

ORGANIZATION OF AMERICAN STATES

PERMANENT COUNCIL

CP



OEA/Ser.G
CP/doc.1524/84
18 October 1984
Original: Spanish

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

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

At its meeting of January 11 of this year, the Committee on Juridical and Political Affairs received from the Permanent Council a mandate to continue its studies on the Draft Convention defining torture as an international crime, in keeping with General Assembly resolution AG/RES. 654 (XIII-0/83).

To do this, the Committee appointed a Working Group composed of the delegations of Argentina, Brazil, Costa Rica, the Dominican Republic, El Salvador, Haiti, Mexico, Peru, the United States and Venezuela. The Working Group elected Dr. Milagros B. de Calcaño, Alternate Representative of Venezuela, as its Chairman.

When it completed its work, the Working Group advised the Committee of its findings in document CP/CAJP-546/84 rev. 1, which is attached as an appendix to this Report, along with a copy of the Draft Convention defining torture as an international crime and a draft resolution on the subject matter.

When the Committee analyzed the Group's report at its meeting of October 18, it decided to endorse the recommendations contained therein. In this connection, the Delegation of Colombia will present to the General Assembly the observation that it made in the Committee as regards the text of Article 10 of the Draft Convention.

The Committee is presenting this report of the Permanent Council for consideration, along with the following draft resolution:

WHEREAS:

The General Assembly, at its eighth regular session, requested the Inter-American Juridical Committee to prepare, in cooperation with the Inter-American Commission on Human Rights, a draft convention defining torture as an international crime (AG/RES. 368 (VIII-0/78));

In compliance with that mandate, the Inter-American Juridical Committee, in cooperation with the Inter-American Commission on Human Rights, in 1980 prepared a draft convention on the subject and forwarded it to the Permanent Council;

The Permanent Council transmitted that draft to the General Assembly, which, at its tenth regular session, adopted resolution AG/RES. 509 (X-0/80), operative paragraph 2 of which provides as follows:

2. To forward that draft with its statement of reasons and the explanations of votes given by the members of the Committee to the governments of the member states for their consideration, so that they may formulate their observations and comments and send them to the Permanent Council before April 30, 1981, so that the Council may introduce the appropriate amendments to the Draft Convention and submit it to the next regular session of the General Assembly.

Once the Observations and comments of the governments had been received, the Permanent Council began, through its Committee on Juridical and Political Affairs, the revision of the Draft Convention prepared by the Inter-American Juridical Committee, and periodically informed the General Assembly on the progress of the work on this subject;

The Assembly successively extended the mandate to the Permanent Council on this subject, so that it could continue its study of the Draft Convention [AG/RES. 547 (XI-0/81), AG/RES. 624 (XII-0/82), and AG/RES. 664 (XIII-0/83)]; and

The Committee on Juridical and Political Affairs has concluded its work and is submitting the report contained in document CP/doc.1524/84, to which the revised Draft Convention defining torture as an international crime is appended, and it suggests that the Permanent Council recommend to the General Assembly that it convene an Inter-American Specialized Conference to adopt that Draft Convention;

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

RESOLVES:

1. To take note of the report and of the Draft Convention defining torture as an international crime (CP/doc. /84), submitted by the Committee on Juridical and Political Affairs.

2. To present this document to the General Assembly for consideration at its fourteenth regular session, with the recommendation that it convene an Inter-American Specialized Conference to adopt it.

The Committee on Juridical and Political Affairs wishes to express its satisfaction for this report of the Working Group, and, in particular, to express its unanimous appreciation to the Chairman, Dr. Milagros B. de Calcaño, for her splendid work in the two sessions in which she served, with such excellent results, in the post entrusted to her by the Committee.

August 18, 1984

Roberto Leyton
Ambassador, Representative of Panama
Chairman of the Committee

Luis E. Guardia
Representative of Costa Rica

Cherrie J. Orr
Representative of Jamaica

George W. McKenzie
Representative of Trinidad and Tobago

Juan José Uranga
Representative of Argentina

Juan Carlos Capuñay
Representative of Peru

José Vallarta
Representative of Mexico

Ivette Goddard
Representative of Barbados

Nina Buzzini O'Neill
Representative of Uruguay

Eugenie Eersel
Representative of Suriname

Luis F. Roca García
Representative of Bolivia

Juan Larraín
Representative of Chile

Mauricio Granillo Barrera
Representative of El Salvador

Milagros B. de Calcaño
Representative of Venezuela

Homero Larrea
Representative of Ecuador

Paul O. Spencer
Representative of Antigua and Barbuda

Lowell R. Fleischer
Representative of the United States

Francisco Villagrán León
Representative of Guatemala

Evans M. François
Representative of Haiti

Mario González Vargas
Representative of Colombia

Luiz Augusto Saint-Brisson de Araujo Castro
Representative of Brazil

Roberto Turull-Dulluc
Representative of the Dominican Republic

Norberto Garrigó
Representative of Honduras

Samuel Orgias
Representative of Grenada

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G
CP/CAJP-546/84 rev. 1
18 October 1984
Original: Spanish

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. BACKGROUND INFORMATION AND WORK OF THE GROUP

Under the provisions of Resolution AG/RES. 664 (XIII-0/83), the General Assembly extended its mandate to the Permanent Council to continue studying and revising the Draft Convention Defining Torture as an International Crime prepared by the Inter-American Juridical Committee.^{1/}

