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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its fifth session (Geneva, 4-8 February and 31 March-4 April 2008)**

Chairperson-Rapporteur: Catarina de Albuquerque (Portugal)

* Reissued for technical reasons.

** Annexes II and III are being circulated in the language of submission only.

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I. INTRODUCTION

1. In its resolution 1/3, the Human Rights Council gave the Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights a mandate to elaborate an optional protocol to the International Covenant on Economic, Social and Cultural Rights. The Chairperson submitted a first draft optional protocol (A/HRC/6/WG.4/2) as a basis for the negotiations of the Working Group at its fourth session, held from 16 to 27 July 2007. Based on the discussions of the Working Group, the Chairperson subsequently submitted a first revised draft (A/HRC/8/WG.4/2) to the Working Group at the first part of its fifth session and a second revised draft (A/HRC/8/WG.4/3) to the second part. The present report contains a summary of the discussions held during those two parts of the fifth session, from 4 to 8 February and from 31 March to 4 April 2008, respectively.

II. ORGANIZATION OF THE SESSION

2. The fifth session of the Working Group was opened by the Head of the Special Procedures Division of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

3. The Chairperson, Catarina de Albuquerque (Portugal), declared her confidence that the Working Group would strive for solutions likely to meet consensus and, at the same time, to ensure effective protection for victims of violations of economic, social and cultural rights.

4. The Working Group adopted its agenda (A/HRC/8/WG.4/1) and programme of work.

5. In her address to the Working Group, the United Nations High Commissioner for Human Rights stated that the adoption of the optional protocol would be a milestone in the history of the universal human rights system and would provide an important impetus for renewed attention to economic, social and cultural rights.

III. OPENING STATEMENTS

6. Delegations welcomed the revised drafts prepared by the Chairpersons to facilitate the negotiation process.

7. Several delegations noted that the sixtieth anniversary of the Universal Declaration of Human Rights provided an excellent occasion for adopting the optional protocol, which would reaffirm the indivisibility, interrelatedness and interdependence of all human rights.

8. Some delegations emphasized that an optional protocol should closely reflect the language of similar treaties establishing communications procedures.

9. Several delegations, including non-governmental organizations and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights favoured a comprehensive approach, under which all Covenant rights would be covered by this protocol. Other delegations expressed preference for a selective ("à la carte") approach, by which States could exclude certain rights by way of opting in or out.

10. While South Africa asserted the justiciability of all economic, social and cultural rights, Canada and the United States of America argued that the progressive nature of those rights made

it difficult to adjudicate them without interfering with decisions by Governments concerning resource allocation. Nigeria stressed that the fact that the realization of economic, social and cultural rights was subject to a State's available resources made their adjudication difficult for developing countries.

11. Some delegations favoured clear criteria for the assessment of violations of these rights, such as reasonableness and unreasonableness and a wide margin of appreciation for States in their policy choices. Several delegations and non-governmental organizations rejected codifying these criteria.

12. In view of the severe resource constraints faced by developing countries, Bangladesh, China, Egypt (on behalf of the African Group), the Libyan Arab Jamahiriya, the Republic of Korea, Amnesty International and CETIM supported including a provision on international assistance and cooperation. A number of delegations expressed the view that such a provision did not belong to an optional protocol.

13. The NGO Coalition stated that an optional protocol should include provisions for an inquiry procedure, interim measures and a prohibition of reservations.

IV. REVIEW OF THE FIRST REVISED DRAFT

14. During the first part of its fifth session, held from 4 to 8 February 2008, the Working Group reviewed the first revised draft optional protocol (A/HRC/8/WG.4/2), in which amendments to the original draft (A/HRC/6/WG.4/2) were indicated in bold font.

Preamble

15. The Russian Federation suggested shortening the preamble to one or two paragraphs.

16. With regard to paragraph 1, Argentina, Bangladesh, Chile, Egypt, the Islamic Republic of Iran and Mexico supported the original text.

17. With regard to paragraph 2, Argentina, Belgium, Canada, Chile, Costa Rica, Ecuador, Finland, France, Haiti, the Islamic Republic of Iran, Mexico, Poland, Portugal, Spain, Switzerland and the NGO Coalition favoured the original text.

18. Egypt (on behalf of the African Group), India, the Netherlands and the United Kingdom of Great Britain and Northern Ireland preferred using the exact quotation from the Universal Declaration of Human Rights. Some delegations noted that an alternative was to drop the explicit reference to the Declaration and to include similar language to that of the preamble of the Convention on the Rights of Persons with Disabilities.

19. With regard to paragraph 4, India and the Netherlands favoured the original wording. Australia, Canada, New Zealand and Sweden preferred to either delete the paragraph or keep the original wording.

20. Algeria, Bangladesh, Egypt, Indonesia, the Islamic Republic of Iran, Lesotho, Morocco, the Russian Federation, Senegal and South Africa suggested adding text so as to quote the full text of paragraph 5 of the Vienna Declaration and Programme of Action.

21. Belgium, France, Mexico, Poland and Portugal proposed that the Vienna Declaration and Programme of Action not be quoted and that the agreed language from the preamble of the Convention on the Rights of Persons with Disabilities be used.

22. With regard to paragraph 5, India and the Netherlands favoured the original text. Canada and the United Kingdom noted that the reference to Economic and Social Council resolution 1985/17 could be part of the text and requested adding the phrase "or any successor thereto".

23. India noted that the bracketed text "any of the rights" should be revised upon agreement on article 2.

24. Canada, India, Mexico, the Netherlands and South Africa proposed to replace the last part of the paragraph with "to carry out the functions provided in the present Protocol".

25. With regard to paragraph 6, Belgium, Germany, Poland, Portugal and Sweden asked for its deletion. Bangladesh, Egypt, India, Mexico, Morocco, South Africa and Venezuela (Bolivarian Republic of) preferred its retention.

Article 1

26. Concerning the title, the United Kingdom and the United States proposed adding "to receive and consider communications".

27. With regard to paragraph 1, several delegates favoured retaining the brackets around the text "and to conduct inquiries" pending a decision on articles 10, 11 and 11 bis, while Canada, China, Denmark, Greece, Japan, the Netherlands, the Russian Federation, Senegal, the United Kingdom and the United States proposed the deletion of this text. It was noted that none of the human rights treaties providing for an inquiry procedure included such a reference. Egypt mentioned that keeping the bracketed text would clarify the competence of the Committee.

28. If an inquiry procedure were included, several delegates proposed the addition of "where applicable" or other similar wording to the bracketed text to reflect the optional character of this procedure.

29. With regard to paragraph 2, several delegations supported its retention. Egypt and the Netherlands noted that, if a reference to inquiries were kept in paragraph 1, paragraph 2 should be revised accordingly.

