



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL
E/CN.4/1984/SR.33
5 March 1984
ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Fortieth session

SUMMARY RECORD OF THE 33rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 February 1984, at 10 a.m.

Chairman: Mr. KOOLJMANS (Netherlands)

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The meeting was called to order at 10.20 a.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
(agenda item 10) (continued) (E/CN.4/1984/19; E/CN.4/1984/L.2; E/CN.4/1983/63;
E/CN.4/Sub.2/1983/15 and Add.1).

1. Mr. MACCOTTA (Italy) welcomed the good results achieved by the Working Group on a draft convention against torture and other cruel, inhuman or degrading treatment or punishment (see E/CN.4/1984/L.2), results which were undoubtedly due primarily to the competence of Mr. Burgers, Chairman/Rapporteur of the Group. Many questions had been settled, particularly the difficult problem of the extent of criminal jurisdiction and, consequently, the scope of the obligation to extradite, as referred to in articles 5, 6 and 7 of the draft convention (loc. cit., annex); the Group had been able to reach an agreement thanks to the conciliatory spirit shown by its members, and more particularly by the delegation of the People's Republic of China. Almost all the articles in the draft text had been accepted by consensus and only article 19, paragraphs 3 and 4, and all of article 20 were still outstanding.
2. Concerning the first question still outstanding, it was necessary to decide whether the "Committee against Torture", which would be set up under article 17, would be able to make "comments" and "suggestions" when considering the reports submitted to it by States parties to the Convention or whether it would have to limit itself to "general comments"; a compromise solution would be to eliminate the term "suggestions" and to keep only "comments", without an adjective.
3. The difference of opinion regarding article 20 was more important, for it concerned a question of principle: would the Committee against Torture be able to undertake inquiries on a particular situation in which, according to the information available to it, torture was practised systematically? In the opinion of his delegation, it did not seem admissible to permit States to disregard that procedure when ratifying the convention, for the convention would lose a good part of its binding force and its scope would be reduced to that of a mere declaration.
4. In any case, in view of the political character of the two problems still outstanding, it was for the United Nations General Assembly to take a decision. The time seemed to have come to submit the draft to it so that it could finalize the text and, above all, so that all States Members of the United Nations, and not merely the States represented in the Commission, could take a decision. The urgency of the matter was commensurate with the political, social and above all moral importance of the struggle against the abominable practice of torture. The negotiations had lasted a fairly long time and, moreover, there was still enough time before the General Assembly's next session to reflect on the two articles still outstanding.

5. Mr. COLLIARD (France) recalled that in 1977, by its resolution 32/62, the General Assembly had requested the Commission to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the course of the many meetings from 1979 to 1984, the Working Group responsible for preparing the convention had made great progress, especially at its most recent meetings. Thus, the preamble, articles 17, 18, 23 and 26-32 of the draft convention had been adopted (see E/CN.4/1984/L.2, annex), while the difficulties concerning articles 5, 6, 7 and 16 had finally been resolved at the last meeting. His delegation was pleased by the adoption of the last-named of those articles, by which a system of universal jurisdiction was established. His delegation had spared no efforts to that end, while at the same time making sure that the proposed provisions were aligned as closely as possible with the corresponding articles in other instruments.

6. However, problems continued to arise concerning the role and procedures of the Committee against Torture, i.e. with respect to article 19 (3) and (4) and article 20. Those problems were extremely difficult. The difficulty in article 19 lay in the fact that the wording of paragraphs 3 and 4 differed from that included in previous similar texts, namely article 40 of the International Covenant on Civil and Political Rights and article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination. As for article 20, it dealt with the even more difficult question of inquiries. Some delegations had considered that that text, despite being drafted extremely carefully, gave the Committee against Torture powers which would amount to interference in the internal affairs of States, a view which his delegation did not share. First of all, his delegation wished to observe that the proposed system was based, as was specified in article 20 (2), on the co-operation of the State party in question, which had to give its agreement before receiving a visiting mission; moreover, all the proceedings of the Committee were confidential. In the second place, although it might be considered that article 20 gave the Committee against Torture scope for action which was not possessed by the Human Rights Committee set up under the International Covenant on Civil and Political Rights, that should be regarded as a step forward which was not in any way disturbing, for at present there were other procedures similar to that envisaged in article 20, for example within the framework of the International Labour Organisation.

7. At present, therefore, article 19 (3) and (4) and all of article 20 were still outstanding. On the one hand, his delegation welcomed the considerable efforts made by the Working Group, and wished to pay a particular tribute to its Chairman/Rapporteur and to the Swedish delegation, which had presented the first preliminary drafts; on the other hand, it regretted that it had not been possible to overcome certain difficulties. Nevertheless, it did not despair and asked that the necessary steps should be taken so that the draft convention could be adopted by the General Assembly as soon as possible.

