



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

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COMMITTEE AGAINST TORTURE

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)\* OF THE 889th MEETING

Held at the Palais Wilson, Geneva,  
on Tuesday, 12 May 2009, at 3 p.m.

Chairperson: Mr. GROSSMAN

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\* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.889/Add.1.

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The meeting was called to order at 3 p.m.

## ORGANIZATIONAL AND OTHER MATTERS

### Second annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/42/2)

1. Mr. RODRÍGUEZ-RESCIA (Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - SPT), introducing the SPT's second annual report, welcomed the opportunity to strengthen dialogue and cooperation with the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The pace of ratification of the Optional Protocol to the Convention against Torture had slowed down after a promising start, probably because States had realized the implications of ratification, notably the requirement to establish a national mechanism for the prevention of torture. A number of States parties to the Protocol, which had one year from the date of ratification to establish such a mechanism, had still not taken the necessary steps to that end. The pace of ratification had nevertheless accelerated in recent months. The number of States parties to the Optional Protocol, which had been 46 at the time of the preparation of the annual report, had increased to 47 since then. Only three additional ratifications or accessions were therefore needed to bring the total number of States parties up to 50 and thus for the number of members of SPT to reach 25. That mark represented a new challenge for the SPT, which would have to adapt its functioning to that enlarged membership, both internally and in its relations with other bodies.
2. It appeared that not all countries shared the same interpretation of the provisions of the Optional Protocol with regard to the national preventive mechanisms, particularly as to taking account of the Paris Principles. The existence of an institution consistent with those Principles, such as an Ombudsman, did not mean that it should assume the role of national mechanism. Such an institution did not necessarily have the necessary powers or the appropriate expertise and resources, particularly to conduct visits. In practice, some countries had passed legislation establishing an entirely new body, but the most common solution to date had been to redefine the role of the Ombudsman through the adoption of an act or decree that expanded his functions and increased his budget.
3. Article 11 of the Optional Protocol provided that the SPT should advise and assist States parties in the establishment of the national preventive mechanisms and maintain direct contact with those mechanisms. Due to the lack of budgetary provision, the SPT had been unable to perform that function by directly addressing the individual requirements of States. On the other hand, it had prepared guidelines outlining the criteria and conditions to be fulfilled, with the valuable assistance of the Optional Protocol Contact Group and the Association for the Prevention of Torture (APT). Those were preliminary guidelines, subject to further development, in accordance with the activities of the SPT and the national preventive mechanisms. Many States parties were still at the initial stage of setting up their national mechanisms. It was not the SPT's role to accredit, but rather to promote the establishment of, mechanisms consistent with the provisions of the Optional Protocol.

4. The SPT and its partners had discussed the definition of the term “prevention”, which might seem self-evident but in fact posed problems, both from the perspective of legal and philosophical theory and with regard to the implementation of the Protocol. The interpretation of the term determined the working methods of the SPT, both for visits and for the preparation of reports. In that connection, the SPT wished to distinguish clearly between its mandate, which was to identify situations in which there was a risk of torture, and that of the Committee against Torture, which consisted more of establishing the existence of acts of torture. In that connection, it had initiated a debate to which the Committee against Torture had already made a significant contribution through its general comment on the implementation of article 2 of the Convention, which required every State to take measures to prevent acts of torture in any territory under its jurisdiction. The debate raised another crucial question: how could the prevention of torture be measured? To that end, the SPT was considering the possibility of establishing torture risk indicators.

5. The budgetary resources of the SPT were very limited. Currently, they enabled it to carry out an average of only three visits per year, equivalent to 12-year periodicity for each State party. The SPT was endeavouring to compensate for its lack of resources by the preparation of guidelines and strategies in cooperation with civil society, in order to provide States with relevant instruments for the implementation of the Protocol. Three visits had been scheduled for 2009. The SPT had already been to Paraguay and would shortly go to Honduras, and subsequently to Cambodia. The concluding observations of the Committee against Torture on the periodic report of Paraguay had been particularly useful to it, as had the exchange of information in the context of the visit. In return, the country report drawn up by the SPT, which reviewed the various political, legal and other structures that might pose a risk of torture, should contain a wealth of information useful to the Committee.