30. Bangladesh and Egypt suggested replacing the verb "receive" with "consider" in paragraphs 1 and 2.

Article 2

31. Concerning the title, New Zealand proposed keeping the word "individual" while China supported its deletion.

32. With regard to paragraph 1, several delegations suggested retaining "within" the jurisdiction, while others favoured the wording "subject to". France supported the wording "relevant de la jurisdiction" in the French version. Amnesty International preferred excluding any reference to jurisdiction.

33. Austria, Bangladesh, Chile, Egypt, Finland, France, Germany, Guatemala, India, Italy, Mexico, Pakistan, Portugal, the Russian Federation, Slovenia and South Africa preferred the deletion of the bracketed text "direct" and "significant". Canada, China, Poland and Sweden favoured retaining this text. New Zealand supported the reference to "significant" and sought clarification of the meaning of "direct victims". The Netherlands and the Republic of Korea noted that the need for a reference to "significant" depended on whether paragraph 2 would be retained, while the Netherlands and the United States said that this reference might be better placed in article 4.

34. China, Egypt (on behalf of the African Group), Nepal and Poland favoured retaining the bracketed text "express", while Bangladesh, Finland, Guatemala, Italy, Mexico, the Netherlands, Portugal and Slovenia asked for its deletion.

35. Bangladesh, Belgium, Egypt (on behalf of the African Group), Liechtenstein, Mexico and Portugal preferred deleting the bracketed text "Parts II and III of/Parts III read in conjunction with provisions contained in Part II". Canada, China, Greece, Italy, New Zealand, Poland, the Republic of Korea, Slovenia, Turkey, the United Kingdom and the United States advised retaining the text "Part III read in conjunction with provisions contained in Part II".

36. Some delegates supported the exclusion of Part I (art. 1) of the International Covenant on Economic, Social and Cultural Rights, while others were for its inclusion. In this regard, Egypt requested the Chairperson to seek the views of the Committee on how it had addressed issues related to article 1 of the Covenant.

37. Egypt (on behalf of the African Group), Finland, Italy, Liechtenstein, Mexico, the Netherlands, Portugal and FIAN supported the retention of "unless the author can justify acting on their behalf without such consent".

38. With regard to paragraph 2, several delegations and non-governmental organizations called for its deletion and reiterated their support for a comprehensive scope. Other delegations supported its retention. Canada presented an alternative proposal, supported by several States, changing the paragraph from an opt-out to an opt-in clause. Other delegations favoured an opt-out approach.

39. Turkey and the United Kingdom asked for the deletion of "of articles 2 (1) and 6 to 15", the United States proposed replacing this text with "referred to in paragraph 1 above".

40. China, Denmark, New Zealand, Poland and the Russian Federation suggested the deletion of the bracketed last sentence. Austria, the Netherlands, the Republic of Korea and the United States supported its retention. The Netherlands preferred a time frame shorter than 10 years.

41. The Working Group then turned to new proposals included in bracketed article 2, paragraph 1, subparagraphs 1 bis and 1 ter.

42. With regard to subparagraph 1 bis, several delegates supported giving further consideration to the inclusion of a provision allowing the Committee to grant amicus standing to non-governmental organizations. Specific proposals were made to add references to national human rights institutions and/or trade unions and employers' organizations.

43. Some delegations expressed concern about subparagraph 1 bis, noting that non-governmental organizations could already participate as third parties under article 2, paragraph 1, and that such a procedure was not found under other similar instruments.

44. With regard to subparagraph 1 ter, most delegates preferred its deletion, expressing, inter alia, concerns about allowing for communications without identified victims and preventing a flood of communications. Ecuador, the Netherlands and the NGO Coalition preferred its retention.

Article 3

45. Several delegations supported the deletion of this article. The Netherlands and Poland supported its retention but expressed flexibility to the position of the majority of delegates.

Article 4

46. Austria stated that the autonomy of the Committee to interpret admissibility criteria should not be overregulated. Amnesty International and COHRE cautioned against admissibility criteria that were overly restrictive.

47. On paragraph 1, several delegations and non-governmental organizations favoured retaining the original language "all available domestic remedies" used in other similar instruments. Denmark, Greece, New Zealand, Poland and the United Kingdom preferred keeping the bracketed text "judicial, administrative and other". A proposal to insert "effective" after "all available", supported by Chile, the United Kingdom, Mexico and the Netherlands, was opposed by Bangladesh, China, Egypt, the Islamic Republic of Iran, Poland, the Russian Federation and the United States.

48. Several delegates and non-governmental organizations supported keeping the bracketed text "unreasonably prolonged" used in all similar communications. China, Bangladesh, Egypt and the Islamic Republic of Iran supported its deletion.

49. Several delegations and non-governmental organizations advised keeping the text in brackets "or unlikely to bring effective relief", which is agreed language from the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Canada, the United States and China preferred its deletion.

50. Several delegations asked for the deletion of the bracketed last sentence. No delegate supported its retention, but some pointed out that, if retained, the sentence should end after the word "established".

51. On paragraph 2, proposals were made to replace "where" with "if" or "when" in the chapeau. Egypt, Liechtenstein and the Netherlands suggested inserting "or" at the end of subparagraph (f) to underline the non-cumulative nature of the list of inadmissibility criteria.

52. With regard to subparagraph (a), Mexico and the NGO Coalition supported replacing "six months" with "a reasonable period". Several delegations noted their preference for a fixed time limit of six months or longer.

53. With regard to subparagraph (b), several delegations favoured the new wording proposed in line with the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities. The Islamic Republic of Iran suggested deleting "after that date". A proposal was made to replace "those facts" with "the alleged violation".

54. With regard to subparagraph (c), several delegates supported retaining "matter", in line with the language used in all the other communication mechanisms. Germany preferred the word "violation", while Belgium, France, Indonesia and Japan preferred "alleged violation".

55. A number of delegations preferred deletion of "of the same nature" at the end of the subparagraph, while Mexico proposed retaining this wording, also used in the International Convention for the Protection of All Persons from Enforced Disappearance. Egypt suggested "of a similar legal character" as an alternative.

56. With regard to subparagraph (d), several delegates preferred deletion of the bracketed text "or inconsistent with applicable instruments in the field of human rights".

57. With regard to subparagraph (e), several delegates preferred the deletion of the bracketed text "or dependent mainly on second hand information". China and the Islamic Republic of Iran supported its retention.

58. With regard to subparagraph (g), some delegations favoured deleting the bracketed text about confidentiality of the information to protect the victim. Other delegates noted that the text should be placed under article 6 or dealt with in the rules of procedure. France and several non-governmental organizations preferred keeping the text, replacing "victims" with "authors".

59. Canada, New Zealand and the United Kingdom proposed a new subparagraph (d) bis referring to a threshold of "significant disadvantage", unless the communication raised a serious issue of general importance. A number of delegates supported the inclusion of such a new criterion, noting that it would allow the Committee not to deal with complaints of minor importance. Other delegations opposed the proposal, noting that it would require the Committee to undertake an examination of the merits at the admissibility stage and would seem to imply that some violations could be considered insignificant, which was unacceptable.

