



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD OF THE 752nd MEETING

Held at the Palais Wilson, Geneva,  
on Friday, 24 November 2006, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 10.10 am.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4) (continued)

Reports for consideration at the thirty-eighth and thirty-ninth sessions and confirmation of the appointment of country rapporteurs and alternate rapporteurs

1. The CHAIRPERSON said that, as shown in the table submitted to Committee members (document without a symbol, distributed at the meeting, in English only), the list of countries whose reports would be considered by the Committee at its thirty-eighth session in May 2007 had been finalized and the following rapporteurs and alternate rapporteurs had been appointed for the countries concerned: for Italy, Ms. Sveaass and Mr. Mariño Menéndez; for Ukraine, Ms. Gaer and Mr. Kovalev; for Denmark, Mr. Grossman and Mr. Wang Xuexian; for the Netherlands, Mr. Mavrommatis and Ms. Sveaass; for Luxembourg, Mr. Camara and Ms. Belmir; for Poland, Mr. Grossman and Mr. Gallegos Chiriboga; and for Japan, Mr. Mariño Menéndez and Mr. Kovalev.

2. At its thirty-ninth session in November 2007, the Committee would have before it the reports of the countries for which the following Committee members would serve as rapporteurs and alternate rapporteurs: for Norway, Mr. Mariño Menéndez and Mr. Wang Xuexian; for Estonia, Ms. Sveaass and Mr. Kovalev; for Portugal, Mr. Mariño Menéndez and Mr. Camara; for Australia, Mr. Mavrommatis and Mr. Gallegos Chiriboga; for Benin, Ms. Belmir and Mr. Gallegos Chiriboga; for Uzbekistan, Ms. Gaer and Mr. Kovalev; and for Latvia, Mr. Grossman and Ms. Sveaass.

3. It was so decided.

Draft proposals for the Working Group on the harmonization of working methods of treaty bodies (document without a symbol, distributed at the meeting, in English only)

4. The CHAIRPERSON welcomed the summary which Ms. Gaer had produced, outlining the Committee's proposals on harmonizing the working methods of the treaty bodies, particularly the innovative proposal on holding experimental meetings at which members of different committees could jointly take up communications and follow up on interim measures recommended to States parties. Since the matters addressed in the document did not require in-depth discussion and the Committee had not much time at its disposal, the Chairperson proposed that the text be adopted without debate.

5. It was so decided.

6. Mr. MARIÑO MENÉNDEZ, recalling how important the activities of the Human Rights Council were for the Committee and the need to avoid overlap between its work and that of the treaty bodies, asked the secretariat to keep the members informed of any Council activity likely to interest them.

7. Ms. BELMIR asked if there was a compilation of the jurisprudence of committees on individual communications.

8. Ms. MORALES (Secretary of the Committee) said that the Petitions Team had already compiled all the views of the Human Rights Committee and was doing the same for the Committee against Torture. Once it had completed that task, it would begin on the jurisprudence of the Committee on the Elimination of Racial Discrimination with a view to publishing an annual compendium of all the decisions taken by the three bodies. In addition, the secretariat was compiling the concluding observations of the treaty bodies for 2005, grouping them by State party and no longer by committee.

9. The CHAIRPERSON said that, as the Optional Protocol to the Convention had now entered into force, the subcommittee to be established pursuant to that instrument was due to meet for the first time in early 2007. Recalling the Committee's guidelines on the Optional Protocol (A/58/44, para. 14), the Chairperson said that the secretariat should contact the subcommittee as soon as the members had been elected and invite it to hold joint meetings with the Committee against Torture, at the earliest opportunity, in order to establish close and fruitful cooperation with the future body from the very outset.

#### SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5)

10. Ms. MORALES (Secretary of the Committee) invited the Committee to examine the table before it (document without a symbol, distributed at the meeting, in English only) and to comment on the dates which the rapporteurs had proposed for submission of future periodic reports by States parties whose reports had been considered at the current session.

11. The CHAIRPERSON recalled that the Committee had had lengthy discussions at previous sessions on delays by certain States parties in submitting their reports and had decided to give States parties which had provided satisfactory oral responses for the period not covered by their report additional time to submit their next report, on the understanding that the interval between consideration of the previous report and submission of the next one must not exceed four years.