8. Mr. CHERNICHENKO (Union of Soviet Socialist Republics) said that in all ages torture had been used by repressive regimes as a hateful instrument which the international community should try to eliminate. The convention against torture and other cruel, inhuman or degrading treatment or punishment (see E/CN.4/1984/L.2, annex) would be an important contribution to that end, but it was necessary to be realistic and to realize clearly that, unless the States parties were willing to observe its provisions, it would remain ineffective. For that reason, it was of the utmost importance to achieve a consensus on all the provisions. Although it was obvious that States which practised torture would not accede to the convention, there was no question but that an international instrument of that kind would help to isolate them politically and therefore to oppose them. From that point of view too, it was essential that the text should command the broadest possible support and for that reason it should not contain anything which might create difficulties connected with the internal legislation of States. At its latest session, after years of negotiations, the Working Group had made considerable progress, which held out hope of an agreement in the near future on the provisions still pending. In that connection, a tribute should be paid to the Chairman/Rapporteur of the Working Group, who had spared no effort to facilitate a consensus.

9. In a spirit of compromise, his delegation had accepted certain provisions with which it had not been in full agreement, and which might have been considerably improved. Among other things, it had made a major concession with regard to the provisions concerning the system for implementing the convention. Without wanting to submit amendments to provisions which had already been adopted, his delegation had a few comments to make on certain points. In the first place, in the preamble, it did not seem to him correct to say that "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"; his delegation would have preferred some such wording as: "is an important factor for peace in the world". Moreover, although it had accepted the wording of article 3, it would nevertheless have preferred the original text, for a decision not to extradite a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture ought to be taken on the basis of sufficiently precise criteria; similarly, still in connection with article 3, it would have preferred a somewhat more precise interpretation or definition of the expression "a consistent pattern of ... violations of human rights" (apartheid, genocide, etc.).

10. His delegation had accepted articles 5, 6 and 7 of the draft convention but it drew the attention of members to the fact that a comparison between articles 5(2) and 7(1) might give rise to misunderstandings, for the term "jurisdiction" was used with two different meanings; in article 5(2) it seemed to refer to the competence of national courts, whereas in 7(1) it seemed to refer, rather, to national jurisdiction. That term should be reconsidered, since it would not fail to raise more difficulties when the text of the draft convention was examined at a higher level.

11. Article 16 was the only one which referred to acts of cruel, inhuman or degrading treatment or punishment which did not amount to torture; that provision should be presented in a more detailed way, with a more precise definition, so that the article would have a stronger effect. There, too, it was essential to proceed on the basis of very clear criteria; and for that reason his delegation had proposed reproducing the provisions of other instruments which had binding force for States parties. It had not pressed its suggestion, but it might possibly return to it.

12. His delegation considered that the Committee against Torture to be established under article 17 should be set up on an optional basis in order to avoid unnecessary expense; moreover, it would not be overburdened with work. In that regard, his delegation had made a major concession by agreeing to a membership of 10 experts, when in its opinion five would be enough.

13. The most serious difficulties had arisen in connection with articles 19 and 20. It had been his understanding that article 19 (4) - the proposal by the Indian delegation - had been adopted; however, it was included between square brackets in document E/CN.4/1984/L.2. The main difficulty raised by article 19 (3) was the expression "comments or suggestions"; some delegations, including his own, considered it more appropriate to repeat the expression "general comments", which appeared in the International Covenant on Civil and Political Rights, inter alia in article 40. His delegation was in favour of that expression, for, on the one hand, the Human Rights Committee had acquired unquestionable experience and, on the other hand, that would avoid the risks of interference in the internal affairs of States inherent in the expression "comments or suggestions". The Committee would thereby be authorized to pass judgement on the measures taken within a State and, for example, to suggest legislative amendments. It was true that the Committee would be composed of independent experts serving in their personal capacity, but one should not be misled on that point: the mere fact of being an independent expert was not an absolute guarantee of objectivity and impartiality, as had been realized on certain occasions.

14. Article 20 dealt with the question of an inquiry procedure. In that connection, it should be noted that torture in a State was not an isolated phenomenon: practice had shown that it went hand in hand with other repressive measures. Situations of that kind were well known, and there was no need to verify them by inquiries; for example, there was no point in making an inquiry about the practices of apartheid, since sufficient sources of information already existed, and specific details could be obtained under the procedures which the Commission already possessed. On the other hand, a State could be slanderously accused of acts of torture, either by another State, private individuals, or a non-governmental organization. On that subject, article 20 spoke of "reliable indications" (para. 1); however, the very indications described as reliable might be false. A State which was slandered in that way might rightly consider that an inquiry would constitute interference in its internal affairs.

15. Moreover, if articles 21 and 22 of the draft convention were adopted, it was not easy to see any justification for article 20. Some delegations had stated at the preceding meeting that article 20 provided for a procedure which was supported by the majority of States. In fact, that procedure was supported by the Western

countries, while many other countries were opposed to it. The United States representative had stated incorrectly that only the delegations of the USSR and the Ukrainian SSR had been against article 20; a number of States - it was well known which ones - had also raised objections. The United States representative had said that his delegation was in favour of a vigorous system of implementation, and that it could not accept a more flexible system. The more flexible system of which he was thinking, however, was that derived from the International Covenants on Human Rights.

