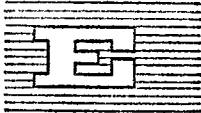


UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



Distr.  
LIMITED

E/CN.4/1367  
5 March 1980

Original: ENGLISH/FRENCH/  
SPANISH

---

COMMISSION ON HUMAN RIGHTS  
Thirty-sixth session  
Agenda item 10 (a)

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

Chairman-Rapporteur: Mr. Anestis Papastefanou (Greece)

### Introduction

1. On the recommendation of the Commission in its resolution 18 (XXXV), the Economic and Social Council, by its resolution 1979/35 of 10 May 1979, authorized the meeting of an open-ended Working Group for a period of one week prior to the thirty-sixth session of the Commission to complete the work on a draft convention. The General Assembly, in resolution 34/167 of 17 December 1979, welcomed this resolution.

2. At its 1526th meeting on 5 February 1980, the Commission on Human Rights by decision 1 (XXXVI) decided that a sessional open-ended Working Group should be established for the consideration of item 10 (a) on its agenda concerning the drafting of a convention against torture and other cruel, inhuman or degrading treatment or punishment.

### Elections

3. At the first meeting of the pre-sessional Working Group, on 28 January 1980, Mr. A. Papastefanou (Greece) was elected by acclamation as Chairman-Rapporteur. Mr. Papastefanou continued as Chairman-Rapporteur of the Working Group established by the Commission on Human Rights at its thirty-sixth session to continue the work of the pre-sessional Working Group.

### Participation

4. The pre-sessional as well as the sessional Working Groups were open to all members of the Commission on Human Rights, the composition of which, for 1980, was as follows: Algeria, Argentina, Australia, Benin, Brazil, Bulgaria, Burundi, Byelorussian SSR, Canada, Colombia, Costa Rica, Cuba, Cyprus, Denmark, Egypt, Ethiopia, France, Germany, Federal Republic of, Ghana, Greece, India, Iran, Iraq, Ivory Coast, Jordan, Mongolia, Morocco, Netherlands, Niger, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Senegal, Syrian Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia and Zambia.

5. The following States, non-members of the Commission, were represented at the Working Group by observers: Austria, Belgium, Gabon, German Democratic Republic, Holy See, Ireland, Italy, Norway, Sudan, Sweden and Switzerland.

6. The United Nations High Commissioner for Refugees was represented at the Working Group by an observer.

7. The Council of Europe and the League of Arab States were represented at the Working Group.

8. The International Committee of the Red Cross, Amnesty International, the Arab Lawyers Union, the Christian Democratic World Union, the International Commission of Jurists and the International League for Human Rights sent observers to the Working Group.

### Documents

9. The Working Group had before it a number of relevant documents, including: the "Draft International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" of Sweden (E/CN.4/1285), the revised Draft Convention submitted by Sweden (E/CN.4/WG.1/WP.1), the "Draft Convention for

the Prevention and Suppression of Torture" submitted by the International Association of Penal Law (E/CN.4/NGO/213), the report of the 1979 Working Group as contained in the report of the thirty-fifth session of the Commission on Human Rights (E/CN.4/1347, paragraphs 178-180) and the report of the Secretary-General in accordance with Commission resolution 13 (XXXIV), summarizing the observations received from governments on the question of the Draft Convention (E/CN.4/1314 and Add. 1-4).

10. As in 1979, the basic working document for the discussions in the Working Group was the revised Draft Convention submitted by Sweden (E/CN.4/WG.1/WP.1). It will be recalled that Article 1, paragraphs 1 and 3, Article 2 and Articles 10 and 11 of this draft had been adopted by the Working Group before and during the thirty-fifth session of the Commission on Human Rights (see texts in E/CN.4/1347, paragraph 178).

11. The 1980 pre-sessional Working Group held ten meetings from 28 January to 1 February 1980, at which it discussed Articles 4, 5, 6, 7, 8, 9, 12, 13, 14, 15 and 16 of the revised Draft Convention. The sessional Working Group continued these discussions during meetings of one hour each held on 5-8, 11, 13, 20 and 27 February 1980.

#### Consideration of Articles

12. As a result of these debates, the Working Group adopted Articles 3 and 4, Article 5, paragraph 1 (a), Article 6, paragraphs 1, 2, 3 and 5 and Articles 8, 9, 12, 13, 14, 15 and 16.

