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REPORT OF THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS ON THE DRAFT CONVENTION DEFINING TORTURE AS AN INTERNATIONAL CRIME

This document will be distributed to the missions and delegations
and will be presented to the Permanent Council of the Organization

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

Working Group studying the draft Convention
Defining Torture as an International Crime

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WORK PAPER PRESENTED BY THE DELEGATION OF MEXICO

Article 11

The Delegation of Mexico continues to support alternative A.

The Delegation of Mexico suggests the addition of a second paragraph to read, verbatim:

"To the extent that the crimes set forth in Article 2 are not listed as extraditable offenses in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offenses in every future extradition treaty to be concluded between them."

(Taken from paragraph 1 of Article 8 of the United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.)

Article 15

Add the following paragraph:

"The Inter-American Commission of Human Rights shall analyze, in its annual report, the existing situation in the member states of the Organization of American States in regard to the prevention and elimination of torture."

Article 19

Delete this article.

Article 21

Delete this article.

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

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REPORT OF THE WORKING GROUP TO STUDY THE
DRAFT CONVENTION DEFINING TORTURE AS AN INTERNATIONAL CRIME

REPORT OF THE WORKING GROUP TO STUDY THE
DRAFT CONVENTION DEFINING TORTURE AS AN INTERNATIONAL CRIME

I. Composition of the Group

At its meeting held on June 14, 1983, the Committee on Juridical and Political Affairs of the Permanent Council took up the mandate contained in resolution AG/RES. 624 (XII-0/82), concerning the Draft Convention Defining Torture as an International Crime prepared by the Inter-American Juridical Committee^{1/} and decided to establish a Working Group to carry out the provisions of that resolution.

This Working Group was made up of the following delegations: Argentina, Brazil, the Dominican Republic, Haiti, Mexico, Peru, the United States, Uruguay and Venezuela.

II. Installation of the Group

The Working Group was formally installed by the Chairman of the Committee on Juridical and Political Affairs, Ambassador Roberto Leyton, at the meeting held for that purpose on July 27, 1983. At that same meeting, the Group unanimously elected Mrs. Milagros M. de Calcaño, Alternate Representative of Venezuela, as its Chairman.

III. Meetings

The Group held nine meetings, on August 10, September 2, 9, 13, and 28, and October 5 and _____, 1983. At each of those meetings, the Group had the technical and administrative advisory services of the General Secretariat, represented by Dr. Alvaro Gómez (Assistant Secretariat for Legal Affairs) and Miss Lía Onega (Secretariat of the General Assembly, the Meeting of Consultation, the Permanent Council, and Conferences).

IV. Documents

While carrying out its work, the Group had the following documents:

1. Draft Convention Defining Torture as an International Crime
(Statement of Reasons and Explanations of Votes) -
OEA/Ser.P/AG/doc.1227/80.

1. Papers prepared by the Inter-American Juridical Committee during the regular session from January 14 to February 9, 1980 (OEA/Ser.Q/IV.21, CJI-42, p. 45 et. seq.

2. Aide-Memoire on the treatment of the topic "Draft Convention Defining Torture as an International Crime" - OEA/Ser.G/CP/CAJP-472/82, rev. 1, corr. 1, August 1983, which summarizes the observations and comments presented by the Governments of Brazil, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru, Suriname, the United States, Uruguay and Venezuela on the Draft Convention.

3. Draft Convention Defining Torture as an International Crime (Working Document) - OEA/Ser.G/CP/CAJP/496/83, rev. 1, August 1983, which contains a table with columns containing the original draft of the Inter-American Juridical Committee, the observations of the above-mentioned governments and, in keeping with such observations, the texts of the changes that could be made in the Committee's draft based on those observations. The document is supplemented with the following: i) Explanatory Footnotes that refer extensively to and analyze the Juridical Committee's proposal; ii) Observations on the Draft Convention, prepared by the General Secretariat to assist the study of certain matters related to the draft and, iii) Resolution No. 3452 (XXX) of the United Nations General Assembly (9 December 1975) on the Protection of all Persons from Being Subjected to Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.

4. Torture as an International Crime, a study taken from the Inter-American Juridical Yearbook (1980), prepared as a background document on the subject (OEA/Ser.G/CP/CAJP-500/83), August 1983.

5. Draft Convention Defining Torture as an International Crime (Reference Documents) OEA/Ser.G/CP/CAJP-514/83, October 1983, which contains the following texts: i) Declaration 3452 (XXX) of the United Nations in Spanish and English, and ii) Agreement for establishment of the military tribunal for the prosecution and punishment of war criminals of the European Axis and its allies (Nuremberg Tribunal), signed in October 1945.

6. Report on the status of the Draft Convention against Torture and other cruel, inhuman, or degrading treatment in the United Nations (document prepared by the Secretariat).

In addition to these documents, the Group had available to it other documents containing the proposals presented by the delegations during the course of the work. These documents are as follows:

- a. Proposals by the Delegations of Mexico and the United States concerning Article 2 of the Draft Convention Defining Torture as an International Crime (OEA/Ser.G/CP/CAJP-504/83, September 9, 1983).

- b. Proposal of Venezuela concerning Article 2 of the Draft Convention Defining Torture as an International Crime (OEA/Ser.G/CP/CAJP-506/83, August 14, 1983).
- c. Draft Proposal by the United States concerning the Draft Convention Defining Torture as an International Crime - additional comments on Article 2 (OEA/Ser.G/CP/CAJP-505/83, September 14, 1983).
- d. Proposal by the United States: text for a new Article 6 bis (OEA/Ser.G/CP/CAJP-507/83, September 16, 1983).
- e. Observations by the Delegation of Uruguay on the Draft Convention Defining Torture as an International Crime and proposal by the Secretariat (OEA/Ser.G/CP/CAJP-510/83, September 22, 1983).
- f. Amendment proposed by the Delegation of the United States to Article 7 of the Inter-American Juridical Committee's draft.
- g. Amendment proposed by the United States Delegation to Article 9 of the Inter-American Juridical Committee's Draft.

V. Mandate of the General Assembly and Work of the Group

The Group's work focused on carrying out the mandate it had been given by the Committee on Juridical and Political Affairs of the Permanent Council. This, in turn, was based on the provisions of resolutions AG/RES. 509 (X-0/80), paragraph 2; AG/RES. 547 (XI-0/81); and AG/RES. 624 (XII-0/82). These provided for making the desirable changes in the Draft Convention Defining Torture as an International Crime prepared by the Inter-American Juridical Committee, bearing in mind the observations and comments made by the member state governments, so that, once revised, the Permanent Council would submit it to the General Assembly of the Organization for consideration at its thirteenth regular session.