12. Following an exchange of views in which Ms. MORALES (Secretary of the Committee) Ms. GAER, Mr. CAMARA and Mr. MARIÑO MENÉNDEZ took part, the CHAIRPERSON said that Hungary, the Russian Federation and Mexico should submit their fifth periodic report before 31 December 2010 and that Guyana, Burundi and Tajikistan should submit their second periodic report before 31 December 2008, while South Africa should submit its second periodic report before 31 December 2009.

13. It was so decided.

#### DRAFT GENERAL COMMENT NO. 2 CONCERNING THE APPLICATION OF ARTICLE 2 OF THE CONVENTION (CAT/C/GC/2/CRP.1/Rev.1) (continued)

14. The CHAIRPERSON invited the Committee to undertake a first reading of the draft general comment on the application of article 2 of the Convention as contained in document CAT/C/GC/2/CRP.1/Rev.1. The draft was a synthesis of two working papers which the Committee had considered at previous sessions (CAT/C/GC/2/CRP.1 and CAT/C/36/CRP.3).

15. Ms. GAER (Rapporteur for the draft general comment), introducing the main thrust of the draft comment, said that its objective was to clarify the scope of article 2 of the Convention. Under that article, States parties were required to take effective measures to prevent torture. During the travaux préparatoires of the Convention, a proposal by Sweden to require States parties to guarantee that no acts of torture took place in their respective territories had prompted lively debate. The contracting parties had ultimately decided that it was more realistic to require States parties to take effective measures to prevent torture. Consequently, the obligation contained in article 2 was only about taking measures, although it was still central to the efforts to combat torture envisaged by the Convention. In that context, the main purpose of the draft general comment was to broaden the obligation to prevent torture under article 2 to include cruel, inhuman or degrading treatment, even though that category of acts was not explicitly addressed in the article. Accordingly, the first two paragraphs of the draft recalled that, as the provisions of the Convention were based on binding rules of customary international law, they could be interpreted broadly. Practical experience supported such an interpretation, because the circumstances that gave rise to torture and to cruel, inhuman or degrading treatment were often similar. In addition, since cruel, inhuman or degrading treatment often led to torture, the obligation to prevent both kinds of acts was emphasized in the draft. Ms. Gaer concluded by saying that she hoped that the Committee would undertake a first reading of the draft, as promptly as possible, and solicit the views of the States parties before adopting the text, on the second reading, at the forthcoming session.

16. Mr. MARIÑO MENÉNDEZ (Alternate rapporteur for the draft general comment) said that, while he fully endorsed Ms. Gaer's presentation, he would have preferred the draft to make more explicit reference to the peremptory norms of jus cogens. It was worth reminding States parties that the provisions of the Convention, particularly the principle in article 1 concerning the prohibition of torture, were based on norms of international law in that particular category and thus had universal scope. The draft could also have mentioned the question of how article 2 of the Convention applies in situations of armed conflict. He nevertheless endorsed the draft general comment as a whole and, noting the high hopes which the international community and non-governmental organizations (NGOs) had placed in it, he said that he hoped that it would be adopted without delay.

17. Ms. GAER (Rapporteur for the draft general comment) said that it did not seem necessary to her to refer explicitly to jus cogens norms; the reference to the binding rules of customary law in the second sentence of the paragraph was sufficient.

18. Mr. CAMARA observed that, in its general comment on article 3, the Committee had decided not to refer to cruel, inhuman or degrading treatment, preferring to retain the reference to acts that inflict "severe suffering" contained in article 1. However, given the spirit of the Convention and the intention of the authors, the opposite choice could have been made. During the first reading of the draft general comment, the Committee should explain why it considered that the obligation to prevent acts of torture under article 2 of the Convention also applied to cruel, inhuman or degrading treatment. There were obvious grounds to support that contention. Article 16 of the Convention provided that the obligations contained in articles 10 to 13 should apply with the substitution for references to "torture" of references to other forms of cruel, inhuman or degrading treatment or punishment. Since that enumeration of articles was not limitative, in Mr. Camara's view there was nothing, a priori, to prevent the inclusion of article 2.

19. The CHAIRPERSON said that he endorsed the wording of the first two paragraphs of the draft general comment and that it was worth remembering that the two criteria in article 1 of the Convention which distinguished torture from cruel, inhuman or degrading treatment were the purpose and the severity of the suffering inflicted.

20. Mr. MARIÑO MENÉNDEZ (Alternate rapporteur for the draft general comment) reiterated the need to reposition the draft in the broader context of peremptory norms of ius cogens. He recalled that the provisions of the Convention were based on binding universal rules that applied both to the States parties to the Convention against Torture and to all members of the international community.