The Permanent Council has pursued this mandate through its Committee on Juridical and Political Affairs. At its meeting on January 24, 1984, the Committee established the Working Group, which has been working on this topic. The group, the Chairman of which is Dr. Milagros B. de Calcaño, the Alternate Representative of Venezuela to the Organization, was composed of the following delegations:

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

The Group was installed and began its work on January 16, 1984. In view of the nature of the work, the Group decided at that time to divide it into two stages: first, a second revision of the original draft in the light of the observations and comments submitted by the Governments of the Member States in response to the inquiries made to that effect on February 19, and September 21, 1981, March 10, 1982 and February 15, 1983, the results of which would be submitted to the governments once again for subsequent consideration; and, second, after the comments of the governments were received, a final revision of the draft, on which a decision would be taken before it was submitted to the Fourteenth Regular Session of the General Assembly.^{2/}

1. Work of the CJI at its regular meeting in January 1980 (OEA/Ser.Q/IV.21, CJI-42, pp. 45 etc.)

2. See report of the Working Group (OEA/Ser.G/CP/CAJP-533/84), p. 3.

On completion of the first stage of its work, on April 27, 1984, the Group submitted a report to the Committee on Juridical and Political Affairs,^{3/} together with a draft Resolution, which the Committee approved at its meeting on May 9, 1984, and submitted to the Permanent Council for consideration.

At its meeting on May 16, 1984, the Council approved both the Report and Resolution CP/RES. 403 (568/84), which provides that the Report of the Committee on Juridical and Political Affairs should be forwarded to the Governments of the member states with the request that they make their observations and comments on the (revised) Draft Convention Defining Torture as an International Crime by June 30, 1984 at the latest. The Council further decided to authorize the Committee to resume its work once the deadline had been met so that it could submit its conclusions sufficiently in advance for submission to the Fourteenth Regular Session of the General Assembly.^{4/}

Pursuant to that resolution, the Working Group resumed its work on August 23, 1984. The meeting held on that date, which was chaired by Dr. Betancourt de Calcaño, was attended by all the member delegations.

It was decided at that meeting that, in that stage, the work would focus on a third revision of the Draft Convention Defining Torture as an International Crime based on the texts agreed upon in April 1984, appended to the Group's report,^{5/} the observations submitted by the Governments of Argentina, Brazil, Chile and Venezuela^{6/} and any others that might be submitted in the course of the deliberations.

II. MEETINGS

During this third stage the group held meetings on August 23, 30 and 31; September 4, 7, 17, 21, 26 and 28 and October , 1984. At those meetings, the Secretary General of the Organization of American States was represented by Dr. Alvaro Gómez of the Secretariat for Legal Affairs; and Dr. Cristina Serna of the Inter-American Commission on Human Rights; Miss Lía Onega of the Secretariat of the Permanent Council acted as Secretary.

3. See report of the Working Group (OEA/Ser.G/CP/CAJP-533/84), p. 3.

4. See CP/doc.1451/84, rev. 1.

5. Doc. CP/CAJP-533/84, cit.

6. a) Argentina: OEA/Ser.G/CP/CAJP-538/84 add. 3 and CP/CAJP-464/82 add. 13; b) Brazil: OEA/Ser.G/CP/CAJP-538/84; c) Chile: OEA/Ser.G/CP/CAJP-538/84, add. 2; d) Venezuela: OEA/Ser.G/CP/CAJP-538/84, add. 1. (APPENDICES I, II, III, IV, and V).

III. DOCUMENTS

For its deliberations, the Group used document CP/CAJP-533/84, containing the revised Draft Convention, as well as the observations of the Governments of Argentina, Brazil, Chile and Venezuela; the following work papers were also utilized:

a) Document submitted by the Delegation of Mexico (OEA/Ser.G/CP/CAJP-542/84) (APPENDIX VI), which contains proposed amendments to articles 1, 2, 5, 7, 8 and 9 of the (revised) draft.

b) Document OEA/Ser.G/CP/CAJP-542/84 add. 1 (APPENDIX VII), submitted by the Delegation of Mexico, containing proposed amendments to article 11, alternative A of the (revised) draft and also to article 15. It also proposes the deletion of article 19 and 21 of the draft.

c) An (unclassified) document submitted by the Delegation of the United States proposing a new article 13.

d) As the work progressed, the Secretariat distributed the versions of the texts approved and those pending discussion to facilitate the study of the proposals at the meetings (decisions up to September 4, 7, 17 and 21, 1984).

IV. DELIBERATIONS

The deliberations of the working group are summarized below; they should be considered together with the preceding reports of the Working Group (CP/CAJP-518/83 and CP/CAJP-533/84) (APPENDIXES VIII and IX).

Preamble

With regard to the Preamble, the Group again considered the questions raised during the second revision of the draft Convention and mentioned in the report of April 1984 (doc. CP/CAJP-533/84, p. 3), in particular, whether paragraphs 3 and 4 were going to be presented in brackets, since it had not been possible to reach agreement on them.

The consensus was in favor of the second revision, that is to say, to keep the brackets in the texts of those paragraphs in view of their close relationship with the substance of Article 1. As for the remaining paragraphs, the Group approved the existing texts with minor editorial changes.

