

**THE PREVENTION OF
TORTURE
IN THE AMERICAS**

**VISITS TO PERSONS DEPRIVED
OF THEIR LIBERTY**

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**REPORT OF
THE MEETING OF EXPERTS**

**MONTEVIDEO
6 – 9 April 1987**

BOX 40/15

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en 1156

Published by

- Committee of Experts for the Prevention of Torture in the Americas
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- International Commission of Jurists, Geneva.
- Swiss Committee against Torture
Po.Box 2267, 1211 Geneve 2, Switzerland

Printed in Geneva in January 1988
Original: TORTURA: Su Prevencion en las Americas
Visitas de Control a las Personas Privadas de Libertad
Coloquio de Montevideo (6 al 9 de Abril 1987)
Montevideo, July 1987

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Most of the texts included in this booklet are translated from Spanish.

Introduction

From the 6th to the 9th of April 1987, some thirty experts met at Montevideo in order to examine a draft Inter-American Convention whose purpose is to make the prevention of torture more effective. This meeting was convened by the International Commission of Jurists (ICJ) and the Swiss Committee against Torture (SCT) and had the support of the Government of Uruguay. The present publication is the complete report of the Montevideo Colloquium. At the end of this report, 4 annexes are to be found :

- a. The text of the articles of the proposed convention which were approved by the experts.
- b. The text of the first draft submitted by the ICJ and the SCT:
- c. Resolution 1986/56 of the United Nations Commission on Human Rights.
- d. The list of participants.

In this introduction, the two sponsoring organisations would like to present the draft that they submitted to the experts and the reasons for convening this Colloquium.

The need for a complementary instrument of prevention

On December 10th 1984, the General Assembly of the United Nations adopted the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment which entered into force on June 26th, 1987, after having obtained 20 ratifications. On December 9th 1985, the Organisation of American States had adopted the Inter-American Convention to Prevent and Punish Torture. Both instruments have a great importance for defining and punishing the use of torture. In our view, however, they need to be complemented by more effective means of prevention.

Indeed, there are reasons to fear that the procedures set up by these two Conventions to ensure that States respect the commitments they made in ratifying them may prove to be inadequate. The United Nations Convention provides that a Committee of ten experts will be empowered to examine the reports that the States Parties must submit on the measures taken to implement such Convention. The

Committee may also initiate confidential inquiries if it "receives reliable information which appears to it to give well-founded indications that torture is being systematically practised in the territory of a State Party" (Article 20). It may also examine complaints lodged by other States Parties or by individuals, in so far as the States Parties have recognized the mandate of the Committee in this respect. As for the Inter-American Convention, it provides no special organ for its implementation, but it attributes to the Inter-American Commission on Human Rights a general function in addition to those it already has.

The procedure proposed by the United Nations Convention represents an important step forward compared to that proposed by the 1966 Covenant on Civil and Political Rights, in that it authorizes the Committee to take the initiative of conducting inquiries. However, as with the Committee on Human Rights established by the 1966 Covenant, the new Committee against Torture may not examine the situation in a given country until that country has been accused of practising torture systematically. Generally, governments which tolerate or encourage torture deny such allegations and use all pretexts to delay the implementation of the procedure. And if they are finally declared responsible for acts of torture - as on occasion they have been following decisions made by the Committee on Human Rights - the victims may already be dead or suffering for years the terrible consequences of the treatment to which they were subjected.

The International Commission of Jurists and the Swiss Committee against Torture propose another procedure whose aim is not to replace the Conventions against torture of the United Nations or of the Organisation of American States, but rather to complement them. Their proposal was devised by a remarkable man, Jean-Jacques Gautier, a Swiss lawyer and banker, who retired early to devote himself to the struggle against torture. His death in May 1986 was a great loss to us all.

His idea, inspired by the work of the International Committee of the Red Cross, was to build defences against torture at a time when torture is not being practiced in a country, defences which will stand firm even after a change of régime to another which might be tempted to introduce torture.

The outlines of the draft.

The draft proposes that States Parties to the Convention create an international committee of persons serving in their individual capacities, not as representatives of governments. The Committee will send missions, composed of

delegates from a panel of specially trained experts, to visit member States on a routine basis, and where necessary send ad hoc missions in urgent cases. The missions will be entitled to visit any place of detention without prior notice, to inspect the entire premises, and to interview alone any or all of the detainees about their treatment and conditions of detention. It is important that they be able to visit all places where persons are detained without their consent, including places of provisional, administrative or re-educative detention or places where persons are interned for medical reasons. They will also be entitled to receive information from the families, friends or lawyers of people in detention.

The mission will report back to the Committee, which will send its conclusions and recommendations to the State Party concerned, and if appropriate enter into a dialogue with the government on how to improve the conditions of detention and the treatment of the detainees.

The whole of this procedure shall be confidential. As long as the State Party cooperates with the Committee, it will remain confidential. The Committee, the delegates and their staff are sworn to secrecy. No announcements will be made about the findings in any particular country, not even in the annual report of the Committee which will be in general terms.

The procedure is not a judicial procedure. The Committee may, of course, receive communications from any source with allegations of torture. These will help the Committee to decide which places to visit. But the Committee will not report back to the complainant. That role must be left to the complaint procedures under other Conventions or Covenants.

Once a State is a party to the Convention, it will not be entitled under any circumstances to prevent the visits taking place, not even in a case of war, be it an international war or a civil war. No emergency or state of exception will justify a refusal to allow the visits to continue.

The success of this procedure will depend upon its confidentiality. No form of sanction is available to the Committee, with one exception. It is assumed that States Parties to this Convention will want to prevent torture practices and will therefore cooperate with the Committee in eradicating any form of torture which may come to light as a result of the visits. But if for some reason, perhaps a change of régime, the government becomes obstructive, ceases to cooperate with the Committee, prevents a mission from carrying out its work properly, or refuses to take steps to eradicate abuses, in those circumstances the Committee would be able to make a public statement

denouncing the obstruction and reporting its findings. We anticipate that this would be a very rare occurrence. The Committee, wanting to maintain its access to the country concerned, would be reluctant to take this step except where it was evident that no useful purpose would be served by continuing the visits. On the other hand, the threat of such a denunciation would constitute a substantial pressure upon a State Party to continue to cooperate with the Committee.

These are, in essence, the outlines of the new mechanism put forward by the I.C.J. and the S.C.T.

Why an Inter-American Convention?

But why did two non-governmental organisations based in Geneva propose an Inter-American Convention rather than a United Nations Convention?

In fact, the proposal of the I.C.J. and the S.C.T. was initially put forward as a draft Optional Protocol to the United Nations Convention against Torture. The proposal was presented officially in 1980 by the Government of Costa Rica. At that time the UN Convention against Torture was in process of elaboration, and it was made clear that the draft Optional Protocol should not be considered before the Convention itself was adopted. But two years before this was done (10 December 1984), our two organisations had been asked by the Council of Europe to elaborate a draft European Convention based on the same model. After several years of discussion, we can now announce that this draft Convention was adopted by the Council of Europe on the 26th of June 1987 under the name of the "European Convention for the prevention of torture and other inhuman and degrading treatment or punishment". It has been signed by 19 of the 21 member States of the Council of Europe on November 26th, 1987 and will enter into force once seven European States have ratified it.

It is however obvious that this kind of system of visits to places of detention would be useful not only in Europe.

In its 1986 session, the Commission on Human Rights of the United Nations adopted a resolution, introduced by Costa Rica, which recommended that states consider the possibility of preparing other regional Conventions containing ideas similar to those set out in the Optional Protocol (See Annex 3).

Encouraged by this resolution of the Commission on Human Rights, we naturally turned towards the American continent. We did this, for three reasons:

The first is that since the introduction of the draft Optional Protocol by Costa Rica, many Latin American

experts had expressed interest in the system proposed.

The second is that the Inter-American Convention to Prevent and Punish Torture adopted in 1985 provides a good starting point for establishing a complementary and effective means of implementation.

The third reason is that several Latin American countries, after having experienced terrible periods of dictatorship, returned to democracy and demonstrated a clear desire to eradicate torture. We believe, therefore, that the present climate is particularly favourable for consideration of the system that we are proposing.