#### Article 3

13. Article 3 of the revised Swedish draft was as follows:

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

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

14. At the Working Group's meeting of 7 March 1979, it had been proposed that the following text (E/CN.4/WG.1/WP.2 of 1 March 1979) should replace Article 3:

"1. No State Party shall expel or extradite a person to another State where substantial evidence indicates that he may be in danger of being subjected to torture.

"2. The evidence referred to in the preceding paragraph of this article includes above all situations characterized by flagrant and massive violations of human rights brought about when apartheid, racial discrimination or genocide, the suppression of national liberation movements, aggression or the occupation of foreign territory are made State policy.

"3. The provisions of this article shall not be invoked as grounds for refusing to institute proceedings against persons who have committed crimes against peace or mankind, or war crimes as defined in the relevant international instruments".

This proposal was re-introduced at the 1980 session of the Group.

15. Another proposal for paragraph 2 of Article 3 was also introduced and read as follows (HR/XXXVI/WG.10/WP.7):

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

Paragraph 1

16. After some discussions it was agreed that the words "substantial grounds" in the revised Swedish draft should be rendered in French by the words "motifs sérieux de croire".

17. In connexion with the same paragraph, the question was raised whether, in the English text, the word "would" should not be used instead of the word "may", the latter word being considered too vague by several representatives. In the Spanish version, it would be translated by "estaría".

18. Paragraph 1 of Article 3, as amended, was adopted by consensus, together with the remark in square brackets in the revised Swedish draft. The text reads as follows:

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

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

19. One delegation stated that its adherence to the consensus was conditional upon the Working Group's agreement to an additional sentence. The proposal was to add a subparagraph to paragraph 1 of the article in order to ensure that States under an obligation to grant extradition in virtue of a treaty could not free themselves unilaterally from that obligation and thus imperil the very institution of extradition. The text reads as follows:

"If a State which otherwise would be obliged to extradite did not do so for the reasons mentioned, it shall take the necessary measures to bring the person, whose extradition it refuses to grant, to trial."

20. While the proposal was supported by one delegate other speakers objected to it. They stated that it would conflict with other national legislation and was liable to raise insoluble problems in some legal systems, including the absence of criminal jurisdiction, lack of evidence, and interference with prosecutorial discretion. Such a clause meant that the practice followed by the Latin American countries in extradition matters should not in any way be affected by the provisions of the present convention.

21. One delegate therefore proposed the following text (HR/XXXVI/WG.10/WP.8/Add.2):

"A State Party which refuses extradition in the circumstances described in paragraph 1 shall, having regard to its national legislation, institute proceedings against the person whose extradition was refused."

22. One representative suggested that the words "having regard to its national legislation" be replaced by the words "if its national legislation so permits".

23. The proposal contained in document HR/XXXVI/WG.10/WR.8/Add.2, as revised, reads as follows:

"A State Party which refuses extradition in the circumstances described in paragraph 1 shall consider, on the basis of its national law, whether to institute criminal proceedings in that State against the person whose extradition was refused."

24. Another speaker suggested the following wording (HR/XXXVI/WG.10/WP.11):

"If a State Party, which is under a treaty obligation to extradite a person to another State, refuses to do so in the circumstances described in paragraph 1, it shall, if its national legislation so permits, institute criminal proceedings against the person whose extradition it refuses."

25. Several representatives then requested that the expression "if its national legislation so permits" should be placed in square brackets. Others requested that the proposal be withdrawn altogether.

#### Paragraph 2

26. The Working Group then moved to paragraph 2 of the proposals contained in documents E/CN.4/WG.1/WP.2 and HR/XXXVI/WG.10/WP.7.

27. One proposal was that paragraph 2 should end with the words "human rights" or that the last three lines - which seemed likely to raise problems - be placed in square brackets.

28. A number of speakers suggested the deletion of the entire paragraph or at least those three lines which, in their view, would inject unnecessary political overtones into the Convention and would in practice restrict the scope of Article 3.

29. Other representatives, however, said that the deletion of the last few lines of paragraph 2 was unjustified. In their view paragraph 2 should not only be retained in its entirety, but the words "colonialism" and "neo-colonialism" as used in the General Assembly resolutions 32/130 and 34/46, should be included therein.