16. The Commission now had two options; the first was to request the Working Group to continue its work and to draw up the remaining articles, with concessions on both sides; the second was to transmit the draft convention as it stood to the General Assembly. The first solution seemed to him to be preferable; his delegation would be able to agree to concessions on the articles in dispute and hoped that the Western delegations would be able to do the same. On the other hand, to transmit an incomplete text to the General Assembly would mean not carrying out the mandate which it had entrusted to the Commission. Obviously there were precedents for that kind of solution, but those precedents had been and should continue to be exceptions.

17. Mr. CHARRY SAMPER (Colombia), after congratulating the Working Group on a draft convention against torture and other cruel, inhuman or degrading treatment or punishment on the progress it had made, said that in his country torture was a specific crime under article 279 of the Penal Code. In keeping with that position, which was reflected in its internal law, his country had welcomed the draft convention sponsored by the Organization of American States (OAS) which defined torture as an international crime. At present, it was resolutely supporting the efforts made by the Working Group to draw up an international convention which expressed the repudiation of torture by the international community and made it possible to prevent and punish that practice.

18. In principle, his delegation approved the articles of the draft convention in document E/CN.4/1984/L.2. In order to complete that text, it might be possible, inter alia, to refer to certain standards which were already set out in such instruments as the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the Convention for the Suppression of Unlawful Seizure of Aircraft. His delegation considered that the Convention against Torture should be binding in order to act as a genuine deterrent.

19. The compromise text on the settlement of disputes which had been submitted by France and adopted by the Working Group seemed satisfactory; it provided for recourse by stages to direct negotiations, to arbitration and finally to the International Courts of Justice.

20. Thanks were due to Sweden for having drawn up the preliminary drafts; he was also pleased that Costa Rica had submitted a draft optional protocol which was a genuine reflection of humanitarian thought in Latin America. His delegation hoped that the Working Group would be able to complete its task in 1985, by making compromises but without weakening the text of the draft convention in relation to the objectives laid down by the General Assembly.

21. Mr. KONATE (Senegal) pointed out that torture was already condemned in article 5 of the Universal Declaration of Human Rights, in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX)), and in article 7 of the International Covenant on Civil and Political Rights. At present, in order to make a convention against torture effective, it was necessary, on the one hand, to establish a universal jurisdiction, and on the other hand, to set up effective implementation machinery. His delegation was very committed to such machinery, although it was not a Western delegation - that being said in allusion to a classification which had just been made. It considered that no law could be relied upon unless it was enforceable.

22. To be effective, the convention should permit the establishment of a universal jurisdiction aimed at ensuring not only the punishment of the crime but also the protection of the victim, while ruling out the facile excuse of denial of justice, which was invoked only too often. The draft stated the obligation for States to declare that torture was a crime, and it was necessary to provide every member of the international community with the means for observing violations, even outside the territory where the crime was committed. On the basis of that argument, his delegation supported draft articles 5, 6 and 7 contained in the annex to document E/CN.4/1984/L.2. It could not accept the argument that mandatory implementation machinery would mean giving the Committee against Torture a right of injunction and would discourage States from acceding to the convention. Nor did his delegation believe that the machinery provided for in the draft could turn that Committee into a censor of State policy. The possibility offered to individuals and States to apply to the Committee was only conceivable if the State in question was willing to co-operate. In that connection, he referred to the smooth operation of the control machinery established under the ILO Constitution. Moreover, the Working Group had provided safeguard clauses to exclude any possibility of interference by the Committee against Torture. By way of illustration, he mentioned Senegal's reaction to the comments of the Human Rights Committee concerning the requirement to post security and obtain an exit visa in order to leave the country: Senegal had abolished those measures. In response to other comments by that Committee, his country had also enlarged its party system and today had 14 parties.

23. There had already been a good deal of effort and many concessions in the Working Group. In particular, thanks were due to the Chairman, Mr. Burgers, for the spirit of conciliation which had enabled him to obtain such good results. His delegation, which therefore favoured a universal jurisdiction and mandatory implementation machinery, would support any draft resolution along those lines which was submitted to the Commission. It hoped that the General Assembly, after being enlightened by the comments of Governments, would take an appropriate decision so that mankind would really possess the means to take action against torture.

24. Sir Anthony WILLIAMS (United Kingdom) said he was pleased by the progress made by the Working Group and thanked the delegations which had shown the necessary

flexibility concerning certain parts of the draft convention (E/CN.4/1984/L.2; annex) in order that the Commission might receive a text at the current session. He also expressed his appreciation to Mr. Burgers, Chairman of the Working Group. He then emphasized the importance of the definition of torture in the draft convention. His Government would communicate its comments on that subject to the Secretary-General. A vague definition would only make implementation of the convention less effective. It would therefore be helpful to improve the one contained in article 1 of the existing draft.

25. In the first place, the convention should relate specifically to **aggravated forms** of maltreatment which deliberately caused intense pain and suffering. Secondly, mention should be made of gratuitous torture, a phenomenon which should not be overlooked. Thirdly, the essentially subjective concept of mental pain or suffering created some difficulties, particularly if it was linked to motives based on discrimination. Finally, in order to prevent the provisions of the convention from being bypassed, it should not exclude pain and suffering deriving from the use of lawful sanctions. He concluded by expressing the hope that article 1 of the draft convention would be carefully considered by the General Assembly.