A first step taken

In order to realize the objective, the draft Convention had to be sponsored by a number of jurists and high-level personalities on the American continent. With this aim in mind we decided to start by convening a meeting of Spanish and Portuguese-speaking experts. For financial reasons it was, unfortunately, impossible to invite more than thirty. To our great satisfaction, all those invited showed a great interest in the draft and most of those who were unable to come to Montevideo designated other experts to replace them.

The excellent debates that took place at Montevideo were most useful. The draft Convention was improved in several respects. It was of course not possible, in three days, to reach an agreement on all of the Convention's articles, and a number of issues remained open, in particular those concerning its institutional framework. It was also difficult to formulate some of the articles definitively before having carried out a certain amount of research and consulted with experts other than those who were present. But the Seminar succeeded in considering in detail the various alternatives and we believe that the report of the debates, printed below, is a good basis for the preparation of a Convention which could be adopted by many American States.

The I.C.J. and the S.C.T. would like to thank most sincerely the Government of the Republic of Uruguay which not only hosted our Seminar but also assured us of its support in our efforts to promote the draft Convention. We were particularly honoured by the presence, at the inaugural ceremony, of two members of the Uruguayan government, Cr. Enrique Iglesias, Minister of Foreign Affairs, and Dr. Adela Reta, Minister of Education and Culture, the latter honouring us by participating in the entire Seminar.

We also owe special thanks to Ambassador Leandro Despouy (Argentina) who chaired the debates with great competence

and tact, as well as to the rapporteur, Dr. Diego García Sayán (Peru), whose report, printed below, reflects with great accuracy the debates which took place during the Seminar. We also thank Dr. Alejandro Artucio (Uruguay), who prepared up the first draft submitted for discussion by the Seminar, and whose knowledge of the problems addressed was invaluable for the advancement of our work, as well as the staff of the IELSUR (Institute of Legal and Social Studies of Uruguay) who undertook the local organisation of the Seminar.

At the closing of the meeting, the organisers were asked to appoint a group of 10 experts which would be responsible for all follow-up work. Dr. Artucio accepted to be the executive secretary of this Working Group. The task of this body will be to ensure the distribution of this report as well as to approach other governmental and non-governmental experts of the continent - including English speaking ones - with a view to achieving approval of the draft Convention considered at Montevideo and to having it adopted by American governments in the near future.

Niall MacDermot
Secretary General of the
International Commission
of Jurists

Francois de Vargas
Secretary General of
the Swiss Committee
against Torture.

Geneva, December 1987

**MESSAGE OF
THE CARDINAL ARCHBISHOP OF SAO PAULO,
DON PAULO EVARISTO ARNS**

read at the opening session
of the Montevideo Seminar
on April 6, 1987

It was a great honour for me and, at the same time, a cause of great happiness and hope to receive the invitation sent by the International Commission of Jurists and the Swiss Committee against Torture asking me to participate in this Colloquium and to address this first opening session.

Happiness and hope because, as we know, each effort to strenghten legal instruments which help to protect the human individual is a step forward. Anything which leads society to promote the dignity of man must be welcomed with joy by all who believe in God, because we are committed to supporting the truth contained in the first book of the Holy Scripture : that man was created in the image of God. Moreover, ever since Christ died for each and every man, the disciples of Christ and the Church have known that each HUMAN BEING has the value of Christ's own life.

It is doubtless that one of the great contradictions of our continent is that, on the one hand, its great majority confesses itself Christian but, on the other hand, the imperatives for the respect of the dignity of the human individual which are contained in the Christian faith are far from being put into practise. The Latin American Episcopate in its Third General Conference at Puebla de Los Angeles denounced the fact that "Latin Americans survive in social conditions which are in contradiction with their situation as inhabitants of a continent whose majority is of the Christian religion. The contradiction between unjust social structures and the imperatives of the Gospel are evident. In this context - continues the Puebla document - where access to social services and to political decision-making is impeded, violations of the freedom of opinion, of religion and of physical integrity are increasing. Assassinations, disappearances, arbitrary arrests, acts of terrorism, abductions, torture occurring everywhere on the continent, demonstrate a complete lack of respect for the human individual". (Puebla 1262).

This international Seminar proposes to examine the possibility of a Convention with the aim of guaranteeing and protecting the human individual against torture.

Christians, in the light of their commitment to the Gospel, have the responsibility to devote themselves to this cause. Such international instruments are becoming more and more necessary, given that, as we all know, many countries continue to violate the rights of the human person. In particular the practice of torture is a sad reality in many countries and a serious threat in many others. The possibility of a Convention, accepted by the States, which would establish a system of visits to places of detention, emerges as an important step in the effort to avoid cruelty to human beings.

The Church cannot remain outside this effort without betraying the Gospel of its Founder. It must give this effort its decisive and firm support in all countries. A support which implies an ever increasing effort of "conscientisation" (conscience awakening). As mother and teacher, the Church must cultivate in its members an awareness of the necessity to reject torture. All Christians must learn to understand that physical and psychological torture is always to be condemned, and that when it is the authority responsible for the common good which carries out such crimes, those responsible for them become vile, despite any justification they may present.

This support means using the moral authority of the Church so that the governments of our continent, whose vast majority calls itself Christian, do not escape their commitment to take effective measures for the defence of human rights and to intensify their efforts so that governments ratify the international conventions which ensure that their citizens are protected against all forms of torture.

This support means lending its voice to those who suffer for denouncing those violations. The World Council of Churches, in its Declaration on Torture, in August 1977, made the following request : "Torture is endemic, arises in obscurity and silence. We appeal to the Churches to bring to public recognition its existence, to end their silence, to make known the individuals and the structures of our societies which are responsible for this most dehumanising of all violations of human rights".

For all these reasons, we cannot refrain from giving our total support to this Seminar which is starting today, and desiring that it will be an effective contribution to the elimination of torture from the whole world and in particular from our Latin American continent.

+ Paulo Evaristo Arns
Cardinal Archbishop
of Sao Paulo.

R E P O R T
of the Montevideo Seminar
April 6-9, 1987

**on a proposed American Convention to establish a
System of Visits to Persons Deprived of their Liberty to
protect them from Torture and from other Cruel, Inhuman or
Degrading Treatment or Punishment**

This report seeks to summarise the principal reflections shared during the Seminar by some 30 experts. The rich and productive exchange of ideas facilitated significant agreement on the essential themes.

As this document is a synthesis of the debate, the interventions of the participants were not transcribed in a textual form. For the same reason, and although the participants intervened in a personal capacity and not as representatives of their governments or organizations, it has been thought best not to include the names of those who supported particular points of view.

Annexed to this report are the first draft prepared by the sponsoring organisations, (i.e. the International Commission of Jurists and the Swiss Committee Against Torture) which was the basic working document (Annex 2), as well as the revised draft which resulted from the Seminar (Annex 1). The organisers have received a draft preamble proposed by one of the participants, which will be a useful working document for the future. Unfortunately, its text could not be discussed for lack of time.

1. Opening Session

The opening session of the Seminar, the only public one, was presided by Dr. Adela Reta, Minister of Education and Culture of Uruguay. The following persons took the floor in the order indicated : Contador Enrique Iglesias, Minister of Foreign Affairs of Uruguay; Professor Pierre de Senarclens, Vice-chairman of the Swiss Committee Against Torture; Mr. Niall MacDermot, Secretary General of the International Commission of Jurists; Lic. Luis Paulino Mora, Minister of Justice of Costa Rica; Monseñor Dario Bevilacqua of Sao Paulo who read a message of the archbishop of that city, Cardinal Paulo Evaristo Arns, and Mr. François de Vargas, Secretary General of the Swiss Committee Against Torture.

At the first private session, a Bureau was established comprising Ambassador Leandro Despouy as Chairman, Dr. Alejandro Artucio as Secretary, Dr. Diego García-Sayán as Rapporteur, Mr. Niall MacDermot, Professor Pierre de Senarclens and Mr. François de Vargas.

