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COMMISSION ON HUMAN RIGHTS
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Agenda item 10 (a)

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

Report of the Working Group on a draft convention against
torture and other cruel, inhuman or degrading treatment
or punishment

Chairman/Rapporteur: Mr. J.H. Burgers (Netherlands)

INTRODUCTION

1. On the recommendation of the Commission on Human Rights in its resolution 1983/48 of 9 March 1983, the Economic and Social Council, by its resolution 1983/38 of 27 May 1983, authorized a meeting of an open-ended working group for a period of one week prior to the fortieth session of the Commission to complete the work on a draft convention against torture and other cruel, inhuman or degrading treatment or punishment.
2. As authorized by the Commission at its 2nd meeting on 7 February 1984, the Group held one supplementary meeting during the session. A total of 11 meetings were held from 30 January to 3 February 1984 and on 16 February 1984.
3. At the 1st meeting on 30 January 1984, Mr. Jan Herman Burgers (Netherlands) was re-elected Chairman/Rapporteur by acclamation.

DOCUMENTS

4. The Working Group had before it the following documents:

Draft convention against torture and other cruel, inhuman or degrading treatment or punishment, submitted by Sweden (E/CN.4/1285);
Revised draft submitted by Sweden (E/CN.4/WG.1/WP.1);
Draft optional protocol submitted by Costa Rica (E/CN.4/1409);
Draft preamble and final clauses submitted by Sweden (E/CN.4/1427);
Report of the 1982 Working Group (E/CN.4/1982/L.40);
Report of the 1983 Working Group (E/CN.4/1983/63).

During the present session, members of the Working Group submitted four working papers (E/CN.4/1984/WG.2/WP.1, E/CN.4/1984/WG.2/WP.2, E/CN.4/1984/WG.2/WP.4/Rev.1 and E/CN.4/1984/WG.2/WP.5). A working paper submitted by the International Commission of Jurists (E/CN.4/1984/WG.2/WP.3) was later withdrawn.

CONSIDERATION OF THE TITLE AND THE PREAMBLE

5 The question of the title of the draft convention, discussed at the 1983 session was again mentioned. There was general agreement that no suggestion should be made by the Group to modify the title as formulated by the General Assembly which requested the Commission "to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment". The representative of the United States, while sharing this consensus on the title, stated his understanding that the convention, as indicated by the title of the agenda item under which it was considered by the Commission on Human Rights and the history of its negotiation was never intended to apply to armed conflicts and thus supersede the 1949 Geneva Conventions on humanitarian law in armed conflicts and the 1977 Protocols additional thereto. He stated his further understanding that incidents covered by the Geneva Conventions and Protocols thereto would not fall within the scope of the convention against torture and that to consider otherwise would result in an overlap of the different treaties which would undermine the objective of eradicating torture.

6. As to the preamble, the Working Group had adopted at its 1983 session a revised set of preambular clauses submitted by the Chairman/Rapporteur, reproduced in the annex to the 1983 report (E/CN.4/1983/63).

7. At the 1983 session, the delegation of Peru had suggested one additional paragraph to read:

'Recognizing that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human personality and that they therefore justify international protection in the form of a convention.'

Consideration of that proposal had been deferred to the present session.

8. Some delegations felt that the proposed additional paragraph, although highly commendable in spirit, was based on controversial concepts and couched in terms too general for inclusion in the present convention. It was also pointed out that the existing second paragraph of the draft preamble already embraced the essential ideas of the proposal. Having taken into consideration the views expressed during the discussion, the delegation of Peru withdrew its proposal.

9. The Working Group thereupon decided at its 8th meeting that the preamble of the draft convention would consist of the revised set of preambular clauses adopted at the 1983 session.

CONSIDERATION OF SUBSTANTIVE ARTICLES

10. The Working Group continued its consideration of the remaining parts of the draft substantive articles upon which decisions had not been reached during the preceding sessions, namely: article 3, paragraph 2; article 5, paragraph 2; article 6, paragraph 4; article 7; and article 16, paragraph 1.

Article 3

11. Article 3 of the draft, of which the first paragraph had already been adopted in 1979, read 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.

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"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.

[2. For the purpose of determining whether there are such grounds 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.]"

12. Several delegations made statements with regard to paragraph 1, which had already been adopted earlier. Some delegations indicated that their Governments might wish to declare at the time of signature or ratification of the convention or accession thereto, that they did not consider themselves bound by article 3 in so far as that article might not be compatible with obligations towards States not parties to the convention under extradition treaties concluded before the date of the signature of the convention.