1. Article 1 (Purpose of the Convention)

The Delegation of Mexico submitted an alternative version of Alternative A of this article in which the characterization of torture as an international crime appears (as an essential element) and the

obligation of the states to prevent, punish, and refrain from practicing it. In addition, reference is made to its characterization in the respective national legislations.^{7/} Several delegations that endorsed the proposal of Mexico, maintained, nevertheless, that crimes are committed by individual persons, and for this reason the obligation of states to refrain from practicing torture was not included.

During the discussion of this amendment, some of the delegations again stated for the record that they were not in agreement with Alternative A of the Draft Convention, since what was important was to stipulate that the States Parties undertook to prevent and punish torture, in accordance with the Convention, without mention of the characterization of torture as "an international crime." Other delegations insisted on the characterization of torture as an international crime, by virtue of the mandate contained in resolution AG/RES. 368 (VIII-0/78), and because the meaning of the expression would be clear in the context of the future Convention, i.e., that it constitutes a crime that is repulsive of the conscience of all nations, for which it establishes international jurisdiction. The Group therefore kept Alternatives A and B of Article 1, which reflect the two positions.

2. Article 2 (Definition of torture)

With regard to this provision, the group agreed to keep the term "serious" between brackets as it appears in the text approved in April 1984; some delegations wanted to delete it whereas others wanted to keep it.

With regard to paragraph II, the decision was to merge paragraphs a and b of the revised draft into a single text and to eliminate "loss of personal freedom legally ordered as a preventive measure" as an exception to the concept of torture, since in the opinion of the Group, it was included in the new wording adopted.

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

With regard to this essential aspect of the Draft Convention, the Group decided to keep Alternatives A and B, which reflected the views already put forward in earlier deliberations, that is, whether the active subjects may only be public employees or officials or persons who at the instigation of such employer of official, order, instigate torture, etc. (Alternative A, paragraphs a and b) or, whether, on the contrary, they may be any person who orders, instigates, induces or is an accomplice in such acts (Alternative B). At the proposal of the Delegation of Argentina, the Group decided to add the concept of complicity in both alternatives, which has the advantage of completing both alternatives. This applies particularly to Alternative B which, thus worded, includes public employees and officers who, being able to prevent torture, fail to do so.

7. See doc. CP/CAJP-542/84, cit.

4. Article 4 (Obedience owed)

The text approved in the second revision was not amended.

5. Article 5 (Exceptional circumstances)

Here, the Group decided to begin its drafting by eliminating mention of the State; in addition to the prohibition of "admitting" the concept of "invoking" was added, and the state of emergency and internal conflict were also included in the circumstances enunciated.

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

Here, the obligation of the States Parties to take preventive measures and punish acts of torture in their area of jurisdiction was maintained, but it was decided that the wording of paragraph 1 approved during the second revision would be changed to link it to article 1, in view of the similarity of the contents of the two articles.

7. Article 7 (Complementary measures)

At the proposal of one of the delegations, paragraph 2 on the obligation of the States Parties to take similar measures as regards the training of police officers and other public officials to avoid other cruel, inhuman or degrading treatment or punishment was included.

8. Article 8 (Internal remedies)

No basic changes were introduced into the text approved during the second revision, and the principle of the exhaustion of domestic remedies prior to recourse to international jurisdiction or an international tribunal was clearly established. The word "accusation" was added in the second paragraph, and with this, it was felt that the text was more technically precise.

9. Article 9 (Obligation to provide compensation)

The first paragraph of this Article is the same as in the draft that was approved during the second revision. The Group decided to add a second paragraph, in accordance with the proposal submitted by a delegation, to the effect that it was necessary to safeguard the right to compensation, which already exists in the laws of some countries.

10. Article 10 (Value as evidence)

The wording of the text approved, which is similar to the text that was approved during the second revision of the Draft Convention, has been improved. Its purpose is to establish that any statement obtained under torture may not be admitted as evidence, with the exception of persons accused of having committed the crime of torture as evidence that the statement was obtained by that method.

11. Article 11 (Obligation to extradite)

In this article, the essence of the context approved during the second revision, of the obligation of the States Parties to extradite any person accused of committing the crime of torture, was maintained. The Group decided to maintain a single draft for that article and to eliminate the alternatives that were included in the revised draft. With regard to that matter, the Group agreed to refer to the right of asylum in a separate provision (new article 15).

12. Article 12 (Jurisdiction and applicable rules)

This provision was introduced in the course of the second revision of the draft and corresponds to provisions that exist in a number of international instruments approved by the United Nations. A similar provision exists in article 5 of the Draft Convention on Torture approved by the United Nations Commission on Human Rights.^{8/} Only editorial changes were made in the third revision.

13. Article 13 (Extraditable Offense)

This Article is new, and the Group decided to incorporate it to stipulate that the offense provided for in the Convention is extraditable, and will be included among the offenses that give rise to extradition in all extradition treaties concluded among the States Parties to this Convention.

A similar provision appears in Article 8 of the Draft Convention against Torture prepared at the United Nations.^{9/} Also, similar texts have been included in the 1979 International Convention against Hostage Taking (art. 10); in the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), in its article 8, and in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), in its article 8.

Paragraph 4 of the new Article 13 is taken, in part, from the provisions of Article 4, paragraph 3 of the Inter-American Convention on Extradition (1981),^{10/} and was included in response to the proposal made by one of the delegations.