For this purpose, the Group studied the Draft Convention in reference article by article in the light of the observations of the governments of Brazil, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru, Suriname, the United States, Uruguay and Venezuela. At the meeting held on October 12, 1983, the Government of Argentina informed the Chairman of the Group that that country's observations and comments on the draft would be submitted shortly. Nevertheless, it should be noted that, since the meeting of October 12 was the penultimate working meeting, the observations of the Argentine Government unfortunately could not be taken into account during this first stage of the study on the Inter-American Juridical Committee's Draft, in view of the fact that the Working Group had not received them as of the date of this report.

This Report should make special reference to two previous decisions taken by the Group when it began its deliberations, as follows:

i. To adopt analysis of the Draft Convention article by article as a working method, considering the observations and comments made by the governments regarding each one. It was also decided, at the request of one of the Delegations, to study the preamble to the Draft Convention.

ii. That the decisions reached upon the first reading would be provisional, subject to confirmation and final decision by the Delegations upon the second review of the Draft.

Based on these decisions and the aforementioned terms of reference, the Group discussed the basic questions of the draft as set forth below.

VI. Discussion

1. Purpose of the Convention (Article 1)

Based on specific observations by certain governments which commented on the Inter-American Juridical Committee's Draft, the Group considered the idea that this provision should set forth only the international contractual obligation the states assume to prevent and punish torture and that it would therefore be preferable to eliminate the concept that "torture is an international crime." It was further argued in this regard that these terms were unnecessary in the Draft, because a statement to the same effect was already included in resolution AG/RES. 368 (VIII-0/78) of the Organization's General Assembly, which had given rise to the Draft's preparation, and in other international instruments in force as well as the Statement of Reasons on the Draft of the Inter-American Juridical Committee itself.^{2/} Another delegation favored retaining the draft's text but replacing "confirm that torture is" with "define torture as," because the latter was the most suitable. The point of view was also expressed that it was necessary to define torture as an international crime and that in addition the concept was in the mandate from the General Assembly.

Nevertheless, the Group was unable to reach a conclusion, and it was decided to postpone any decision until the matters contemplated in Article 2 were decided upon, because it was felt that these two provisions are closely related.

2. Definition of Torture (Article 2)

A large part of the Group's work was devoted to examination of this matter. Also considered, in addition to the comments and observations

2. See doc. AG/doc.1227/80, p. 12.

presented by the governments, were several proposals to amend and to replace Article 2, presented by the delegations composing the Working Group.

The basic points studied were the following:

i. Some delegations expressed the desirability of adjusting the definition to specific basic criteria such as the intentional nature of the act and the seriousness of the pain or suffering considered as torture (both physical and mental). It was also deemed pertinent for this article to include, at the request of a delegation, a paragraph stating that "for the purposes of the Convention, the concept of torture shall not include the suffering or pain inherent in or caused by legal punishment," which would replace the first part of the last paragraph of Article 2 of the Inter-American Juridical Committee's Draft.

ii. Other delegations observed the need for any text defining torture to take into account the text of Article 1 of the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Resolution 3452 (XXX) of the United Nations General Assembly), unanimously adopted on December 9, 1975, so that there would be coherence with the international instruments generally accepted by all the OAS member states. It was also observed, as a precedent favoring such coherence, that account should be taken of the fact that the Draft Convention against torture presented by the Swedish Government to the United Nations in 1978^{3/} (Article 1) adheres to the definition set forth in Resolution 3452 (XXX) and that Article 1 of the Draft Convention approved by the working group of the United Nations Commission on Human Rights,^{4/} 1983, follows the terms of that same resolution 3452 almost to the letter.

iii. Likewise, at the proposal of a delegation, the Group studied the pertinent wording for a definition excluding from the concept of torture valid medical procedures which might be carried out in cases of mental illnesses. The Group took into account the reasons set forth by the Inter-American Juridical Committee in the Draft's statements of reasons,^{5/} as well as the consequences that could arise from including in a convention of this nature an exception that could give rise to a broad range of applications contrary to the basic purpose of this instrument, which is to protect the right to personal integrity. In this regard, the group considered the wording of paragraph 2, Article 2 of the Inter-American Juridical Committee's text to be more suitable.

3. E/CN.4/1285

4. E/CN.4/1983/L.2 (Appendix).

5. Doc. 1227, cit., p. 13, paragraph 1.

iv. The matter of including cruel, inhuman, or degrading treatment in the concept of torture was considered, as proposed by a delegation and as it appears in the aforementioned United Nations Resolution 3452. As a result of its deliberations, the Group reached a decision on this matter, by which it was left pending the second review at the draft.

v. Moreover, favorable consideration was given to separating into two provisions the matter of defining torture and the matter of the instigators or individuals responsible for the crime of torture. On this the Group reached a decision.

As an important aspect related to that future provision (2 bis), the Group discussed the Convention's scope with regard to responsibility for carrying out the crime. The discussions centered basically on the position taken by the Inter-American Juridical Committee of extending responsibility for instigating this crime to "persons who, without being public employees or officials, order, induce, or apply it." The members of the group expressed their various positions on this matter.

Thus, while some delegations expressed the opinion that the Draft Convention Defining Torture as an International Crime should limit responsibility for that crime to public officials and persons acting in an official capacity, other delegations spoke in favor of holding another kind of person responsible. They therefore expressed their inclination in favor of the text proposed by the Inter-American Juridical Committee. In this same regard, one delegation proposed adding the following phrase to the text of the Draft: "...particularly if terrorist organizations or groups devoted to violence or disruption through any means and with any purposes are involved." Another delegation offered the following text as a compromise between the two positions expressed: "...on behalf of any non-governmental organization" (also to be added to paragraph c) of Article 2 of the Draft Convention prepared by the Inter-American Juridical Committee.

vi. The Group decided that it was not advisable to include in Article 2 the text of the final paragraph of the original draft on prison policy, and thus prevailed the views of another delegation that favored inclusion of the matter dealt with in this paragraph in another provision of the Draft, and even as a second paragraph of Article 5.

vii. It was decided to reword the Draft to refer to torture as a crime, as it appears in Article 2 of the original draft (paragraph 3). Despite this decision, it should be observed that it is pending the final decision with regard to Article 1 (purpose of the Convention).

3. Obedience owed (Article 3)

In relation to this matter, the Group's discussions were kept, in general, within the frame of reference of the observations and comments by the governments.

