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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Secretary-General

Addendum

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SYRIAN ARAB REPUBLIC

[Original: Arabic]

[30 October 1984]

1. The draft convention in question is principally derived from drafts submitted by Sweden and Costa Rica. In its final form, the draft is the result of numerous revisions and amendments and the outcome of lengthy and many-faceted discussions undertaken by the delegations of the States participating in the Working Group to which the Economic and Social Council of the United Nations entrusted the preparation of the said draft at the recommendation of the Commission on Human Rights.

2. From the travaux préparatoires for the draft convention, it is clear that the delegations of a number of States, such as the Union of Soviet Socialist Republics, the German Democratic Republic, India, Spain, Uruguay, Canada, Senegal, France, the United Kingdom, the United States of America, China, and Brazil, have shown appreciable flexibility in the discussions and in accepting the proposals made in the Working Group, as explicitly stated by the representatives of those States. They did so in a spirit of conciliation and co-operation in order to assist in the completion of the draft convention and to reach consensus on certain questions which had been the subject of dispute and in view of the convention being of the highest priority and of pressing importance.

3. Consequently, we have no substantive observations to make on the said draft with regard to the articles and the wording that have been settled. It is, then, to be considered a progressive step in the international arena for the protection of humanity and human dignity from arbitrariness and injustice and for the extirpation of torture and that degrading treatment which is incompatible with fundamental human rights.

THAILAND

[Original: English]

[25 October 1984]

Part I

Article 1

1. There is no definition of torture in Thai law but the term is used in many sections of the Thai Criminal Procedure Code with relatively the same meaning as that of the draft convention. In particular, sections 134 and 135 of the Thai Criminal Procedure Code prohibit the inquiry official against deception, threat or promise to any alleged offender inducing such person to make any particular statement concerning the charge against him. In this context "threat" can be interpreted to embrace the meaning of torture.

Article 2

2. Prohibition against torture of any kind is the applicable rule of Thai constitutional law and criminal procedure with no exception whatsoever under any circumstances.

Article 3

3. Prohibition against extradition may violate the existing commitment of States Parties under particular extradition treaties to which they have been parties before, especially in case the requesting State is not a State party to this convention.

Article 4

4. Under section 200 of the Thai Penal Code, any acts of torture maliciously committed by criminal justice officials with the intention to cause any person to be punished or to receive heavier punishment shall be an offence punishable by life imprisonment.

Article 5

5. The underlying principle of this article is already provided by sections 4 to 11 of the Thai Penal Code, according to which the Thai courts can assume jurisdiction over a category of offences committed outside the territory of the Kingdom of Thailand. Furthermore, the offence under section 200 as mentioned above also falls under this category.

Articles 6 and 7

6. This is a longstanding principle adopted by the Thai Criminal Procedure Code. That is to say, whenever it appears that any offence including the one under section 200 of the Thai Penal Code has been committed, the inquiry and prosecution regarding that case shall be undertaken without delay. The proposition under draft article 6, paragraph 3, specifying the requirement of notification regarding the assumption of court jurisdiction over the case between States parties concerned, is therefore welcome as an approporiate co-operative measure.

Article 8

7. According to the present practice in Thailand regarding extradition, the offence under section 200 of the Thai Penal Code is an extraditable one. Moreover, under the Extradition Act of B.E. 2472 (1929), extradition can be granted by the Thai authority on the basis of reciprocal principle.

Article 9

8. Any mutual judicial assistance ought to be based on the treaty obligation between the States concerned.

Article 10

9. Such education and information have already been included in most of the training programmes for Thai criminal justice officials.

Articles 11 to 16

10. Nearly all the safeguards contemplated by these draft articles have already been provided under the existing Thai Constitution and laws on criminal procedure as well as the rules of civil law governing tort liability in relation to the rights of the victim of an act of torture to fair and adequate compensation. In particular, under section 226 of the Thai Criminal Procedure Code, it is provided that any evidence obtained as a result of torture shall be inadmissable in any criminal proceedings.

Part II

Articles 17 to 24

11. The establishment of the committee with responsibility entrusted thereto would seem to be unrealistic due to the lack of genuine authority to deal with any specific violations. Besides, it is not virtually unlikely that the performance of duties enumerated in the relevant draft articles may not result in interference with matters which are essentially within the domestic jurisdictions of United Nations Member States.

Part III

Articles 25 to 32

12. These provisions are generally accepted as the final clauses of many multilateral conventions concluded by the United Nations. No particular comments are therefore necessary.

VENEZUELA

[Original: Spanish]

[19 October 1984]

1. The Government of Venezuela considers that the adoption of such an international instrument is in full accord with the activities of the United Nations and Venezuela itself in support of the enjoyment of human rights throughout the world and that it will enhance the effectiveness of the other relevant international instruments.

2. Nevertheless, with regard specifically to the text of the draft convention, the translation into Spanish requires careful revision since it suffers from a number of defects which could be corrected. In particular, the use of the word "jurisdicción" in articles 5 to 7 of the draft should be clarified, so as to avoid difficulties of interpretation. Similarly, in article 8, paragraph 2, the word "asistencia" should be replaced by the word "existencia".

3. Concerning the problem raised by articles 19 and 20 of the draft, the content of which was not agreed on in the Working Group, Venezuela wishes to make the following comments.

4. The difficulty as regards article 19 lies in the fact that the wording of paragraphs 3 and 4 differs from that used in similar earlier texts, such as article 40 of the International Covenant on Civil and Political Rights and article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination. In that connection, some delegations have objected to the inclusion of the words "comments or suggestions" because they consider that the use of those terms would increase the risk of possible interference in the internal affairs of States. It is thus considered more appropriate to use the expression "general comments", as used in the International Covenant on Civil and Political Rights and the above-mentioned Convention.

5. With respect to article 20, which authorizes the Committee to carry out investigations if there are reliable indications that torture is systematically practised in the territory of a State party, in our view there are sufficient safeguards in the text to preclude any abuse of the provision, such as that whereby the co-operation of the State party is required for the investigation to begin, and the requirement that the consent of the State party must be given for a visit to be made to its territory, as provided for in paragraph 3. Further, as affirmed in the Commission on Human Rights by the representative of the International Commission of Jurists, investigations are to be confidential, and accepted by the States contravening the proposed article 20.

6. To that end, Venezuela considers that the text of article 20 should be retained in the form in which it last appeared in the Working Group, including non-acceptance of the proposal by one State to add the phrase "which has made a declaration in accordance with article 21, paragraph 1" in article 20, paragraph 1, after the words "in the territory of a State party".