21. Ms. GAER (Rapporteur for the draft general comment) expressed the view that the Convention against Torture, particularly article 16, in itself justified the extension of the obligation to prevent to include cruel, inhuman or degrading treatment. There was no need to emphasize ius cogens norms, because the obligation to prevent was a key component of the Convention. Since the conditions that gave rise to torture and to cruel, inhuman or degrading treatment were often the same, there was every reason to draw the States parties' attention to the fact that both types of act should be addressed by the preventive measures required pursuant to article 2.

22. Mr. GALLEGOS CHIRIBOGA said that the views expressed by Ms. Gaer and Mr. Mariño Menéndez reflected two different approaches. The first emphasized the specificity of the provisions of the Convention and of the obligation to prevent, while the second stressed the fact that the provisions belonged to a particular category of ius cogens norms. The two approaches seemed easy to reconcile and in any case led to the same conclusion; whatever the basis used to interpret article 2 of the Convention, the obligation to prevent both torture and cruel, inhuman or degrading treatment with equal strength was what should be stressed.

23. Mr. CAMARA said that he wished to bring a concrete example to the discussion: when the Committee had asked the Israeli delegation, during the consideration of Israel's special report, to clarify the guidelines issued by the authorities on interrogations and the ruling of the Israeli Supreme Court on that subject, the delegation had explained that article 1 of the Convention referred to "severe" pain, while the interrogation guidelines authorized State officials to inflict "moderate" pain in order to obtain information from suspected terrorists. The problem was one of general criminal law, which the Committee could not ignore, namely, the conditions for exemption from criminal responsibility. The conditions were set out in article 2 of the Convention. In its general comments, the Committee should make it clear to States that there was no justification for exemptions, whether with regard to torture or the acts enumerated in article 16.

24. Mr. MARIÑO MENÉNDEZ (Alternate rapporteur for the draft general comment) said that, according to Mr. Camara's interpretation, article 2 of the Convention meant that no exceptional circumstance could be invoked as justification for inhuman treatment. While nothing appeared to contradict that contention, the matter should be discussed in greater depth. Whatever the circumstances, States had an obligation to prevent inhuman treatment, which an order from a superior officer could neither justify nor excuse.

25. The CHAIRPERSON said that it was important not to lose sight of the fact that the paragraphs in question were introductory paragraphs and that some points in them were taken up later in the text. Three elements of the discussion were worth repeating in the future version of the chapter. Firstly, a reference to general international law would enhance that particular part of the text; secondly, it was important to be cautious and to retain the wording of article 16 on cross-referencing; finally, it was necessary to make sure that enough information was available on the obligation to prevent torture and ill-treatment.

26. Ms. GAER (Rapporteur for the draft general comment), introducing section II of the draft, entitled "Absolute prohibition", said that the section reproduced the declaration which the Committee had adopted in November 2001 and transmitted by letter, to all States parties, which had made no objection thereto. Paragraph 3 of the section recalled that all the obligations contained in articles 2, 15 and 16 of the Convention were non-derogable. In the above-mentioned declaration, the Committee had affirmed, for the first and only time, that article 16 was non-derogable. Paragraph 4 of the text before the Committee underscored that principle by stipulating that no exceptional circumstances whatsoever, not even a state of war, authorized derogation. The above-mentioned declaration clearly stated that the need to obtain information helpful for public security was no excuse. Paragraph 4 of the draft also contained a very broad interpretation of the concept of territorial jurisdiction, which the Committee had used when considering the reports of the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Georgia, for example. Paragraph 5 of the text reproduced, almost verbatim, the declaration transmitted by letter to the States parties in 2001. It unequivocally extended the principle of the non-derogability of the obligations to include acts of terrorism and violent crimes.

27. Mr. MARIÑO MENÉNDEZ (Alternate rapporteur for the draft general comment) stressed that it was very important to establish the principle of the absolute prohibition of torture from the outset, because that principle was under attack. Once that fundamental principle, which was rooted in practice, had been set down, the subject of territorial jurisdiction could be dealt with in detail in paragraph 15, on the applicability of the Convention, and be touched upon more briefly in paragraph 4.