6. The SPT attached great importance to strengthening links with other United Nations committees and bodies. For practical reasons, it had not always been able to participate fully in inter-committee work, but that in no way reflected a lack of interest or will to do so. The SPT would endeavour to participate in all the meetings held between the offices of the committees. Due to their closely related mandates, relations between the SPT and the Committee against Torture were naturally of particular significance. One of the SPT’s main current concerns was its lack of resources. Budgetary issues were a common challenge for both bodies; it would therefore be in their interest to prepare a coordinated strategy aimed at securing more resources and making the best use of those available to them.

7. The SPT was also endeavouring to strengthen its links with regional bodies such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples’ Rights. At its June session, it would be meeting a representative of the African Commission in order to review with him the Commission’s activities in the area of prevention and the Robben Island Guidelines, which were among the non-binding instruments that the SPT had examined with great interest. The SPT was also seeking to strengthen its links with the International Committee of the Red Cross (ICRC), which had provided it with valuable support in its early days by introducing it to ICRC working methods and procedures. Their cooperation would take place at another level, now that the SPT had its own working methods adapted to its field activities.

8. To date, only two States parties had made contributions to the Special Fund, which helped finance the implementation of SPT recommendations and the education programmes of the national preventive mechanisms. At the current stage, the situation was understandable insofar as Governments, before contributing to the Fund, were waiting to see the results of the SPT's activities, and in particular the contents of its reports. However, efforts should be made to ensure that there was general awareness of the existence and objective of the Fund, and to establish all the necessary structures to secure its proper management and use.

9. Ms. GAER asked whether the SPT intended to publish its assessments of the national preventive mechanisms since they did not concern the content of confidential visits, but compliance with international standards. Such data would be very useful for the Committee, which regularly requested information from States parties on their preventive mechanisms but whose mandate did not enable it to conduct such in-depth assessments.

10. It would be desirable to give further consideration to the issue of the human resources available to the SPT and to the Committee; both faced similar difficulties arising from the fact that the secretariat staff assigned to them was constantly changing and did not always have the expertise required. The two bodies could work together to consider specific measures to remedy the situation, such as the possibility of establishing a team within the secretariat specializing in issues relating to torture.

11. Mr. MARIÑO MENÉNDEZ asked whether the SPT had already set up a system for the follow-up of recommendations addressed to States parties after its visits. He would also welcome an update on the progress of the SPT's work on torture risk indicators and enquired whether an analytical or concept paper was already available for consultation. Lastly, he requested clarification of the national mechanism assessment activities conducted to date and the obstacles encountered in that regard.

12. Ms. SVEAASS asked whether the SPT could describe some of the characteristics of mechanisms that operated successfully and met the criteria of the Protocol or, conversely, the main shortcomings noted thus far. Referring to the annex to the report concerning the Istanbul Protocol, she sought clarification of the use of that instrument by the SPT during its visits and in its reports. Moreover, she questioned the SPT's ability to act in response to situations such as in the Republic of Moldova, where there had been serious outbursts of tension and violence, resulting in many allegations of violations, only a few weeks after its visit to the country.

13. The CHAIRPERSON said it was surprising to note that the Istanbul Protocol was referred to as a "soft law instrument" in the SPT report (CAT/C/42/2), when many international law experts considered it to be a valid source of law. The Committee, which considered the Istanbul Protocol to be an essential instrument in combating torture, would welcome any clarifications by the SPT on the matter.