30. Several delegations opposed any reference to UN General Assembly resolutions in the text of the Convention on the ground that it is not good legal practice to incorporate a non-binding General Assembly resolution in an international convention that imposes binding legal obligations upon States. They stated also that no list of State policies could ever be exhaustive or agreed upon by the Working Group. One delegation declared that such a list of State policies would have to include religious persecution, denial of free speech, suppression of political dissent and the free flow of information, and armed intervention in the affairs of a sovereign State.

31. The Working Group agreed to put the whole paragraph 2 in square brackets and to insert therein the proposed terms "colonialism and neo-colonialism" as follows:

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

#### Paragraph 3

32. As regards paragraph 3 of the proposal contained in document E/CN.4/WG.1/WP.2 of 1 March 1979, the Working Group agreed not to include it in order to reach a consensus.

#### Article 4

33. Article 4 of the revised Swedish Draft (E/CN.4/WG.1/WP.1) was as follows:

"1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

"2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

34. As regards the concepts of "complicity or participation in torture" in Article 4, paragraph 1, doubts were expressed whether, in the legislation of all countries, these terms would cover those persons who were accessories after the fact to torture or who had in some way concealed acts of torture.

35. One representative proposed the addition of the word "encubrimiento" in Spanish. Some speakers felt that in the legal systems of their countries the term "complicity" already covered the concept of "concealment".

36. The Working Group agreed to include, in brackets, an explanatory foot-note on this matter to paragraph 1 of Article 4, and adopted by consensus the following version of Article 4:

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

[ \* / The term "complicity" includes "encubrimiento" in the Spanish Text].

In the Spanish text

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

In the French text:

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

37. Subsequently one delegate reserved his position on Article 4 because of his concern that the word "complicity" was not broad enough to cover the notion of "accessory after the fact" under his country's domestic law.

#### Article 5

38. Article 5 of the revised Swedish draft (HR/XXXVI/WG.10/WP.1) was as follows:

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

- (a) When the offences are committed in any territory under its jurisdiction;
- (b) When the alleged offender is a national of that State;

[(c) When the victim is a national of that State.]

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

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

#### Paragraph 1 (a)

39. One delegation found the expression "or on board aircraft or ships registered in that State", which was proposed as an addition by several delegations, somewhat unhappily phrased.

40. While not opposing the consensus on that addition to the text, the delegation in question expressed its preference for the following form of words: "on board an aircraft registered in that State or a ship flying the flag of that State".

41. The following text of Article 5, paragraph 1 (a) was adopted by consensus:

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

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

Paragraph 1 (b)

42. With respect to Article 5, paragraph 1 (b), a delegate proposed the replacement of the word "national" by the phrase "public official or employee of that State".

43. Most delegates stated that the term "national" was a widely-used concept in international law in connection with the establishment of jurisdiction, and that they preferred this basis of jurisdiction, as formulated in the New York and Hostages Conventions.

44. Several delegates drew the attention of the Working Group to the provisions of Articles 1 and 4, and stated that there was also a need to cover those nationals who were not officials or employees but who committed acts of torture with the consent or acquiescence of public officials or other persons acting in an official capacity or who were charged with complicity or participation in torture. The proposed replacement would make the Convention less effective.

45. It was suggested by one representative that the first wording of Article 5, paragraph 1 (b) be retained and that the proposal mentioned above in paragraph 42 be inserted between brackets after the word "national".

46. Another delegate proposed that Article 5, paragraph 1, should be redrafted to read as follows (HR/XXXVI/WG.10/WP.9):

"1. Each State Party shall take such measures as may be necessary to prosecute persons who have committed the crimes mentioned in Article 4 of this Convention and who are in its territory and under its jurisdiction."

47. In the view of another representative, Article 5, paragraph 1 (b) should be drafted as follows (HR/XXXVI/WG.10/WP.10):

"(b) When the alleged offender belongs to one of the categories of individuals named under Article 1, paragraph 1 and is present in any territory under the jurisdiction of that State."

Paragraph 1 (c)

48. Several representatives requested the deletion of the paragraph which, in their view, opened an unduly wide scope for repression and created difficulties for establishing proof.

49. One delegate said he agreed to the retention of that paragraph - drawing attention to the existence of similar clauses in the Convention against the Taking of Hostages, as well as in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents - but with the addition of the words "and the alleged offender is discovered in its territory." Other speakers proposed to make this provision optional.