13. The delegation of Uruguay stated that it did not wish to oppose adoption of article 3, but that it maintained its view that the inclusion of this article in the convention was not advisable, since it might be misused by serious criminals to evade prosecution.

14. The delegations of Canada and Spain expressed their disappointment with the fact that paragraph 1 of draft article 3 referred only to torture and not to other acts of cruel, inhuman or degrading treatment or punishment.

15. The representative of Senegal, pointing out the possible connection between articles 3 and 7, orally proposed the addition of a safeguard clause at the beginning of article 3, paragraph 1, which would read as follows:

"Without prejudice to the obligations incumbent on a State under article 7 of the Convention ..."

Several speakers felt that such an addition was not necessary, because the obligations regarding extradition or prosecution under article 7 would apply irrespective of any reference to that article in article 3. They also observed that articles 3 and 7 aimed at different categories of persons: article 3 at persons who might become victims of torture, article 7 at persons who might have been involved themselves in the perpetration of torture. In the light of these comments the representative of Senegal did not insist on his proposal.

16. In respect of draft article 3, paragraph 2, various suggestions were made along similar lines to those made during previous discussions, such as deleting the paragraph entirely, retaining the paragraph but deleting the illustrative list, and maintaining the illustrative list but modifying its content. It was said that paragraph 2 might offer useful guidance to national courts which might otherwise give too narrow an interpretation to the first paragraph.

17. The delegation of the Federal Republic of Germany, remarking that paragraph 2 seemed to concentrate on the situation in the State concerned rather than the specific risks of the persons involved, orally proposed adding the following sentence:

"It shall be decisive, however, that there are in the individual case substantial grounds to believe that the person to be expelled, returned or extradited would be in danger of being subjected to torture."

18. In order to make consensus on article 3 possible, the representative of India proposed that only the first part of paragraph 2 be retained but that the illustrative list beginning with the words "such as" be omitted. This proposal seemed to be generally acceptable to the Working Group. The representative of the Soviet Union drew attention to a difference between the Russian and the English version of the text of draft article 3, paragraph 2. Whereas the Russian text spoke of "persistent gross and mass violations of human rights", the English text spoke of "a consistent pattern of gross violations of human rights". Therefore, while accepting the Indian proposal in principle, the Soviet representative suggested that the English text should be brought into line with the Russian text.

19. Several opinions were expressed concerning the meaning of those terms in the practice of the United Nations. After informal consultations the representative of India proposed, as a compromise, to replace the present formulas in all languages by the following: "a consistent pattern of gross, flagrant or mass violations of human rights".

20. Another problem with regard to article 3, paragraph 2, was its passive formulation which, in the view of several speakers, did not make it sufficiently clear by whom the relevant considerations should be taken into account. In the light of this discussion, and based on the compromise proposal of the Indian delegation, the representative of the United Kingdom proposed the following formulation for this paragraph (E/CN.4/1984/WG.2/WP.4/Rev.1):

"2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

21. At the 9th meeting of the Working Group, the delegation of the Federal Republic of Germany stated that, in order to assist the Working Group in reaching a consensus on article 3, paragraph 2, it would not insist on its proposal for the addition of a new sentence at the end of that paragraph. The Working Group then adopted the text of the paragraph as contained in the proposal of the delegation of the United Kingdom. After the adoption of this paragraph some representatives made explanatory statements for the record.

22. The representative of the German Democratic Republic stated that his delegation had joined the consensus in a spirit of compromise and co-operation, although it considered the final text, and especially the phrase "consistent pattern of gross, flagrant or mass violations", not fully satisfactory. His delegation would have preferred the original version of the paragraph or a formulation based on General Assembly resolution 32/130 which had been adopted by a vast majority of States. His delegation's final position on the subject would depend on the results of the debate on the remaining articles and he therefore reserved his right to revert to that question at a later stage.

23. The representative of the Union of Soviet Socialist Republics said that, although he had supported the compromise solution, he would have preferred the original version of the paragraph. He attributed great importance to the concept of "mass violations of human rights". In his understanding, the concept of a consistent pattern of human rights violations already implied that such violations occurred on a massive scale. Therefore, the word "or" in the text was not to be interpreted as indicating opposition between the concept of "gross" and that of "mass" violations of human rights. The two concepts were complementary and should be read together

24. The representative of the United States of America said that the language in the paragraph under consideration had been taken from Economic and Social Council resolution 1503 (XLVIII) as well as from General Assembly resolution 32/130. Therefore, according to his delegation's interpretation, paragraph 2 included situations covered by Economic and Social Council resolution 1503 (XLVIII).