14. Mr. GALLEGOS CHIRIBOGA said that the 50-country mark could be reached rapidly if campaigns were conducted to encourage countries that had not yet done so to ratify the Optional Protocol, particularly in Europe, where several countries had already signed it. It might be desirable to intensify efforts in that regard. The lack of resources was clearly an obstacle to the

fulfilment of the SPT's mandate under the Optional Protocol. The Committee also suffered from a shortage of human and financial resources. The body responsible for resource allocation issues was the United Nations General Assembly's Administrative and Budgetary Committee (Fifth Committee). The Committee against Torture and the SPT should join forces and perhaps even devise a strategy in consultation with the other treaty bodies, emphasizing their need for additional resources if they were to effectively fulfil their mandate.

15. Ms. BELMIR noted that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment involved more than just making inspection visits to places of detention, but required an education programme and a variety of legislative, administrative, judicial and other measures that did not fall within the remit of the SPT but within that of States. However, such measures were still manifestly lacking in most countries that had ratified the Optional Protocol. The SPT nevertheless had a role to play in regard to training, and to that end cooperation with national human rights institutions should be strengthened.

16. Mr. RODRÍGUEZ-RESCIA (Chairperson of the SPT) said that it was not always easy for the SPT to reconcile its confidentiality requirements with the need to publicize its recommendations so as to promote their implementation. The SPT systematically encouraged States that it visited to publish its recommendations. Either States parties accepted, as in the case of Maldives and of Sweden - a country which had even gone so far as to make the publication of recommendations a legal requirement - or they refused, as they were entitled to do under the Optional Protocol, in which case the SPT had no means of ensuring that the other parties concerned, primarily the national preventive mechanisms, were aware of its recommendations, as they needed to be. Consideration should be given to the procedure to be followed in that situation. Other questions were still pending with respect to confidentiality, for instance as to whether preliminary observations arising from visits could be made available to the national preventive mechanisms. The SPT was continuing to seek appropriate responses to those questions. Many States remained reluctant to ratify the Optional Protocol in the light of the resultant specific commitments, which they were not prepared or were not in a position to honour. In addition, States had their own conception of the meaning of an "independent national preventive mechanism", which was often significantly different from its definition under the Optional Protocol. Many took it to be equivalent to an Ombudsman, whereas very often, particularly in Europe, the powers of an Ombudsman were far less extensive than those of a national preventive mechanism as defined under the Optional Protocol.

17. The SPT's activities in the field required specific skills that could be effectively acquired and strengthened only through continuity. Constant staff rotation posed a real problem. Furthermore, in view of the insufficient budgetary resources allocated to it, the SPT was unable to adequately respond to requests for assistance from States parties and national preventive mechanisms as it was obliged to do under the Optional Protocol. In cooperation with non-governmental organizations, in particular the APT, workshops had been organized, but on an informal, ad hoc basis. That could not be considered to constitute satisfactory compliance with the requirement for the SPT to provide assistance under the Optional Protocol.

18. Follow-up to those activities formed part of an ongoing dialogue with the State party. The preliminary observations expressed orally by the SPT following its visit were then submitted in writing to the authorities to enable them to respond and to supply updated information on any

steps taken after the visit to remedy reported problems. The SPT subsequently drew up its final report, which reflected additional information supplied by the State party and contained recommendations, some of which had a deadline for implementation. The authorities were invited to reply, providing information on the follow-up action taken.

19. The SPT had not yet established torture risk assessment indicators, but was working on their development. The Committee's views on the issue could be useful. As to the Istanbul Protocol, while the reference to "soft law" was unfortunate, the SPT nevertheless recognized that Protocol's value, particularly in combating impunity. That instrument was still little known in the majority of States. It was therefore important to disseminate it more widely, ensuring, however, that it was not presented solely as a handbook for the establishment of evidence of torture. The SPT and the Committee should discuss the issue together.

20. The CHAIRPERSON thanked the Chairperson of the SPT for the replies provided. Commending the frank dialogue between the two bodies, he expressed the hope that their collaboration would become steadily more active and would enhance the effectiveness of their work.

The public part of the meeting rose at 4.10 p.m.