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

Chairman-Rapporteur: Mr. Anestis Papastefanou (Greece)

Introduction

1. On the recommendation of the Commission in its resolution 34 (XXXVI), the Economic and Social Council, by its resolution 1980/32 of 2 May 1980 authorized the meeting of an open-ended Working Group for a period of one week prior to the thirty-seventh session of the Commission to complete the work on a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, with a view to the submission of the draft, together with provisions for the effective implementation of the future convention, to the thirty-sixth session of the General Assembly.

Elections

2. The first meeting of the pre-session Working Group, on 26 January 1981, Mr. A. Papastefanou (Greece) was elected by acclamation as Chairman-Rapporteur. Mr. Papastefanou continued as Chairman-Rapporteur of the Working Group established by the Commission on Human Rights at its thirty-seventh session to continue the work of the Working Group during the session.

Participation

3. The pre-session as well as the sessional Working Groups were open to all members of the Commission on Human Rights, the composition of which, for 1981, was as follows: Algeria, Argentina, Australia, Benin, Brazil, Bulgaria, Burundi, Byelorussian SSR, Canada, Colombia, Costa Rica, Cuba, Cyprus, Denmark, Egypt, Ethiopia, France, Germany, Federal Republic of, Ghana, Greece, India, Iran, Iraq, Ivory Coast, Jordan, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Senegal, Syrian Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia and Zambia.

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

5. Amnesty International, the Arab Lawyers Union, and the International Commission of Jurists sent observers to the Working Group.

Documents

6. The Working Group had before it a number of relevant documents, including: the "Draft International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" of Sweden (E/CN.4/1285), the revised Draft Convention submitted by Sweden (E/CN.4/WG.1/WP.1), the "Draft Convention for the Prevention and Suppression of Torture" submitted by the International Association of Penal Law (E/CN.4/NGO/213), the reports of the 1979 and 1980 Working Groups as contained in the reports of the thirty-fifth and thirty-sixth sessions of the Commission on Human Rights (E/CN.4/1347, paragraphs 178-180; E/1980/13, paragraphs 201-209; E/CN.4/1367) and the report of the Secretary-General in accordance with Commission resolution 18 (XXXIV), summarizing the observations received from governments on the question of the Draft Convention (E/CN.4/1314 and Add. 1-4). The Group also had before it a draft preamble and proposed final provisions submitted by Sweden (E/CN.4/1427) and a draft optional protocol submitted by Costa Rica (E/CN.4/1409).

Consideration of substantive articles

Article 1.

7. Article 1 of the draft as adopted by the Working Group in 1980 (E/CN.4/1367, annex) read as follows:

"Article 1

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

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

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

8. It will be recalled that paragraphs 1 and 3 were adopted by the Working Group prior to and during the thirty-fifth session of the Commission on Human Rights. At its meetings held from 26 to 30 January 1981, the Working Group resumed consideration of article 1, paragraph 2.

9. Some delegations were in favour of the deletion of the square brackets since they thought it useful to draw attention at the outset to the fact that, as torture under the Convention is to be made a penal offence, it was necessary to have as precise a definition of torture as possible. The bracketed phrase would make clear that torture is at the highest end of a scale of cruel, inhuman or degrading treatment or punishment. Other delegations took the view that the wording of paragraph 2 could be interpreted as bringing an element of imprecision to the definition of torture given in paragraph 1, and they therefore proposed the deletion of paragraph 2 of article 1.

10. As it was not possible to reach a consensus, it was decided to keep paragraph 2 between square brackets and to consider it later.

11. It was decided to replace the term "national legislation", in paragraph 3, by "national law", so as to bring that paragraph into line with paragraph 2 of article 16.

12. Following consideration by the 1981 Working Group, article 1 reads as follows:

"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 or an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from inherent in or incidental to lawful sanctions.

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

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

Article 2

13. Article 2 as previously adopted by the Working Group read as follows: (E/CN.4/1367, annex):

"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; [however, this may be considered a ground for mitigation of punishment, if justice so requires.]"

After discussion, the Working Group decided to delete the phrase between square brackets in paragraph 3 of article 2.

14. Article 2, as amended following consideration by the Group, read as follows:

"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

15. Article 3 as adopted by the Group last year read as follows (E/CN.4/1367, annex):

"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.