25. The representative of China stated that, although he had agreed to the final text in a spirit of compromise, he would have preferred the listing of examples in paragraph 2, such as a State policy of apartheid, racial discrimination or genocide. The concept of "mass violations of human rights" should in fact have been qualified by a mention of specific circumstances constituting such violations.

Articles 5, 6 and 7

26. The Working Group considered again the system of universal criminal jurisdiction included in draft articles 5, 6 and 7, reproduced in the annex to the 1983 report (E/CN.4/1983/63). The discussions indicated that there had been important changes of position as compared to the 1983 session of the Working Group. The inclusion of universal jurisdiction in the draft convention was no longer opposed by any delegation.

27. At the outset of the debate on this question, the delegation of Argentina made a general declaration enunciating its Government's attachment to the fundamental values of respect for human rights. This delegation announced that it would make every effort to help finalize the draft convention against torture and declared that the new Argentine Government supported universal jurisdiction as provided for in draft articles 5, 6 and 7, as well as the implementation system provided for in draft articles 17 to 24.

28. The representative of Uruguay stated that his delegation continued to have its doubts, basically from a juridical point of view, about the inclusion of universal jurisdiction in the draft convention, but that it did not wish to stand in the way of consensus on the question. At the same time he announced that the inclusion of universal jurisdiction in the convention might eventually make it difficult for his Government to become a party to the convention. The delegation of China stated that it favoured the inclusion of universal jurisdiction in the draft convention, but that it considered the current formulation of the draft articles concerned not entirely satisfactory.

29. The representative of Australia reiterated her Government's position, adopted in 1982, that Australia still had some doubts about the desirability or practicality of the universal jurisdiction provisions in the convention but was committed to the early negotiation of as strong a convention as possible and had therefore joined the growing consensus in support of universal jurisdiction. The Australian delegation further confirmed its Government's view that such a system must be complemented by effective implementation provisions in the final text. Many other speakers reiterated their view of universal jurisdiction as an essential element for the effectiveness of a convention against torture.

30. The representative of Senegal made a statement concerning the proposal he had submitted in 1983 for the insertion of an additional paragraph in draft article 5, as set out in paragraph 22 of the 1983 report (E/CN.4/1983/63). He observed that the explanation given in that same paragraph of the report did

not accurately reflect the ideas underlying his proposal. However, further study of the question and consultations with other delegations had persuaded him that the concern which had prompted his proposal was met to a great extent by the current text of article 7. Taking this into account and with a view to expediting the work on the draft convention, the representative of Senegal withdrew the proposal.

31. The delegation of Brazil made explanatory remarks with regard to the compromise text on universal jurisdiction submitted by the representative of Brazil in 1983 and contained in paragraph 23 of the 1983 report (E/CN.4/1983/63). Although it could accept the inclusion of universal jurisdiction in the draft convention, the Brazilian delegation had been concerned with certain practical problems that could arise from its implementation as provided for in draft articles 5, 6 and 7 as they stood. It had advanced its formulations in the hope that they would make it easier for other delegations to accept the inclusion of universal jurisdiction in the draft convention. However, it remained flexible and, if its proposals were not generally acceptable, would not insist on them. It remained ready to discuss a solution on the basis of other formulations, including the present draft articles 5, 6 and 7.

32. Most speakers expressed their preference for the present text of draft articles 5, 6 and 7 as a basis for discussion. It was pointed out that the formulation concerning universal jurisdiction should be as close as possible to that used in earlier treaties, such as the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the International Convention against the Taking of Hostages. On the other hand, several speakers expressed an interest in exploring the possibility of achieving consensus by introducing in the present text of the draft convention the essence of, or certain elements borrowed from, the Brazilian alternative proposals.