2. The themes debated

Using the valuable draft presented by the organisers as a working base, the discussions at the Seminar - which were held in private sessions - focussed on four basic themes, namely : the system of visits to persons deprived of their liberty as a mechanism to prevent torture, the juridical nature of the instrument to be passed, the institutional frame-work which would be most adequate for making effective the instrument under discussion, and finally who should be the competent body for carrying out the system of visits.

Besides these main themes, interventions were made and some important conclusions were reached about the nature of the obligations to be assumed by the Parties and about the admissibility of reservations.

3. Non-derogable nature of the obligations and non-admissibility of reservations

Several participants highlighted the importance of the content of Article 2, paragraph 1 of the draft concerning the non-derogable nature of the obligations derived from the international instrument under discussion. It was noted that it is precisely under situations of exception that an operative mechanism for the prevention of torture can be most urgent and necessary. One participant proposed a change of the wording, which was adopted : the nature of the obligations stipulated would be clearer if lines 2 and 3 of paragraph 1 of Article 2 of the draft, were omitted.

On the other hand, several participants highlighted in their interventions that Article 1 of the draft is fundamental in as far as it determines the non-admissibility of reservations. Several examples were mentioned which illustrated how the meaning and content of international standards can be distorted by reservations.

4. The system of visits

The basic idea of the draft is to implement a system of visits to all places where persons who are deprived of their liberty may be held. There was general consensus that these visits must have as their objective to examine the treatment given to persons who are deprived of their liberty with a view to improving the protection against

torture and other cruel, inhuman or degrading treatment. The discussion on the system of visits focussed mainly on the themes indicated below.

4.1. Places to be visited

The draft stipulates (Art. 1, para. 1) that visits can be carried out in "...any place within its jurisdiction, where persons deprived of their liberty by the decision of a public authority are being held or may be held for whatever reason". The draft specifies that these places can be "...inter alia, civil or military prisons or penitentiaries and places controlled by the police, the security or armed forces; civil and military interrogation centres; centres controlled by the judicial power; detention centres in general, re-educative, corrective, health or hospital institutions" (Art.8, para. 1).

These provisions of the draft were subject to a long debate which led to a general consensus. The importance of considering the cases of all persons deprived of their liberty "...for whatever reason..." was insisted upon, bearing in mind that what the instrument under discussion seeks to achieve is not to determine whether a detention is legitimate or not, but to prevent, and protect a person deprived of his liberty from the practice of torture.

During the debate, the experience of some countries of the region, where torture is practised mainly in detention centres which are not prisons, was taken into consideration. For this reason, a formula which is ample enough not to restrict the spectrum of places to be visited must be devised. Special emphasis was placed on the importance of maintaining in Art. 1, par. 1, the provision which refers to the places where "...persons deprived of their liberty are being held or may be held..." (emphasis added), so that the convention could become a useful instrument against the use of clandestine detention centres.

On the basis of the general agreement expressed, proposals were made for some changes in the wording. One participant pointed out that the words "...in any circumstances and at any time..." (Art. 1, par. 1) should be omitted, since it is precisely the instrument under discussion which defines the terms and conditions of the visits. After some debate the proposal was accepted. Another participant suggested that the word "decision" should be eliminated from the sentence mentioning that the deprivation of liberty results from a "...decision of a public authority...", since this could result in a discussion or interpretation in each instance on whether a decision of some recognisable authority existed or not. There was general agreement on this proposal.

In addition, it was suggested that not only the situation in which a person finds himself deprived of his liberty by virtue of an act of a public authority should be considered, but also situations in which a person is deprived of his liberty because of an omission of the authority. This proposal was accepted, not without a mention, however, of the practical difficulties of carrying out visits under such circumstances.

Throughout the Seminar different points of view were expressed on the provision of Article 8, paragraph 2, of the draft which establishes that no visits shall be carried out to places which "...the representatives or delegates of a Protecting Power, or of the International Committee of the Red Cross (ICRC), are allowed to visit in agreement with the Geneva Conventions of 1949 and its Additional Protocols of 1977, and which they visit effectively".

A significant number of participants expressed their opinion that such a rule would be undesirable since, given the magnitude of the problem of torture, a possible concurrence of organizations was appropriate. Some participants pointed out that what was indicated in Article 8, paragraph 2, referred to an armed conflict (for which the Geneva Conventions and its Additional Protocols are relevant) and that, as a consequence, in normal situations as well as in situations of disturbance or internal tensions the dilemma would not arise since in these cases the ICRC does not act on the conventional basis mentioned. Likewise, it was mentioned that in practice action by a Protecting Power did not occur in the terms stipulated in the article mentioned.

An agreement between the participants was finally reached on the need to adopt a wording compatible with the activities of the ICRC, seeking a necessary complement, as far as possible. Without having adopted a definite text, the proposal remained that the system which is being designed should put emphasis on persons deprived of liberty other than those who are under the protection of the ICRC (referred to as "prisoners of war" in a situation of armed conflict, whether non-international or international, and "political or security prisoners" in other situations).

Some participants expressed the view that it would be appropriate to extend the system of visits to States which are not parties to the convention if and when the government consented to such visits. This idea was met with interest since it could make the functioning of the system of control possible, in certain circumstances, in States which would not readily become parties to the convention. Other participants noted, however, that this

could weaken the convention, since some States could use such a provision as a pretext for not becoming parties to the convention, while expressing their readiness to study the possibility of giving the necessary authorisation on a "case by case" basis.

Finally, various participants commented that Article 16 of the draft did not conform with the present trend of international law. Some comments were made on some specific situations and it was agreed that this article should be deleted.

4.2 Persons to be visited

In Article 1, paragraph 2 of the draft, an enumeration is made of what is understood by "persons deprived of their liberty". Even though the paragraph states that such an enumeration has an exclusively exemplary purpose, several participants pointed out that any such enumeration always lends itself to a restrictive interpretation. Others made observations on some of the circumstances mentioned in this paragraph, especially that referring to medical considerations, as well as on others which had not been mentioned such as, for instance, internal banishment. Bearing this in mind, there was agreement on eliminating the enumeration contained in this paragraph.

Following this debate, there was a consensus on adopting a general formula which would refer only to "persons deprived of their liberty" omitting an enumeration which could eventually exclude some serious and important circumstances. The participants agreed that among such persons consideration should be given to those who were in such a situation for political reasons, as well as for reasons of common law or any other reason.

4.3. Objective and characteristics of the visits

Starting from the interventions of some of the participants, it was agreed that it was necessary to emphasize the objective of the visits stipulated in the text of the draft (art. 1, para. 1 and Art. 10, para. 1 and 2). For formal reasons, it was thought better to gather together everything concerning that subject and to place it under Article 1.

More than one participant noted that although the objective of the visits be to ascertain whether persons deprived of their liberty are being, or have been, inflicted with torture or with any other cruel, inhuman or degrading treatment, the possibility of remedying their condition where necessary and, in any event, of proposing measures for improving their protection should expressly be considered.

All the participants expressed their agreement with the provision referring to the obligations of the State (Art. 9) with regard to the carrying out of the visits. Special emphasis was placed on the importance of the provision (Art. 9, para. 1, d) which focusses on the commitment of the State to guarantee that the interviews with persons deprived of their liberty take place in private, without witnesses and for the length of time considered necessary. One participant suggested that providing adequate means of transport when there is no other means of access to a place to be visited should be considered as an obligation of the State, since in certain conditions the lack of transport to the place to be visited can make the permission of the authorities illusory. Another participant proposed an obligation of the State to provide facilities for the delegates to record or tape the interviews with the persons deprived of their liberty. Both suggestions were endorsed by consensus.

Bearing in mind that this system for the prevention of torture could simultaneously serve as a brake to the phenomenon of disappearances, one participant suggested that when carrying out visits, the delegates could request the authorities to produce specific persons who, according to their information, are being deprived of their liberty. This could occur outside of the place of detention. For this reason, an addition to Article 9, para.1 was adopted.