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

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

The Working Group considered article 3, paragraph 2. Some delegations stressed the importance they attached to retention of the illustrative list of consistent and gross violations of human rights set forth in this paragraph, and proposed that the square brackets should be deleted. Other speakers considered that, if the brackets were to be deleted, the list should be deleted or perhaps amplified by a reference to other types of violation. Some members favoured the deletion of paragraph 2 in its entirety, as they deemed it superfluous. In addition, one delegation said that the existence of most of the conditions in the list did not, either logically, legally or otherwise, constitute grounds to believe that a person would be in danger of being subjected to torture.

16. The discussion was concerned in particular with the retention of the expressions "colonialism" and "neo-colonialism". It was decided to delete the square brackets around these words, on the understanding that the paragraph as a whole remained between brackets.

17. One delegation proposed the addition of a footnote reading:

"The Working Group agreed that a State Party which refuses extradition in the circumstances described in paragraph 1 shall, if its national legislation so permits, institute criminal proceedings against the person whose extradition it refuses."

Several representatives raised the question of the legal effect of such a footnote in a document such as the Convention. It was suggested that it could more appropriately be included in the Working Group's report. In view of the difference of opinion, the author of the proposal requested that consideration of the matter be deferred to allow him to engage in consultations.

18. To bring the various language versions into line, the Group decided to replace the words "preuves substantielles", in paragraph 1 of the French text, by the words "motifs sérieux de croire", and the words "de telles preuves", in paragraph 2, by "de tels motifs". In the English text of paragraph 2, the words "there is such evidence" were replaced by the words "there are such grounds" in order to bring the text into line with paragraph 1.

19. Article 3, as revised, reads as follows:

"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.

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

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.]"

Article 5

20. The part of article 5 which the Working Group adopted in 1980 read as follows:

"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."

At its meeting this year, the Working Group considered subparagraphs (b) and (c), which read as follows:

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

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

21. The Working Group decided by consensus to delete the square brackets enclosing the word "national" in subparagraph (b).

22. With regard to subparagraph (c), the Group decided by consensus, after considerable discussion during which several delegations stated that they had strong reservations about this wording, to remove the square brackets enclosing that subparagraph and to add the words "if that State considers it appropriate" at the end of the paragraph, thus adopting the wording of the Convention against the Taking of Hostages.

23. New article 5, paragraph 1 (a), (b) and (c), therefore reads as follows:

"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."

24. Article 5, paragraph 2, of the revised draft, which was not adopted, read as follows:

["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 3 to any of the States mentioned in paragraph 1 of this Article."]

25. As in 1930, some members suggested the deletion of this paragraph, either because they were opposed to the principle of universal criminal jurisdiction or because of the difficulties to which the provision could give rise when establishing the facts. Several delegations indicated particularly that they had difficulties, in view of their legal systems, in accepting a clause of universal jurisdiction which was not subject to some conditions. One representative proposed that, if the paragraph were to be retained, the phrase "after having received a request for extradition" should be added after the words "and it does not extradite him". Some speakers considered that the paragraph should be retained. They referred to the fact that a corresponding paragraph already appeared in many other comparable conventions 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, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents and the Convention against Taking of Hostages, and they emphasized that universal jurisdiction was desirable in order not to provide torturers with any places of refuge. Since no agreement could be reached, it was decided to retain the paragraph in brackets.

26. Article 5, paragraph 3, read as follows:

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

The Working Group adopted paragraph 3, as set forth above, by consensus.

27. Article 5, as it emerged from the work of the Group in 1981, therefore reads as follows:

"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 3 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."

28. During informal consultations the following text was proposed:

"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 3 to any of the States mentioned in paragraph 1 of this article.

2(a) Without prejudice to the foregoing paragraphs, an alleged offender should normally be tried by the State in whose territory the offence is committed."

The Working Group, during its public meeting, felt that, since the informal proposal could not be discussed owing to lack of time, it should be examined in greater detail next year.

Article 6

29. Article 6, as adopted by the Working Group last year, read as follows:

"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 fact.

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.]

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

The Group examined paragraph 4. No decision was taken as certain members considered that articles 5 and 7 should be adopted first. It was decided that paragraph 5 of article 6 should be transferred to article 7 when the remainder of article 7 had been adopted. The Working Group decided to retain article 6 as drafted and to revert to it later.

Article 7

30. Article 7 of the revised Swedish draft read as follows:

"The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is found, shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in any territory under its jurisdiction, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State."

When it considered article 7, the Working Group had before it the amendment submitted by the Netherlands (E/CN.4/(1981)/WG.2/WP.2), which read as follows:

"Article 7

1. The State Party in the territory of which a person alleged to have committed any offence referred to in Article 4 is found shall in the cases contemplated in Article 5, paragraph 1, if it does not extradite him, be obliged, without exception whatsoever, to submit the case to its competent authorities for the purpose of prosecution.