In one of those comments, it was proposed that a specific circumstance extenuating from criminal liability for the crime of torture be included in the Draft. However, the Group decided to keep the text of the original (CJI) Draft, with style changes that would improve the text. Finally, it may be noted on this matter that one member State stated in its comments on the Draft that it would make reservation on this point at the time it ratifies the Convention.

4. International qualification of acts of torture (Article 4)

On this matter one delegation observed that since it was a case primarily of a declarative text that did not include new obligations that would become a subject of the Convention, the possibility could be studied of including a text in the same vein in the Preamble. This criterion was accepted, and it remained pending to study a specific proposal when the draft Preamble of the original CJI text, which the Group had not had time to look at in this first stage of its work, is studied.

5. Exceptional circumstances (Article 5)

The Group agreed on the need for and importance of including a provision on this matter in the Draft, but with other wording that would extend the list of exceptional circumstances, including among them the suspension of constitutional guarantees. In this sense, it agreed to recommend as a new text for Article 5 of the draft that which appears included in Appendix II to this report. In addition, the Group decided to add the text of the last paragraph of Article 2 of the CJI Draft to this article as paragraph 2.

6. Obligation of the states to adopt provisions of domestic law (Article 6)

The Group fully considered the question involved in this article of the Draft prepared by the Juridical Committee as "the obligation of states that become parties to the Convention to ...adjust their legislations to the provisions of the Convention."^{6/}

One delegation advocated making some changes of wording to improve the text and, above all, to make specific reference to jurisdiction in all areas in which the state exercises or may exercise it. In this regard, it was suggested that the term "shall adopt" be used in place of "undertake to adopt" in the original text, and that the phrase "in the sphere of its jurisdiction" be inserted following the words "effective measures...", on which the Group reached a decision.

6. Statement of Reasons, doc.1227, cit., page 15.

One delegation presented, as a result of the discussion within the Group, a modified text of Article 6 of the CJI Draft, eliminating the words "and punish" in the first part of the article and adding a second paragraph intended to establish the obligation of the states to ensure in their criminal legislation that acts of torture and attempts to perform such acts constitute crimes subject to penalties or "appropriate sanctions that take their seriousness into account."

7. Obligation of the states on prohibition of torture in the training of officials (Article 7)

The Group considered the content of the obligation set forth in Article 7 of the Draft in the light of the written observations of two governments that, taking the CJI text as a basis, supplemented it with the express prohibition of certain treatments of prisoners, such as "corporal punishment, placement in unlighted cells, and every inadmissible punishment...", or with aspects on prison administration, such as posting on "walls of detention centers or penitentiaries pictures and notices referring to the fact that torture is an international crime."

After various considerations, the Group decided to keep the text of the CJI Draft, leaving this article for future consideration together with a substitute text proposed by one delegation but on which it was not possible to reach agreement.

8. Mechanisms of application of the Convention (Article 8 and 14)

The Group deemed it advisable to analyze these two articles together because their contents are closely related.

a. Periodic reports to the IACHR (Article 8)

With respect to the legal basis of the periodic reports to the Inter-American Commission on Human Rights on the subjects contemplated in Article 8 of the Draft, the Group studied the scope of this provision for the States Parties to the American Convention on Human Rights that may become States Parties also to the Convention Defining Torture as an International Crime, since for these states the obligation to render such reports would be a reiteration of the obligation set forth in Article 43 of the Pact of San José. The Group also studied the scope of Article 8 for those states that, without being Parties to the American Convention, may ratify or adhere to the Convention on Torture. Finally, the Group noted that in each of these assumptions, point (2) of Article 8 of the CJI Draft could complement the obligation of the IACHR, in point (g) of Article 41 of the Pact of San José, to submit an annual report to the General Assembly in the way indicated in its Statute.

While it was noted that this provision did not appear to be incompatible with the present functioning of the IACHR and that the mechanism proposed could be acceptable, doubts were expressed about the

advisability and scope, as well as the acceptance, of the idea that the Inter-American Commission on Human Rights itself could have these reports.

For these reasons, it was decided to leave an agreement on this point pending and to state this in the report.

b. Inter-American Commission on Human Rights and Inter-American Court of Human Rights (Article 14)

With respect to the use of the means of protection provided for in the American Convention on Human Rights (Part II, Chapter VI, Article 33), the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights,^{7/} the Group took into account what the Inter-American Juridical Committee stated to the effect that this system was proposed "for reasons of a practical and legal nature."

However, considering the diverse implications of the establishment of a mechanism in effect in one treaty for another treaty, and the difficulties this may offer because of the fact that there are member states of the OAS that are not yet Parties to the American Convention, the Group decided to postpone its decision on this question until a second reading, and to so inform the Committee on Juridical and Political Affairs.

9. Internal remedies (Article 9)

The Group considered that Article 9 of the CJI Draft did not reflect with sufficient clarity and precision the basic principle--generally recognized by international law--that internal remedies must be exhausted before a claim or denunciation is appealed or presented to an international organ responsible for the protection of human rights.^{8/} In this sense, it was felt that it was necessary to confirm in a more precise text the "orientation that has presided over international protection of human rights as an action complementary to the domestic jurisdiction."^{9/}

One delegation reiterated the observation it had made in writing (Doc. cit. below) to the effect that Article 9 as it is worded "introduces a shading in the application of the principle of exhaustion of the remedies of domestic jurisdiction, in establishing a choice between recourse to the internal institutions and direct appeal to the mechanisms of the Inter-American Commission on Human Rights (IACHR)."

7. Statement of Reasons, doc. cit. page 18.

8. American Convention, Article 46, a; Statute of the IACHR, Articles 19.a and 20.c.

9. Brazil Observations (OEA/Ser.G/CP/CAJP/464/82, add. 2, p. 2. The same concept is expressed in the Preamble to the Convention, second paragraph, and in the American Declaration of the Rights and Duties of Man, 1948.

One delegation presented a text to replace Article 9, which was not accepted. Another delegation also offered an amending text, which likewise was not accepted because it did not include an important aspect noted by another delegation in its comments on the draft, on the acceptance of a judgment of an international court through the adoption of an internal provision for that purpose.^{10/}

In view of the foregoing, the Group decided it was advisable to modify the wording of Article 9 so that it would clearly express the principle of the intervention and exhaustion of the remedies of domestic jurisdiction before resorting to the international instance, but that it was necessary to postpone the drafting of a definitive text on this matter, because of its connection with Articles 8 and 14.

Without prejudice to the foregoing, the Group decided to take into account, for the future work, the modified text proposed by one delegation, which reads as follows: "The States Parties undertake to guaranty to any person who makes an accusation that he has been subjected to torture by or at the instigation of a public official that he shall have the right to have his case examined and decided upon, in the first place, by the competent authorities of the internal judicial branch of his State, and once the internal legal system and the resources that it provides have been exhausted, to have his case examined by the procedure established in this Convention."