33. Some speakers considered that the Brazilian proposals had a legal drawback in that they would oblige a State to detain a person for a certain period during which that State had not established its jurisdiction over the case and extradition had not been requested. The delegation of Brazil pointed out that this problem could be solved by replacing the word "establish" in article 6, paragraph 4, of the Brazilian proposal by the word "exercise". In reply to a question, the Brazilian delegation further explained that, while its alternative proposal was aimed at giving priority to the establishment of jurisdiction by States referred to in article 5, paragraph 1 (a), (b) and (c), it was not intended to create an automatic obligation for the requested State to extradite the alleged offender to those States, since extradition was a sovereign act to be decided in each case by the competent court of the requested State. Some speakers observed that it was both legally and politically proper to leave the State in which the offender was found such freedom to refuse extradition, because if extradition was requested by the State in which the acts of torture had taken place, it was doubtful whether the requesting State would really punish the offender.

34. The Chinese representative expressed the view that the proposal on universal jurisdiction made by the Brazilian delegation could be regarded as a basis for discussion and that it was in principle acceptable. In his understanding, the basic spirit of the Brazilian proposal was that the exercise of jurisdiction

in accordance with article 5, paragraph 1 (a), (b) and (c), should have priority over the exercise of jurisdiction based exclusively on the presence of an alleged offender in the territory of a State party. Only if the States having primary jurisdiction did not wish to exercise it, should jurisdiction be exercised by the State where the offender was found. At a later stage, the Chinese delegation informed the Working Group that it could in principle accept universal jurisdiction as set out in the draft convention.

35. At its 11th meeting, the Working Group agreed to adopt the present text of articles 5, 6 and 7, without prejudice to the reservations of certain delegations which would be reflected in the report.

36. In this connection, the representative of the German Democratic Republic stated that, although his delegation had not opposed the adoption of articles 5, 6 and 7, he had to recognize that the subject-matter of the draft convention against torture differed considerably from that of such instruments as the Convention for the Suppression of Unlawful Seizure of Aircraft and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, which contained similar provisions and to which the German Democratic Republic was a party. In particular, the provision contained in article 5, paragraph 1 (c), caused problems to his authorities. Therefore, his Government had to reserve its final position with respect to that question, and would also take into account the outcome of the deliberations concerning other elements of the draft convention.

Article 16

37. The Working Group discussed again the question whether to include a reference to article 14 in article 16, paragraph 1, which would imply that States parties should ensure in their legal systems that the victims not only of torture but also of other acts of cruel, inhuman or degrading treatment or punishment obtain redress and have an enforceable right to fair and adequate compensation.

38. Several speakers expressed themselves in favour of including the reference to article 14 in paragraph 1. Some other speakers opposed the reference to article 14, fearing that the concept of "cruel, inhuman or degrading treatment or punishment" was too imprecise as a basis for an enforceable right to compensation and might lead to difficulties of interpretation and possible abuses. One representative suggested that the Working Group might try again to agree on a definition of this concept. Some other speakers, who were in favour of including the reference to article 14, expressed the opinion that a definition was not necessary and that each country would develop its own case-law in this matter.

39. Referring to the definition of torture in article 1, paragraph 1, of the draft convention, the delegation of Canada stated for the record that it was not satisfied with the second sentence of that paragraph, which excluded pain or suffering arising only from, inherent in or incidental to lawful sanctions.

40. The delegation of India, in view of the connection between the present question and article 14, asked that reference be made in the report to the general reservation concerning article 14 which her delegation had entered at previous sessions.

41. The representative of Spain proposed the inclusion of references to articles 3, 14 and 15 in article 16, paragraph 1, in order for the mechanism of protection to be in harmony with the title of the convention itself which included "other cruel, inhuman or degrading treatment or punishment". If reference to these three articles was not acceptable to the Working Group, then the second sentence of paragraph 1 should be deleted. One other representative also proposed the deletion of the second sentence. In the light of the ensuing discussion and in view of the fact that some of these issues had been debated in the past, the representative of Spain, in a spirit of compromise, withdrew his proposal.

42. The representative of the Union of Soviet Socialist Republics, in an effort to help overcome the difficulties with regard to the question of including a reference to article 14 in article 16, suggested that the convention could specify that, in such a case compensation would be limited to material damage and damage to the health of a person. He therefore submitted the following proposal (E/CN.4/1984/WG.2/WP.5):

"1. In the second sentence of paragraph 1 of article 16, delete the words 'and [14]'.

"2. At the end of the paragraph, add the sentence: 'The obligation contained in article 14 shall apply with the substitution indicated above in the event that such treatment or punishment caused its victim material loss or loss of health'.

"3. After the first paragraph, insert a new paragraph:

'2. In the determination of acts referred to in paragraph 1 of this article, each State Party shall not in accordance with the relevant international agreements binding on it and its rational law.'