14. Article 14 (Aut dedere, aut judicare)

Minor editorial changes were introduced into this article, which remained basically the same as article 13 approved during the second revision, and the principle aut dedere, aut judicare was recognized.

8. See doc. E/CN.4/1983/L.2, cit. Appendix, page 4.

9. Idem, page 5.

10. Treaty Series, No. 60, page 5. General Secretariat of the OAS.

15. Article 15 (Right of asylum)

In this second revision, the Group deemed it advisable to safeguard specifically the right of asylum vis-à-vis the proposed convention on torture since that convention would in no way limit that right that is so dear to the Inter-American System. Also, the obligations the States already have in the area of extradition were left intact.

16. Article 16 (Relationship to other conventions)

This article remained unchanged in the third revision, and the powers of the Inter-American Commission on Human Rights to protect the rights provided for in the American Convention or "Pact of San José" were left intact.

17. Article 17 (Obligation to report)

Paragraph 1 of this article corresponds to the text of the draft approved during the second revision (Article 15).

At the proposal of one of the delegations, it was deemed advisable to add the second paragraph to establish the obligation of the Commission specifically to report on the prevailing situation in the OAS Member States as regards the observance of the right to personal safety. This paragraph is based on the provisions of paragraph 2 of article 8 of the original draft (CJI).^{11/} However, the delegations were unable to reach an agreement, and the proposed paragraph has therefore been left in brackets.

18. Arts. 18, 19 and 20 (Signing, ratification and accession)

These articles, which correspond to the texts of articles 18 and 19 of the draft of the CJI, were not amended.

19. Article 21 (Reservations)

With regard to this point, the Group considered the various views expressed by the delegations during the second revision:

i. To follow the text of article 75 of the American Convention and to establish a system of reservations according to the Vienna Convention on the Law of Treaties (1969).

ii. To delete any provision on reservations and to leave this matter to the applicable law of the States, or

^{11/} See AG/doc.1227/80, p. 4.

iii. To establish a provision whereby each State Party may present reservations as long as they are not general and not incompatible with the object and purpose of the treaty. The group decided on a text for article 21 that was based on these latter views, and is similar to other provisions that exist in inter-American conventions.

20. Article 22 (Denunciation and deposit)

These articles remain as approved during the second revision of the Draft Convention.

V. FINAL REMARKS

This report to the Committee on Juridical and Political Affairs marks the completion of the Working Group's assignment to study and revise the Draft Convention defining Torture as an International Crime prepared by the Inter-American Juridical Committee.^{12/} Appended to this report is the text of the revised draft, so the Committee can submit it to the Permanent Council. Subsequently the Permanent Council will submit it to the General Assembly at its fourteenth regular session, in accordance with the provisions of resolution AG/RES. 368 (VIII-0/78), with the recommendation that an inter-American specialized conference be called next year to adopt the Convention.

Accordingly, the Working Group wishes to submit the draft resolution to the Committee on Juridical and Political Affairs that is attached.

October 11, 1984

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

Juan José Uranga
Representative of Argentina

Juan Carlos Capuñay
Representative of Peru

José Luis Vallarta
Representative of Mexico

Josefina Vega Batlle
Representative of the Dominican Republic

Mauricio Granillo Barrera
Representative of El Salvador

Lowell R. Fleischer
Representative of the United States

Evans M. F. Francois
Representative of Haiti

Luis Augusto de Araujo Castro
Representative of Brazil

DRAFT RESOLUTION

WHEREAS:

The General Assembly, at its eighth regular session, requested the Inter-American Juridical Committee to prepare, in cooperation with the Inter-American Commission on Human Rights, a draft convention defining torture as an international crime (AG/RES.368 (VIII-O/78));

In compliance with that mandate, the Inter-American Juridical Committee, in cooperation with the Inter-American Commission on Human Rights, in 1980 prepared a draft convention on the subject and forwarded it to the Permanent Council;

The Permanent Council transmitted that draft to the General Assembly, which, at its tenth regular session, adopted resolution AG/RES. 509 (X-O/80), operative paragraph 2 of which provides as follows:

2. To forward that draft with its statement of reasons and the explanations of votes given by the members of the Committee to the governments of the member states for their consideration, so that they may formulate their observations and comments and send them to the Permanent Council before April 30, 1981, so that the Council may introduce the appropriate amendments to the draft Convention and submit it to the next regular session of the General Assembly.

Once the observations and comments of the governments had been received, the Permanent Council began, through its Committee on Juridical and Political Affairs, the revision of the draft Convention prepared by the Inter-American Juridical Committee, and periodically informed the General Assembly on the progress of the work on this subject;

The Assembly successively extended the mandate to the Permanent Council on this subject, so that it could continue its study of the draft Convention [AG/RES. 547 (XI-O/81), AG/RES. 624 (XII-O/82), and AG/RES. 664 (XIII-O/83)]; and

The Committee on Juridical and Political Affairs has concluded its work and is submitting the report contained in document CP/doc. /84, to which the revised draft Convention defining torture as an international crime is appended, and it suggests that the Permanent Council recommend to the General Assembly that it convene an Inter-American Specialized Conference to adopt that draft Convention,

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES

RESOLVES:

1. To take note of the report and of the draft Convention defining torture as an international crime (CP/doc. /84), submitted by the Committee on Juridical and Political Affairs.