2. The State Party in the territory of which a person alleged to have committed any offence referred to in Article 4 is found, shall, in the cases contemplated in Article 5, paragraph 2, be obliged to submit the case to its competent authorities for the purpose of prosecution upon complaint by any interested party made in accordance with procedures set under the law of that State Party.

3. Any person regarding whom proceedings are being brought in connection with any offence set forth in Article 4 shall be guaranteed fair treatment at all stages of the proceedings."

31. In support of the Netherlands amendment, some delegations said that, in their view, it brought out more clearly than did the Swedish text an essential link with article 5, while the terms of paragraph 2 allowed for more flexibility so far as the modalities for applying the article were concerned. In their view, the main advantage of the Netherlands amendment was its qualification of the operation of universal jurisdiction by referring to complaint procedures. They also considered that paragraph 3 of the Netherlands amendment contained a timely reminder of a fundamental principle relating to the rights of the accused in criminal proceedings.

32. According to other speakers, the Netherlands amendment lacked the requisite clarity so far as some of its wording - in particular, the words "upon complaint by any interested party" - was concerned, and could give rise to loose interpretation and open up loopholes. In the view of these members, article 7 of the Swedish draft provided a better working basis.

33. The Group decided to adopt paragraph 3, amended in fine, of the Netherlands amendment as the last paragraph of article 7:

"3. Any person regarding whom proceedings are being brought in connection with any offence set forth in Article 4 shall enjoy all the guarantees of a fair and equitable trial."

34. Brazil and Sweden submitted a second revised version of draft article 7 (E/CN.4/(1981)/WG.2/WP.5). This version read as follows:

"1. A State Party which has established its jurisdiction over an offence according to Article 5 shall, when the alleged offender is present in a territory under its jurisdiction, submit the case to its competent authorities for the purpose of prosecution, if it does not extradite him.

2. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

3. Any person regarding whom proceedings are being brought in connection with any offence set forth in Article 4 shall be given all guarantees of fair proceedings.
4. The provisions of paragraph 1 are without prejudice to the right that any State Party having jurisdiction according to Article 5 may have to prosecute a person who is not present in a territory under its jurisdiction."
35. Following a discussion which revealed, in particular, that there were reservations in regard to paragraph 4, the sponsors withdrew their proposal.
36. The Working Group adjourned consideration of article 7.
37. During informal consultations the following text was proposed:

Article 7

"The State Party with jurisdiction over the territory in which a person alleged to have committed any offence referred to in Article 4 is found shall, if it does not extradite him, be obliged, in cases contemplated in Article 5, to submit the case to its competent authorities, which, for the purpose of prosecution, shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State."

The Working Group, during its public meeting, felt that, since the informal proposal could not be discussed owing to lack of time, it should be examined in greater detail next year.

Article 8

38. Article 8, as worded as a result of the work carried out in 1980, read as follows:

"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] [shall] consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

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

The discussion on article 8 was mainly concerned with the alternatives "may" and "shall" in paragraph 2. The Working Group also had before it a proposal for the replacement of paragraph 2 of article 8 introduced by Argentina (E/CN.4/(1991)/WG.2/WP.4), which read as follows:

"2. The present Convention shall establish the necessary legal basis for extradition in respect of such offences vis-à-vis any State Party which makes extradition subordinate to the existence of a treaty if the said State Party receives a request for extradition from another State Party with which it does not have a treaty. The extradition shall be subject to any other conditions which may be required under the law of the State to which the request is addressed."

39. No consensus could be reached in favour of either the word "may" or the word "shall" or of adoption of the amendment. The proposal was withdrawn. The text of article 8 was retained as drafted.

Article 14

40. Article 14 as adopted in 1980 read as follows:

"Article 14

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

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

41. The discussion on article 14 was mainly concerned with the word "rehabilitation", between square brackets. The Group decided to qualify that word by adopting the expression "for as full rehabilitation as possible".

42. The Group also decided to place the words "dans son système juridique", in the French text, after the word "garantit", and to add the words "committed in any territory under its jurisdiction" after the word "torture".

43. The Working Group adopted article 14, as thus revised, by consensus; it now reads as follows:

"1. Each State Party shall ensure in its legal system that the victim of an act of torture committed in any territory under its jurisdiction be redressed and have 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."

44. The Indian Delegation asked that reference be made in the report to the reservation concerning article 14 which it had entered the previous year.