26. Mr. DICHEV (Bulgaria) said that his delegation, after considering the report of the open-ended Working Group established by resolution 1983/38 of the Economic and Social Council (E/CN.4/1984/L.2), was pleased by the results achieved to date. Nevertheless, it was obvious from that document that the preparation of the draft convention had not yet been completed. It was therefore necessary to authorize a meeting of the Working Group for a period of one week prior to the forty-first session of the Commission. The spirit of co-operation and compromise already shown gave reason to hope for final agreement on the parts of the text which were still between square brackets. In the meantime, the Secretary-General should ask States Members of the United Nations to submit comments on the uncompleted part of the draft convention.

27. The principles embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been reflected in the provisions of the draft convention (loc.cit., annex). In particular, his delegation supported the provisions which stated that acts of torture were offences under the criminal law of each State party and, as such, subject to severe penalties (art. 4). On the other hand, his Government reserved the right to express its final position with respect to articles 3, 8, 17, 19 and 20 at a later stage. In article 3, the phrase "a consistent pattern of gross, flagrant or mass violations of human rights" did not seem fully satisfactory; the original version of paragraph 2 of that article would have been preferable. While joining the consensus on article 8, his delegation hoped that it would be supplemented by the following new paragraph: "In cases of extradition requests concerning (committed) criminal acts, as defined in article 4, on behalf of several States, priority in the ruling on such extradition requests is granted on the same basis on which concerned States are mentioned in paragraph 1 of article 5". In addition, without opposing article 17, his delegation would prefer the Committee against Torture to consist of five members instead of 10.

28. It had been impossible to reach a consensus on articles 19 and 20. His delegation, for its part, had some objections of principle concerning article 19 (3) and (4), and the whole of article 20. It would be able to accept article 19 only if the words "comments or suggestions" were replaced by the words "general comments", which were used in article 40 of the International Covenant on Civil and Political Rights. Moreover, his delegation was not prepared to accept the far-reaching powers of the Committee against Torture provided for in draft article 20; the proposed provisions might easily lead to unacceptable interference in the internal affairs of States. For that reason, his delegation supported the USSR proposal, referred to in paragraph 52 of the Working Group's report. Like the delegation of the Ukrainian SSR, it would also like to include in article 20 (1), after the words "in the territory of a State party", the phrase "which has made a declaration in accordance with paragraph 1 of article 21".

29. Mr. CHOWDHURY (Bangladesh) noted that the question of torture had been of concern to the Commission for years and that it might be said, in fact, that protection against torture had been at the very origin of the concept of human rights. The practice of torture had existed since time immemorial, and in ancient States it had been common when the leaders had not been concerned about the welfare of their people.

30. In article 5 of the Universal Declaration of Human Rights, it was stated that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1975, had made torture "an offence to human dignity" and "a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights" (General Assembly resolution 3452 (XXX), annex, art. 2); reference had obviously been made to article 5 of the Universal Declaration of Human Rights in that new Declaration. Since then, in its resolution 36/151 of 16 December 1981, the General Assembly had recognized the existence of acts of torture in a number of countries and the need to provide assistance to victims and their families.

31. The draft convention prepared by the Working Group (E/CN.4/1984/L.2, annex) was derived from those provisions, particularly from article 5 of the Universal Declaration of Human Rights, which it developed further. It was praiseworthy in more than one respect. First, it contained a definition of torture, although, as the United Kingdom delegation had observed, it should be made more specific. Secondly, it should make it possible to ensure adequate protection against torture and other cruel, inhuman or degrading treatment or punishment while safeguarding the fundamental principle of non-interference in the internal affairs of States. Thirdly, it provided for the establishment of a Committee against Torture which could deal with violations of the obligations deriving from the convention. Lastly, it provided that acts of torture should be considered to be offences under the national law of States, and imposed on States parties the obligation to make those offences punishable by appropriate penalties. In that respect, it was important that the judiciary should be truly independent of the executive and that recourse procedures should be effective in all cases.

32. His delegation felt somewhat pessimistic about draft article 22, which provided that any State party to the convention might at any time declare that it recognized the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals who claimed to be victims of a violation by a State party of the provisions of the convention, but that no communication should be received by the Committee if it concerned a State party which had not made such a declaration. Realizing that it was hopeless to appeal to reason when allegations of torture or mistreatment were brought against States, his delegation wondered how many States parties would be willing to make that declaration, although it was certainly necessary to envisage it. Moreover, paragraph 5 of that same draft article 22 provided that the Committee would not consider any communication from an individual unless it had ascertained that the individual had exhausted all available domestic remedies. However, it was extremely difficult, for example, to exercise domestic remedies in cases of torture committed against political opponents. To be sure, the adjective "available" allowed for a degree of flexibility in interpretation, but that was not enough. There again, that provision was necessary if accessions to the convention were to be encouraged.

33. In conclusion, he repeated his delegation's support for the draft convention which had been submitted, subject to any amendments that the Commission might consider it advisable to make. He sincerely hoped that the draft convention would be transmitted to the General Assembly as soon as possible, even in its existing form.