Paragraph 2

50. One delegate stated that he was in favour of the deletion of Article 5, paragraph 2, which was likely to create difficulties when the facts were being



established. If it was decided to retain that article, he proposed that the words "after receiving a request for extradition" should be added after the words "and it does not extradite him". This proposal was supported by several other delegates.

51. Several other representatives favoured retention of Article 5, paragraph 2, as set forth in the revised draft text. These delegates pointed out that either the omission of Article 5, paragraph 2, or the proposed amendment could create a loophole in the Convention, thereby creating potential safe-havens for torturers.

52. In this connexion it was stated by a delegate that his basic concern about the inclusion of paragraph 2 was that it could, in certain circumstances, jeopardise the natural rights of an accused to a fair and impartial trial and could also create, in practice, serious international political tensions. Subsequently that delegate offered to withdraw his reservation in the interest of reaching a consensus.

53. The Working Group agreed that discussion of Article 5, paragraph 1 (b) and (c) as well as of paragraphs 2 and 3 should be suspended to allow further consideration and consultation.

#### Article 6

54. Article 6 of the revised Swedish draft (E/CN.4/WG.1/WP.1) was as follows:

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

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

"3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

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

"5. Any person regarding whom proceedings are being carried out in connexion with any of the offences referred to in Article 4 shall be guaranteed fair treatment at all stages of the proceedings."

55. Several delegates pointed out that the word "preliminary" used in Article 6, paragraph 2, might give the impression that the actions described in paragraph 1 had been carried out without the necessary examination. It was suggested that paragraph 2 should be incorporated into paragraph 1. Some delegates proposed

the insertion of the words "preliminary enquiry" into paragraph 1 and the substitution of the words "further" or "formal" for the word "preliminary" in paragraph 2. It was agreed that the proposed phrase "after an examination of information available to it" should be added after the word "satisfied" in paragraph 1.

56. One view was that the phrase "other measures", contained in paragraph 1, might be interpreted too widely. It was suggested that it be replaced by "other legal measures".\*/

57. Referring to a similar provision contained in the United Nations Convention against the Taking of Hostages, one representative proposed to extend the scope of paragraph 3 to stateless persons by the following phrase added after "national": "or, if he is a stateless person, to the representative of the State where he usually resides".

58. It was decided to suspend the discussion on paragraph 4 until after consideration of the question of jurisdiction in Articles 5 and 7.

59. Article 6, paragraphs 1, 2, 3 and 5, as adopted by consensus by the Working Group, reads as follows:

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

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

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

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

"5. Any person regarding whom proceedings are being carried out in connexion with any of the offences referred to in Article 4 shall be guaranteed fair treatment at all stages of the proceedings."

---

\*/ In the French text, replace the word "légales" by the word "juridiques".

Article 7

60. Article 7 of the revised Swedish draft (E/CN.4/WG.1/WP.1) was as follows:

"The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in any territory under its jurisdiction, 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 any offence of a serious nature under the law of that State."

61. It was said that the Working Group should consider this article together with Article 5 because of their complementary nature. One delegate queried whether Article 7 did not partly duplicate Article 5, paragraph 1 (a). Other delegates, referring to previously adopted conventions such as the United Nations Convention against the Taking of Hostages, Article 8, paragraph 1, pointed out that there was a need for such an article. Thus no offender would have the opportunity to escape the consequences of his acts of torture. He would be extradited or prosecuted. The Working Group suspended its consideration of Article 7 until a later stage.

Article 8

62. As regards Article 8 of the revised Swedish draft, most representatives, who referred to a similar provision contained in the United Nations Convention against the Taking of Hostages, were in favour of the optional version (["may"]) in paragraph 2, in order to arrive at equality of commitment between States which granted extradition on the basis of a treaty and those which might grant it on the basis of their municipal law. One representative stated that paragraph 3 should correspond to the optional formula of paragraph 2.

63. The Working Group adopted by consensus Article 8 as contained in the revised Swedish draft (E/CN.4/WG.1/WP.1) which was as follows:

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

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

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

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

Article 9

64. Article 9 of the revised Swedish draft (E/CN.4/WG.1/WP.1) was as follows:

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

"2. The provision of paragraph 1 of this article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters."

65. One delegate asked that an additional sentence be added to the end of paragraph 1 of Article 9, which reads: "The law of the state requested shall apply in all cases".