"4. Paragraph 2 of article 16 should be renumbered as paragraph 3."

43. After further consultations, the Chairman/Rapporteur noted that several delegations which had favoured the inclusion of a reference to article 14 had now indicated that they would not insist on such a reference if it created an obstacle to reaching agreement on draft article 16. At its 11th meeting, the Working Group decided to adopt draft article 16, limiting the reference in the first paragraph to "articles 10, 11, 12 and 13".

44. The delegations of Canada and Ireland stated that they had not opposed the adoption of article 16, but that they wished to see registered in the report that their Governments retained a strong preference for including a reference to article 14 in this article. The delegation of the Union of Soviet Socialist Republics, considering it possible to adopt article 16 without a reference to article 14, stated that in that case it would not insist on its proposal. However, it emphasized that, if in the course of the further consideration of article 16 some delegations again raised the question of the necessity of including a reference to article 14 in article 16, it would return to its proposal.

CONSIDERATION OF PROVISIONS RELATING TO IMPLEMENTATION

45. The Working Group considered the provisions relating to the implementation on the basis of draft articles 17 to 24, contained in the annex to the 1983 report (E/CN.4/1983/63). The delegation of the Union of Soviet Socialist Republics informed the Group that, in a spirit of compromise, it would no longer insist on giving all elements of the implementation system an optional character, for instance by including all implementation provisions in an optional protocol. In order to expedite the work on the draft convention, the Soviet delegation was prepared to accept mandatory provisions in the convention with regard to the creation of an implementation organ and with regard to reporting by States parties. However, it maintained its fundamental objections against the mandatory character of the proposed article 20 concerning inquiries. The delegation of the Ukrainian Soviet Socialist Republic stated that, in the same spirit, it withdrew its alternative suggestions in respect of draft articles 17 and 19, but that it maintained its position that the inquiry system laid down in draft article 20 should have an optional character.

46. In respect of draft article 17, some discussion took place on the question of the size of the proposed Committee against Torture. The Working Group decided to replace the words "nine experts" in paragraph 1 by "ten experts", and to replace the word "four" in both parts of the second sentence of paragraph 5 by "five". With these amendments draft article 17 was adopted by the Working Group at its 5th meeting.

47. In respect of draft article 18 some discussion took place on the proposal of the delegation of the United States contained in paragraph 45 of the 1983 report, namely to add a new final paragraph to this article, to read as follows:

"The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above".

48. Although this proposal met with some opposition, no delegation indicated that it would insist on its objections against it. Accordingly the Working Group decided to add a new paragraph to draft article 18 as proposed by the delegation of the United States. With this amendment draft article 18 was adopted by the Working Group at its 5th meeting.

49. The Working Group then considered draft article 19 concerning reporting by State parties and consideration of the reports by the Committee against Torture. The delegation of the Union of Soviet Socialist Republics stated that it could not accept the present formulation of paragraphs 3 and 4 of this article, which authorized the Committee to make such "comments or suggestions" on the report of a State party as it might consider appropriate and to include such "comments or suggestions" in its own annual report. The Soviet delegation proposed replacing the word "comments" in both paragraphs by the words "general comments", in conformity with article 40 of the International Covenant on Civil and Political Rights. The delegation of the Ukrainian SSR, supporting the proposal of the Soviet delegation, further proposed deleting the words "or suggestions" in paragraphs 3 and 4. The delegation of the German Democratic Republic supported the proposals of the Soviet and Ukrainian delegations. Most speakers, however, wished to retain the formulation "comments or suggestions", which had met with no opposition during the discussions in the Working Group in 1982 and 1983. Several speakers pointed out

in particular that there was a considerable difference between the International Covenant on Civil and Political Rights, which dealt with a wide variety of rights, and the proposed convention against torture, which was much more specific and therefore should provide that comments made by the Committee against Torture be more than just general comments. One delegation indicated that it could not accept changing the word "comments" into "general comments" but that it might agree to delete the words "or suggestions" if that would make consensus on the draft article possible.

50. Another matter discussed in connection with draft article 19 was whether the reports of States parties could be transmitted to the General Assembly of the United Nations. The delegation of India proposed adding the following sentence at the end of paragraph 4 of the draft article: "If so requested by the State Party concerned, the Committee may also transmit a copy of the report submitted by the State under paragraph 1". This proposal seemed to be generally acceptable to the Working Group. At its 11th meeting the Working Group agreed to add the sentence proposed by the delegation of India at the end of draft article 19, paragraph 4.