28. The Convention referred to a state of war or a threat thereof: that terminology seemed rather outdated. It might be better to refer to armed conflicts, as had been the case during the consideration of the reports of the United States and the United Kingdom. The present section had a twofold dimension, namely, the obligations of States parties on the one hand, and the human rights protected by those obligations, on the other. Those rights were set out in paragraph 5, where the emphasis was placed on the human person, without any form of distinction; those inviolable rights must be respected with regard to all. The question could be asked why article 3 of the Convention was not mentioned in paragraph 3 of the proposed text, given that the rights embodied in articles 2, 15 and 16 of the Convention did not have the absolute character of those in article 3.

29. Mr. KOVALEV said that the section of the general comment under discussion, particularly paragraph 5, was very well written and timely. The rapporteurs had quite rightly broached the subject of counter-terrorism, an issue of particular importance in the contemporary world.

30. Ms. BELMIR praised the way that paragraph 5 had been drafted and said that she wished to add something to it. The reports of some States parties had shown that, when acts of torture had been committed under orders and the perpetrators had not been aware that acts of torture were involved, the perpetrators had been fully exonerated, because criminal law considered intent as a very important factor in determining responsibility. Would it be possible to stipulate, at the end of paragraph 5, that no State official could be exonerated on the ground that he did not know that he was committing an act of torture?

31. Mr. CAMARA mentioned the problem of amnesties following serious and massive violations of human rights and which led to perpetrators being acquitted of those acts. Might it be worth referring, in the text, to that practice, which was becoming more widespread?

32. Ms. SVEAASS agreed that paragraph 5 was extremely important and remarkably well written. Since the section was certain to be read with great care, she asked why torture and ill-treatment were mentioned throughout, apart from in three places where only torture was mentioned: was that because the wording of the relevant article of the Convention had been used?

33. The CHAIRPERSON stressed that article 2 was very important, because it shaped the Convention itself. The proposed text had won general consensus, subject to some improvements. Mention should probably be made to armed conflict. Ms. Belmir's comment was an important one, because some States parties had reported that torture was only an offence if the perpetrator knew it to be so, a condition that contravened the principle that ignorance of the law was no excuse. The question of amnesties should also be mentioned, as the effectiveness of the Convention was at stake.

34. Ms. GAER (Rapporteur for the draft general comment) thanked the Committee members for their useful suggestions. A reference to armed conflict would resolve the problem concerning a declaration of war or of a state of emergency. In response to Ms. Sveaass' question, the Rapporteur confirmed that where the text referred to torture on its own, it was because the wording had been taken from the Convention. As for Mr. Camara's comments on "moderate pain" and amnesties, the jurisprudence of the Committee on that question was rather limited. A reference to amnesties could be included in the paragraph on ending impunity.

35. Mr. MARIÑO MENÉNDEZ (Alternate rapporteur for the draft general comment) said that, with reference to amnesties, when the Committee was drafting a comment on a universal instrument, it could also take account of regional developments in the interpretation of the Convention. The question of amnesties had been taken up, inter alia, by Latin American human rights organizations, which had rejected general amnesties as a matter of principle. The Committee could use that fact to broach the subject of amnesties.

36. The CHAIRPERSON said that the text could stipulate, for example, that measures like amnesties could not be used to breach the provisions on preventing torture.

37. Ms. GAER (Rapporteur for the draft general comment), introducing section III, entitled "Content of the obligation to take effective measures", said that paragraph 8 of part A no doubt addressed Ms. Belmir's concerns, since it drew everyone's attention to the gravity of the offence

of torture. Moreover, in addition to the reference to “perpetrators, victims and the public”, a reference could be made to officials of the State and the armed forces. The section emphasized the fact that the definition of torture contained in the Convention gave States the means to act effectively. Part B, paragraph 12, of the section was very important, because it stressed that prevention was a particularly complex task in continual evolution.

38. Mr. MARIÑO MENÉNDEZ (Alternate rapporteur for the draft general comment) said that it might be worth adding a comment to paragraph 7 on the extra difficulty of applying the definition of torture in federal States. The current heading of paragraph (b) - “Obligation to prevent acts of torture committed by individuals” - did not reflect the content of the paragraphs to which it referred and should be reworded to read: “Obligation to prevent acts of torture”.

39. The CHAIRPERSON approved the change to the heading which Mr. Mariño Menéndez had suggested.

40. Mr. KOVALEV, referring to the final sentence of paragraph 7, said that many countries used the fact that their legislation defined torture more widely than article 1 of the Convention to avoid incorporating the definition contained in the latter into their domestic law. The Committee should therefore stipulate that the legislation of States parties must, as a minimum, include a definition of torture that was consistent with the definition in article 1 of the Convention, although they could broaden the definition, if they so wished.