Several participants emphasized the need to maintain the principle of periodic visits (Art. 6, para. 1). Two considerations in favour of this were put forward. In the first place, the fact that the implementation of a regular and permanent system of visits to places where persons deprived of their liberty are being held or may be held, constituted per se a mechanism of protection against torture. In the second place, the periodic nature of visits to different places and under different circumstances could convert these visits into a normal and accepted procedure. Therefore, it can and must be assumed that the circumstances in which visits would be carried out would not prejudice in any way the question of whether a State was inflicting or had been inflicting torture or other forms of cruel, inhuman or degrading treatment.

The importance of the delegates being able to freely interview the relatives, lawyers, doctors and any other persons who could supply information on persons who are deprived of their liberty, was stressed. One participant suggested - and this was accepted - that it should be made explicit that the right to communicate be extended not only to other persons, but also to organisations, since the non-governmental human rights organisations are playing an increasingly important role in our countries.

In order to make visits viable and fruitful, there was a consensus on the need to reassert the principle of protection of persons deprived of their liberty who might be endangered by any statement or affirmation they could have made to the delegates. One participant proposed that this principle of protection should be extended to relatives, lawyers, institutions and any other person interviewed by the delegates, for the statements or affirmations they made. The suggestion was adopted without objections.

Whether the extension of this protection should be maintained in the event that the statements "...were false" was the subject of a rich exchange of ideas (Art. 10). The participants who suggested the elimination of that phrase, affirmed that it would imply the assumption that persons deprived of their freedom or their families can make false statements, and thus render the results of the visits and its conclusions illegitimate. Those who were in favour of maintaining this principle argued that it could constitute a protective instrument, since in specific circumstances the alleged "falseness" of statements could be the basis for reprisals disguised as penal provisions against contempt of authority and calumny. The text finally adopted maintains the intent of draft Article 9, para. 2, while taking into account the preoccupations of all the participants.

4.4. Procedures for carrying out visits

Some participants noted that the provision of Article 8, paragraph 1 of the draft with reference to carrying out the visits "...without prior notice and at any time...", was not feasible in practical terms. Several comments were made regarding this problem. Reference was made to the experience of the International Committee of the Red Cross and of the Inter-American Commission on Human Rights showing how, in these cases, a process of negotiation with the authorities was inevitable in order to be able to make the visits effective.

Several participants placed emphasis on the importance of maintaining the principle that the mere notifying of the State Party should be enough for carrying out the visit since, if such a provision were eliminated, it could possibly be interpreted as meaning that the State Party has some sort of discretionary power to accept or refuse a visit. It was agreed, however, that in practical terms, after the notification - or jointly with it - a mechanism of dialogue should be initiated with the respective State Party, in order to make the visits viable (credentials, authorisation before the subordinate authorities, etc.). For this reason, there was agreement on eliminating the words "...without prior notice and at any time..." contained in Article 8, para. 1 of the draft, but

maintaining the principle that simply notifying the competent organisation would be sufficient for the execution of the visits.

4.5. Confidentiality

Confidentiality is crucial for the effectiveness of the system and this was understood by all the participants. In principle, the system proposed was that all procedures are confidential except in exceptional circumstances. The reports which are submitted to the State Party at the end of a mission are confidential (Article 11, para. 1) and can only be published in the event of the government's failure to co-operate or of its unwillingness to improve the situation (Article 11, para. 3).

One participant expressed his reservations concerning this confidentiality, pointing out that it could possibly be used by authoritarian régimes for their benefit. Another participant argued that in general the confidential treatment of human rights violations in international fora had not led to visible improvements.

Other participants recognized the risks involved in the confidential system for investigating and sanctioning human rights violations. They emphasized, however, that in this case it dealt with a system orientated above all towards the prevention of torture, in which periodic visits, with a minimum of guarantees, by the delegates of the competent body were the fundamental mechanism. They pointed out, in this sense, that the reports, being confidential, should not create difficulties per se for a government and that this would facilitate concrete improvements.

Some participants suggested that the confidential reports could be made available simultaneously to the authorities of the respective country, as well as to certain inter-governmental human rights organizations. Other participants claimed that this would precisely rob these reports of their confidential nature, and that these should remain truly confidential, which meant available only and exclusively to the authorities of the respective State Party.

In this respect, some participants expressed their uncertainty on what must be meant by "authorities of the State Party" wondering if this had to mean not only the executive power, but also the judicial power as well as the parliament. Although no specific wording was adopted, various participants expressed the opinion that the "authorities" in question must be those responsible for the foreign relations of the State because it was presumed that, in general terms, the confidential reports had to be addressed to the executive power.

On the other hand, some participants - referring to the experience of the ICRC - suggested a wording which conveys the idea that, although the "Committee" (in the wording of the draft) must submit its report to the authorities, it is important to state clearly that the delegates could transmit their observations, statements and recommendations directly to the authorities, immediately following a mission. This, it was argued, would only make explicit what in fact had already become a common practice - that during a mission it is normal and logical for delegates to meet with the authorities at different levels and in that event make their main observations and suggestions. Bearing this in mind a new wording was adopted for Article. 11, para. 1.

Finally, the matter of publishing reports, observations, statements and recommendations basically set out in Article 11, para. 3 was considered. It was emphasized that though such publication should be exceptional, it was an important instrument for the improvement of the conditions of detention recorded on the visits. The proposal of one participant was accepted, suggesting that one of the considerations which would lead to publication should not be so much "...the unwillingness (of the State) to improve the situation...", which could possibly have a negative connotation, but rather the factual and verifiable circumstance of "...not adopting the necessary measures for improving the situation...". One participant suggested that a third situation should be added to the two already mentioned justifying publication, namely when the State publishes on its own, in a partial form, the reports, observations, statements or recommendations of the competent body or of delegates. Thus, the mere fact that such a partial publication is made would release the competent body from its obligation to respect the rule of confidentiality. This proposal was adopted by consensus.

Some participants remarked that if a publication was made, it should incorporate the points of view and commentaries which the State Party gave to the competent body or to the delegates. This proposal was also adopted.

5. Juridical nature of the instrument.

This was one of the subjects which stirred some of the most intensive debates at the Seminar. Some participants proposed bringing the instrument into force through a resolution passed by the States while, on the other hand, other participants supported the need for a conventional mechanism so that the instrument would have a binding force between the parties.

The participants who were in favour of the first point of view, argued that achieving agreement on a conventional

instrument would be difficult during both its elaboration and its ratification process. A special warning was given about the risk that possibly few States would approve and/or ratify the Convention in question. Those who were of this opinion pointed out that the General Assembly of the OAS, a meeting of consultation or a specific conference, would be adequate for concretising, in a future not too distant, a resolution or declaration which would welcome the mechanisms of prevention which were being discussed at the Seminar.

On the other hand, various arguments were put forward in favour of the necessity for the instrument to take the form of a convention. The recent European experience was given as an example in which the Council of Europe initiated and carried to fruition a Convention for the Prevention of Torture, the main ideas of which are the same as those in the draft in discussion. In addition although it was recognised that the passing of a resolution or declaration could be a shorter procedure, it was noted that this would be done by sacrificing the effectiveness of the system in removing its obligatory nature, and with the serious danger of jeopardizing the content of the instrument in seeking a hurried consensus.

It was also pointed out that, if a resolution or declaration was passed, it could further delay the possible adoption of a treaty since some States could claim that it would be first necessary to assess the experience of the application of such a resolution or declaration before committing themselves to a new international convention.

In addition, various participants stressed the importance of having a means of elaboration and ratification which, though slow and initially involving only a few countries, would eventually result in an instrument with the necessary force and coherency for confronting the very serious problem of torture. Some participants, moreover, maintained emphatically that to give binding force to an instrument preventing torture would be extremely useful in a situation in which the civilian political authorities of certain countries find themselves constrained, in various ways, by the armed forces. Being compulsory, the acceptance of the visits would not be left to the discretion of the authorities, and this could help them to consolidate their power in the face of the military sector, by referring to the impossibility of refusing - within the frame-work of international law - to carry out the obligations assumed by the State in a treaty. Moreover, it was pointed out that by having a binding force, the instrument would be less vulnerable to brusque political changes such as, for instance, a coup d'Etat.

At that point of the debate, the participants came to an agreement that a resolution or declaration would be insufficient and that it was indispensable to obtain the adoption of an instrument of binding force. It was noted that while for some participants the mechanism of adoption of a resolution or declaration and of a treaty, should be initiated simultaneously, other participants, were concerned with concentrating their efforts on the complex mechanism of seeking the adoption of a treaty.