51. As no agreement was reached on replacing the formula "comments or suggestions" by "general comments", draft article 19 could not be adopted by the Working Group.

52. The Working Group discussed repeatedly and at considerable length draft article 20, which authorizes the Committee to initiate an inquiry in connection with reliable indications that torture is being systematically practised in the territory of a State party. The delegation of the Union of Soviet Socialist Republics explained that it had objections of a fundamental and principled nature against the mandatory character of the proposed provisions. In the view of this delegation, systematic torture had always indicated that there was a situation characterized by mass and gross violations of human rights in the State concerned. Such situations immediately became widely known, and therefore there was no need to create a special organ for their recognition as such. However, if there was no certainty about the existence of such a situation, the proposed system might be misused for the purpose of unlawful interference in the internal affairs of sovereign States. The Soviet delegation could only accept draft article 20 if it was given an optional character. This delegation also pointed out that, since primarily States or individuals or non-governmental organizations could be the sources of information mentioned in article 20, all such information should be considered in accordance with articles 21 and 22. The delegation of the German Democratic Republic supported the position of the delegation of the Soviet Union. The delegation of the Ukrainian Soviet Socialist Republic proposed the insertion of the words "which has made a declaration in accordance with article 21, paragraph 1", in paragraph 1 of draft article 20 after the words "in the territory of a State Party".

53. Some other delegations raised questions about certain elements of the formulation of draft article 20. In particular they wondered whether it might not be appropriate to specify the sources of information that could be used by the Committee or to provide for the development of criteria by the Committee itself with regard to the consideration of information received.

54. Most delegations expressed themselves strongly in favour of maintaining the mandatory character of draft article 20 which they considered essential to effective implementation of the convention. It was said that the inquiry system contained in this article represented an important step forward in comparison with the implementation systems laid down in other international human rights instruments.

Making this inquiry system optional would seriously diminish the value of the draft convention against torture. The proposed article had built into all its subsections sufficient safeguards to protect against its abuse, such as provisions whereby a dialogue between the Committee and the State concerned would be ensured at all stages of the procedure and whereby a visit to the territory of a State would necessitate its consent. Furthermore, the proposed article had to be read in the context of the implementation system as a whole, including article 17 which set out strict criteria to ensure the expertise and competence of the Committee. One delegation remarked that the inquiry procedure proposed in draft article 20 was not new in the United Nations system. It had been used in ILO for a long time and with considerable success.

55. As to the question of the committee specifying sources of information or developing criteria, several delegations observed that the formulation of draft article 20 was the outcome of extensive discussions and consultations which had taken place in the Working Group in both 1982 and 1983, and that the problems now mentioned by some delegations had already been taken into account in the present formulation of the draft article. However, other delegations pointed out that such problems could not have been taken into account in the proposed formulation since no agreement had been achieved on the question of the implementation system as a whole.

56. Since no agreement was reached on the question of giving the proposed inquiry system an optional character, draft article 20 could not be adopted by the Working Group.

57. Draft articles 21 to 24 did not meet with objections from the Working Group. Accordingly at its 7th meeting the Working Group adopted article 21, article 22, article 23 and article 24.

CONSIDERATION OF FINAL CLAUSES

58. The Working Group considered the final clauses on the basis of draft articles 25 to 31 reproduced in the annex to the 1983 report (E/CN.4/1983/63) and on the basis of the draft provisions concerning the obligations of federal or non-unitary States and concerning the settlement of disputes, proposed by the delegations of Australia and the Netherlands respectively and contained in paragraphs 70 and 71 of the same report.

59. At its first meeting the Working Group adopted articles 25, 26, 27 and 31 as contained in the annex to the 1983 report. Because of the insertion of a new article in the draft, article 31 was later renumbered as article 32.

60. At the same meeting the delegation of Australia withdrew its proposal concerning the obligations of federal or non-unitary States, contained in paragraph 70 of the 1983 report.

61. The Working Group then debated the proposal of the Netherlands delegation concerning the settlement of disputes, contained in paragraph 71 of the 1983 report. According to the proposed draft article, any dispute between two or more States parties with respect to the interpretation or application of the convention, which was not settled by negotiation, should, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agreed to another mode of settlement. Some speakers supported this provision as an important mechanism that was well tested in international law. Some other representatives restated their objections to inserting any clause of compulsory jurisdiction of the International Court of Justice into the convention.