41. Ms. BELMIR said that the incorporation of the definition of torture was a fundamental part of the obligation to take measures to prevent torture. Since, depending on the country, constitutions and domestic laws were more or less explicit about the incorporation of international norms into domestic laws and the modalities for implementation, the words “to the extent possible” should be added after the phrase “undertake to include” in the first sentence of paragraph 6, so as to take account of differences in the legal systems of the States parties. Moreover, in States parties where torture was not defined as a specific offence under domestic law, but rather as an aggravating circumstance, the incorporation of the definition of torture contained in article 1 of the Convention could result in there being two definitions of torture, a problem which the Committee should bear in mind.

42. Mr. CAMARA expressed the view that the final sentence of paragraph 7 should be deleted, since broader definitions than that contained in article 1 of the Convention often helped to guarantee impunity for perpetrators of torture. Moreover, in order to establish a legally sound link between articles 1 and 16 of the Convention, the Committee could ask States parties to ensure that their legislation punished the perpetrators of the acts listed in article 16 and that there was a presumption of guilt when a person in the hands of State officials alleged ill-treatment, without taking account of the criterion of the degree of pain to distinguish torture from cruel, inhuman or degrading treatment or punishment. In that case, the alleged perpetrators would have to show that the ill-treatment alleged by the victim had nothing to do with any of the purposes mentioned in article 1.

43. The CHAIRPERSON asked Mr. Camara to write a proposal along those lines and to transmit it to the secretariat.

44. Ms. SVEAASS asked whether the phrase “impartial judicial mechanisms for inspecting ... places of detention” in paragraph 13 should be expanded to include the services of ombudsmen.
45. Ms. GAER (Rapporteur for the draft general comment), introducing section IV of the draft, entitled “Scope of State obligations and State responsibility under the Convention”, said, after reading out paragraphs 15 and 16, that, as Mr. Mariño Menéndez had mentioned earlier, the two paragraphs partly repeated the content of some paragraphs of section II and would therefore be rewritten. However, the final text must retain the reference in paragraph 16 to all the kinds of places (prisons, hospitals, schools, etc.) in which States parties must prohibit and prevent cruel, inhuman or degrading treatment or punishment, in implementation of article 16 of the Convention. She then read out paragraphs 17 and 18, on the prohibition of complicity, and paragraphs 19 to 23, on protection of individuals and groups at risk of discrimination or marginalization.
46. Mr. MARIÑO MENÉNDEZ (Alternate rapporteur for the draft general comment), returning to the subject of the prohibition of complicity, said that the present wording implied that the State was complicit in breaches of the Convention by its officials, whereas the State was in fact responsible for acts committed by its officials. Editorial changes should be made to make the text clearer.
47. The CHAIRPERSON said that there was not enough time left to continue the discussion, and asked the Rapporteur to conclude the reading of the draft.
48. Ms. GAER (Rapporteur for the draft general comment) read out section V, on other preventive measures required by the Convention, and section VI, on orders from a superior.
49. The CHAIRPERSON said that, as the draft general comment would be taken up again at the thirty-eighth session, he invited the Committee to send the secretariat their written comments on the text before the end of December 2006. The Rapporteurs would have one month from the date on which they received the comments to incorporate them into the draft. The text would then be modified and the secretariat would send it to the translation services, so that it would be available in the working languages of the Committee by the opening of the thirty-eighth session.
50. Ms. GAER (Rapporteur for the draft general comment) asked if it would be possible, after the text had been modified on the basis of the members’ comments, to send it to NGOs and States parties in order to have their comments as well.
51. Ms. MORALES (Secretary of the Committee) suggested that the draft should be made public, after the members’ comments had been incorporated and the text had been sent to the translation services, without waiting for comments from NGOs and States parties, in order to ensure that it was available in the different languages by the opening of the thirty-eighth session.
52. It was so decided.

CLOSURE OF THE SESSION

53. The CHAIRPERSON, giving a brief summary of the session, said that the Committee had kept to its programme of work and had successfully completed its main tasks, at the cost of considerable efforts and to the detriment of activities of lower priority than the consideration of reports and communications and the drafting of conclusions and recommendations. Since the main problem was lack of time, the Committee should endeavour in future to find better ways of using the meeting time available to it.

54. After the customary exchange of courtesies, the CHAIRPERSON declared the thirty-seventh session of the Committee against Torture closed.

The meeting rose at 12.55 p.m.