34. Mr. BALLESTEROS (Uruguay) said he would limit himself to making some brief observations on the draft convention against torture and other cruel, inhuman or degrading treatment or punishment, while elaborating upon certain comments by his delegation which were reflected in the Working Group's report (E/CN.4/1984/L.2).

35. First, there was no doubt about the justification for international protection against torture and other cruel, inhuman or degrading treatment or punishment. However, it was understood that the results achieved by the Working Group, which a priori were very satisfactory and had been arrived at by mutual concessions, could not prejudice the position taken by Governments in the last resort - especially since several delegations had joined the Working Group when several draft articles had already been approved and had therefore been able to make only general comments.

36. In the case of his delegation, the principal concession had been to refrain from disturbing the Working Group's consensus on questions about which it nevertheless had some misgivings or fundamental reservations. Those misgivings or reservations related, first, to the exception provided for in the last sentence of draft article 1 (1) (loc. cit., annex), for it might be asked how sanctions which might cause pain or suffering could be considered lawful. Secondly, they concerned draft article 3 and were referred to in paragraph 13 of the Working Group's report: in his delegation's opinion, the rules laid down in that draft article should be applicable to any offender, and not merely to torturers. However, the draft article gave the competent authorities discretionary powers of judgement, thus providing a loophole regardless of the type of crime. Several delegations had also referred to the possibility of making reservations concerning that draft article, as was noted in paragraph 12 of the Working Group's report.

37. Finally, his delegation's doubts or reservations concerned the very controversial question of universal jurisdiction. In that connection, his delegation wished to point out that, while Uruguay had ratified the International Covenant on Civil and Political Rights, as well as the Optional Protocol thereto, it had not acceded to certain conventions which did not involve a similar international responsibility, and that it had acted in that way because of certain doubts of a purely legal nature concerning the scope of universal jurisdiction, which was not yet clearly defined. It was true that the universal jurisdiction provided for in the draft convention was aimed at reducing the possibility for a State to evade its obligation to punish persons who had been guilty of acts of genocide, racial segregation, terrorism or torture - all of them violations which the international community, on the basis of international instruments, had undertaken to terminate. Nevertheless, undue recourse to that jurisdiction might help alleged offenders to escape the jurisdiction of their natural judges, which would violate the sovereign right of States to try offences committed in their territory. That possibility was enhanced by the recognition of the prerogative of every State in article 3 of the draft convention. For that reason, his delegation considered, on a preliminary basis, that attention should be paid to China's comment as reflected in paragraph 34 of the Working Group's report, according to which priority should be given to the jurisdiction of the State in whose territory the offence had been committed, while reserving the application of the principle of universal jurisdiction to residual and flagrant cases.

38. In any event, his delegation was continuing to study the draft convention carefully and with absolute objectivity. For the time being, it could not adopt a final position on it, but that position would in any case be based on purely legal considerations.

39. At present, his delegation had no objection to the articles on which the members of the Working Group had been unable to reach agreement, namely article 19 (3) and (4) and the whole of article 20; it considered that those provisions were in conformity with the implementation machinery provided for in part II of the draft convention, machinery which was based on the establishment of a Committee against Torture. However, it was fully aware of the legitimate misgivings which had been expressed about the provisions in question and which had been very well reflected by the Chairman/Rapporteur in his report. It did not think that the lack of agreement on those provisions would justify the renewal of the Working Group's mandate, but it would not oppose that renewal if the Commission considered it useful for the purpose of reaching full agreement within the Group itself.

40. Mr. BIANCHI (Argentina) congratulated the Working Group on the draft Convention which it had prepared (E/CN.4/1984/L.2, annex).

41. In his country, which was still under the shock of the terrible events of the very recent past, the mere mention of torture aroused feelings of terror. Acts of torture, when they became a matter of routine and were an integral part of a system of repression, not only constituted a violation of the physical and mental integrity of the individual, but were also a denial of the humanity of both the torturer and his victim.

42. In 1980, the Inter-American Legal Committee of the OAS had drawn up a draft convention in which torture was defined as an international crime. In December 1983, his country had stated that it subscribed to that definition. Despite the differences in definitions as between the OAS draft convention and that of the Working Group submitted to the Commission, his delegation thought that in the present case various degrees of international protection could co-exist: that was, to say, at the same time, a universal convention open to all States, in conformity with draft articles 25 and 26 of the text under study, and a regional convention. Such an arrangement was in keeping with the spirit of draft article 1 (2) proposed by the Working Group.

43. Argentina had recently enacted a law on torture amending the Penal Code: that law included among acts of torture the imposition of psychological suffering if it was sufficiently serious; it provided for the punishment of persons responsible for acts of torture, the punishment of an official who had failed to take action to prevent an act of torture from being perpetrated when he could have done so, or who had failed to denounce it, as well as the punishment of doctors who participated in acts of torture, judges who, having knowledge of such acts, refrained from investigating the case, and prison authorities who had not shown the necessary vigilance. The penalty prescribed was equivalent to that provided for homicide (homicidio), i.e. from 8 to 25 years' imprisonment, and if torture resulted in death, it could be as much as imprisonment for life. Those penalties indicated the importance which the new Argentine Government attached to the integrity of the person: the same importance as to life itself.