Article 5

60. Several delegations and non-governmental organizations supported the inclusion of interim measures in the optional protocol, while others preferred their inclusion in the rules of procedure. Algeria and the Russian Federation proposed the deletion of article 5.

61. With regard to paragraph 1, Canada, China, Denmark, Italy, Ireland, Poland, Spain, the United Kingdom and the United States favoured the addition of "in exceptional circumstances".

62. Australia, Egypt (on behalf of the African Group), South Africa, the Syrian Arab Republic and Venezuela proposed deleting the bracketed text "taking into account the availability of resources". China, India and Nepal preferred its retention.

63. Egypt (on behalf of the African Group) supported the use of the word "harm" instead of "damage".

64. Australia and Egypt (on behalf of the African Group) preferred deleting the bracketed text "and based on reliable information"; China preferred its retention.

65. Bangladesh, Egypt (on behalf of the African Group), India, Ireland and Poland suggested that interim measures should only be granted after a communication had been declared admissible.

66. Norway and Sweden proposed adding "bearing in mind the voluntary nature of such requests" at the end of the paragraph. Some States supported this proposal. Others noted that its inclusion was not necessary, as the views and requests of treaty bodies such as the Committee on Economic, Social and Cultural Rights were non-binding and voluntary in nature.

67. With regard to paragraph 2, several delegates supported its retention.

Article 6

68. With regard to paragraph 1, several delegations preferred deleting the bracketed text. It was noted that a State would not be able to respond appropriately to a communication if it did not know the identity of the author, and that concerns about the safety of individuals were covered by article 12.

69. Austria and Bangladesh noted that this issue could be dealt with in the rules of procedure.

70. Portugal, Mexico, ICJ, IWRAW Asia-Pacific and the NGO Coalition favoured the retention of the bracketed text.

71. With regard to paragraph 2, the Netherlands suggested adding the word "including" before the text in bold font.

Article 7

72. Several delegations were in favour of retaining article 7; others preferred its deletion or its inclusion in the rules of procedure. Australia, Bangladesh, Guatemala, Indonesia, South Africa and the United Kingdom indicated preference for the original text of draft article 7. China noted that friendly settlements should be confined to inter-States procedures.

73. With regard to paragraph 1, Portugal and the Russian Federation supported the bracketed text "within a reasonable period of time". Argentina and the United Kingdom preferred deletion of this text; Guatemala advised referring to a specific period of time.

74. Venezuela (Bolivarian Republic of) expressed support for the bracketed text about friendly settlement, while Argentina, Portugal, the Russian Federation and the United Kingdom preferred its deletion. Indonesia proposed replacing it with text referring to the exhaustion of all available domestic remedies before making use of a friendly settlement mechanism.

75. Venezuela (Bolivarian Republic of) agreed to the bracketed text about reaching a conclusion; Argentina, Guatemala, the Russian Federation and the United Kingdom preferred its deletion.

76. Several delegations were in favour of the bracketed text "[T]he terms of a friendly settlement shall be subject to review and approval by the Committee." Poland supported giving the Committee the competence to review but not approve the terms. Australia, Austria, Germany, Ghana, the Russian Federation, the Syrian Arab Republic, the United Kingdom and Venezuela (Bolivarian Republic of) preferred its deletion.

77. On paragraph 2, Mexico, Portugal and the Russian Federation supported the insertion of the bracketed text "[T]he full implementation of", while Venezuela (Bolivarian Republic of) wished to delete it. The Syrian Arab Republic preferred to delete only "full". Poland preferred the original text providing for closure of the procedure at the moment of reaching a friendly settlement.

78. The Russian Federation and the United Kingdom favoured retaining the original language "shall be deemed to close"; France preferred replacing it with the word "closes".

79. With regard to paragraph 3, several delegations favoured its deletion. Germany supported its retention. The Netherlands suggested inserting the word "negotiations" after the words "end the friendly settlement". Senegal considered that the Committee should have the power to intervene only if the result of the friendly settlement had not been achieved; New Zealand considered that the Committee should not be able to terminate the process unilaterally.

80. Bangladesh, the Russian Federation and the United Kingdom requested the deletion of paragraph 4.

Article 8

81. Australia and New Zealand preferred the original title "Consideration of the merits".

82. On paragraph 1, the Russian Federation and Venezuela (Bolivarian Republic of) supported the original text, while India asked to reinsert "by the parties concerned". Algeria, Bangladesh, Germany, the Islamic Republic of Iran, Italy, Liechtenstein and Spain agreed with the text proposed in bold font, while Egypt, India, and Norway asked for its deletion. Australia, Chile, Denmark, New Zealand, the Netherlands and the United States proposed deleting only the text "after the communication has been declared admissible".

83. New Zealand proposed adding "written" before the word "information". Poland suggested replacing the text in bold with "[P]arties concerned shall be invited to submit statements or observations in regard to this information within the time limit set by the Committee.".

84. With regard to paragraph 3, Argentina, Finland, Mexico, Sweden and the Netherlands preferred reverting to the original wording. Liechtenstein and the United States proposed replacing "may" with "shall", while Chile proposed including "shall" in relation to United Nations mechanisms and "may" to regional mechanisms. Several delegations preferred the wording "may consult" with regard to both United Nations and regional human rights mechanisms. Liechtenstein preferred deleting the reference to regional mechanisms. Azerbaijan and Egypt suggested referring to "United Nations treaty bodies". Some delegations preferred deleting the paragraph or leaving it for the rules of procedure. Slovenia and the United Kingdom preferred reverting to "decisions and recommendations" instead of "work carried out".

85. On paragraph 4, Argentina, Bangladesh, Finland and the Russian Federation preferred the original text, while Costa Rica, India, Mexico, Portugal and Sri Lanka highlighted the importance of closely reflecting the language of the Covenant.

86. Delegates proposed a number of amendments. Germany proposed replacing the word "shall" with "may" before the word "focus". Canada, Denmark, Germany, Liechtenstein, New Zealand, Spain and the NGO Coalition suggested the deletion of words "respect, protect and fulfil". Azerbaijan and Egypt (on behalf of the African Group) supported its retention.

87. Canada, Liechtenstein and Mexico proposed merging the first and second sentences, deleting the bracketed text in the first sentence.

88. With regard to the second sentence, Ecuador, Egypt (on behalf of the African Group), Guatemala, India, Liechtenstein, Mexico and Sri Lanka sought deletion of the terms "reasonableness", "unreasonableness", "effectiveness" and "adequacy". Australia, Austria, Germany, Greece, the Netherlands, New Zealand, Slovenia and Sweden supported the inclusion of "reasonableness", while Denmark, Japan, Poland, the United Kingdom and the United States preferred the term "unreasonableness". The United Kingdom proposed an annex for the criteria for the text of unreasonableness. Chile and Slovenia supported the inclusion of the term "effectiveness". Egypt (on behalf of the African Group), Guatemala, Liechtenstein and Mexico supported wording closer to article 2, paragraph 1, of the Covenant.