With regard to the objective of adopting a treaty, several points of view were expressed which were summarised in two possibilities. One was that the treaty in question should be a Complementary or Additional Protocol to the Interamerican Convention for the Prevention and Sanction of Torture adopted in 1985, or to the American Convention on Human Rights of 1969. The other was, that the elaboration and adoption of a convention autonomous from those conventions should be pursued. To support the first point of view, some participants argued that it would reinforce what already exists within the frame-work of the interamerican system. The participants who maintained that it should, on the contrary, be an autonomous Convention, pointed out that if the instrument was to be an Additional or Complementary Protocol to the Interamerican Convention for the Prevention and Sanction of Torture or to the American Convention on Human Rights, it could be ratified only by the States Parties to one or the other of said Conventions.

6. The institutional frame-work

This theme was inevitably closely linked in the debates with that of the juridical nature of the instrument. There was agreement between the participants that there were four possibilities for an institutional frame-work for initiating the adoption of such an instrument. The first was that of the United Nations Organization system, if the objective was to put it within a universal context. The second was that of the interamerican system expressed in the Organization of American States. A third possibility would be that of a regional instrument, totally separated from the OAS and which would function between States Parties. Lastly, would be to give the instrument a regional (Interamerican) character, keeping it outside the organic frame-work of the OAS, but having links with the latter through its Secretary General, which was the choice made in the draft.

All the participants agreed on the regional (inter-american) character of the instrument to be adopted, thus coming to an important fundamental agreement on this subject. Different points of view, however, were expressed with respect to the institutional frame-work which this inter-american instrument should have.

Some participants expressed the view that since there existed, within the framework of the OAS, a body entrusted with the prevention of human rights violations, i.e. the Interamerican Commission on Human Rights (ICHR), the latter was the logical institutional framework for putting this instrument into force. This could be achieved through a specialised conference, as was the case for the American Convention on Human Rights, or through the General Assembly, as was the case for the Interamerican Convention for the Prevention and Sanction of Torture.

Other participants recognised the advantages of working through an institution which already exists, but noted that under the present conditions, this procedure had the danger that, upon adoption of the text, substantial exceptions and limitations would be introduced. Recognising the importance of the Convention against Torture passed at the American level in 1985, it was pointed out that this Convention allowed the possibility of formulating reservations, and that this had already been used, in the present process of ratifications, in terms which would threaten the basic purpose of the Convention. Some participants, while acknowledging the efforts of the ICHR towards securing the enforcement of human rights in the continent, warned that this organ, due to its composition and location, is subject to a political pressure. Consequently it could not always give priority to those situations or countries which require the greatest attention. It was noted, likewise, that the main contributions of the ICHR have been in the area of public action and denunciation, and that the introduction of mechanisms based on confidentiality could therefore prejudice the practice already existing, resulting in a neutralization of the important function of the organization. Another participant remarked that, in principle, it was difficult to combine public procedures with the confidential ones.

In relation to this, a group of participants emphasized that it was better to promote the adoption of the text by a group of States which, though not being a majority or not very numerous in the beginning, would reduce the risks of the text being distorted and weakened in essential areas. It was pointed out that it would be interesting to consider the possibility of leaving the text open to ratification by States which are not parties to the interamerican system; those who argued in favour of acting within the framework of the OAS noted, however, that the recent Interamerican Convention for the Prevention and Sanction of Torture stipulated that it remained open to the accession of any American State (Art. 20), whether it is a member of the OAS or not.

In the light of these discussions and exchanges of views both during and outside the session, agreement was expressed on the recognition that the ICHR was already developing confidential procedures which were functioning satisfactorily without a leakage of information. It was agreed that the ICHR could, in principle, organize a system of routine visits under normal conditions, but that in situations of great tension and of serious, systematic and general violations of human rights - such as those resulting from a coup d'Etat - it would not be possible for the ICHR to operate simultaneously with the two procedures, public and confidential. Therefore the Commission would have to choose between a system of confidential visits or sending a mission which would publish a report on the human rights situation, including all the information available on torture. Consequently, it was agreed that certain incompatibilities could arise if the confidential system of visits was channelled through the ICHR. As this system does not allow the publication of the information gathered, it would clash with the necessity to act at the level of public denunciation, by informing also about torture and cruel, inhuman or degrading treatment against persons deprived of their liberty.

7. The competent body

Two subjects were central in the debate on this theme; on the one hand, the characteristics of what the draft calls the "Committee" and especially the composition of missions of delegates to visit a particular State; and, on the other hand, the financing of the system, bearing in mind that a periodic system of visits which seeks to protect against torture and ill-treatment of all persons deprived of their liberty (and not only those imprisoned for political or security reasons) could be rather costly.

Since the alternative remained as to whether the competent body should be an autonomous Committee - in the terms of the draft - or the ICHR itself, there was no discussion on the mechanisms of appointment and of functioning of the "Committee" nor suggestions of changes in those of the ICHR. Whatever the option, the delegates would be responsible to the controlling body entrusted with organising the visits.

Some attention was given to the subject of the delegates and total agreement was reached on the need for the work be of the highest technical and specialised quality. This should be kept in mind for the selection of the delegates and for the training sessions which might be necessary. As was already mentioned, several participants put special emphasis on the need to have medical personnel among the delegates who would carry out the visits.

Concerning the Committee, several participants noted that it was obvious that the mechanism of its appointment and functioning was directly linked to the institutional frame-work which would be chosen. As to the delegates, several participants noted that the ideal was to rely on a permanent and professional body, but that given the material difficulties, they thought that in the first stage the proposed Committee (or the competent body which would finally be chosen), should appoint out those who would participate in a specific mission from a list of possible delegates. That is the procedure proposed in the draft. On the other hand, there was a consensus on the need to introduce a provision in the text of the instrument, stating that the delegates participating in a mission should not be nationals of the State visited, in order to dispel any doubt which could arise in regard to the impartiality of such a visit.

Some participants suggested that it would not be very wise to grant the States the possibility of "vetoing" one or more persons on this list (Article 7, para. 2). It was pointed out that this provision could eventually paralyse the mechanism. Other participants argued that such a provision was necessary for giving a certain flexibility to the States but, at the same time, it should be made clear that the sense of the rule proposed was not to allow a State to veto the name of one or more of the delegates chosen when they were just about to carry out a mission to their country. Rather, this power could only be exercised once a year, when the Committee would communicate to the States the list of delegates, without specifying their particular responsibilities.

Concerning the financing of the system, it was first noted that, at present, this is a very serious general problem for the inter-governmental human rights organs. There was agreement that this problem existed whatever institutional frame-work was chosen. The critical economic situation of the OAS and, within it, the severe restrictions imposed on the ICHR, created serious doubts about the possibility of using this organ as a basis for enforcing a system of visits. On the other hand, it was believed that a new institution would not find an easy solution to its financial needs either.

This problem remained, but it was observed that, at the present stage of promotion of an idea and of a draft, resources could be obtained from certain non-governmental organisations and even from some governments. In relation with the financing of the system, once into function, note was taken of some experiences of specific funds within the United Nations system, which do not rely on the general budget of the UN but have obtained resources from certain developed countries and also from some Latin American countries. There was a consensus recognising that the

problem did not have a simple solution but that this should not hold up for continued progress until solutions could be found.

8. Follow-up

On concluding the work of the Seminar, all participants expressed in various ways their satisfaction over the fruitfulness of the debates and the important agreements they had made. There was consensus that a very important step had been taken but that, in order to attain the concrete results which they desired, it was indispensable to assure continuity to the work done.

In this regard, it was agreed that the organisers and the Bureau should launch follow-up mechanisms of communication between the participants, and that they should seek to promote among governments and regional non-governmental organizations the main ideas agreed at the seminar. This would facilitate the continued improvement of the draft and the movement toward the concretization of an interamerican instrument which would protect persons deprived of their liberty from torture and ill-treatment.