2. To present this document to the General Assembly for consideration at its fourteenth regular session, with the recommendation that it convene for 1985 an Inter-American Specialized Conference to adopt it.

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 the pertinent rules contained in the global and regional instruments to take effect, it is necessary to draft a Convention 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

Torture is an international crime, wherefore the States Parties shall prevent and punish it in accordance with the terms of this Convention.

ALTERNATIVE B

The States Parties shall prevent and punish torture in accordance with the terms of this Convention.

Article 2

I. For the purposes of this Convention, torture shall be understood to be any act intentionally performed by which severe 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, as a penalty, or for any other purpose. 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.

II. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

Article 3

ALTERNATIVE A

The following persons shall be guilty of torture:

- a) A public servant or employee who, acting in that capacity, orders, instigates, or induces the use of torture, or who directly uses it or who, being able to prevent it, fails to do so.
- b) Any individual who, at the instigation of a public servant or employee as mentioned in subparagraph (a) orders, instigates, induces, or is an accomplice in the use of torture, or who uses it directly.

ALTERNATIVE B

A person who orders, instigates, or induces the use of torture, or who directly uses it, or is an accomplice to it, shall be guilty 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

The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for torture.

Neither the dangerous character 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 terms of Article 1, the States Parties hereto shall adopt effective measures to prevent and punish torture within their jurisdiction.

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

The States Parties likewise shall adopt effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 7

I. The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest.

II. The States Parties, likewise, shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment.

Article 8

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation, or well-grounded reason to believe that an act of torture has been committed within its jurisdiction, each State Party shall guarantee that its respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

Article 9

The States Parties undertake to incorporate into their national laws statutory regulations guaranteeing adequate compensation for victims of torture.

None of the provisions of this article shall affect the right to receive compensation that the victim or other persons may have by virtue of existing national legislation.

Article 10

No statement obtained by torture shall be admissible as evidence in a legal proceeding, except against a person accused of having committed torture, as evidence that the accused obtained that statement by that method.

Article 11

The States Parties shall take the necessary steps to extradite anyone accused of committing torture, or sentenced for committing such a crime, in accordance with their respective national laws on extradition and their international commitments on this matter.

Article 12

I. 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 torture has been committed within 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.

II. Also, 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.

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

Article 13

1. The offence referred to in Article 2 shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include torture as an extraditable offence in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of torture. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize torture as an extraditable offence between themselves subject to the conditions provided by the law of the requested State.

4. Extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, or that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting state.

Article 14

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

Article 15 (new)

No provision of this Convention may be interpreted as limiting the right of asylum, when its exercise is appropriate, nor as altering the obligations of the States Parties in the matter of extradition.

Article 16

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 torture.

Article 17

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

II. In keeping with its duties and responsibilities, in its annual report, the Inter-American Commission on Human Rights will endeavor to analyze the existing situation in the member states of the Organization of American States in regard to the prevention and elimination of torture.

Article 18

This Convention is open to signature by the member states of the Organization of American States.

Article 19

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 20

This Convention is 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 21

The States Parties may, at the time of approval, signature, ratification, or accession, make reservations to this Convention, provided that each reservation is not incompatible with the object and purpose of the Convention, and concerns one or more specific provisions.

Article 22

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 23

This Convention shall remain in force indefinitely, but may be denounced by any State Party. 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 24

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 denunciation, as well as of reservations, if any.

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser. G
CP/CAJP-538/84
3 July 1984
Original: Portuguese

OBSERVATIONS OF THE MEMBER STATE GOVERNMENTS ON THE
REVISED DRAFT CONVENTION DEFINING TORTURE AS
AN INTERNATIONAL CRIME

Brazil

Washington, D.C. June 29, 1984

No. 206

Excellency:

In reply to Your Excellency's note dated May 25, I have the honor to submit to Your Excellency the following observations of the Brazilian Government on the preliminary draft convention on torture prepared by the working group of the CAJP:

1. Preamble, paragraphs 3 and 4 and Article 1

The Brazilian Government reaffirms its conviction that it is neither necessary nor advisable to qualify torture as an "international crime" in the draft.

It is unnecessary because such a qualification would not, in itself, contribute to making the prevention and punishment of torture, the basic objective of the future Convention, more effective.

It is not advisable, because to do so could introduce an element of legal controversy that would prejudice the acceptability of the future Convention.

It is also the understanding of the Brazilian Government that in accordance with Alternative B of Article 1, the Convention should establish the obligation for the States Parties to prevent and sanction torture. Cooperation among the States as well as any international measures that prove necessary to achieve that objective will derive from application of Articles 11 through 15 of the preliminary draft.

2. Article 3

The Brazilian Government prefers alternative A, since it considers only officials of the State or persons acting on their instigation as active subjects of the crime of torture.

3. Article 8, paragraph 2

The Brazilian Government stands by its view that the clause should include the expression "denunciation" to read: "When there is a denunciation or well-founded presumption..."

4. Article 10

The Brazilian Government considers that the wording of the final clause could be improved and proposes the following: "...except against a person accused of having committed the crime of torture as proof that, by this means, the declaration was made".

