includes torture, degrading punishment, harassment or arbitrary acts, the sentence shall be 2 to 5 years' imprisonment."

6. Special reference should be made to the fact that the case of a public official acting on the order of a superior is dealt with in article 34 of the Constitution, which states that:

"Article 34: In case of manifest violation of a constitutional or legal provision, to the detriment of any person, the order of a superior does not relieve the agent who executes it from responsibility. This provision shall not apply to members of the Public Forces when they are on duty, in which case the responsibility rests with the superior in rank who gives the order."

7. It is also important to point out that the 1983 constitutional reform made provision in the legal system for the right of the prisoner to obtain the assistance of legal counsel as soon as he is deprived of liberty. This legal provision eliminates the possibility of the prisoner being lawfully held *incomunicado*.

8. Notwithstanding the foregoing, it is a matter of concern that the description of torture in the proposed article 1 is limited to those cases "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". That suggests that, if performed by an individual, civilian organization or pseudo-religious sect, the acts described in the article would not be considered as torture.

9. This article is concerned only with institutionalized violence, without encompassing other situations. In our view, the problem is not, in principle, confined to public officials. Other situations involving what is essentially torture should be covered, particularly since the intent is firmly to repudiate any activities which violate the physical and psychological integrity of the individual.

10. With regard to the problem of extradition (article 3), the Republic of Panama has signed a number of agreements and treaties on the matter, but none of them has clearly specified the right of States to deny a request for extradition where there are sound reasons for believing that the person in question might be in danger of being tortured. The draft convention would be extremely useful in that regard.

11. The Republic of Panama considers that there would be great benefit in establishing international machinery to consider and recommend appropriate measures in response to the acts which have led to the formulation of this draft.

SPAIN

[Original: Spanish]

[24 September 1984]

1. The Spanish delegation has participated with the greatest interest in the work of preparing a draft convention against torture and other cruel, inhuman or degrading treatment or punishment. It is gratified, therefore, that the Commission on Human Rights should have decided, by its resolution 1984/21, to transmit the report of the Working Group to the General Assembly and to have recommended that the General Assembly consider the draft convention as a matter of priority with a view to its early adoption.

2. The implementation of the draft convention does not give rise to juridical problems in Spain since torture is classified as an offence in article 204 bis of the Penal Code, as amended by Act 31/1978 of 7 July.

3. With respect to the desirability of adopting such a convention, the Spanish delegation has supported the principle that the international protection of human rights is effective only when declarations contained in international texts are converted into internationally enforceable legal obligations and when domestic machinery for the control, the prevention and punishment of human rights violations is coupled with an international system for verification of States' compliance with these norms, based on a specific organ.

4. Inevitably, the text prepared, which is the result of a compromise, cannot be fully satisfactory to all. The Spanish Government would have preferred the scope of the convention to be wider and in line with the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX)), so that the whole system of protection established would cover not only torture but also other inhuman or degrading treatment or punishment. The Spanish Government would also have preferred the international monitoring system established in articles 21 and 22 of the draft to be binding on States Parties to the convention rather than dependent on signature of a declaration recognizing the committee's competence, since, in the opinion of the Spanish Government, the committee provided for in the draft should be an international organ of a quasi-judicial nature with verification, investigation and decision-making powers. However, in the interest of compromise, the Spanish delegation to the Commission on Human Rights accepted the proposed text and the Spanish Government is prepared to do everything possible to obtain a consensus on the articles on which consensus has not yet been reached.

5. Nevertheless, the Spanish Government would emphasize the need to maintain the present wording of articles 19 and 20 without brackets, since it considers that these clauses of the convention should not be optional but should be an integral part of it; otherwise the convention would lose much of its purpose, if not its *raison d'être*.

6. The Spanish Government wishes to emphasize the desirability of this draft being approved by the General Assembly as soon as possible, since it considers that it is sufficiently mature. For its part the Spanish delegation will use its best endeavours to ensure that it is adopted by the General Assembly at its thirty-ninth session.

YUGOSLAVIA

[Original: English]

[2 October 1984]

1. The Yugoslav Government has carefully studied the draft convention submitted by the Commission on Human Rights for adoption by the General Assembly at its thirty-ninth session, and would like to inform the Secretary-General that the draft text is in large part acceptable to Yugoslavia. It considers that the draft convention voices in a satisfactory manner the main problems which may arise from the application of torture, and defines measures to be taken by the international community with a view to eliminating all forms of cruel, inhuman or degrading treatment or punishment. It has, therefore, instructed the Yugoslav delegation to the thirty-ninth session of the General Assembly to make maximum efforts to arrive, in close co-operation and consultation with other Member States, at the final text of the convention so that it may be adopted by the Assembly at its current session.

2. In this connection, it wishes to inform the Secretary-General that the Yugoslav delegation will be prepared to take part in a more appropriate formulation of some parts of the draft convention, principally those related to extradition and the mandate of a committee.

3. Regarding extradition, which is dealt with in article 3 of the draft convention, the Yugoslav Government believes that it can be better regulated. Namely, paragraph 1 of article 3 states one of the reasons for refusing extradition of the accused or convicted persons. This is duly taken into account in the existing practice of international extradition treaties, which formulate this reason in a different way by saying that extradition shall also be refused "on other substantial grounds", referring thus, first and foremost, to reasons of personal safety of persons whose extradition is being requested, and to torture and other cruel, inhuman or degrading treatment of such persons. This practice should be maintained, because the manner in which this principle is formulated in paragraph 1 of article 3 of the draft convention can create in practice the paralysis of the institution of extradition as an important form of international legal assistance in criminal matters.

4. Paragraph 2 of article 3 should also be reviewed, since it only paraphrases the provisions of paragraph 1 and can therefore be deleted.

5. The Yugoslav Government would like also to comment on article 20, which deals with a committee, its mandate and functioning. The Government is of the view that paragraphs 2, 3, 4 and 5 of article 20 should be more carefully worded so as to avoid the impression that the whole system of control and supervision by the committee is based on mistrust of national law. The right of the committee to make a "confidential inquiry" in the territory of a State Party, as provided for in paragraph 2 of article 20, implies in large measure profound distrust vis-à-vis States. Therefore, the Yugoslav Government is convinced that this part of the draft convention could be improved if agreement is reached on those solutions and methods of work of the committee which will be based on co-operation among States. In this context, appropriate corrections of the provisions of paragraphs 3, 4 and 5 of article 20 should be made.