Diego García-Sayán

Rapporteur

ANNEX I

Draft American Convention to establish a System of visits to persons deprived of their liberty to prevent Torture or other Cruel, Inhuman or Degrading Treatment or Punishment.

Text adopted at the Montevideo Colloquium (April 1987)

SECTION I

Principles

Article 1

1. The States Parties to this Convention undertake to permit visits, in accordance with this Convention, to any place within their jurisdiction where persons deprived of their liberty by a public authority, or with its knowledge or consent, are being held or may be being held, for whatever reason, including medical, educational or correctional reasons.

2. The object of the visits will be to verify, by all available means, whether persons deprived of their liberty are being or have been subjected to torture, and whether any cruel, inhuman or degrading treatment or punishment is being inflicted upon them, with a view to proposing means for securing their protection or improving their situation when necessary.

Article 2.

1. At no time can circumstances such as a state or situation of war, invasion, or threat of war or of invasion, internal political instability, disturbances or internal conflicts, or any other public emergency authorise the suspension of any article of this Convention.

2. No provision of this Convention shall be interpreted as impairing the rights enjoyed by persons deprived of their liberty by virtue of internal legislation or relevant international instruments.

SECTION II

Committee

Articles 3,4 and 5

(This Section was the subject of discussion but no definitive text was adopted).

SECTION III

Visits

Article 6

1. The Committee (*) shall be responsible for organising and carrying out periodic visits to any place under the jurisdiction of a State in which any person deprived of his liberty for whatever reason is held or may be found. In addition, and without prejudice to the periodic visits, the Committee shall be empowered to carry out visits at any other time, when the circumstances call for them, in the opinion of the Committee. The object of the visits shall be the same as indicated in para. 2 of Article 1.

2. The visits shall be carried out by the persons designated to this effect by the Committee at the time of each mission to a State Party. Those persons shall be referred to as "delegates" and shall act under the instructions and responsibility of the Committee. The delegation shall be chaired by the person designated by the Committee.

3. While discharging their functions, both the Committee and its delegates shall seek the cooperation of the competent authorities of the State concerned.

Article 7

1. The delegates mentioned in the previous article shall be selected from a list of persons drawn up by the Committee. To qualify for the list, a person shall be of high moral character, have a thorough knowledge of and training in the issues dealt with in this Convention, and meet the other requirements which the internal rules of the Committee may set forth.

2. The delegates selected for carrying out a particular mission shall not be citizens of the State visited.

3. The Committee shall submit annually to the government of each State Party the said list of persons, with any changes and modifications made in it. In exceptional cases, a State may, within 30 days of receiving this list, declare that one or more persons on it can not participate in visits to places within its jurisdiction, stating its reason or reasons.

Article 8

1. The Committee shall notify the Government of the State Party concerned of its intention to carry out a mission and names and the nationalities of the members of the delegation which will carry it out. After such notification, the delegates of the Committee shall be able to visit any place within the jurisdiction of that State where persons deprived of their liberty, within the meaning of article 1, are being held or where the delegates think they may be held. These places include, inter alia, prisons, civil and military penitentiaries, places controlled by the police, the security or armed forces, civil and military interrogation centres, centres controlled by the judicial power, and, in general, any place of detention, or re-educational, corrective, or health institutions, including hospitals.

2. ... (A specific text which would establish the compatibility of activities of the Committee and of the International Red Cross Committee was not adopted, but a consensus was reached on this point which is referred to in the Report).

Article 9

1. The State Party within whose jurisdiction a mission is to take place or is being carried out shall provide the Committee and its delegates with all the facilities necessary for the proper fulfilment of its task and shall not obstruct by any means or measures the programme of visits or any other activities which the delegation is carrying out specifically for or in relation to the visits. In particular, the State Party shall :

- a) provide the Committee or the delegates with full information on the places where persons deprived of their liberty are being held, including information which the delegates may request on specific questions;
- b) permit members of the delegation access to and freedom of movement within its territory, and provide means of transport to the places to be visited, when these are not otherwise available ;

- c) allow the delegates, during their mission, free access to any place within its territory where persons deprived of their liberty are being held or may be held;
- d) adopt the necessary measures to allow the delegates to interview in private, without witnesses and for the time they deem necessary, any person deprived of his liberty under the terms of Article 1. This includes any necessary provision to enable delegates to record or tape the testimonies of the persons interviewed if they think it necessary;
- e) produce for the delegates, inside or outside the place of detention, any person deprived of his liberty under the terms of Article 1 (1) if so required by the delegates.

2. The delegates may also communicate freely with the relatives, defence lawyers and doctors of the persons deprived of their liberty, as well as with any other person or organisation considered likely to provide them with information to help them in fulfilling their mission.

Article 10

1. If they deem it appropriate, the delegates can immediately communicate some of their observations to the competent authorities of the State visited.

2. Irrespective of the truth or falsity of statements or affirmations made to the delegates by a person deprived of his liberty, or by a person or organisation mentioned in Article 9 (2), these shall not be cause for any authority or official to order, apply, permit or tolerate sanctions against such a person or organisation, or for such a person or organisation to be prejudiced in any way.

Article 11

1. At the conclusion of a mission to a State Party, the Committee shall prepare a confidential report based on the information provided by and the observations, findings and views of the delegates and containing the committee's own observations and where appropriate their recommendations. The Committee will submit its report in confidence to the State visited, so that it can make any observations and commentaries upon it.

2. The Committee may also take the initiative to hold consultations with the State Party concerned, with a view to improving the treatment given to persons deprived of their liberty and, where appropriate, adopting measures for protecting them more adequately against torture or other cruel, inhuman or degrading treatment or punishment.

3. As a general rule the reports, observations, statements and recommendations of the Committee or its delegates, as well as the consultations with the authorities concerned, shall be confidential. In all cases, the Committee shall bear in mind the points of view and commentaries of the State Party. However, as an exception and only in cases of non-co-operation of the government concerned, or of its refusal to take the necessary measures for improving the situation following the recommendations made by the Committee, or in the case of a partial publication of the confidential report by the State visited, the Committee may make public its findings, observations and recommendations in whole or in part. Provided, however, that the Committee must publish its findings, observations and recommendations whenever requested to do so by the State Party concerned.

4. Under no circumstances shall the Committee include in its communications to the Party, or in its publications, data or other information likely to affect or prejudice the honour, integrity or morality of any person who is or has been deprived of his liberty, or which can jeopardize his integrity or security, without the prior consent of the person concerned, or that of his legal representative. The same provision shall be applied to persons and organisations referred to in Article 9 (2).

SECTION IV

General provisions (**)

Articles 12 to 13 - (No definitive text was adopted).

Article 14 - (take in article 14 of pre-draft).

Article 15 - (No definitive text was adopted).

Article 16 - (Omitted).

Article 17

No reservation may be made in respect of the provisions of this Convention.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at on..... 19.... in English, French, Portuguese and Spanish, all of which are equally authentic.

(*) Hereafter, the use of the term "Committee" refers to the organ named in Section II of the Draft, which has not yet been decided upon.

(**) The provisions of this section referring to the functioning of the Committee, to the process of signing and ratification and to the mechanisms of linkage with the Organisation of American States (OAS), have not yet been adopted. The same applies to the transitory provision. The provisions contained in Article 16 of the Draft were eliminated by consensus (See Report) while those of Article 14 and 17 of the same Draft were adopted by consensus.

ANNEX II

First Draft of an
American Convention to establish a System of visits to
persons deprived of their liberty to prevent Torture or other
Cruel, Inhuman or Degrading Treatment or Punishment.

Text presented at the Montevideo Colloquium
by the International Commission of Jurists and
the Swiss Committee against Torture

PREAMBLE (to be drafted....)

SECTION I

Principles

Article 1

1. Each State Party to this Convention undertakes to permit visits, in any circumstance and at any time, in accordance with this Convention, to any place within its jurisdiction where persons deprived of their liberty by a decision of a public authority are being held or may be held for whatever reason. The object of the visits will be to examine and verify the treatment given to persons deprived of their liberty with a view, if necessary, to improving their protection against torture or cruel, inhuman or degrading treatment or punishment.