Article 16

45. Article 16 as adopted by the Working Group the previous year read as follows:

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

46. The Working Group first considered the references in paragraph 1 to articles 3, 14 and 15. After discussion, the Group decided to delete the reference to articles 3 and 15 and to retain the reference to article 14, between square brackets.

47. It was suggested that a provision similar to the last sentence of paragraph 1 of article 1 should be inserted in article 16, in order to exclude from the scope of article 16 suffering arising only from lawful sanctions, as had been done in the definition of torture in article 1 of the draft Convention. That suggestion was opposed by several members. They pointed out that the purpose of article 16 was to prohibit the existence of cruel, inhuman or degrading treatment and punishment, not to legalize it by having such treatment incorporated into law. The reply elicited by that interpretation of the suggestion was that the last sentence in paragraph 1 of article 1 did not admit the legalization of torture. Attention was also drawn to the distinction between the legal connotations of the concepts of "punishment" and "lawful sanctions".

48. With regard to paragraph 2, the Working Group adopted proposals calling for replacement of the words "of this Convention" by the words "of this article" and the addition at the end of the paragraph of the words "or which relate to extradition or expulsion".

49. Article 16 as adopted by the Working Group in 1981 therefore reads as follows:

"Article 16

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

2. The provisions of this article 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."

Provisions relating to implementation

50. The Working Group had before it the Swedish proposals contained in document E/CN.4/1285 (articles 16 to 21) and the proposed amendments submitted by the Netherlands in document E/CN.4/(1981)/WG.2/WP.3. The draft of the International Association of Penal Law (E/CN.4/NGO/213) also contained provisions on implementation (article XIII). The Swedish proposal, like that of the International Association of Penal Law, entrusted the task of international supervision to the Human Rights Committee established pursuant to article 28 of the International Covenant on Civil and Political Rights. The Netherlands amendment to the Swedish proposal provided for the establishment of a committee which would be composed of the members of the Human Rights Committee established under the Covenant. Lastly, there was a draft optional protocol to the Convention (E/CN.4/1409), providing for a system under which visits would be made to the territory of States Parties, submitted by Costa Rica for consideration after the Convention has been adopted.

51. The Working Group took note of a telegram from the Legal Counsel of the United Nations, reproduced in document E/CN.4/(1981)/WG.2/WP.6, explaining the legal difficulties that he believed would be encountered if the Human Rights Committee established under the Covenant were designated as an international supervisory body within the framework of the Convention. Several delegations shared the opinion of the Legal Counsel of the United Nations and pointed out that the States Parties to the Covenants would not necessarily be the same as the States Parties to the Convention against torture. In such a situation it was difficult to use a structure provided for the implementation of one convention to implement another.

52. A general discussion took place on measures of implementation. Some speakers took the view that, basically, implementation should be assured by each State Party within the context of its legal system, and they expressed doubts regarding the advisability of establishing international bodies with extensive jurisdiction. It was suggested that the provisions concerning international supervision should be made optional. Other delegations pointed out that self-enforcement has been shown to be a failure because, despite internal laws and international instruments prohibiting torture, torture was still widely practised. They therefore believed that implementation procedures were an indispensable part of the treaty. Another suggestion, which was not adopted, was that the proposals on implementation should be referred to governments for their opinion.

53. Several delegations, believing that it would be desirable to consider the adoption of appropriate provisions on international implementation, made preliminary observations concerning the texts submitted. Certain members, who expressed their interest in principle in the Swedish draft, considered that the difficulties referred to by the Legal Counsel of the United Nations were not insurmountable, and that the idea of using the services of the Human Rights Committee merited examination. Other speakers considered it preferable to entrust the task of implementation to a separate international body. In the view of some representatives, such a task could be carried out by the Commission on Human Rights or by the Sub-Commission. One speaker suggested that, if the agenda of those two bodies was too heavy, the possibility could be considered of entrusting the implementation of the Convention to a second Sub-Commission, the establishment of which had already been provided for in a draft submitted previously to the Economic and Social Council.

54. Sweden submitted an alternative suggestion for the establishment of a committee to supervise the Convention. This suggestion, contained in document E/CN.4/(1981)/WG.2/WP.7, reads as follows:

- "1. The Committee shall be composed of members serving in their personal capacity.
2. Members shall be nationals of States Parties and shall so far as possible be chosen among members of the Human Rights Committee.
3. Members shall be elected for a period of four years by States Parties among candidates nominated by States Parties."

Some delegations expressed their support for the Swedish suggestion. Some vigorously opposed it. Others considered that it should be the subject of more detailed examination.