10. Obligation to investigate (Article 10)

Various observations were made with respect to this point, in addition to those presented by governments of the members states in writing. Despite this, the Group was of the view that a provision of this kind should be kept in the Draft, but that it should include both the following basic elements, in a revised text:

i. That the term "sufficient reason" be replaced by "a well-grounded accusation or presumption" and,

ii. That the term "with all diligence" be replaced by "at once."

With these elements in mind, the Group decided to postpone a decision on the definitive wording of Article 10.

11. Obligation to define torture in domestic legislation and obligation to compensate the victims of torture (Article 11)

The Group, in taking into account the comments of the governments, observed that two questions of different nature are involved in this provision: (i) the obligation of the States to define torture in accordance with the Convention in their domestic legislation, which is

10. Peru: Note dated June 23, 1983, see Appendix I.

already implicit in other provisions of the Draft such as articles 5, 6, and 8; and (ii) the obligation to establish appropriate compensation committed for the victims of the crime of torture "by the State, whenever the active subject is a public employee or official."

With respect to the second question--which is the one that presents difficulty--various considerations were made on the legal basis for establishing appropriate compensation internationally, bearing in mind the criterion of the subsidiary liability of the state for the acts and omissions attributable to the administration that redound in harm or damage to interests or persons. It was stated that, in a new text, specific provision should be made about the way in which that compensation shall be determined; the special remedies that should be established for the case of request for indemnification; whether indemnification should be made in the case of "unjustified delay in the administration of justice" or in "the denial of justice," and so on.

As a result of these points of view, the Group did not reach agreement on this question and on the wording that could be given to this Article 11.

12. Value as evidence (Article 12)

With respect to this point, it was decided to postpone consideration of it until the pending discussion on Article 2 is concluded, that is to say, until a decision is reached on the definition of torture, particularly the question concerning whether cruel, inhuman, or degrading treatment should be part of the definition of torture, because that would naturally affect the wording of this Article 12.

13. Obligation to extradite (Article 13)

The Group considered that Article 13 of the Draft accepts in a plausible way the generally recognized principle of international law aut dedere aut judicare (extradite or punish). However, it was observed that the reference to the conventions on asylum did not appear to be pertinent, and that it would be more appropriate to have this text refer to the conventions on extradition in force in the inter-American system: the point of view was also expressed that a reference to the international law regarding asylum was essential. For this reason, the Group was unable to reach agreement on the content of this article.

14. Restrictive clause (Article 15)

In accordance with the observations presented by the governments as well as the statements made by delegations during the work, favorable consideration was given to eliminating this provision. However--at the suggestion of the technical adviser--the Group decided to postpone that elimination of Article 15 on the scope of other conventions on this same subject, and to examine this question when it resumes its work.

15. Code of Conduct (Article 16)

The Group decided, in view of the work being done in the United Nations on a code of conduct for law-enforcement officers or officials, not to express an opinion on this question for now, and to entrust the Secretariat with providing complete and updated information to it on the state of the work on the matter in the United Nations, once the Group continues its work, keeping this provision for the present.

16. Humanitarian nature of the Convention (Article 17)

On this point it was decided to eliminate this matter from the articles of the Draft, because of its declarative nature, and to make a reference in this sense in the Preamble to the Draft, in the future work.

17. Clauses on signature, ratification, and adherence

(Articles 18, 19, and 20).

The Group decided to keep the texts of these provisions in the Draft Convention.

18. System of reservations (Article 21)

With respect to this point, at the proposal of one delegation, the Group considered that the text of Article 21, in its wording, should be in accord with the procedure on reservations set forth in the Vienna Convention on the Law of Treaties (1969) following in this matter the orientation of modern treaty law, as is provided in the American Convention on Human Rights (Article 75). The Group therefore decided to leave this provision for later study.

19. Entry into force (Article 22)

The Group approved the wording of this article of the Draft Convention appropriate and therefore decided to keep it.

20. Application of the Convention to a state that has two or more territorial units (Article 23)

At the request of one delegation, consideration was given to elimination of this article because it was considered unnecessary. The Group agreed with that proposal and therefore decided provisionally that it be deleted.

21. Final clauses (Articles 24 and 25)

In reviewing these two articles, the Group had no observations to make on their text and therefore adopted them as they appear in the Draft.

It should be noted that this report is supplemented by four appendices, namely:

Appendix I. Draft Convention Defining Torture as an International Crime.

Appendix II. Notes from the governments of member states giving observations and comments on the Draft Convention Defining Torture as an International Crime; and

Appendix III. Comparative table of the observations and comments of governments of member states;

Appendix IV. Provisional decision taken by the Working Group on Convention defining Torture as an International Crime.

VII. Recommendation

Having gone over the Draft Convention in a first reading, the Working Group considers it advisable to recommend to the Committee on Juridical and Political Affairs that it submit this report to the Permanent Council, with the request that the Council request from the General Assembly of the Organization another extension of the mandate given in resolution AG/RES. 509 (X-0/80), so that the Group may continue its work in the near future.

In addition, and in order to maintain continuity in the work carried on during this year, the Group unanimously decided to suggest to the Committee on Juridical Affairs that it would be advisable, when the Permanent Council again assigns the study of this topic, that a group be appointed to perform this task made up, as a minimum, of the delegations that conducted this work during this period, and that it continue under the chairmanship of Mrs. Milagros B. de Calcaño, Alternate Representative of Venezuela.

On the basis of this report, the Working Group presents the following preliminary draft resolution to the Committee on Juridical and Political Affairs:

DRAFT RESOLUTION

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

HAVING SEEN the report of the Committee on Juridical and Political Affairs on the state of the work regarding the Draft Convention Defining Torture as an International Crime, prepared by the Inter-American Juridical Committee;

CONSIDERING that in accordance with the provisions of resolution AG/RES. 624 (XII-0/82), a considerable number of states have presented their observations and comments on the Draft Convention, the analysis of which could not be completed in the time available; and

TAKING INTO ACCOUNT the fact that the conclusion reached in the first reading of the Draft are of a provisional nature, subject to confirmation and final decision when the second review of that Draft is made,

RESOLVES:

To request the General Assembly of the Organization to extend the mandate given to the Permanent Council through resolutions AG/RES. 509 (X-0/80), AG/RES. 547 (XI-0/81), and AG/RES. 624 (XII-0/82), so that the Council may continue the study and review of the Draft Convention Defining Torture as an International Crime and introduce any appropriate amendments therein, and, finally, submit them to the General Assembly at its fourteenth regular session.