66. Several representatives felt that there was little apparent logical relationship between paragraphs 1 and 2 of this article. It was found that paragraph 2 might be interpreted in such a way as to weaken the obligation laid down in paragraph 1. Paragraph 2 should, therefore, in the view of some representatives, be deleted. Others were in favour of re-phrasing it.

67. One representative proposed that paragraph 2, as further revised, should read:

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

68. The Working Group adopted by consensus Article 9 in its revised version:

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

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

Articles 12 and 13

69. Articles 12 and 13 of the revised Swedish draft (E/CN.4/WG.1/WP.1), which were considered together by the Working Group, were as follows:

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

Each State Party shall ensure that, even if there has been no formal complaint its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

70. A representative proposed that the order of Articles 12 and 13 be reversed. In support of this proposal he felt that the prevention and punishment of acts of torture were primarily the responsibility of the Governments of States Parties and not that of the victim, who may not be in a position to make complaints. The Working Group agreed to this proposal. It further decided to delete the phrase "even if there has been no formal complaint" contained in Article 13.

71. As regards Article 12, it was pointed out by the same representative that it was necessary to ensure the protection, not only of the complainant, but also of any witnesses, against ill-treatment in retaliation for the complaint made or testimony given. Several representatives suggested that this was necessary in order to encourage witnesses to put themselves at the disposal of the competent authorities. In this connexion, one representative proposed that the words "or intimidation", "and witnesses" and "or any evidence given" should be inserted in the last sentence of Article 12.

72. In response to the question on the scope of the phrase "territory under its jurisdiction" as contained in these articles, it was said that it was intended to cover, inter alia, territories still under colonial rule and occupied territories.

73. Articles 12 and 13 as adopted by consensus by the Working Group read as follows:

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

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

#### Article 14

74. Article 14 of the revised Swedish draft (E/CN.4/WG.1/WP.1) was as follows:

"1. Each State Party shall ensure that the victim of an act of torture has an enforceable right to compensation. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

"2. Nothing in this article shall affect any other right to compensation which may exist under national law."

75. Various suggestions were made to rephrase the first sentence of paragraph 1. In order to make it more precise, a representative proposed the insertion of the phrase "in its legal system" after the word "ensure".

76. Several representatives felt that in the special case of victims of acts of torture, there was a need to strengthen their right to compensation. They suggested that the phrase "an enforceable right to compensation" should be replaced by the words "an enforceable right to fair and adequate compensation".

77. According to some speakers, the experience of physicians had shown that there were deep physical and psychological sequelae to torture long after the acts had been perpetrated. One-time monetary compensation might not suffice to erase these sequelae and remedy the damages done. Most representatives agreed to the idea, to add the words "including the means for his rehabilitation" after the word "compensation" in paragraph 1 of Article 14.

78. Several representatives stated that they had difficulties with the term "rehabilitation", which they regarded as vague and ambivalent, as, in their view, this term might encompass a variety of meanings of a juridical, sociological and medical nature. An alternative, suggested by one representative, was to add the words "including medical measures required by his physical and mental state of health". One delegate drew the attention of the Working Group to the term "rehabilitation" as used in General Assembly resolution 34/154 on the International Year of Disabled Persons of 17 December 1979 and proposed that the word "rehabilitation" should be interpreted in the way it was understood in that resolution. Several delegations opposed any reference to UN General Assembly resolution 34/154 in the text of the Convention for the reason that it is not good legal practice to incorporate a non-binding General Assembly resolution in an international convention that imposes binding legal obligations upon States. The Group considered it necessary to put the term "rehabilitation" in square brackets and to revert to it at a later stage of the discussion in order to reach a common understanding.

79. Some representatives felt that there was a need to extend the scope of the proviso concerning persons who, in the event of the death of the victim as a result of an act of torture, shall be entitled to compensation. Reference was made to the case of a friend or neighbour helping a tortured person and giving him financial assistance before he died. One delegate proposed that the words "or any other persons designated by national law" should be added after the word "dependants".