89. Liechtenstein proposed the text "[…] the Committee shall assess the steps taken by the State Party, to the maximum of its available resources and with a view to achieving the full realization of the right or rights referred to in the communication by all appropriate means, in accordance with its obligations under article 2, paragraph 1, of the Covenant".

90. Canada proposed amending the wording to "shall assess the adequacy of the steps taken by the State Party in accordance with the provisions of Part II of the Covenant".

91. With regard to the third sentence, Argentina, Bangladesh, Belgium, Chile, Costa Rica, Ecuador, Finland, France, Germany, India, Liechtenstein, Mexico, Portugal, the Russian Federation and Sri Lanka sought the deletion of "margin of appreciation". Austria, Ireland, Japan, Poland and Venezuela (Bolivarian Republic of) supported its retention, while Canada, Denmark, Greece, the Netherlands, New Zealand, Norway, Sweden, Turkey and the United Kingdom supported adding the word "broad" or "wide" before the word "margin". Canada, supported by several States, proposed amending the end of the sentence to "the appropriate policy measures and allocation of its resources in accordance with domestic priorities".

92. The International Labour Organization, by reference to article 74, paragraph 5, of the International Convention on the Rights of All Migrant Workers and Members of their Families, proposed inserting a new paragraph reading "When considering communications related to matters falling within the competence of the International Labour Organization, the Committee shall invite the International Labour Office to appoint a representative to participate, in a consultative capacity, in its meetings.".

Article 8 bis

93. Canada suggested the deletion of the second and third paragraphs and the last part of paragraph 1, converting the first part of that paragraph into a new paragraph 5 of article 8.

Article 9

94. Argentina, Egypt, Ghana, South Africa, the Netherlands and Venezuela (Bolivarian Republic of) supported the retention of article 9. France and Poland noted that article 9 was acceptable given its optional nature. Poland stressed the non-binding nature of the report submitted by the Committee under this procedure.

95. China, Japan, New Zealand, Senegal, the Syrian Arab Republic and the Russian Federation preferred the deletion of article 9. If retained, delegations underlined the need to ensure the consistency of the text with the rest of the protocol.

Articles 10, 11 and 11 bis

96. Several delegations supported the retention of the inquiry procedure provided for in articles 10 and 11. Other delegations called for the deletion of these articles.

97. Argentina, Austria, Brazil, Greece, the Netherlands, New Zealand, Sweden and the United States requested retaining the reference to the words "grave or systematic" in article 10, paragraph 1. Ecuador preferred their deletion.

98. With regard to article 10, paragraph 5, Brazil and Sweden asked to retain the time frame of six months. France advised to replace it with a longer time period or by the wording "preferably six months".

99. With regard to article 10, paragraph 6, Australia noted that States should be able to provide comments on the report before it was made public.

100. On article 11, Canada and New Zealand preferred its deletion, as follow-up issues could be dealt with in the rules of procedure. If retained, New Zealand suggested that the non-binding nature of the procedure be clarified by adding the words "if any" between the words "taken" and "in response".

101. Several delegations expressed flexibility or support for an inquiry procedure, as long as it remained optional, as provided for in article 11 bis. Others were of the view that the procedure should not be optional, but expressed flexibility on this point. Some delegates suggested replacing the opt-out mechanism with an opt-in one, while others cautioned against this change. The Russian Federation favoured merging articles 10 and 11 bis to make clear that the procedure was optional.

102. The Russian Federation expressed concern at the power given to the Committee to launch an inquiry. India requested clarification as to whether an inquiry procedure could be triggered in the absence of a communication and, if so, on which grounds.

Article 12

103. Canada, France, Germany, the Netherlands, New Zealand, the United States and Amnesty International supported the retention of article 12. Australia, Belgium, Canada, the Islamic Republic of Iran and Switzerland preferred reverting to the initial draft, in line with article 11 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

104. Australia, Belgium, Canada and Switzerland noted that reference to "individuals" only would be sufficient. New Zealand inquired whether the word "authors" would not cover all situations.

105. Australia, Belgium, Canada and Switzerland underlined that the words "ill-treatment" and "intimidation" covered various threats. France emphasized that the words "form of ill-treatment, reprisal, victimization or intimidation" should cover any restrictions to access remedies. Amnesty International proposed amending the text to read "any threats, intimidation or denial of any human rights or fundamental freedom". COHRE proposed replacing these words with "any form of pressure". The United States noted that the words "subject to its jurisdiction" should be made consistent with article 2, paragraph 1.

106. The Netherlands suggested that article 12 could become article 8 ter as it related to the individual communication procedure.

Articles 13

107. Algeria, Austria, Egypt (on behalf of the African Group), the Russian Federation and the United States supported article 13. Italy, Liechtenstein, Sweden and Switzerland preferred the original language. Canada and Liechtenstein considered that article 22 of the Covenant provided a better mechanism for identifying international assistance needs and Canada sought the deletion of article 13.

108. Senegal and the NGO Coalition noted that the title "International assistance and cooperation" should be referred to in the text of article 13.

109. With regard to paragraph 1, Argentina, Bangladesh, France, Guatemala, India, the Netherlands and Poland supported the wording "and with the consent of the State party concerned".

110. Argentina, France and Poland favoured the inclusion of "and other States parties"; Guatemala, Japan, the Netherlands, the Republic of Korea and Sweden sought its deletion. Indonesia noted that article 22 of the Covenant made no reference to "other States parties". India inquired whether this reference implied that all information would be automatically transmitted to other States parties.

111. Argentina, France, the Netherlands, Poland, the Republic of Korea, Sweden and Switzerland preferred deleting the word "financial" before "assistance", while China and Nepal supported its retention.

112. Egypt noted that the focus of international assistance in article 13 should be on technical advice to avoid duplication with article 14.

113. With regard to article 13, paragraph 2, Guatemala favoured retaining "each within its field of competence". Australia, Egypt and the Netherlands suggested including a reference to "with the consent of the State Party", while China proposed referring to "with prior knowledge of" and Indonesia to "with prior notification of" the State concerned.

Article 14

114. Several delegations, including Canada, Denmark and the United States, opposed or expressed concerns about the establishment of a fund, noting the danger of linking violations to funding, the risks of duplicating existing United Nations funds and the practical difficulties in managing such a fund. The raison d'être of the fund was also questioned, as, in many cases, no violation of the Covenant would be found if the non-fulfilment of a right was caused by a lack of resources.

115. Argentina, Bangladesh and Egypt argued that the optional protocol was the right place for establishing a fund and referred to the precedent in the Optional Protocol to the Convention against Torture.

116. Australia noted that, if the article was retained, there would be a need for strict criteria for the use of the fund. Switzerland noted that there was a need to clarify what proportion of funding would be made available to individual victims and to Governments respectively.