62. The delegation of France proposed an alternative draft article concerning the settlement of disputes (E/CN.4/1984/WG.2/WP.1), which followed the example of the corresponding provisions of the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) and several other international conventions concluded under the auspices of the United Nations in recent years. The text of the proposed article read as follows:

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

"3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Secretary-General of the United Nations."

63. The Working Group adopted the proposal by France at its 7th meeting and decided to place the new provision after the present draft article 28. The subsequent draft articles were renumbered accordingly. Thus, the new draft article appears in the annex to the present report as article 29.

64. With regard to draft article 28, concerning a procedure for amending the convention, some delegations suggested changes or additions to the text. Other delegations expressed a preference for maintaining the present text, which followed the example of the corresponding provisions of the International Covenants of 16 December 1966. However, one suggestion by the delegation of the United States met with no objection from the Working Group: it was that the words "within four months from the date of such communication" should be inserted in the third sentence of article 28 after the words "In the event that". As the other suggestions were not insisted upon, the Working Group decided at its 7th meeting to adopt draft article 28 as amended by the delegation of the United States.

65. The Working Group gave thorough consideration to former draft article 29, now renumbered as article 30, which dealt with the question of denunciation of the convention. The delegation of the United States proposed a new additional paragraph to that draft article, which read as follows (E/CN.4/1984/WG.2/WP.2):

"2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation became effective. Nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective."

66. Most delegations favoured the United States amendment which, in their view, would strengthen the protection against torture in an acceptable manner. Even more restrictive conditions for denunciations were considered desirable by one representative who suggested that denunciation should take effect not one but three years after receipt of the notification by the Secretary-General. On the other hand, the view was also expressed that the United States proposal might lead to unnecessary complications and that it might be better to keep the original text of the draft provision which was based upon well established precedents in existing instruments. Some speakers voiced their fear that the formula proposed might not furnish sufficient safeguards to States against the risk of international investigation of matters arising after the denunciation had come into effect.

67. In the light of the observations that had been made and following informal consultations with interested delegations, the delegation of the United States orally proposed to add another paragraph to the draft article, reading as follows:

"3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State."

68. The representative of the United States of America stated that article 29, taken as a whole, would then permit the Committee to take into account new information related to a matter it already had before it prior to the date on which denunciation became effective, but that it could not commence consideration of a new matter based on information received only after the date on which denunciation became effective. After some discussion the Working Group agreed to include the additional paragraphs proposed by the United States in the article under consideration. In order to preserve uniformity of language, it was decided to change the words "take effect" in the first paragraph of the article (identical with the original text of former article 29) to "becomes effective", and likewise to change the words "became effective" in the first sentence of the second paragraph to "becomes effective". At its 8th meeting the Working Group adopted the draft article (now numbered article 30) with the amendments proposed by the delegation of the United States and the above-mentioned textual changes required to preserve uniformity of language.

69. At the same meeting the Working Group adopted former draft article 30, which became article 31, after having replaced the reference to "article 29" in subparagraph (c) by a reference to "article 30". The Working Group thus completed consideration of the final clauses of the draft convention.

Annex

Draft convention against torture and other cruel,
inhuman or degrading treatment or punishment

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observant of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)),

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

Part I

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. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

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.

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.

Article 3

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.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant factors including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

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.

Article 5

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 or on board a ship or aircraft registered in that State;

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

(c) When the victim is a national of that State if that State considers it appropriate.

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.

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. Such State shall immediately make a preliminary inquiry 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 inquiry 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.

Article 7

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

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 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

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. 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. 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 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

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

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

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. 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

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

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 amount to 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 10, 11, 12 and 13 shall apply with the substitution for references to torture or 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 or which relate to extradition or expulsion.

Part II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The State Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.

2. The Secretary-General shall transmit the reports to all States Parties.

[3. Each report shall be considered by the Committee which may make such comments or suggestions on the report as it may consider appropriate, and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1.]

Article 20

[1. If the Committee receives information which appears to it to contain reliable indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1-4 shall be confidential. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, at its discretion, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.]

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the

matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report.

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party to the Convention which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
 - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 23

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

Part III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 30

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective. Nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 31

The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this Convention or acceded to it, of the following particulars:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27, and the date of the entry into force of any amendments under article 28;
- (c) Denunciations under article 30.

Article 32

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.