80. The Working Group agreed that paragraph 2 of Article 14 should be redrafted as follows:

"Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

81. One delegate who, in early discussions, had reserved his position on Article 14, subsequently withdrew his reservation. Therefore Article 14 as amended was adopted by consensus as follows:

"1. Each State Party shall ensure in its legal system that the victim of an act of torture be redressed and have an enforceable right to fair and adequate compensation including the means for his [rehabilitation]. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

"2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

#### Article 15

82. Article 15 of the revised Swedish draft (E/CN.4/WG.1/WP.1) was as follows:

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

83. With respect to Article 15, one delegate drew the attention of the Working Group to Article 12 of the Declaration on the Protection of all Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 9 December 1975 and stressed that there should be conformity between the meaning of the Declaration and Article 15 of the Draft Convention.

84. The Working Group adopted by consensus Article 15 as follows:

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

#### Article 16

85. Article 16 of the revised Swedish draft (E/CN.4/WG.1/WP.1) was as follows:

"This Convention shall be without prejudice to any provisions in other international instruments or in national law which prohibit cruel, inhuman and degrading treatment and punishment."

86. One delegate pointed out that Article 1, paragraph 3, adopted the previous year, had specified that that article was without prejudice to provisions of wider application relating to the subject matter of the convention. Similarly, Article 16 was a saving clause affirming the continued validity of other instruments prohibiting punishments or cruel, inhuman or degrading treatment.

87. A proposal (HR/XXXVI/WG.10/WP.5/Rev.1) was made to have the following text as paragraph 1 of Article 16:

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not constitute torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles [3], 10, 11, 12, 13, [14] and [15] shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."

88. In the view of the authors this proposal should become paragraph 1 of Article 16, while its original version should appear as paragraph 2.

89. On the suggestion of one representative, the authors agreed to delete the words "in particular" in the French text of the proposal.

90. In support of that proposal, it was emphasized that international conventions that prohibit inhuman or degrading treatment or punishment and in particular, the International Covenant on Civil and Political Rights and the European Convention on Human Rights, were already in force. Such prohibition was necessary to prevent offenders from taking advantage of an unduly narrow interpretation of the word "torture".

91. Other delegates thought that those concepts were too vague to be applied at the criminal law and police regulation levels.

92. Some delegates proposed to replace the term "to prevent" by "to prohibit" in the proposal contained in document HR/XXXVI/WG.10/WP.5/Rev.1.

93. One delegate expressed a reservation with respect to paragraph 2 of Article 16 and stated that there was no necessity for such a provision.

94. A discussion ensued concerning the scope of the proposal contained in document HR/XXXVI/WG.10/WP.5/Rev.1. Some delegates were of the opinion that no reference should be made to Articles 3, 14 and 15.

95. The following text of Article 16 was adopted by consensus:

"1. Each State Party shall undertake to prohibit in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not constitute torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles [3], 10, 11, 12, 13, [14] and [15] shall apply with the substitution for references to torture, of references to other forms of cruel, inhuman or degrading treatment or punishment.

"2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment."

#### Procedural questions

96. All speakers stressed the necessity to complete the drafting of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by considering the remaining substantive clauses (Article 1, paragraph 2; proposal relating to Article 3, paragraph 1; Article 5, paragraph 1 (b) and (c) and paragraphs 2 and 3; Article 6, paragraph 4; Article 7; Articles 16 to 21 of the draft contained in document E/CN.4/1285) as well as the final clauses and the preamble.

97. Therefore, the Working Group agreed to propose to the Commission on Human Rights that an intersessional working group should be established before the thirty-seventh session of the Commission. Referring to the great deal of work which still had to be done, a number of delegates felt that the pre-sessional working group should meet for two weeks or ten days before the next session of the Commission on Human Rights.

98. Other delegates were of the opinion that in view of budgetary considerations and the great progress which had been made so far, the question of whether to establish a pre-sessional or a sessional working group on torture during the thirty-seventh session, should be left to the discretion of the Commission in plenary.

99. One delegate requested that the Commission should be informed by the Secretariat whether there was any fund within the United Nations budget which could be used for financing in particular the participating of delegates of developing countries in the discussion of a pre-sessional working group if its session continued for more than one week.

100. Another delegate put the question whether it was possible to create a small group comprising representatives of the various legal systems to draw the attention of the future pre-sessional working group to possible questions of harmonization between these legal systems in connexion with the drafting of the Convention.

101. At its final meeting on 27 February 1980, the Working Group adopted its report as contained in document HR/XXXVI/WG.10/WP.14 and Add.1 to Add.3.