44. His delegation was well aware that the evils which it was sought to eradicate would not disappear simply through being named, but in its opinion the widespread use of torture had reached such a degree of perversity that it was the duty of the international community to take urgent action, as the General Assembly had emphasized in its resolution 32/62. The Working Group had carried out its work with great efficiency. It had succeeded in obtaining recognition for the principle of universal jurisdiction, referred to in draft articles 5, 6 and 7, which his delegation supported, just as it supported the implementation machinery envisaged in draft articles 19 and 20, without which the convention would be meaningless and would be just one more inoperative or largely ineffective international instrument.

45. The Commission had often been criticized for being excessively politicized and failing to meet the expectations of the many victims of injustice throughout the world. However, it could be agreed that at least some of those criticisms were unjustified, for the Commission's mandate did not enable it to perform miracles. That being said, there were cases where a greater effort was necessary. The elimination of torture and other cruel, inhuman or degrading treatment or punishment fitted perfectly into that category of cases. The time had come for the Commission to transmit the draft convention to the General Assembly, so that the latter could consider and adopt it as soon as possible.

46. Mr. SEGURA (Costa Rica) said that the Working Group's excellent report on a draft convention against torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/1984/L.2) represented progress towards the elimination of torture, the existence of which at the end of the twentieth century called in question all the achievements and values of mankind.

47. In March 1980, his Government had submitted to the Commission a draft optional protocol to be annexed to the draft convention (see document E/CN.4/1409). Subsequently, his Government had asked the Commission to consider that draft optional protocol only after it had approved the text of the convention, in order not to delay such approval. Since the provisions concerning the implementation of the convention had not yet been approved, his Government would wait until the Commission's next session before asking the Working Group to consider the draft optional protocol.

48. Mr. HAMMARBERG (Amnesty International) said that six years had passed since the General Assembly had asked the Commission to prepare a draft convention against torture. More time would certainly be necessary before that text was finally approved, ratified and implemented. The slowness of that process was explained by the fundamental difficulties of that question, which were not primarily of a legal nature. All Governments today were prepared to state that they were opposed to torture, but their commitment was less firm when the discussion moved from generalities to concrete and binding regulations. The measures proposed to ensure effective implementation of the convention were viewed with suspicion had discussed in a less than constructive spirit. However, it was not sufficient for Governments to make general statements against torture.

49. Amnesty International and other non-governmental organizations were continuing to receive alarming reports about torture which, according to those reports, had involved more than half of the States Members of the United Nations in recent years. After verifying them, it could be stated that more than one third of the world's Governments had used or tolerated torture or the ill-treatment of prisoners during the 1980s. The victims during that period could be counted in tens of thousands. Today, torture was widespread and was even systematic in many countries, whose authorities often used it deliberately in order to destroy violent or non-violent opposition or to obtain information by force.

50. Such methods had been used before in history and for the same purposes. But what was new was that those practices were now illegal. International law prohibited torture without any derogation, even in emergency situations. A convention, however, would not make it possible to implement that international ban against torture unless it contained effective implementation machinery, as had recently been confirmed by the General Assembly in its resolution 38/119. The establishment of the Committee against Torture proposed in article 17 of the text of the draft convention (E/CN.4/1984/L.2, annex) would be a step in the right direction, since that organ would be authorized to receive inter-State and individual communications. It was regrettable, however, that the proposed procedure was optional and was to apply only to those Governments which ratified it. There was a danger, therefore, that the committee in question would be precluded from action when and where the need was most acute. His organization, of course, had hoped that consideration would be given to a mandatory complaints procedure. It therefore judged it desirable to envisage some machinery - possibly independent of the convention - by which situations could be investigated where it was believed that torture was systematically practised.

51. The draft submitted to the Commission contained the crucial principle of the universality of jurisdiction in that area. It was important that there should be no safe haven for torturers. Torture had been described as a "social cancer", but that did not mean that torture was inevitable. The existence or non-existence of torture was a question of political will, and Governments which were determined to eradicate it had succeeded. The same political will should be shown at the international level, in order to ensure protection against torture and in that way to defend principles which transcended national and political borders. Much was expected of the United Nations in that field. In conclusion, his organization expressed the hope that the Commission would transmit the draft convention to the General Assembly, through the Economic and Social Council, as a matter of priority.

52. Mrs. MOLTKE-LETH (Observer for Denmark) said that torture was one of the most appalling aspects of inhumanity. Through the United Nations and the specialized agencies, the international community had repeatedly condemned that practice and other cruel, inhuman or degrading treatment. It had repeatedly been stressed that there should be no concessions in the fight against that evil and that it was the duty of the United Nations to put an end to it and to assist its victims.