117. Sweden and Switzerland inquired how the fund would benefit victims. While stating a strong preference for not establishing a fund, Sweden proposed compromise language for a fund exclusively geared towards assisting individuals to submit communications. Several delegates favoured using the fund for supporting victims' access to the procedure or for providing effective remedies for victims. Algeria, Bangladesh and Egypt were against such a limited use of the fund. Poland noted, that if established, the fund should support financing technical assistance only.

118. Belgium, with the support of Austria, Brazil, Egypt, Morocco and Norway, suggested adding language from article 32, paragraph 2, of the Convention on the Rights of Persons with Disabilities to clarify that a lack of financial aid could not be justification for not complying with the Covenant.

119. With regard to paragraph 1, Argentina, Bangladesh, Ecuador, the Islamic Republic of Iran, Nepal and the NGO Coalition supported the revised text. China asked for the deletion of "on remedies" in the first line and the replacement of "effective remedies" with "effective measures to implement the recommendations of the Committee" in the last line.

120. With regard to paragraph 2, several delegations preferred its retention, if article 14 were to be kept in the protocol, to underline the voluntary nature of the fund. Bangladesh and Egypt noted that, while the fund would be voluntary, the protocol should not mention this explicitly. Egypt noted that the fund could also be established as a dedicated project of OHCHR.

Article 15

121. Professor Eibe Riedel advised delegates to revert to the original draft text, because the Committee reports to the Economic and Social Council, not the General Assembly.

Article 16

122. Australia preferred the original draft. Austria and Mexico preferred the word "undertake" while France preferred "encouraged". Mexico and New Zealand suggested amending the bracketed text in line with article 21 of the Convention on the Rights of Persons with Disabilities "and to do in a manner which recognizes the rights of persons with disabilities to information in accessible format". The United Kingdom supported the provision of material in accessible formats but preferred not to refer to "rights of persons with disabilities", as they were not recognized in the Covenant.

Article 17

123. Egypt (on behalf of the African Group) noted that the article should either indicate elements to be included in the rules of procedure or be deleted.

124. Several delegates called for the deletion of the alternative text in bold font.

125. Canada proposed new text based on article 39, paragraph 2 of the International Covenant on Civil and Political Rights, specifying that the rules "shall provide, inter alia, that: (a) two-thirds of the membership shall constitute a quorum, and (b) decisions of the Committee shall be made by the majority of the members present". Some delegations preferred changing the word "develop" in the original draft to "modify", to allow the Committee to assume its new functions without having to review all its existing procedures.

126. Australia, Denmark, Nepal, New Zealand and the United States suggested postponing discussions on this article until it became clearer which issues would be left for the rules of procedure. Japan proposed adding "and the States parties may comment on or make proposal for the rules of procedures, which will be considered by the Committee" to the first sentence.

Article 18

127. New Zealand suggested amendments to simplify the language, merging the first and second paragraphs. Other delegates cautioned against changing the text of such a standard provision. Egypt (on behalf of the African Group) supported allowing States who had signed the Covenant only to ratify the optional protocol. The United States recommended replacing the words "shall be" with "is" as in article 8 of the First Optional Protocol to the International Covenant on Civil and Political Rights.

Article 19

128. Argentina, Belgium, Chile, Egypt, Norway, the Russian Federation and Venezuela (Bolivarian Republic of) preferred the reference to "the tenth instrument" of ratification for the protocol to enter in to force. Australia and the Netherlands preferred referring to "the twentieth instrument".

Article 20

129. This article has become article 11 bis.

Article 21

130. Argentina, Chile, Denmark, Mexico and Uruguay preferred keeping the article as drafted. Guatemala and the Netherlands proposed using the language of the Convention on the Rights of Persons with Disabilities, article 14. Some delegates highlighted that other instruments of a similar nature also prohibited reservations.

131. Several delegations noted that the article was superfluous, as the matter was covered by the Vienna Convention on the Law of Treaties, and asked for its deletion. Bangladesh and Egypt (on behalf of the African Group) noted that reservations could be permitted only if consistent with the nature and scope of the protocol.

132. Some delegates noted that a decision on this article should be deferred until an agreement had been reached on article 2.

Article 22

133. Canada preferred amending the text to reflect article 11 of the First Optional Protocol to the International Covenant on Civil and Political Rights.

Article 23

134. No objections were made to deleting this article.

Article 24

135. Canada preferred keeping a period of three months for denunciation, in line with the First Optional Protocol to the International Covenant on Civil and Political Rights. The Netherlands noted that other similar instruments referred to periods of six months and one year. Chile,

Portugal and Switzerland preferred one year as provided for in the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, while Poland preferred six months as provided for in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Articles 25 and 26

136. No comments were made to these articles.

V. REVIEW OF THE SECOND REVISED DRAFT

137. At the second part of the session, from 31 March to 4 April 2008, the Working Group had before it a second revised draft of the optional protocol (A/HRC/8/WG.4/3) and a note with additional drafting proposals, prepared by the Chairperson dated 25 March 2008. In her opening statement, the Chairperson underlined the need for all to show flexibility in order to reach consensus and expressed her hope that the Working Group would be able to complete its mandate and conclude the session with a text for transmission to the Human Rights Council.

Preamble

138. The Working Group agreed to replace paragraph 1 with the wording of preambular paragraph 1 of the International Covenant on Civil and Political Rights.

139. Paragraphs 2 and 3 were accepted as drafted.

140. Paragraph 4 was left pending owing to a lack of consensus on a proposal by the Islamic Republic of Iran to reflect language from paragraph 5 of the Vienna Declaration and Programme of Action.

141. The discussion on paragraph 6 was left pending.

142. Paragraph 5 was approved as drafted after some discussion, without reference to Economic and Social Council resolution 1985/17. Delegates discussed inserting, “established by ECOSOC resolution 1985/17” after “Committee on Economic, Social and Cultural Rights”. Some delegations agreed to the insertion, others discussed whether to insert this reference as a footnote, while a third group cautioned against such an insertion.

Article 1

143. Article 1 was accepted as drafted.

Article 2

144. With regard to paragraph 1, Egypt (on behalf of the African Group) and Portugal preferred the deletion of the language in brackets. Algeria stated that the scope of the protocol should include Part I of the Covenant. Canada, Greece, Poland, Turkey, the United Kingdom and the

United States favoured referring to "any rights set forth in Part III read in conjunction with Part II of the Covenant". Morocco reiterated its position that the application of the protocol should be limited to rights that are only specific to the Covenant. The NGO Coalition cautioned against exclusion of Part I of the Covenant from the protocol. China and India stated that Part I of the Covenant should be excluded from the scope of the article.

145. With regard to paragraph 2, Bangladesh, Belgium, Brazil, Chile, Ecuador, Egypt (on behalf of the African Group), Finland, France, Germany, Mexico, Morocco, Peru, Portugal, Slovenia, South Africa, Spain, Uruguay and Venezuela (Bolivarian Republic of) supported a comprehensive approach and called for the deletion of this paragraph. Italy and Sweden supported a comprehensive approach, provided that the optional protocol allowed States a wide margin of appreciation to determine freely the best use of their resources.