5. Article 11

The Brazilian Government considers that the judicial authority, on considering the requests for extradition, will necessarily take into account the existing obligations in the area of asylum as well as non-refoulement. It would hardly be appropriate to restrict the extradition or return in cases where there is well-founded suspicion that the accused could be tortured in the country that requested the extradition. The Brazilian Government suggests the following wording for a new paragraph 2: "Extradition shall not be granted, nor shall the return be admissible when there is a presumption that the accused runs the risk of being tortured in the requesting country".

Accept, Excellency, the renewed assurances of my highest consideration.

Dário M. de Castro Alves
Ambassador Permanent Representative of
Brazil to the OAS

To H.E. Ambassador João Clemente Baena Soares
Secretary General of the
Organization of American States
Washington, D.C.

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G
CP/CAJP-538/84 add. 1
11 July 1984
Original: Spanish

OBSERVATIONS OF THE GOVERNMENTS OF THE MEMBER STATES ON THE
REVISED DRAFT CONVENTION DEFINING TORTURE
AS AN INTERNATIONAL CRIME

Venezuela

REPUBLIC OF VENEZUELA
PERMANENT MISSION TO THE
ORGANIZATION OF AMERICAN STATES

Washington, D.C.

July 9, 1984

OEA-632

Excellency:

I have the honor to address Your Excellency to convey to you, pursuant to Permanent Council resolution 403 (568/84), the observations formulated by the Government of Venezuela on the revised Draft Convention Defining Torture as an International Crime.

1. As for the classification of torture as an international crime, again it should be so classified in order to comply with the mandate contained in the resolution AG/RES. 368 (VIII-0/78). The Government of Venezuela does not share the view that it is inadvisable to define torture as an international crime, inasmuch as in its view the international community, and specifically the community of American nations, can at any time establish a qualification of that nature in order to underscore the nature and importance of certain criminal acts and the obligation to prosecute and punish those forms of behavior that do injury to an individual's fundamental rights and adversely affect peaceful international relations.

2. As for the determination of the active subjects of the crime of torture, under the Venezuelan Criminal Code, those subjects are civil servants responsible for either the custody or conveyance of the individuals under arrest or convicted, and civil servants invested, by reason of their functions, with authority over those persons, wardens or jailers, who gave orders to perpetrate the crime of torture. As a consequence, at the international level the State should be answerable only for the actions of civil servants. Hence, of the alternatives proposed for Article 3 of the revised draft, the alternative identified as letter A is considered to be the most appropriate.

His Excellency
João Clemente Baena Soares
Secretary General of the
Organization of American States
Washington, D.C.

3. In reference to the right of asylum (Article 11), the Government of Venezuela supports Alternative A, inasmuch as our country's steadfast position has been one of commitment to the defense of this right, based on Article 116 of our national Constitution.

4. The Government continues to support Article 15 of the revised Draft, which concerns the duty of states to inform the Inter-American Commission on Human Rights of any measures they adopt in application of the Convention.

5. As for the possibility for formulating reservations on the Convention, the wording of Article 19 of the revised Draft is considered satisfactory; nevertheless, some thought could be given to the proposal that reservations on specific articles on the convention be barred, since this would obviate the possibility of noncompliance with substantive standards, which noncompliance could diminish the efficacy of the Convention. Accordingly, some thought could be given to prohibiting reservations, altogether, which would help make the text of the Convention invulnerable and strengthen its observance.

Accept, Excellency, the renewed assurance of my highest consideration.

Antonio Torres Torres
Minister Counsellor
Interim Representative

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G
CP/CAJP-538/84 add. 2
12 July 1984
Original: Spanish

OBSERVATIONS BY THE GOVERNMENTS OF THE MEMBER STATES
ON THE REVISED DRAFT CONVENTION DEFINING TORTURE
AS AN INTERNATIONAL CRIME

Chile

PERMANENT MISSION OF CHILE
to the
Organization of American States

N.º 242

Washington, D.C.
9 July 1984

Excellency:

I have the honor to convey to Your Excellency my government's observations on the Revised Draft Convention Defining Torture as an International Crime:

1. With regard to the preamble, the paragraph beginning with the word "recognizing" appears to be the most suitable.

2. Therefore my government is inclined to favor Alternative A for article 1, because it appears to be more in keeping with the preamble and at the same time has an essential prescriptive meaning by characterizing torture as an "international crime." Alternative B, on the other hand, is a mandate lacking a basic dispositive content.

3. Article 2 includes the expression "intentionally," which appears to be consistent with the definition of a crime in our penal code, which mentions willfulness, which is, however, presumed in any act or omission punishable by law.

My government considers it advisable to propose deletion from this article of the word "serious," which is offered as an alternative wording. This is because, if the issue is to repress a crime against humanity due to a specific and determined doctrinal conception, the act, unacceptable in itself, cannot be made noncriminal because its results are more or less injurious. This would seem to be in open contradiction with the supposedly humanitarian spirit behind the draft in question.

His Excellency
João Clemente Baena Soares
Secretary General
Organization of American States
Washington, D.C.

Finally, in the third paragraph of this provision, which under the heading "II" excludes certain situations from the concept of torture, a new paragraph c) should provide that also excluded from such concept are "measures taken by a trial judge which, like isolation, seek only to ensure the truth of the declarations of the accused, defendant or prisoner."

It might perhaps be proposed that the isolation may not exceed 15 days (X days) in order to be included in the exception we suggest.