53. It appeared from the note prepared by the Secretary-General pursuant to the Commission's request (E/CN.4/1984/19) that the United Nations Voluntary Fund for Victims of Torture was operating satisfactorily and that several countries had made or pledged contributions, some of them even for the second time. At the latest session of the General Assembly, the Danish Minister for Foreign Affairs had pledged a second substantial contribution, namely 1 million kroner, an amount equal to that of his country's first contribution. Denmark, which had taken the initiative in 1981 to establish the Fund, hoped that the other countries which had approved that proposal would give serious thought to providing generous aid to the victims and their families. In its resolution 38/92, the General Assembly had asked all Governments, organizations and individuals to respond favourably to requests for contributions.

54. Besides those financial contributions, it was also necessary to provide medical and social assistance to victims. Torturing another human being was an attempt to destroy his dignity. Victims of torture not only suffered from physical injuries but also from serious mental traumas which were very difficult to heal. A team of Danish doctors had specialized in the treatment of torture victims, and in 1982 a rehabilitation centre had been set up in Copenhagen to give medical treatment to victims of torture and their relatives and to carry out educational and training activities with a view to disseminating methods of care and re-education, and even research with a view to improving aid to victims of torture and contributing to the abolition of that practice. Although that research centre was a private humanitarian institution, her Government had provided treatment facilities and premises free of charge. The Financial Committee of the Danish Parliament had also decided to contribute annually an amount of 3 million kroner to the Centre over the next four years in order to eliminate a possible budget deficit. Her Government was following the activities of the Centre with interest and was grateful to the Board of Trustees of the Fund for the interest which it too had taken in the Centre. It would likewise welcome information from other countries concerning the creation of similar centres.

55. Prevention, however, was better than cure. The task of preparing a convention against torture which had been entrusted to the Commission six years before was coming to an end after lengthy deliberations. When the draft convention with its provisions concerning universal jurisdiction and compulsory implementation was adopted, a legal instrument would be available which would enable the international community gradually to eliminate torture. If it was desired that the new international instrument should go beyond the existing and generally accepted provisions of international law, it was imperative to adopt measures to ensure that neither isolated acts of torture nor the systematic practice of torture would be condoned in silence or go unpunished. Her delegation, therefore, strongly appealed to the delegations which seemed to doubt the justification for effective implementation machinery to reconsider their position, so that the General Assembly could adopt that important convention as soon as possible. By closing their eyes and ears, the members of the Commission would incur a grave moral responsibility and would lose a little more of their credibility. In conclusion, she thanked the Chairman/Rapporteur of the Working Group for his untiring efforts.

56. Mr. EWERLOF (Observer for Sweden) said that his delegation had always attached great importance to the draft convention against torture. The international community should, as a matter of urgency, take effective measures to eliminate that practice, which, although prohibited by international law, was still very common throughout the world. A number of measures had been taken during the past 10 years to combat torture; a Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been adopted in 1975; the General Assembly had adopted a Code of Conduct for Law Enforcement Officials in 1979, and Principles of Medical Ethics in 1982; the United Nations Voluntary Fund for Victims of Torture had been set up in 1981. A convention against torture would be another significant step, provided that it imposed specific and concrete obligations on States and provided for effective implementation machinery.

57. His delegation noted with satisfaction that the Working Group set up by the Commission had made significant progress in preparing the draft convention and that its members had reached agreement on nearly all the elements of the text, thanks in particular to the energy and devotion of the Group's Chairman/Rapporteur. The text presented to the Commission was not an ideal one, but it was the best that could be achieved in the circumstances. His delegation could support it, provided that article 20 was retained as a mandatory element in the convention. Since the Working Group had completed its work, the time had come for other United Nations bodies to take the final decisions. By adopting the draft convention without delay, the General Assembly would contribute to the development of international law in a very important field of human rights.

58. Mrs. KHANDAN (International Movement for Fraternal Union Among Races and Peoples) said several international humanitarian organizations had reported that cruel and inhuman treatment in prisons in the Islamic Republic of Iran was continuing and increasing in intensity. The extent of the phenomenon of torture and secret executions was such that certain leaders in that country had themselves made remarks to their subordinates about their treatment of detainees. Prison authorities had been criticized for "not seeing to prisoners' needs" and had been advised to refrain from the "violent treatment" of inmates and their families.

But according to many reports from Iran, there had been a stepping-up of secret mass executions and torture. According to a medical correspondent who had recently visited Evin Gaol in Teheran, 490 prisoners were said to have been shot in one night. That number included 15 children, one being a baby 11 months old whose mother had been arrested nine days after the birth of her child. That woman, who had not yet had a formal hearing, had hesitated to continue talking in the presence of officials. The correspondent and others had been present at a "mass repentance" session which had made use of the most advanced methods of brainwashing.

59. According to the reports received, there were more than 400 prisons in Iran. Due to the lack of space and the increasing number of prisoners, many persons were imprisoned in high-security centres or in unknown localities.