146. Canada, China, Greece, Japan, the Netherlands, New Zealand, Norway, Switzerland, the United Kingdom and the United States supported the retention of the paragraph. The United States suggested that the reference to specific articles should be changed to read "any rights set forth in Part III read in conjunction with Part II of the Covenant". Austria, Denmark, the Republic of Korea and Turkey supported an opt-out clause. Japan and Poland preferred an opt-in clause, as proposed by Canada, but remained open to consider an opt-out approach. Latvia and the Russian Federation favoured an à la carte approach. China stated that an opt-out approach should not be applied to article 2, paragraph 1, of the Covenant.

Article 3

147. The Working Group approved its deletion.

Article 4

148. With regard to paragraph 1, the Working Group agreed to delete "or unlikely to bring effective relief". ICJ expressed concern about the deletion, arguing that no one should be required to exhaust futile remedies.

149. Paragraph 2, subparagraph (*a*) was approved by the Working Group as amended, replacing "six months" with "one year".

150. Subparagraph (*b*) was accepted as drafted.

151. Subparagraph (*c*) was approved as drafted after some discussion. Egypt (on behalf of the African Group) and Senegal requested a reference to "international procedures of similar character". Bangladesh, Egypt, France, the Islamic Republic of Iran and Senegal proposed deleting "investigations" and referring to "similar procedures of settlement". Guatemala suggested adding the word "complaints". India and the Russian Federation proposed referring to "another procedure of international consideration of communications or settlement". The Syrian Arab Republic preferred mentioning "settlement, complaint and investigation". Australia, Austria, Brazil, Greece, Liechtenstein, Mexico, the Netherlands, Norway, Portugal, the Russian Federation and the United Kingdom cautioned against changing to language that might

give rise to legal questions, particularly adding "similar", which would be unclear. In adopting this provision, the Working Group agreed to mention in the report that they understood the wording in a broad and comprehensive way that would include other international (including regional) procedures.

152. Subparagraph (*d*) was accepted as drafted.

153. With regard to subparagraph (*e*), the Chairperson suggested adding "frivolous". Most delegations did not favour the inclusion of this word. China and India supported adding a requirement that communications could not rely mainly on second-hand information.

154. Subparagraphs (*f*) and (*g*) were accepted as drafted.

155. The United Kingdom, supported by Australia, Canada, Denmark, Ireland, Japan, New Zealand, Norway, Poland, Sweden and the United States, submitted an amended version to subparagraph 2 (*d*) bis, as a new paragraph 3, which reads: "The Committee may decline to consider a communication where it does not appear to reveal that the author has been significantly disadvantaged", noting that this text offered flexibility to the Committee to allocate time and resources effectively.

156. Argentina, Brazil, Chile, China, Ecuador, Egypt (on behalf of the African Group), Finland, France, India, Mexico, the Netherlands, Portugal, the Russian Federation, Switzerland and several non-governmental organizations did not favour proposed paragraph 3. Delegations underlined concerns raised in the first part of the session about the expression "significantly disadvantaged" (see paragraph 60 above).

157. China was concerned that, with the word "may" and with no criteria that the Committee has to apply in deciding not to consider a communication being provided for, any double standard would be to the detriment of the uniform application of the protocol. The United Kingdom said that, while it would have preferred "shall", it considered that the Committee should be relied upon to adopt a consistent approach in the light of its workload and the prevailing circumstances.

Article 5

158. With regard to paragraph 1, Brazil, Ecuador, Ethiopia, Finland, Germany, the Islamic Republic of Iran, Mexico and Portugal preferred the text as drafted. Argentina, Bangladesh, Brazil, Canada, Denmark, Egypt, France, Germany, Greece, Japan, Mexico, the Netherlands, Portugal, Spain, Sweden, the United Kingdom and the United States supported including "as may be necessary in exceptional circumstances", as suggested by the Chairperson. Finland, Switzerland, Amnesty International, ICJ and the NGO Coalition considered the amendment redundant.

159. Liechtenstein proposed replacing "for its urgent consideration a request that the State party take such interim measures" with "a request that the State party urgently consider taking such interim measures".

160. Norway proposed adding at the end of the paragraph "bearing in mind the voluntary nature of compliance with such requests". A number of delegations supported the proposal, while others

preferred not to add such wording. Some delegates noted that the proposal was not necessary because of the voluntary nature of such requests. Mexico, Portugal and Switzerland considered it incompatible with the purpose of preventing irreparable harm. Several delegates and non-governmental organizations mentioned that it would imply a retrogression in relation to Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the jurisprudence of regional human rights systems. Norway argued that clarification of the voluntary nature was necessary, since other treaty bodies interpreted interim measure requests to be binding on States. Canada agreed that it would be helpful to state that requests for interim measures were non-binding, even if that was already clear from the words "request" and "urgent consideration", and further proposed adding at the end of the paragraph "and shall invite the State party concerned to make submissions regarding the request if it so wishes". Liechtenstein considered that States parties had an obligation to consider urgently taking action on interim measure requests.

161. Japan favoured reinserting "when the risk of such damage is sufficiently substantiated" at the end of paragraph 1. Canada preferred that interim measures be dealt within the rules of procedure.

Article 6

162. Article 6 was accepted as drafted.

Article 7

163. Article 7 was accepted as drafted.

Article 8

164. Portugal and the Russian Federation suggested using uniform terminology to streamline "examine/examination" and "consider/consideration". Some delegates cautioned against deviating from standard language.

165. Paragraph 1 was approved as modified, replacing "consider" with "examine", "made available to it" by "submitted to it" and "information" by "documentation" twice. Discussions were held in relation to the proposal of Canada to insert "written" before information to ensure consistency with the First Optional Protocol to the International Covenant on Civil and Political Rights, article 5 (1), but delegations noted that "written" was not contained in other instruments. China, Pakistan and the Russian Federation expressed concern about replacing "provided that this information is transmitted to the Parties concerned" with "by the Parties concerned".

166. Paragraph 2 was approved as drafted.

167. Paragraph 3 was approved as amended after some discussion, adding references to "United Nations specialized agencies, funds, programmes and mechanisms", "other international organizations" and "any observations and comments by the State party concerned".

168. With regard to paragraph 4, the Chairperson suggested the insertion of "and appropriateness" after "reasonableness", and the deletion of the last sentence. Some delegations supported the insertion of "appropriateness", while others did not. A few noted that the

combined use of reasonableness and appropriateness could cause confusion. Canada and New Zealand cautioned against selective reference to article 2, paragraph 1 of the Covenant and proposed referring to Part II of the Covenant instead. Austria proposed replacing "as long as they are consistent" with "in compliance with".