AnnexArticle 1

"1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. 1/

"[2. Torture is an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.] 3/

"3. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application relating to the subject matter of this Convention." 1/

Article 2 1/

"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

"2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

"3. An order from a superior officer or a public authority may not be invoked as a justification of torture [However, this may be considered in mitigation of punishment if justice so requires]."

Article 3 2/

"1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 4/

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

---

1/ Adopted in 1979 (E/CN.4/1347, p. 39).

3/ Not yet adopted.

2/ Adopted in 1980 (E/CN.4/1367, paras. 18, 31 and 36).

4/ As indicated in para. 19 of the report, there exists a proposal to be added to paragraph 1 of article 3.

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

Article 4 2/

"1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. \*/

"2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

---

[\*/ The term "complicity" includes "encubrimiento" in the Spanish Text].

In the Spanish text

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

In the French text:

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

Article 5

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

(a) When the offences are committed in any territory under its jurisdiction or on board an aircraft or ship registered in that State." 2/

(b) When the alleged offender is a [national] of that State; 3/

[(c) When the victim is a national of that State.] 3/

"2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article. 3/

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

---

2/ Adopted in 1980 (E/CN.4/1367, paras. 18, 31 and 36).

2/ Adopted in 1980 (E/CN.4/1367, para. 41).

3/ Not yet adopted; see also paras. 42, 46 and 47 of the report.

Article 6

"1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted. 2/

"2. Such State shall immediately make a preliminary enquiry into the facts. 2/

"3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides. 2/

"(4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction). 3/

"5. Any person regarding whom proceedings are being carried out in connexion with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings." 2/

Article 7 3/Article 8 2/

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

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

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

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

---

2/ Adopted in 1980 (E/CN.4/1367, para. 59).

3/ Not yet adopted.

2/ Adopted in 1980 (E/CN.4/1367, paras. 62 and 67).

Article 9 2/

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

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

Article 10 1/

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

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

Article 11 1/

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

Article 12 2/

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

Article 13 2/

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

---

2/ Adopted in 1980 (E/CN.4/1367, paras. 62 and 67).

1/ Adopted in 1979 (E/CN.4/1347, pp. 43 and 44).

2/ Adopted in 1980 (E/CN.4/1367, para. 72).

Article 14 2/

"1. Each State Party shall ensure in its legal system that the victim of an act of torture be redressed and have an enforceable right to fair and adequate compensation including the means for his [rehabilitation]. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

"2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

Article 15 2/

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

Article 16 2/

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not constitute torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles [3], 10, 11, 12, 13, [14] and [15] shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

"2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment."

Distr.  
RESTRICTED .

E/CN.4/WG.1/WP.1  
19 February 1979

Original: ENGLISH/  
FRENCH

COMMISSION ON HUMAN RIGHTS  
Thirty-fifth session  
Agenda item 10

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

Working Paper

submitted by the Delegation of Sweden

On the basis of the Swedish Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (document E/CN.4/1285) and the written comments on this Draft Convention which have been submitted by certain Governments and have been summarized in document E/CN.4/1314, the Delegation of Sweden has had informal consultation with a number of other delegations. These informal consultations have resulted in a revised Draft Convention which, however, only includes the substantive parts of the Convention. The Delegation of Sweden would like to submit this revised text to the Working Group of the Commission for further consideration.

GE.79-10715

Article 1

1. For the purpose of the present Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. Torture is an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

3. This Article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application relating to the subject matter of this Convention.

Article 2

1. Each State Party undertakes to ensure that torture or other cruel, inhuman or degrading treatment or punishment does not take place within its jurisdiction. Under no circumstances shall any State Party permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Discussion on para. 2 was not completed during the informal consultations. As regards cruel, inhuman or degrading treatment or punishment, see also below (Article 16 of the Revised Draft).

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 3

Each State Party shall, in accordance with the provisions of the present Convention, take legislative, administrative, judicial and other measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 4

No State Party may expel or extradite a person to a State where there are reasonable grounds to believe that he may be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture; however, this may be considered a ground for mitigation of punishment, if justice so requires.

Article 5

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

(Remark to be included in the Commission's report:

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

Cf. Article 33 of the 1951 Geneva Convention Relating to the Status of Refugees.



Article 5

1. Each State Party shall ensure that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment are fully included in the curricula of the training of law enforcement personnel and of other public officials as well as medical personnel who may be responsible for persons deprived of their liberty.