2. The term "persons deprived of their liberty by a decision of a public authority" shall include, among others, those in following situations : persons who are detained, imprisoned or confined by a judicial order or by simple administrative order; those on trial, punished or under investigation for whatever crime or offence and by whatever jurisdiction; those deprived of their liberty for educative or correctional reasons, as well as those who have been forcibly interned for medical reasons, be it by virtue of a judicial or an administrative decision. This enumeration has only an illustrative value.

Article 2

1. At no time can circumstances which would justify the declaration of a state of exception or the adoption of legislation of exception, such as a state of war, invasion, or the threat of war or of invasion, internal

political instability, disturbances or internal conflicts, or any other public emergency, authorise the suspension of any article of this Convention.

2. No provision of this Convention shall be interpreted as impairing the rights enjoyed by persons deprived of their liberty by virtue of internal legislation or relevant international instruments.

SECTION II

Committee

Article 3

1. For the purpose of this Convention, a Committee shall be established which shall have the tasks set forth below. It shall consist, in the first stage, of five (5) members. When fifteen States have become parties to the Convention, the number of members of the Committee shall be increased to seven (7).

2. The members of the Committee shall serve in their personal capacity and shall be elected among persons of high moral character and recognised competence in the field of human rights, particularly in the matter dealt with in the present Convention. During the exercise of their mandate the members shall not exercise any function incompatible with the requirements of independence, impartiality or availability inherent in their mandate as members of the Committee.

3. No two members of the Committee may be of the same nationality.

Article 4

1. The members of the Committee shall be elected by secret ballot by the States Parties to the Convention from a list of candidates proposed by those States parties, compiled and distributed beforehand by the Secretary General of the Organisation of the American States (OAS). The election shall take place in meetings of the States Parties held every two years, which shall be convened for that purpose by the Secretary General of the OAS. In order to draw up the said list, each State Party shall be invited to present up to three candidates, who shall be nationals of an American State and fulfill the requirements stated in para. 2 of Article 3. At least two of the candidates shall have the nationality of the State which proposes them.

2. The States Parties shall elect, in the first stage (Article 3, para. 1), five (5) titular members and five (5) deputy members. The latter shall occupy the seat of the former in case of absence in accordance with the internal rules of procedure to be established, provided, however, that there shall not be two members of the same nationality. When fifteen States shall have become parties to the Convention, seven (7) titular members and their seven (7) respective deputy members shall be elected in the same manner.

3. The titular members as well as the deputy members shall be elected for a period of four years, after which they may be reelected only once. The Committee shall be renewed partially every two years, in the manner established by the internal rules of procedure.

Article 5

1. The Committee shall meet in camera. It shall take its decisions by a majority of the members present. Four members shall constitute a quorum as long as the Committee is composed of 5 members. When it is composed of 7 members (Article 3), the quorum shall be five.

2. The Committee shall adopt its own internal rules of procedures. It shall meet whenever the circumstances require but not less than twice a year.

3. The Committee shall have an Executive Secretary, who shall be designated by the States Parties in agreement with the Committee. The Executive Secretary shall be responsible for appointing the necessary staff and shall organise and supervise their work. He shall be responsible directly before the Committee.

SECTION III

Visits

Article 6

1 The Committee shall be responsible for organising and carrying out periodic visits to any place of detention as well as to any place where a person deprived of his liberty by a decision of a public authority for whatever reason is held or may be being held. In addition, and without prejudice to the periodic visits, the Committee shall be empowered to organise and to carry out visits at whatever time, when the circumstances so call for, in the sole opinion of the Committee. The object of the visits shall be the same as indicated in para. 1 of article 1.

2. The visits shall be carried out by persons designated to that effect by the Committee, at the time of each mission to a State party. Those persons shall be referred to as "delegates". They shall act following the instructions and under the responsibility of the Committee. The delegation shall be chaired by the person designated by the Committee.

3. While discharging out their functions, both the Committee as its delegates shall seek the cooperation of the competent authorities of the State concerned.

Article 7

1. The delegates mentioned in the previous article shall be selected from a list of persons drawn up by the Committee. To qualify for the list, a person shall be of high moral character, have a thorough knowledge and training in the issues dealt with in this Convention, and meet the other requirements which the internal rules of procedure of the Committee may set forth. Moreover, they must be nationals of an American State.

2. The Committee shall submit annually to each State Party the said list of persons, with any changes and modifications made in it. In exceptional cases, a State may, within 30 days of receiving this document, declare that one or more persons on the list can not be allowed to participate in visits to places within its jurisdiction.

Article 8

1. The Committee shall notify the Government of the State Party concerned of its intention to carry out a mission and the names and the nationalities of the members of the delegation which will carry it out. After such notification, the delegates of the Committee can visit any place within the jurisdiction of that State where persons deprived of their liberty, within the meaning of article 1, are being held or where the delegates think they may be being held. These places include, inter alia, prisons, civil and military prisons and penitentiaries, places controlled by the police, the security or armed forces, civil and military interrogation centres, centres controlled by the judicial power, and, in general, any place of detention, or re-educational, corrective, or health institutions, including hospitals.

2. The delegates shall abstain from visiting those places which the delegates of a Protecting Power or of the International Committee of the Red Cross are empowered to visit, in accordance with the Geneva Conventions of 1949 and their Additional Protocols of 1977, and which they visit effectively.

Article 9

1. The State Party in which a mission is to take place or is being carried out shall provide the Committee and its delegates with all the facilities necessary for the proper fulfilment of their task and shall not obstruct by any means or measures the programme of visits or any other activities which the delegation is carrying out specifically for or in relation to the visits. In particular, the State Party shall:

- a) provide the Committee or the delegates with full information on the places where persons deprived of their liberty are being held, including information which the delegates may request on specific persons;
- b) permit members of the delegation access to and freedom of movement within its territory;
- c) allow the delegates, during their mission, to move within any place where persons deprived of their liberty are being held or may be held;
- d) adopt the necessary measures to allow the delegates to interview in private, without witnesses and for the time they deem necessary, any person deprived of his liberty under the terms of Article 1.

2. The delegates may also communicate freely with the relatives, defence lawyers and the doctors of the persons deprived of their liberty, as well as with any other person or organisation considered likely to provide them with information to help them in fulfilling their mission.

Article 10

1. During the visits the delegates shall make sure, by all means at their disposal, that the persons deprived of their liberty have not been subjected to torture and that no other cruel, inhuman or degrading treatment or punishment has been inflicted upon them.

2. The delegates shall suggest in their confidential reports to the Committee the means which could be adopted in order to achieve better protection against torture and cruel, inhuman or degrading treatment or punishment.

3. If they deem it appropriate, the delegates can immediately communicate some of their observations to the competent authorities of the State visited.

4. No authority or official may order, apply, permit or tolerate sanctions against a person deprived of his liberty, nor shall such a person be prejudiced in any way

because of the statements or affirmations made to the delegates, even if they were false.

Article 11

1. At the conclusion of a mission to a State Party, the Committee shall prepare a confidential report based on the information provided by and the observations, statements and views of the delegates, and containing the Committee's own observations and where appropriate their recommendations. The Committee will submit its report to the State visited, so that it can make any observations and commentaries upon it.

2. The Committee may also take the initiative to hold consultations with the State Party concerned, with a view to improving the treatment given to persons deprived of their liberty and, where appropriate, adopting measures for protecting them more adequately against torture or other cruel, inhuman or degrading treatment or punishment.

3. As a general rule the reports, observations, statements and recommendations of the Committee or its delegates, as well as the consultations with the authorities concerned, shall be confidential. However, as an exception and only in cases of non-co-operation of the government concerned, or of its refusal to improve the situation in accordance with the recommendations made by the Committee, the latter can make public its findings, observations and recommendations in whole or in part. Provided, however, that the Committee must publish its findings, observations and recommendations, whenever requested to do so by the State Party concerned.

4. Under no circumstances shall the Committee include in its communications to the Party, or in its publications, data or other information likely to affect or prejudice the honour, integrity or morality of any person who is or has been deprived of his liberty, or which can jeopardize his integrity or security, without the prior consent of the person concerned, or that of his legal representative.

SECTION IV

General provisions

Article 12

The Committee shall submit each year a general report of its activities to the States Parties.