October 27 1983

Milagros B. de Calcaño
Representative of Venezuela
Chairman of the Working Group

Susana Avila Castelazo
Representative of Mexico

Juan José Uranga
Representative of Argentina

Juan Carlos Capuñay
Representative of Peru

Robert J. Higgins
Representative of the United States

Rolando Visconti
Representative of Uruguay

Carlos Moreira García
Representative of Brazil

Roberto J. Turull Dulluc
Representative of the Dominican Republic

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

Working Group studying the Draft Convention
Defining Torture as an International Crime

OEA/Ser.G

CP/CAJP-533/84

27 April 1984

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REPORT OF THE WORKING GROUP
STUDYING THE DRAFT CONVENTION
DEFINING TORTURE AS AN INTERNATIONAL CRIME

REPORT OF THE WORKING GROUP STUDYING THE DRAFT CONVENTION DEFINING TORTURE AS AN INTERNATIONAL CRIME

I. Background

The subject of this report had its origin in resolution AG/RES. 664 (XIII-0/83), whereby the General Assembly of the Organization, at its thirteenth regular session, extended the mandate given to the Permanent Council to study and review a draft Convention Defining Torture as an International Crime.

In accordance with the provisions of that resolution, the Council has continued its study of the Draft Convention on the subject prepared by the Inter-American Juridical Committee (CJI), through its Committee on Juridical and Political Affairs. That Committee, at its meeting on January 24, 1984, reestablished the Working Group that had been studying the subject, under the chairmanship of Dr. Milagros V. de Calcaño, Alternate Representative of Venezuela.

The Working Group was composed of the following delegations:

- Argentina
- Brazil
- Costa Rica
- Dominican Republic
- El Salvador
- Haiti
- Mexico
- Peru
- United States
- Venezuela

II. Installation of the Group

The Group was installed to resume its tasks on February 16, 1984. In addition to its members, the delegations of Colombia, Ecuador, and Uruguay attended.

III. Meetings

The Group met nine (9) times: on February 16 and 24; March 2, 15, 21, 23, 28, and 29, and April 3, 1984. At the meetings, the Group had the

technical and administrative advisory services of the General Secretariat, represented by Drs. Alvaro Gómez and Alberto Tolosa, of the Secretariat for Legal Affairs, Dr. Cristina Cerna of the Secretariat of the Inter-American Commission on Human Rights, and Miss Lía Onega, of the Secretariat of the Permanent Council.

IV. Documents

For its discussions, the Working Group utilized the documents listed under item IV of the report it had submitted in 1983 to the Committee on Juridical and Political Affairs,^{1/} and additionally:

- a. Decisions taken by the Working Group during 1983 on the Draft Convention Defining Torture as an International Crime (OEA/Ser.G/ CP/CAJP-525/84), with the respective appendices on the texts of decisions reached at the meetings, which were distributed by the Secretariat immediately following those meetings or at the next one.
- b. The human rights of all persons subject to any form of detention or imprisonment, torture, or other cruel, inhuman, or degrading treatment or punishment. Report of the working group on a draft convention against torture and other cruel, inhuman, or degrading treatment, of the United Nations Commission on Human Rights (E/CN.4/1984/L.2, February 20, 1984, Original: English).
- c. Note of the Mission of Colombia to the OAS, dated February 16, 1984 (Note No. 118), transcribing the verbatim text of Article 21 of that country's national Constitution, for the purposes set forth in its note of June 30, 1983 (Note No. 575), whereby the Government of Colombia made its observations on the draft of the Inter-American Juridical Committee.

V. Work Accomplished

At the installation meeting, the Chairman of the Group underscored the working parameters in the sense that the tasks would be restricted to a new reading of the Draft Convention prepared by the Inter-American Juridical Committee, as well as a review of the decisions on its articles provisionally taken by the Group at its meetings in 1983.

The Group decided to request the Secretariat to address the missions that were not members of the Group but whose governments had presented observations on the Draft Convention, to invite them to attend its meetings, so that it might have their comments on the subject.

^{1/} See Doc. CP/CAJP-518/83.

Likewise, at the suggestion of one delegation, the Group decided that the General Secretariat should act in coordination with the Secretariat of the United Nations, in view of the work that agency is carrying out on this same subject, for the purpose of keeping the Working Group informed.

Because of the nature of the work to be done, the Group decided to divide its work into two stages.

- a. The first, the results of which are given in this report, for the purpose of preparing a Draft Convention, on the basis of the original draft prepared by the CJI, the observations so far presented by the governments, and the instructions received by the delegations that are members of the Group, which would be submitted to the governments for consideration.
- b. The second would begin once the comments of the governments had been received, when a final review of the Draft would be made for taking definitive decisions and presenting them to the General Assembly.

In addition, it was considered wise to establish a deadline for the completion of each stage. For the first stage, that would be April 30. A period of two months would then be left for the governments to reply; and the second stage would begin in July, and continue to the completion of its work, naturally before the beginning of the session of the General Assembly.

In preparing the Draft Convention that it is presenting, the Working Group felt that there were several questions deserving priority consideration that had in the past been left pending, such as the following:

- i. Organization of the Preamble;
- ii. Definition of torture as an international crime;
- iii. Active subjects of the crime of torture (persons held guilty of that crime) and determination as to whether persons other than public officials or employess may be active subjects of that crime;
- iv. Determination as to whether the concept of "cruel, inhuman, or degrading treatment" should remain included in the definition of the crime of torture;
- v. Study of the mechanisms of application of the Convention, that is to say, whether they would be the same organs foreseen in the American Convention on Human Rights (the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights);

- vi. Study of the problem of exhaustion of domestic remedies before resorting to an international tribunal;
- vii. System of reservations to the future Convention on Torture.

On this basis, and after serious deliberations the Group reached the conclusion that the Draft Convention it would prepare should contain three fundamental elements, which are:

1. The concept and definition of torture, for the purposes of the Convention.
2. Determination of active subjects responsible for that crime.
3. Establishment of the international jurisdiction, with respect to punishment of the perpetrators of that crime.

In accordance with these general lines, the Group prepared the text that is appended to this report, which represents a document of consensus, obtained through the negotiation capacity of the Working Group itself, and is subject to comments, observations, and considerations by the member states of the Organization.

It should be pointed out that on those questions on which the Group was not able to reach an agreement, it was decided to present two alternatives containing the positions expressed by the members of the Group.

VI. Deliberations

Some comments on the text of the articles prepared are given here following:

1. Preamble

With respect to the Preamble, the Group considered several questions,

- i. The first paragraph was modified to simplify it.
- ii. The second paragraph of the Preamble was added, the content of which corresponds to Article 4 of the CJI Draft, with modifications of wording proposed by one delegation.