2. Each State Party shall include this prohibition in the general rules or instructions issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of persons deprived of their liberty.

Article 6

Each State Party shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

1. Each State Party shall ensure that all acts of torture as defined in Article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 10

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

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

Article 11

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

Article 1

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party undertakes to make the offences referred to in paragraph 1 of this Article punishable by severe penalties.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Cf. Article 2, para. 2, of the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 7 in the following cases:

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

(a) when the offences are committed in the territory of that State or on board a ship or aircraft registered in that State;

(a) when the offences are committed in any territory under its jurisdiction;

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

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

(c) when the victim is a national of that State.

(c) when the victim is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to Article 14 to any of the States mentioned in paragraph 1 of this Article.

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

Cf. Article 4, para. 2, of the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft; Article 5, para. 2, of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; Article 3, para. 2, of the New York Convention. Discussion on para. 2 of the Revised Draft of the Convention, including the informal consultations

12/14/73  
5

Original Swedish Draft

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

Revised Draft

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

Comments

Cf. Article 4, para. 3, of the Hague Convention, Article 5, para. 3 of the Montreal Convention; Article 3, para. 3, of the New York Convention.

Article 9

Each State Party shall guarantee to any individual who alleges to have been subjected within its jurisdiction to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of its public officials, the right to complain to and to have his case impartially examined by its competent authorities without threat of further torture or other cruel, inhuman or degrading treatment or punishment.

Article 10

Each State Party shall ensure that, even if there has been no formal complaint, its competent authorities proceed to an impartial, speedy and effective investigation, wherever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed within its jurisdiction.

Article 12

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

Article 13

Each State Party shall ensure that, even if there has been no formal complaint, its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 11

1. Each State Party shall, except in the cases referred to in Article 14, ensure that criminal proceedings are instituted in accordance with its national law against an alleged offender who is present in its territory, if its competent authorities establish that an act of torture as defined in Article 1 appears to have been committed and if that State Party has jurisdiction over the offence in accordance with Article 8.

2. Each State Party shall ensure that an alleged offender is subject to criminal, disciplinary or other appropriate proceedings, when an allegation of other forms of cruel, inhuman or degrading treatment or punishment within its jurisdiction is considered to be well founded.

Article 12

Each State Party shall guarantee an enforceable right to compensation to the victim of an act of torture or other cruel, inhuman or degrading treatment or punishment committed by or at the instigation of its public officials. In the event of the death of the victim, his relatives or other successors shall be entitled to enforce this right to compensator.

Article 7

The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in any territory under its jurisdiction, 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 any offence of a serious nature under the law of that State.

Article 14

1. Each State Party shall ensure that the victim of an act of torture has an enforceable right to compensation. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this Article shall affect any other right to compensation which may exist under national law.

Cf. Article 7 of the Hague Convention; Article 7 of the Montreal Convention; Article 7 of the New York Convention.

1  
7  
E/CN.4/NG.1/VP.1  
1987/7/24/4-13/7

Original Swedish Draft

Article 13

Each State Party shall ensure that any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment shall not be invoked as evidence against the person concerned or against any other persons in any proceedings.

Article 14

Instead of instituting criminal proceedings in accordance with paragraph 1 of Article 11, a State Party may, if requested, extradite the alleged offender to another State Party which has jurisdiction over the offence in accordance with Article 6.

Revised Draft

Article 15

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

Article 6

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

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

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

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

Comments

Cf. Article 6 of the Hague Convention; Article 6 of the Montreal Convention; Article 6 of the New York Convention.

Article 15

1. States Parties shall afford one another the greatest measure of assistance in connection with proceedings referred to in Article 11, including the supply of all evidence at their disposal necessary for the proceedings.
2. The provisions of paragraph 1 of this Article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 2

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in Article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Cf. Article 10 of the New York Convention; Article 10 of the Hague Convention; Article 11 of the Montreal Convention.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary enquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

Cf. Article 6 of the Hague Convention; Article 6 of the Montreal Convention; Article 6 of the New York Convention.

Original Swedish Draft

Revised Draft

Comments

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

5. Any person regarding whom proceedings are being carried out in connection with any of the offences referred to in Article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 16

This Convention shall be without prejudice to any provisions in other international instruments or in national law which prohibit cruel, inhuman and degrading treatment and punishment.

Cf. Article 9 of the  
New York Convention.