169. Germany, Mexico, Portugal and several non-governmental organizations proposed deleting paragraph 4, while Egypt (on behalf of the African Group) preferred retaining it.

170. Australia, Bangladesh, Belgium, Greece, Japan, Norway, the United Kingdom and the United States supported a "reasonableness" test. Egypt (on behalf of the African Group), Peru and the NGO Coalition preferred that the word "reasonableness" not be used.

171. Several delegations favoured maintaining a reference to the "[broad] margin of appreciation" as suggested in the first revised draft and also referred to in the Committee's statement of May 2007 (E/C.12/2007/1), while several others, including non-governmental organizations, preferred deleting the reference to a "margin of appreciation". Portugal feared that it would undermine the core objective of the protocol and increase the burden of proof on victims; Egypt (on behalf of the African Group) objected because it could undermine State's sovereignty. Some delegates requested further clarification of "reasonableness" and "margin of appreciation". The Norwegian Centre for Human Rights cautioned against selectively adopting jurisprudential principles from the European system while ignoring those from other regional systems.

172. Guatemala, the Islamic Republic of Iran, Mexico, Peru and Poland expressed support for the proposal of Liechtenstein from the first part of the session.

173. Canada proposed revising the paragraph so that it would include the wording "whether steps were reasonable, in conformity with Part II of the Covenant" and "appropriate policy measures and the optimum use of its resources in accordance with its domestic priorities, provided it does so in a manner consistent with its obligations under the Covenant". Australia, Denmark and Ireland supported these amendments.

174. Canada and China found the wording "where relevant" unclear. The Chairperson noted that States had obligations to implement the Covenant immediately, such as in application of the right to non-discrimination. China noted that action taken to eliminate existing discrimination required financial and other resources. China also pointed out that article 2, paragraph 1 of the Covenant provides for "the rights recognized in the present Covenant" without any distinction between them.

175. Delegates discussed the proposal by the International Labour Organization (ILO) to add a paragraph 5. Several delegations preferred not to add a paragraph specifically related to ILO, since paragraph 3 already refers to information from all specialized agencies. ILO withdrew its proposal on its understanding that it would be accommodated in the practice of the Committee.

Article 8 bis

176. After some discussion, the Working Group agreed to use language from article 7, paragraphs 3, 4 and 5 of the Optional Protocol to the Convention on the Elimination of All

Forms of Discrimination against Women. Ethiopia suggested moving paragraph 1 to article 8, and dealing with paragraphs 2 and 3 in the rules of procedure. Canada noted that such matters could be dealt with in the rules of procedure, and suggested deleting paragraphs 2 and 3. The Netherlands and New Zealand requested adding "views on the admissibility" rather than only referring to "views on the merits". China suggested using wording from paragraph 1, article 7 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women to read "views on the communications and recommendations". Mexico noted that paragraphs 2 and 3 of the same article were also useful here.

Article 9

177. The Russian Federation reiterated its reservations about this article and its possible application, asking that the entire article be put in brackets, and to defer a final decision on it.

178. The United Kingdom proposed similar admissibility criteria in paragraph (*c*) as those in article 4, paragraph 1, and favoured deletion of "invoked" and "in the matter" and "or unlikely to bring effective relief" at the end of the first sentence. Bangladesh and India preferred keeping the word "invoked" to ensure consistency with other instruments.

Articles 10, 11 and 11 bis

179. Several delegations expressed similar concerns as those discussed during the first part of the session. Egypt requested further clarification on the fact that the inter-State procedure was an opt-in clause while the inquiry procedure was an opt-out provision. The Russian Federation noted that the legal basis for having both approaches in this particular instrument was unclear, and suggested a similar approach to both procedures. Canada suggested that articles 2, paragraph 1, and 10 should have the same scope and refer to the "rights set forth in Part III read in conjunction with Part II.

Article 12

180. The Working Group accepted the text as drafted.

Articles 13 and 14

181. The Chairperson mentioned her proposal for an additional paragraph in article 13 and the deletion of article 14.

182. Several States agreed to merge articles 13 and 14. Some States expressed concern about the purpose and administration of a trust fund and requested the insertion of wording on its voluntary nature, as in article 26, paragraph 2 of the Optional Protocol to the Convention against Torture. Argentina, France, Germany, the Netherlands and Switzerland stated that they could accept most of paragraph 3. Germany, while being sceptical about the establishment of a fund as such, welcomed the reference to "a separate project within an existing trust fund".

183. Algeria, Australia, Belgium, Canada, Denmark, Egypt (on behalf of the African Group), Japan and Sweden did not favour merging articles 13 and 14. Australia, Canada, Sweden and the United Kingdom stated that a fund should not be created by means of the optional protocol. Belgium, Canada, Sweden, the United Kingdom and the United States considered that the

Committee was not the appropriate body to administer the fund, while Egypt (on behalf of the African Group) clarified that the fund would not be administered by the Committee alone.

184. With regard to paragraph 3, Argentina, Australia, Bangladesh, Belgium, Germany, India, Sweden and Switzerland indicated their support for providing assistance to victims. Bangladesh and Sweden suggested replacing "legal aid" with "aid" or "assistance". Belgium and Switzerland proposed replacing "alleged victim" with "victim or victims of alleged violations". Australia favoured retaining "alleged victim". Canada and France stated that the fund should not be used to compensate victims of violations, a duty of the State party. Belgium, Canada and the United States did not favour making assistance to victim(s) dependent on "the consent of the State party concerned", while India favoured this clause.

185. Canada, China, Egypt and the United States expressed concerns at a legal aid fund that had no precedent in other instruments. The United States considered that the Committee was not in a position to fund complaints that it would be reviewing, while Switzerland disagreed.

186. Australia, Denmark, Germany, Japan, Sweden, the United Kingdom and the United States cautioned against the wording "technical assistance to Governments" being understood as yet another development fund. The United Kingdom and India argued that the fund could only be linked to the implementation of the optional protocol, in line with article 7 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Germany proposed replacing the last part of paragraph 3 with "and to provide expert and technical assistance to States parties to develop new and to further contribute to existing national human rights capacities in the area of economic, social and cultural rights, as the Committee may consider appropriate".

187. Egypt (on behalf of the African Group), supported by Bangladesh and the Islamic Republic of Iran, proposed replacing "separate project within an existing Trust Fund of the OHCHR" with "mechanism" and amending the objectives to read: "(a) to provide expert and technical assistance to Governments for the implementation of the rights recognized in the Covenant; (b) to grant aid to a victim of a violation, after having examined the communication and made a determination on the merits, in connection with the presentation of the case". Belgium and Switzerland preferred the deletion of "as the Committee may consider appropriate".

188. Belgium, Egypt (on behalf of the African Group), India, the Islamic Republic of Iran, Senegal and Switzerland considered that legal aid should be available to potential victims once a communication had been declared admissible.