The Group considered that, since it was a matter of reaffirming concepts contained in Resolution 3452 (XXX) of the General Assembly of the United Nations, and in inter-American instruments concerning human rights, it was appropriate to incorporate the content of Article 4 into a paragraph of the Preamble. In addition, it was considered that keeping Article 4 and the reference to "other cruel, inhuman, or degrading treatment or punishment" could create confusion with respect to the objective of the Convention, which is to prevent and punish the crime of torture.

- iii. Some delegations proposed that paragraphs 2 and 3 be eliminated. That proposal was not accepted.

In the view of some delegations, it was necessary that reference be made in the Preamble and in the text of the Convention to the basic element of the mandate contained in resolution AG/RES. 368 (VIII-0/78), to define torture as an "international crime." In the view of other delegations, since the concept "international crime" was not defined in international law, it was not proper to use that concept in a convention.

As a result, the Group decided on the texts that appear appended hereto. However, since it was not possible to reach an agreement on the concepts that are brought together in the third and fourth paragraphs, it decided to leave them in brackets so that a decision may be taken on the basis of the observations by the Governments, and at the next period of meetings it may be possible to achieve a definitive text.

2. Article 1 (Purpose of the Convention)

In relation to this article, discussion was reopened in the Group on the advisability of including: (a) the description "international crime," which, in the opinion of some delegations is necessary in order to fulfill the mandate of resolution AG/RES. 368 (VIII-0/78), or (b) only the contractual obligation of the States that come to be Parties to the Convention to prevent and punish torture under the terms set forth in the articles of the Convention, without establishing the offense as an "international crime." Despite those differences, there was agreement that the important thing was the establishment of a system so that the punishment of the crime of torture will not be left entirely to the national jurisdictions.

On the basis of the views expressed, and since it was not possible to reach an agreement, two alternative texts for this article have been prepared for consideration by the governments.

3. Article 2 (Definition of Torture)

On this provision, the Group bore in mind what was decided upon in the meetings held in 1983, that the text of the original (CJI) Draft should be divided into two separate provisions: one giving the definition of what torture shall be understood to be, and the other referring to the active subjects of the crime of torture.^{2/} It was so decided.

With respect to the definition of torture, the Group decided as follows:

- In general, to maintain the text of Article 2, first paragraph, of the original CJI Draft.

2. See document CP/CAJP-518/83.

- To include in the text the idea of intentionality of the act of inflicting physical or mental pain or suffering on a person, since torture cannot be an involuntary act.
- Not to include in the definition the concept of cruel, inhuman, or degrading treatment, since the crime defined is "torture," without prejudice to the fact that in the Preamble and in the last paragraph of Article 6 other types of treatment are condemned.
- To exclude from the concept of torture both the physical or mental pain or suffering inherent in lawful punishments or caused by them and the loss of personal freedom legally ordered as a preventive measure.

It should be noted that at the request of one delegation it was decided to leave the term "serious" in brackets, so that a decision as to including it could be taken later. In the view of some delegations, the Convention would be strengthened if light pain or suffering were excluded; in the view of others, the inclusion of the term "serious" might give rise to excuses for possible nonobservance of the Convention.

4. Article 3 (Active subjects of the crime of torture)

On this point the Group again discussed the two positions that had been expressed last year: (a) that of the delegations that considered that the scope of the Convention should be limited to the acts committed by public officials or employees who order, induce, or use torture or by those persons who act at their instigation; making reference also to the formulation of other similar instruments approved within the frame of the United Nations [resolution 2432 (XXX) of 1975]; (b) the proposal by another delegation in the sense that the concept of perpetrators or active subjects of the crime should include persons who, while not being public officials or employees, order, induce, or use torture, in particular, when it is a case of an organization or group devoted to violence or disturbance by any means and for any purpose whatsoever.

However, in order to advance in the work, the Group decided to present two alternative texts for this article, reflecting the positions mentioned above.

5. Article 4 (Obedience owed)

With respect to this point, the Group reached a text that respects the generally accepted principle of individual criminal liability in cases of crimes of torture. This text differs only in wording from the original (CJI) Draft.

6. Article 5 (Exceptional circumstances)

In conformity with what was decided last year, the Group decided on a new text on this matter, enlarging upon the list of exceptional circumstances referred to, including "suspension of constitutional guarantees," and adding a second paragraph that includes, in summary, the text of the last part of the last paragraph of Article 2 of the CJI (original) Draft.

7. Article 6 (Adoption of measures of domestic law)

On the basis of what was decided upon in the last period of meetings, the Group decided to include in the Draft Convention a provision by which the States Parties undertake to ensure that acts of torture constitute offenses under their domestic laws, as well as to adopt effective measures to prevent and punish torture, in accordance with the terms of the Convention. It was also decided to include in this article a separate paragraph establishing a similar obligation of the States with respect to cruel, inhuman or degrading punishment, thus avoiding confusion between "other treatment" and the crime of torture defined in the convention.

8. Article 7 (Complementary measures)

With reference to this point, the text decided upon responds to suggestions made in 1983 by various delegations in the sense of obligating the States to take measures in the training of security personnel to prevent the practice of torture during any form of loss of freedom and to extend that guarantee to interrogations in connection with detentions or arrests.

9. Article 8 (Guarantees, internal remedies)

On the basis of Articles 9 and 10 of the Draft prepared by the CJI, the Group prepared a provision (Article 8), by which, first, the obligation is established for the States Parties to the Convention to guarantee to any citizen who makes an accusation that he has been subjected to torture within the area of their respective jurisdictions that the case will be examined impartially, and to give this same guarantee, whenever there are reasonable grounds to believe that an act of torture has been committed, that its authorities will proceed to act with all diligence.

It is also established in this provision that the domestic remedies must have been exhausted, as a prior requisite for a person to be able to resort to an existing international tribunal, the jurisdiction of which has been accepted by the State concerned.

10. Article 9 (Obligation to provide compensation)

With respect to this aspect of the Convention, the Group decided to modify the text proposed by the CJI, eliminating the question of the

obligation to define torture in the domestic laws, already included in Article 6, and establishing in this rule only the obligation of the States Parties to adopt rules of internal law that will guarantee appropriate compensation for victims of the crime of torture.