60. At present, more than 100,000 political prisoners were imprisoned in Iran in conditions which were far below the minimum standards. Mention might be made of lack of space, and poor sanitary and medical facilities and food. All prisoners were suffering from numerous diseases and were exposed to a slow death. In Adel-Abad prison in Shiraz, all the women prisoners were suffering from serious hormone imbalances and skin irritations because of the large quantities of camphor which were mixed with their food rations. A very large number of children and mothers were also held captive in Iran. Children whose parents had been executed or who were imprisoned with their mothers were afflicted with infantile paralysis or rickets because of malnutrition and lack of care. Many children died and the survivors had to be cared for by other prisoners. Pregnant women were also imprisoned and tortured and gave birth to sick or handicapped children. In order to induce mothers to give information, the daily ration of powdered milk for their babies was sometimes stopped.

61. The situation of women prisoners, who formed nearly half of the prisoners, was no better than that of the children. They were tortured, raped, flogged and beaten in front of their children. They were subjected to electric shocks and burns. According to some reports, women in Adel-Abad prison in Shiraz had been given 20 to 30 lashes every day. In Lahidjan prison in northern Iran, the torturers splashed acid on all prisoners, including women, in order to force them to make confessions. On 8 August 1983 at Kermanshah, in western Iran, four girl prisoners had had their hair cut off, and had been tortured, raped and mutilated before being executed.

62. In addition to physical tortures, political prisoners in Iran were systematically subjected to widespread psychological torture. For example, some prisoners were told that they were going to be shot and were subjected to repeated mock executions. During interrogations, it also happened that a pretence was made of executing a prisoner. In several detention centres, the prisoners were forced to be present at the execution of their comrades, and films of the executions were shown in their presence. The prisoners were forced to give the coup de grâce to comrades who were shot or to form part of firing squads, under threat of being executed themselves. It also happened that a prisoner was forced to listen for several days to the cries of pain of other prisoners who were being tortured or to be present while they were being tortured.

63. It was the duty of the international community to restore the fundamental rights of individuals in places where they were so seriously ignored. Her organization considered that the Commission should take action against cruel treatment and arbitrary detentions. It would be desirable, therefore, for it to appoint a special rapporteur as soon as possible to investigate the human rights situation in Iran, especially with regard to conditions of detention and the many cases of torture.

64. Mr. NEUDECK (Centre for Social Development and Humanitarian Affairs) welcomed the fact that, thanks to the efforts of the Working Group, decisive progress had been made with the draft convention against torture. The struggle against torture was a priority for the United Nations in the field of human rights, and it also occupied a predominant place in the crime prevention and criminal justice programme of his organization.

65. In 1975, at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, it had been decided for the first time to take strong action against torture. The Congress had adopted a declaration against torture which had subsequently been endorsed by the General Assembly. To implement the Declaration, the United Nations had adopted, among other things, the Code of Conduct for Law Enforcement Officials and the Principles of Medical Ethics, and had drawn up a draft set of principles for the protection of all persons subjected to any form of detention and imprisonment.

66. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which would be held in 1985, would make it possible to gauge the progress made, at the national and international levels, in the struggle against torture, a question which it would consider within the framework of the topic "Formulation and application of United Nations standards and norms in criminal justice". At its eighth session in March, the Committee on Crime Prevention and Control would make preparations for the Eighth Congress and expected to receive useful contributions from all those participating in the implementation of the human rights programme.

67. Mr. VENDRELL (Pax Romana) drew attention to article 5 of the Universal Declaration of Human Rights, which provided that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Torture was being practised more and more widely by the authorities of police and military regimes, of which there were many. The media all over the world denounced those tragic situations, and organizations like Amnesty International also bore witness to that abominable practice. In the name of the evangelical principle which justified its very existence, his organization could not remain indifferent in the face of the repeated violation of the physical and moral integrity of the human person.

68. It was the purpose of the United Nations, and in particular the Commission, to increase solidarity and to establish peace among peoples, on the basis of law and by creating specific legal machinery. Today, no one denied that sovereignty belonged to the people, but in the name of the principle of non-interference, reasons of State had been allowed to prevail over sovereignty. A State which did not respect the dignity of a detainee could hardly protect the community of which the individual was a part. It was therefore urgently necessary to complete the final text of the draft convention against torture by including in it unambiguous provisions which would ensure its implementation. The Committee Against Torture provided for in article 17 of the text of the draft (E/CN.4/1984/L.2, annex) should be authorized to make a confidential inquiry when it received information which gave reason to presume that torture was being practised. Unless the Commission made provision for the committee to be able to undertake enquiries, it would be impossible to escape from the present legal situation. Furthermore, once that step had been taken, the Working Group should examine the draft optional protocol presented in March 1980 by Costa Rica.

69. In the face of the gravity and extent of the practices alleged, it was impossible to be content with declarations or condemnations, which were all too often ineffective if they were not supported by law. No alleged "reason of State" or "public order" or "security" could justify practices which degraded the perpetrator more than the victim and dishonoured those who authorized them.

70. Today, after having denounced the practices of the military in Argentina, his organization was horrified by the information concerning the number of corpses of torture victims, including women and children, which were being discovered in that country in secret charnel-houses. The international community could not remain unmoved by the evidence, since it would risk becoming an accomplice in a crime against humanity. It was therefore necessary to adopt the necessary machinery immediately in order to put an end to the habitual practice of torture and to ensure that human solidarity prevailed over the principle of national sovereignty.

The meeting rose at 1.05 p.m.