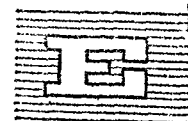


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COMMISSION ON HUMAN RIGHTS
Thirty-fifth session
Item 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS
SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT,
IN PARTICULAR: (a) DRAFT CONVENTION ON TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

Summary prepared by the Secretary-General
in accordance with resolution 18 (XXXIV)
of the Commission on Human Rights

Addendum

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I. INTRODUCTION

1. This report, which is an addendum to the summary prepared by the Secretary-General in implementation of Commission on Human Rights resolution 18 (XXXIV), summarizes further information received up to 18 January 1970.
2. As of this date, the only comments received are those of the Government of the United Kingdom on the Swedish draft international convention on the protection of all persons from torture and other cruel, inhuman or degrading treatment or punishment.

II. COMMENTS ON THE DRAFT ARTICLES (continued)

Article 1

1. The United Kingdom considers that the first paragraph of Article 1 should be made more consistent with the definition of torture given in the second paragraph which was explicitly endorsed by the European Court of Human Rights. The United Kingdom therefore suggests that the word "extreme" should be substituted for the word "severe" in the second line of paragraph 1.
2. In order further to distinguish torture from other forms of criminal assault, including those to which this Convention would not apply, it would be preferable for the definition to include an element of systematic application. It is therefore suggested that the words "systematically and" should be inserted before "intentionally" in the second line of paragraph 1.
3. In order to amplify the definition, it is suggested that after "public official" in the third line of paragraph 1 the phrase "or any other agent of the State" should be inserted.
4. It is apparent from the last sentence of paragraph 1 that this Convention would accept the Standard Minimum Rules for the Treatment of Prisoners as a standard. The last sentence of paragraph 1 should therefore be deleted.
5. Greater precision would be achieved if the purposes of torture were listed rather than exemplified as they are in the present text.

Article 2

6. In order to provide a clearer definition of the Convention's purpose, paragraph 1 should read: "Each State Party undertakes to ensure that its public officials or any other of its agents do not commit torture or other cruel, inhuman or degrading treatment or punishment".
7. It is suggested that "by a State Party" should be inserted after "invoked" in paragraph 2, as a point of clarification.

Article 4

8. The criteria for extradition should be more precise and therefore the words "reasonable grounds to believe that he may be in danger of being" should be replaced by "substantial grounds for believing that he would be ...".

Article 5

9. In the first line of the second paragraph delete "include" and insert "give effect to".

Article 7

10. In paragraph 1 delete "as defined in Article 1". It is unnecessary to refer to the definition already given in Article 1 which applies throughout the draft Convention.

11. Delete paragraph 2 and insert: "Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature". A recent precedent for this formula is to be found in article 2(2) of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Articles 8, 11, 14

12. Please see the comments on Article 7. In paragraph 1 of Article 8 delete "the offences referred to in Article 7" and insert "offences of torture".

13. The United Kingdom considers that the ultimate effectiveness of the Convention as a whole will depend on the general soundness and acceptability of the enforcement provisions as reflected in these three Articles and on the emphasis they give to the means by which persons accused of torture may be brought to justice. The United Kingdom considers that in contrast with offences of a more obviously international character, such as hijacking and attacks on internationally protected persons, the exceptionally wide extra-territorial jurisdiction conferred by Article 8 in respect of torture goes beyond what is practicable. In the United Kingdom the criminal law, the jurisdiction of the criminal courts and criminal procedure, are based upon offences having been committed, broadly speaking, within the United Kingdom. There is a general and well established requirement for evidence to be given orally to provide an opportunity for cross-examination. For practical as well as judicial reasons, therefore, the United Kingdom would find it difficult to breach this territorial principle and to accept even a limited degree of extraterritorial jurisdiction.

14. Moreover, since the prosecution of a person accused of torture is likely to be more successfully undertaken in the territory where the offences occurred and where the evidence is available, that the emphasis in these Articles should be placed on extradition rather than on prosecution and the principle of aut dedere aut judicare should apply.

15. The extradition provisions could usefully be strengthened by the inclusion of an Article along the lines of Article 8 of The Hague Convention for the Suppression of Unlawful Seizure of Aircraft which would require contracting States, inter alia, to include torture (as rigorously defined in a revised Article 1) as an extraditable offence in existing treaties and would provide the option of regarding the Convention as a basis for extradition where no treaty exists between contracting States.

Article 9

16. In the second line delete "jurisdiction" and insert "territory". Omit the words "without threat of further torture or other cruel, inhuman or degrading treatment or punishment" in line 5.

Article 10

17. In the last line delete "jurisdiction" and insert "territory".

Article 11

18. See paragraphs 12-15.

19. The wording of paragraph 1 should be amended to reflect the wording in Article 7 of The Hague Convention for the Suppression of Unlawful Seizure of Aircraft. Paragraph 1 shall therefore be replaced by: "Each State Party, in the territory of which the alleged offender is found and which has jurisdiction over the offence in accordance with Article 8, shall, if it does not extradite him, be obliged, without exception whatsoever, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a serious nature under the law of that State".

Article 12

20. The United Kingdom suggests that the word "relatives" should be replaced by the word "dependants".

Article 13

21. Add at the end: "except against a person accused of obtaining such statement by torture".

Article 14

22. See paragraphs 12-15.