11. Article 10 (Value as evidence)

During 1983, the Group decided to postpone consideration of Article 12 of the CJI Draft until a text for Article 2 of the same Draft had been adopted. During the present year, a text was reached that appears in the Appendix, in the sense of not giving value as evidence to any statement obtained through an act of torture, and establishing an exception to that rule when it is a case of a statement used against a person accused of having committed the crime of torture, as evidence that that statement was made. This exception was taken from the draft on this subject being prepared by the United Nations, and its purpose is to prevent undue protection of the presumed criminal.

12. Article 11 (Obligation to extradite)

During 1983, no agreement was reached on the content of Article 13 of the CJI Draft, with regard to the reference to the right to asylum, since for some delegations this was not in order, while for others, it should be expanded upon and replaced by a mention of the rules of international law on the subject.

During 1984, the Group has listened to the views of the delegations on this point. One delegation proposed replacing the mention of the right to asylum by a reference to non-refoulement (no return), which is a criterion generally recognized by international law and established in the Convention on the Status of Refugees (1951) and the Protocol to it (1967) and in Article 22 of the American Convention on Human Rights (1969).

Most of the delegations considered, moreover, that it was necessary to make express reference to the right to asylum in the text of the Convention, since it was an institution recognized by the law of the Americas and had its origin in international treaties and rules.

Since it was not possible to reach a common position on the matter, the Group reached agreement on the first part of the article, referring to the obligation to extradite, but decided to present the respective formulas (Alternatives A and B), until it learns the opinions of the governments of the member states on this important point.

13. Article 12 (Jurisdiction and applicable rules)

In this aspect the Group introduced a new provision into the CJI Draft Convention, on the system applicable to the establishment of international jurisdiction, following in general terms the wording of provi-

sions of the same scope in other international instruments, such as the International Convention Against the Taking of Hostages, Article 5; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Article 5 (1971); and the text of the Draft Convention Against Torture (Article 5), now being prepared by the United Nations Commission on Human Rights.

14. Article 13 (Aut dedere aut judicare)

On the basis of a text presented by a delegation, the Group approved a new Article 13, replacing the rule proposed by the CJI regarding the mechanisms for the execution of the Convention, on account of the positions expressed by those delegations whose States are not Parties to the American Convention on Human Rights and have not accepted the jurisdiction of the Inter-American Court of Human Rights, in the sense that they could not accept to be tied to those instruments indirectly by this Convention on Torture.

Moreover, as was pointed out at the beginning of this report, it is the view of the Group that the fundamental thing is the establishment of international jurisdiction for the punishment of the crime of torture.

This article is a new provision intended to establish in a more precise way the formula "to extradite or to punish" proposed in the old Article 13 of the CJI Draft. The last paragraph of the new article contains the obligation to inform the State requesting extradition, and it is sufficiently broad to include every type of decision that the authorities of the branches of the power of a State may take, whether they be judicial, administrative, of the police, or some other.

15. Article 14 (Relationship to other conventions)

The text of this provision is based on the text of Article 15 of the Draft Convention, but adding mention of the American Convention on Human Rights and the Statute of the Inter-American Commission on Human Rights. The new text, responds to the need to make reference to the relationship between the future convention on torture and the instruments on human rights in the area of the OAS, as well as to the Convention being prepared in the United Nations and other instruments that may be adopted.

16. Article 15 (Obligation to report)

Because it considered this subject to be closely related to the instruments on human rights in force in the inter-American system, the Group considered it necessary to establish a rule that would contemplate the obligation of the States to inform the Inter-American Commission on Human Rights about the measures they take to prevent torture within their jurisdiction.

This article corresponds, basically, to the first paragraph of Article 8 of the CJI Draft, but with the modifications presented by one delegation during the period of meetings of the Group in 1983.

17. Article 16 (Signing of the Convention)

This article remained as it appears as Article 18 of the CJI Draft.^{3/}

18. Articles 17 and 18 (Ratification and accession)

These articles remain the same as articles 19 and 20 of the CJI Draft.^{4/}

19. Article 19 (Reservations)

With respect to this point, the Group considered various views:

- i. One delegation proposed that in this matter the prohibition of making a reservation or reservations to essential provisions of the Convention be specified, without prejudice to whether or not the system of reservations would be that of the Vienna Convention on the Law of Treaties;
- ii. Other delegations proposed including in the Convention the same provision set forth in Article 75 of the American Convention on Human Rights, which makes the provisions of the Vienna Convention apply.

The Group decided that the Convention would apply the system of reservations of the Vienna Convention of 1969 (Article 75 of the American Convention on Human Rights), but that it would make special mention in this report of the fact that the governments should take into account the need that, with respect to certain provisions of the Convention, no reservations should be permitted.

20. Article 23 (Territorial Units)

The Group reaffirmed its decision made in 1983 to eliminate this provision.

21. Articles 21 and 22 (Denunciation and deposit)

These articles remained with the same texts approved by the Working Group in 1983.

VII. Conclusion

In submitting this report to the Committee on Juridical and Political Affairs, the Working Group recommends that it be suggested to the Permanent Council that, as the next step, it send it to the governments of the

3. The Group decided to eliminate Article 16 of the CJI Draft, without prejudice to the adoption by the General Assembly of a resolution that would provide for the preparation of a Code of conduct for law-enforcement officers or officials, which would complement the Convention Against Torture.

4. The Group decided to eliminate Article 17 of the CJI Draft because it considered it unnecessary.

member states; that the Council, as the Group mentioned on beginning its work (see section V), set next June 30 as the deadline for the governments to present their comments, and that the Group resume its work in July. At that time the final review of the Draft Convention would be made, with time for the Committee and then the Council to present it to the General Assembly in compliance with the mandate given through resolution AG/RES. 664 (XIII-0/83).

On the basis of this report, the Working Group submits the following draft resolution to the Committee on Juridical and Political Affairs:

DRAFT RESOLUTION

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

HAVING SEEN:

The resolution AG/RES. 664 (XIII-O/83), through which the General Assembly extended until its fourteenth regular session the mandate given to the Permanent Council to study and review the Draft Convention Defining Torture as an International Crime; and

The report submitted to the Permanent Council by the Committee on Juridical and Political Affairs presenting the preliminary results of its study, in the form of a revised Draft Convention (CP/doc. /84); and

CONSIDERING:

That the Committee on Juridical and Political Affairs has recommended that that Draft Convention and the report accompanying it be sent to the member states for consideration so that they may make their observations and comments thereon before next June 30, in order to enable the Council to present the result of its work to the General Assembly at its fourteenth regular session,

RESOLVES:

1. To approve the recommendation by the Committee on Juridical and Political Affairs that the General Secretariat be instructed immediately to send the report of that Committee to the governments of the member states, so that they may make any observations on the revised Draft Convention it contains (CP/doc. /84), by next June 30 at the latest.