Article 13

1. The members of the Committee, while exercising their functions, shall enjoy the same privileges and immunities as those given to the members of the Interamerican Commission on Human Rights by virtue of the treaties and agreements in force.

2. The same privileges and immunities shall be enjoyed by the delegates and staff of the Committee who will take part in the visits during the entire time they stay on the territory of the State where the mission is carried out and are in fact carrying it out.

3. The members of the Committee as well as the delegates and staff of the Committee shall be bound by the obligation to maintain confidential whatever they have learned while discharging their duties under the present Convention. This obligation of confidentiality shall remain in force not only during their term of office but also after its expiration.

Article 14

The present Convention is open to signature, and later to ratification or accession, by any American State. The instruments of ratification or instruments of accession shall be deposited with the General Secretary of the Organisation of American States.

Article 15

1. The present Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five (5) American States have expressed their consent to be bound by it, according to the provisions of Article 14.

2. For each State expressing later its consent to be bound by the Convention, the present Convention shall enter into force the first day of the month following the expiration of a period of three months after the date of the deposit of its own instrument of ratification or instrument of accession with the Secretary General.

Article 16

Any State may, by a declaration addressed to the Secretary General of the OAS, at the time of the signature or at the time of the deposit of its instrument of ratification or instrument of accession, or later on, express its will to extend the application of the present Convention to other territories of whose international relations it is responsible. In those territories, the Convention shall enter into force the first day of the month following the

expiration of a period of three months after the date of receipt of the declaration by the Secretary General.

Article 17

No reservation may be made in respect of the provisions of the present Convention.

Article 18

1. The States parties may, at any time, denounce the present Convention by means of a declaration addressed to the Secretary General of the OAS.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of the declaration by the Secretary General.

Article 19

The Secretary General of the OAS shall notify the American States of :

- a. any new signature of the Convention;
- b. the deposit of any instrument of ratification or accession;
- c. any date of entry into force of this Convention, as well as the date of entry into force for each State which has expressed its consent to be bound by it, in accordance with articles 14 and 15;
- d. the declarations made in accordance with Article 16 and the date after which they shall be effective;
- e. the names and nationalities of the persons who have been elected as titular or deputy members of the Committee (Article 4), as well as any change in the composition thereof;
- f. any other act, notification or communication relating to this Convention, except for action taken in pursuance of Articles 8,9,10 and 11;

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at, the..... 19.... in English, French, Portuguese and Spanish, all texts being equally authentic. The originals are deposited in the archives of the Secretary General of the OAS. The Secretary General shall transmit certified copies to each American State.

Annex III

1986/56. Torture and other cruel, inhuman or degrading treatment or punishment 3/

The Commission on Human Rights,

Considering the obligation of States under the Charter of the United Nations, in particular article 55 thereof, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Recalling article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Recalling with satisfaction General Assembly resolution 39/46 of 10 December 1984, by which the Assembly adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Convinced that international co-operation and control mechanisms or systems are important elements in the struggle to eliminate torture and cruel, inhuman or degrading treatment or punishment,

Recalling that, on 6 March 1980, the Government of Costa Rica submitted to the Commission a draft optional protocol to the draft convention against torture and other cruel, inhuman or degrading treatment or punishment which was under consideration by the Commission at that time,

Recalling that the draft optional protocol concerned provides for a system of periodic visits by a committee of experts to places of detention or imprisonment within the jurisdiction of States parties,

Noting the draft European convention against torture, which is based on ideas similar to those contained in the draft optional protocol,

1. Recommends that other interested regions, where a consensus exists, should consider the possibility of preparing a draft convention containing ideas similar to those set out in the draft optional protocol;
2. Requests the Secretary-General to submit to the Commission on Human Rights, at its forty-fourth session, a progress report on the work relating to the preparation of such conventions;
3. Also decides to defer consideration of the draft optional protocol submitted by Costa Rica until the forty-fifth session of the Commission.

A n n e x IV
LIST OF THE PARTICIPANTS

The participants were invited in their personal capacities and not as representatives of their respective governments or organisations. Ranks and organisations are indicated only for identification purposes.

Juan Alvarez Vita	Minister-Counselor, Social Affairs and Human Rights Lima, Peru.
Alejandro Artucio	International Commission of Jurists, Institute for Social and Legal Studies of Uruguay (IELSUR) Montevideo, Uruguay.
Darío Bevilacqua	Canon, Member of CLAMOR, Sao Paulo, Brazil.
Carlos Calero Rodríguez	Ambassador to the United Nations. Rio de Janeiro, Brazil.
Philippe Comtesse	Head of the Service of Detention, International Committee of the Red Cross, (CICR). Geneva, Switzerland.
Leandro Despouy	Ambassador, Chairman of the UN Sub-Commission for the Prevention of Discrimination and the Protection of Minorities, Buenos Aires, Argentina.
Belisário Dos Santos Jr.	Secretary General. Association of Latin American Lawyers (AALA), Sao Paulo, Brazil.
Gustavo Gallón Giraldo	Permanent Committee on Human Rights, Bogota, Colombia.
Diego García Sayán	Executive Secretary, Andean Commission of Jurists. Lima, Peru.
Antonio González de León	Ambassador of Mexico in Brasilia. Brasilia, Brazil.

Carlos A. González	Dean, Faculty of Legal and Diplomatic Sciences, Catholic University, Asunción, Paraguay.
Héctor Gros Espiell	Judge at the Interamerican Court of Human Rights, San José, Costa Rica.
José Korzeniak	Professor of Constitutional Law, Montevideo, Uruguay.
Niall MacDermot	Secretary General, International Commission of Jurists, Geneva, Switzerland.
Víctor Alfonso Maldonado	Mexican Academy of Human Rights, Mexico City, Mexico.
Luis Méndez	Legal Officer, International Commission of Jurists, Geneva, Switzerland.
Julieta Montaña	Permanent Assembly of Human Rights, Cochabamba, Bolivia.
Luis Paulino Mora	Minister of Justice, San José, Costa Rica.
Elizabeth Odio Benito	Former Minister of Justice, San José, Costa Rica.
Eduardo Rabossi	Ambassador, Under-Secretary for Human Rights, Buenos Aires, Argentina.
Adela Reta	Minister of Education and Culture, Montevideo, Uruguay.
Pierre de Senarclens	Vice-Chairman of the Swiss Committee against Torture, Geneva, Switzerland.
Serrana Sienna	Lawyer, Montevideo, Uruguay.
Edmundo Vargas Carreño	Executive Secretary of the Interamerican Commission on Human Rights (OAS), Washington, USA.

François de Vargas Secretary General,
Swiss Committee against Torture.
Geneva, Switzerland.

Gustavo Villalobos Vicaría de la Solidaridad.
Santiago, Chile.

EXCUSED

Andrés Aguilar Member of the UN Human Rights
Committee,
Ambassador of Venezuela to the
United Nations, New York, USA.

Cardinal Paulo Evaristo Arns Archbishop of Sao Paulo,
Sao Paulo, Brazil.

Raúl Cárdenal Professor,
University of Mexico.
Mexico.

Roberto Garretón Merino Vicaría de la Solidaridad.
Santiago, Chile.

Emilio Mignone Director, Center of Social and
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Fernando Cepeda Ulloa Minister of Government,
Bogotá, Colombia.

Pedro Nikken Judge at the Inter-American Court
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Caracas, Venezuela.

Enrique Palet Executive Secretary.
Vicaría de la Solidaridad.
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Quito, Ecuador.

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Alejandro Serrano Caldera President of the Supreme Court of
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Managua, Nicaragua.

Rodolfo Stavenhagen Chairman, Academy on Human Rights
Mexico.

Adolfo Vásquez Carrizosa

Chairman, Permanent Committee on
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Bogota, Colombia.

César Verduga

Executive Secretary,
Latin American Association on
Human Rights (ALDHU).
Quito, Ecuador.

Alberto Zumarán

Senator.
Montevideo, Uruguay.

This report can be obtained at

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- International Commission of Jurists, Geneva.
- Swiss Committee against Torture · P.O. Box 2267, 1211 Geneva 2, Switzerland