4. My Government favors alternative b) of article 3, since its wording does not subordinate the actor's responsibility to the performance or participation of "a public official." To accept the first alternative, on the other hand, assumes disregarding the fact that terrorists also torture. And, what is even more serious, they would be exonerated from responsibility.

5. We find articles 4 and 5 quite suitable for the purposes of the draft.

6. My government believes that paragraph 3 of article 8 violates the principle of res judicata, which, from the doctrinal standpoint, has always been defined as within the jurisdiction of each state. The existence of international tribunals could not give precedence over national jurisdiction without serious detriment to the very sovereignty of the state.

7. In article 21 of the Spanish version, the verb should be conjugated to suit the singular subject.

Accept, Excellency, the renewed assurances of my highest consideration.

Mónica Madariaga
Ambassador

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G
CP/CAJP-538/84 add. 3
4 September 1984
Original: Spanish

OBSERVATIONS OF THE GOVERNMENTS OF THE MEMBER STATES
TO THE REVISED DRAFT CONVENTION DEFINING
TORTURE AS AN INTERNATIONAL CRIME

Argentina

Permanent Mission of Argentina to the
Organization of American States

SG 260 (2.1.8)

Washington, D.C., August 30, 1984

Excellency:

In accordance with Resolution No. 403 of the Permanent Council of the Organization of American States, I have the honor to address Your Excellency to bring to your attention the following observations of my government to the revised draft Convention Defining Torture as an International Crime:

1. Regarding the Preamble, we consider the wording of the second of the bracketed paragraphs (the one beginning with the word "Recognizing"...) to be the more appropriate of the two.

2. Article 1: We endorse the text proposed as Alternative A.

3. Article 2: In the first paragraph of the first section, we believe it advisable to eliminate the word "serious" to qualify the pain or suffering inflicted on a person.

Regarding the second paragraph, its present wording might prove confusing and inconsistent with the prohibition implicit in the first paragraph. Consequently, it would be preferable to aim for a text more like that used in the earlier version of this paragraph.

4. Article 3: We consider appropriate the paragraph presented as Alternative A.

Regarding subparagraph b. of this paragraph, we propose that it be changed to read: "A person who, on the instigation of a public employee or official as referred to in subparagraph a., orders, instigates, or cooperates in its use or uses it directly."

His Excellency
João Clemente Baena Soares
Secretary General of the
Organization of American States
Washington, D.C.

5. Article 8: In the second paragraph, it is suggested that the phrase "Whenever there are reasonable grounds..." be replaced by another that reads: "When a denunciation has been made or there are reasonable grounds..."

6. Article 10: It is considered more suitable that the final part of this read as follows: "...except as evidence that the statement was made through that means."

7. Article 11: We endorse the wording proposed as Alternative A.

Accept, Excellency, the assurances of my highest consideration.

Gastón de Prat Gay
Ambassador
Permanent Representative

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G
CP/CAJP-464/82 add. 13
1 November 1983
Original: Spanish

OBSERVATIONS AND COMMENTS OF THE GOVERNMENTS OF THE MEMBER STATES
ON THE DRAFT CONVENTION DEFINING TORTURE AS AN
INTERNATIONAL CRIME

(Argentina)

MEMORANDUM

Observations and comments of the Government of Argentina on the draft Convention defining torture as an international crime

As announced by the Argentine Delegation at the October 12, 1983 meeting of the Working Group studying the draft Convention defining torture as an international crime, prepared by the Inter-American Juridical Committee, the following observations and comments are made on that text:

Article 1

The criterion used in the draft Convention in the sense of defining torture as an international crime is endorsed.

Article 2

The proposals to divide into two separate provisions the matter of defining torture (the crime and the matter of those responsible for the crime as well as the circumstances under which no crime would be considered to exist, are supported.

In regard to the suggestion to include in the concept of torture, "other cruel, inhuman, or degrading treatment," aspects already contemplated in Article 4, the view is that by attempting to include both concepts in a single definition one loses touch with the real differences that distinguish them. In fact, torture is vastly different in degree from "other cruel, inhuman, or degrading treatment." This is covered in the draft currently under consideration by the United Nations.

With respect to the active subjects of that crime, the various proposals made and analyzed within the Working Group contain repetitious elements that create confusion, such as: "public employee or official;" who "orders, instigates or induces use of torture, or ... directly uses it (torture);" "public employee ... who commits arbitrary acts;" "a guard or warden who commits acts that cause suffering;" "those who, having the obligation and the possibility of preventing torture, fail to do so;" the "head, director, or administrator of an institution or establishment in which torture was practiced," etc.

An objection is also raised to the phrase "or any other purpose" used in Article 2.

Obviously any situation in which the crime can be perpetrated by any person or for any purpose is undesirable. A definition specifying either the motives or the active subject of the offense is necessary.

As for reducing the field of active subjects, it would be appropriate to eliminate paragraph b) of Article 2 in the original draft, thereby limiting the active subjects to only public employees or officials. This is the solution that applies in the present Argentine system, whose Penal Code limits this field to public officials.

The Argentine Delegation would, therefore, support a text that would define more exactly the concept of torture, either by narrowing the concept--by deleting or replacing the phrase "or any other purpose--or by defining those guilty of the crime to be only public officials.