2. To authorize the Committee on Juridical and Political Affairs to resume its work once that period has been completed, so that it may present its conclusions to the Permanent Council sufficiently in advance so that they may be presented to the General Assembly at its fourteenth regular session.

April 24, 1984

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Chairman of the Working Group

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APPENDIX

REVISED DRAFT CONVENTION DEFINING TORTURE
AS AN INTERNATIONAL CRIME

Preamble

The American States signatory to the present Convention;

AWARE of the provision of the American Convention on Human Rights that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment;

REAFFIRMING that all acts of torture or any other cruel, inhuman, or degrading treatment or punishment constitute an offense against human dignity and a denial of the principles set forth in the Charter of the Organization of American States and in the Charter of the United Nations, and are violations of the fundamental human rights and freedoms proclaimed in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights;

[NOTING that, in order for them to take effect, the pertinent rules contained in the aforesaid Declaration and Convention must be implemented by drafting a document that defines torture as an international crime;]

[RECOGNIZING that the practice of torture is one of the most serious violations of the essential rights of every person, requiring that such a practice be considered an international crime;] and

REAFFIRMING their purpose of consolidating in this hemisphere the conditions that make for recognition of and respect for the inherent dignity of man, and enable him fully and completely to exercise his fundamental rights and freedoms,

HAVE AGREED upon the following:

Article 1:

ALTERNATIVE A. The States Parties confirm that torture is an international crime which they undertake to prevent and to punish under the terms set forth in the following articles.

ALTERNATIVE B. The States Parties undertake to prevent and to punish torture under the terms set forth in the following articles.

Article 2. 1. For the purposes of this Convention, torture shall be understood to be any act intentionally performed by which [serious] physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, or as a penalty.

Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim, or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

2. The concept of torture shall not include:

- a. Physical or mental pain or suffering that is inherent in or caused by legal punishments;
- b. Loss of personal freedom legally ordered as a preventive measure.

Article 3.

ALTERNATIVE A

The following shall be held guilty of the crime of torture:

- a. A public employee or official who, acting in that capacity, orders, instigates, or induces use of torture, who directly uses it, or who, being able to prevent it, fails to do so.
- b. A person who, on the instigation of a public employee or official as referred to in subparagraph (a) above, orders, instigates, or induces use of torture, or who directly uses it.

ALTERNATIVE B

A person who orders, instigates, or induces use of torture, who directly uses it, or who, having the obligation and the possibility of preventing it, fails to do so, shall be held guilty of the crime of torture.

Article 4. The fact of having acted under orders of a superior shall not absolve one of the corresponding criminal liability.

Article 5. No State shall admit as justification for the crime of torture the existence of certain circumstances, such as a state of war, a threat of war, a state of siege, internal disturbance, suspension of constitutional guarantees, internal political instability, or other public emergencies or disasters.

Neither the dangerousness of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.

Article 6. In accordance with the provisions of this Convention, the States Parties hereto undertake to adopt effective measures to prevent torture in the territory under their jurisdiction.

Each State Party shall ensure that all acts of torture and attempts to commit torture are offenses under its criminal law, and shall make such acts punishable by severe penalties that take into account their grave nature.

The States Parties likewise undertake to adopt effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment in the territory under their jurisdiction.

Article 7. The States Parties shall adopt measures so that special emphasis will be placed on the prohibition of the use of torture in the training of police officers and other public officials responsible for the custody of persons provisionally or definitively deprived of their freedom, and in interrogation, detention, or arrest.

Article 8. Each State Party undertakes to guarantee to any person alleging that he has been subjected to torture within the area under its jurisdiction the right to have his case examined impartially.

Whenever there are reasonable grounds to believe that an act of torture has been committed within the area under its jurisdiction, each State Party shall ensure that its competent authorities shall proceed to an immediate investigation of the case and initiate appropriate criminal action.

Once the internal juridical procedures of the State concerned and the remedies it provides have been exhausted, the case may be submitted to an international tribunal whose competence has been accepted by that State.

Article 9. The States Parties undertake to establish laws in their national legislations to guarantee adequate compensation for the victims of the crime of torture.

Article 10. No statement obtained through torture shall be admitted as evidence in any trial, except in the case of a trial of a person accused of having committed the crime of torture, as evidence that the statement was made.

Article 11.

ALTERNATIVE A

The States Parties shall take the necessary steps to extradite anyone accused of committing the crime of torture, or sentenced for committing such a crime, in accordance with their respective national laws on extradition and their international commitments, without prejudice to the international law on asylum.

ALTERNATIVE B

The States Parties shall take the necessary steps to extradite anyone accused of committing the crime of torture, or sentenced for committing such a crime, in accordance with their respective national laws on extradition and their international commitments, without prejudice to the international principle of non refoulement.

Article 12. 1. Each State Party shall take the necessary measures to establish its jurisdiction over the crime described in this Convention in the following cases:

- a. When the crime has been committed within the area under its jurisdiction;
- b. When the alleged criminal is a national of that State; or
- c. When the victim is a national of that State, and it considers this appropriate.

2. Similarly, each State Party shall take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within the area under its jurisdiction and it is not appropriate to extradite him in accordance with Article 11.

3. This Convention does not exclude the criminal jurisdiction exercised in accordance with domestic law.

Article 13. When a State Party does not extradite the alleged offender, the case shall be submitted to its competent authorities as if the crime had been committed within the area under its jurisdiction, for the purposes of an investigation, and when appropriate, for penal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State that requested the extradition.

Article 14. This Convention shall not limit the provisions of the American Convention on Human Rights, other conventions on the subject, or the Statutes of the Inter-American Commission on Human Rights, with respect to the crime of torture.

Article 15. The States Parties undertake to report to the Inter-American Commission on Human Rights about any legislative, judicial, administrative, or other kinds of measures they take in application of this Convention.

Article 16. This Convention shall be open to signature by the member states of the Organization of American States.

Article 17. This Convention is subject to ratification.

The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 18. This Convention shall be open to accession by any other American state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 19. Reservations may be made to this Convention only in accordance with the provisions on the matter in the Vienna Convention on the Law of Treaties, signed on May 23, 1969.

Article 20. This Convention shall enter into force on the thirtieth day following the date on which the second instrument of ratification is deposited. For each State ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day following the date on which that State deposits its instrument of ratification or accession.

Article 21. This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State, but shall remain in force for the remaining States Parties.

Article 22. The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication, in accordance with the provisions of Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify the member states of the Organization and the states that have acceded to the Convention of signatures and of deposits of instruments of ratification, accession, and/or denunciation, as well as of reservations, if any.