Article 7

It is considered that the proposals made by two delegations in the sense of adding some supplementary concepts to the original text are pertinent and, though too verbose, contain necessary provisions in view of the myriad situations of violence that occur today.

Article 8

In regard to the establishment of a procedure for the reports from and to the IACHR, the suggestion made by one delegation in the sense of replacing the phrase "to implement" with the term "in application of," would be appropriate since "implement" creates confusion. It is likewise considered that a more precise rendering would be for the IACHR "to analyze" the situation prevailing in all the American states in its report to the General Assembly.

Article 9

The position in favor of amending the original text of the Draft for the purpose of clearly establishing the complementary nature of proceedings in an international venue for the individual, after all domestic remedies have been exhausted, is endorsed by the Argentine Delegation.

Article 10

The Argentine Delegation agrees with the observations made in favor of changing the phrase "sufficient reason" to "a denunciation or well-founded presumption," and of changing the phrase "with all diligence" to "immediately."

Article 11

The Argentine Delegation agrees that, as suggested, it is appropriate to include the matter of determining an appropriate compensation and of establishing suitable legal remedies for torture victims.

The objection raised to the principle of awarding compensation by the State to the victim does not seem pertinent, since there is no guarantee that all American states have such a system of State liability for the actions of its civil servants.

The proposed addition to obligate states to impose "severe penalties" seems to be wholly consistent with this topic; in fact, it is strange that this obligation was not explicitly stated in the original Draft.

Article 12

Notwithstanding the close relationship between this point and the wording ultimately adopted for Article 2, it should be noted that the principle of not admitting as valid evidence any declaration or statement obtained through an act of torture is consistent with recent Argentine jurisprudence. However, it is felt that the wording of the Draft now under consideration by the United Nations, which recognizes that a statement shall not be invoked as evidence (in any proceeding) "except against a person accused of torture as evidence that the statement was made, (Article 15, Draft Convention against torture and other cruel, inhuman or degrading treatment or punishment, Report of the Working Group on Torture, doc. A/CN.4/1983/L.2), must be taken into account.

Article 13

The observations made by three delegations would improve upon the original text. In effect, on the one hand, it would be established that the requested state shall inform the requesting state of the trial and of the penalty imposed and, on the other, it would be made clear that the states must take into account their respective national laws and international commitments with regard to extradition.

It should be noted likewise that the Draft Convention on Torture (of the United Nations) does not make asylum an exception to the obligation to grant a request for extradition. (Art. 8).

Article 14

It is considered that the observations and suggestions submitted to point out that the competence of the Inter-American Court of Human Rights is confined to those states that have recognized its jurisdiction (Art. 62 of the Pact of San José) are pertinent and would improve on the original text.

Article 15

The view to the effect that this provision should be maintained is in principle shared. This is so in view of the fact that the possibility that an instrument of a universal nature on this subject

may be adopted. That instrument, according to the draft being considered in the United Nations, would also contain a similar, although not identical, clause. (Art. 1, paragraph 2).

Article 17

The position in favor of deleting this article is shared.

Articles 18, 19, and 20

The texts of these provisions could be maintained as they are, or they might be merged in accordance with the drafting proposed by one delegation.

Article 21

The present wording of this article is not satisfactory. The suggestion to replace it with a text identical to Article 75 of the Pact of San José would seem pertinent, inasmuch as the latter refers to the Vienna Convention on the Law of Treaties (1969).

In view of the foregoing, the Delegation of Argentina requests that this document containing the observations and comments of its Government on the Draft Convention being studied, be added to the Report of the Working Group that examined the topic, which the Committee on Juridical and Political Affairs will duly submit to the Permanent Council for consideration.

(by) Raúl A. Quijano
Ambassador
Permanent Representative

Washington, D.C., November 1, 1983

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

Working Group on the draft Convention
defining Torture as an International Crime

OEA/Ser.G
CP/CAJP-542/84
24 August 1984
Original: Spanish

(Working document presented by the Delegation of Mexico)

Article 1

Torture is an international crime, wherefore the States Parties undertake to prevent it, to refrain from applying it, and to punish it under the terms of the present Convention and according to their respective national laws.

Article 2

(Paragraph 1)

Delete the word "serious". In the last line, add the words "or for any other purpose", as shown in document AG/doc.1227/80.

(Paragraph 2)

Amend this paragraph to read: "The concept of torture shall not include physical or mental pain or suffering that is inherent in or caused by legal punishments, nor the loss of personal freedom legally ordered as a preventive measure, provided they do not include the performance of the acts or the application of the methods referred to in paragraph 1 of this article.

Article 5

In the first line, following the words "State shall", insert the words "adduce or" in front of the word "admit", so that the phrase reads: "No State shall adduce or admit...".

Article 7

Delete the period at the end of this article, and add the following: "or other cruel, inhuman, or degrading treatment, including corporal punishment, confinement in dark cells, or any inadmissible punishment that involves the performance of the acts or the application of the methods referred to in paragraph 1 of Article 2 of this Convention."

Article 8

In the second paragraph, line 1, amend the text to read as follows:
"Whenever there has been an accusation or there is a presumption that an act of torture has been committed,...".

Article 9

Rewrite this article as follows: "The States Parties undertake to classify torture as a crime in their national laws, and to include in their legislation provisions to guarantee adequate compensation for the victims of the crime of torture."