189. Liechtenstein cautioned against a two-class system between States parties to the protocol and States parties to the Covenant only in terms of receiving assistance from the fund. CETIM underlined the importance of international assistance and cooperation in the implementation of the Covenant.

190. The Russian Federation pointed out that a reference to technical assistance was already reflected in article 13, paragraph 2. Liechtenstein, in support of that argument, emphasized the need to clarify the relationship between paragraphs 1, 2 and 3, suggested deleting paragraph 3 and adding the following sentence at the end of paragraph 1: "For the provision of such technical advice or assistance by the OHCHR, a separate project, within an existing Trust Fund, shall be

established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations."

191. The Netherlands and New Zealand proposed replacing "legal aid" and "presentation of the case" with "assistance" and "submissions of communication" respectively. The Russian Federation also preferred a general reference, avoiding the term "legal aid". Egypt (on behalf of the African Group) did not favour the use of "legal aid" and "case", and favoured the deletion of all reference to assistance to individuals. Some delegations preferred referring to "States parties" rather than to "Governments".

192. With regard to the beneficiaries of the fund, the Russian Federation supported granting assistance to both victims and States. Poland supported technical assistance to Governments but was concerned about granting legal aid to individuals without clear eligibility criteria. Senegal emphasized the importance of ensuring compensation for the victims and for supporting States in building capacity to implement their obligations.

193. New Zealand considered linking the provision of assistance to victims to a determination of admissibility, and suggested inserting "assistance in preparation of the submission of the communication" instead of "presentation of the case".

194. The Netherlands favoured omitting "alleged" and suggested reference to "author" or "individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the Covenant". Argentina and the Russian Federation supported the retention of "alleged". The Russian Federation added that assistance would be provided only when a violation had been found by the Committee.

195. In relation to the administration of the fund, the Russian Federation suggested inserting "as the Committee may recommend appropriate" to clarify (a) that the provision of assistance is not an automatic procedure, and (b) that a final decision in this regard should be made by the Committee.

196. A suggestion was made to use language from article 7, paragraph 2 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

197. The Russian Federation considered that article 13, paragraph 4 was not necessary.

198. CETIM pointed out that concerns could be solved by applying the criteria adopted by the Committee to distinguish States' inability and lack of political will and by granting assistance to victims only in cases where complaints had been declared admissible.

Article 15

199. The Working Group approved the article as drafted.

Article 16

200. The Working Group agreed on the article as drafted, after some discussion on "accessibility" and whether to end the article after the word "formats".

Article 17

201. The Working Group approved the deletion of article 17, after some discussion. Canada supported retention of this article and provided alternative text, which would ensure an appropriate quorum in the Committee when considering communications.

Article 18

202. Article 18 was approved as drafted.

Article 19

203. Article 19 was approved as modified, deleting "own" in paragraph 2 and basing it on the language of article 9, paragraph 2 of the First Optional Protocol to the International Covenant on Civil and Political Rights.

Article 20

204. The Working Group approved the deletion of this article.

Article 21

205. Algeria asked for the deletion of article 21. The Chairperson stated that the discussion on the article would be adjourned and combined with the discussion on article 2.

Article 22

206. The Working Group agreed to use the language of article 15 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Article 23

207. The Working Group approved the deletion of article 23.

Article 24

208. The Working Group approved article 24, replacing "one year" with "six months", as provided for in article 19, paragraph 1 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Article 25

209. Article 25 was approved as drafted.

Article 26

210. Article 26 was approved as drafted.

VI. CLOSURE OF PROCEEDINGS AND ADOPTION OF THE REPORT

211. At the end of the discussion, the Chairperson noted that there was no objection to the transmission of the text to the Human Rights Council for its consideration and that the statements made by delegations would be reflected in the report. The Working Group had thus completed its mandate.

212. The text of the draft optional protocol transmitted by the Working Group to the Council is contained in annex I.

213. In their closing statements, delegations were unanimous in commending the dedicated efforts of the Chairperson and the Working Group as a collective to seek consensus solutions.

214. Algeria stated that the exclusion of Part I of the Covenant from article 2 of the optional protocol risked undermining the Covenant, and reserved its right to address this issue in the Council.

215. Chile welcomed the consensus reached on article 2. The fact that this article did not make any distinction between economic, social and cultural rights as such was consistent with the Covenant, notably article 3 and article 5, paragraph 1, and with resolutions of the Council, in which it reiterated the need to treat all human rights in an equal manner and with the same emphasis.

216. Uruguay noted that it would have preferred a protocol with a broader focus.

217. The United States noted that it continued to have concerns about a number of provisions and remained sceptical of the need for an optional protocol. It reserved its position on the text overall. While equally important, economic, social and cultural rights were, in a legal sense, fundamentally different. They were to be progressively realized in accordance with available resources and were, on their face, difficult to adjudicate, as reflected in the absence of provisions on remedies and enforcement in the Covenant.

218. India considered that the draft optional protocol was a good compromise text which had met the concerns of all parties and noted that it would take the draft for further examination with relevant Government bodies.

219. The Russian Federation stated that the draft reflected a compromise between different approaches to implementing economic, social and cultural rights. As an integral part of the system of international law, the protocol would allow States parties to make reservations compatible with the object and purpose of the treaty. The Committee would not have the competence to assess such compatibility, but should rather focus on effectively fulfilling its new role in cooperation with States parties.

220. Egypt (on behalf of the African group) expressed its overall satisfaction with the text, welcomed the inclusion of the modest but potentially beneficial provision on a trust fund and the provisions on interim and protection measures, inquiry procedure and friendly settlement. The African Group regretted that the text did not encompass all parts of the Covenant, but understood that this exclusion had no bearing or implication for the centrality accorded to the right to self-determination in the Covenant or under international human rights law in general.

221. Egypt (in a national capacity) fully welcomed and supported the transmission of the text to the Council.

222. Morocco considered that the text met the concerns of delegations, provided the best possible compromise, and that the Council should adopt the protocol as soon as possible.

223. Denmark reserved its final position on the draft and stated that the decision to forward the draft to the Council represented neither an agreement on the text as a whole nor support for all elements in it. Denmark remained sceptical of an individual complaint mechanism. The nature and progressive realization of economic, social and cultural rights made them insufficiently justiciable and less suited for such a mechanism, which could potentially interfere, unwarranted, with national policy measures.

224. The Netherlands was satisfied that several of its concerns had been accommodated and that useful compromise solutions had been found in some instances. Given that its overriding interest - the possibility to opt out from the right of complaint with regard to certain provisions - had not been accommodated, it reserved its final position on the draft.

225. Japan noted that it was less than satisfied with the draft, as arguments on some articles to which it attached importance had not been settled and its proposals not reflected.

226. Canada remained concerned about establishing a communications procedure for economic, social and cultural rights, given their different nature as progressively realizable. Some Covenant rights, set out in broad and vague terms, could not be easily subjected to quasi-judicial assessment. It regretted the rejection of an à la carte approach, which would have facilitated broader acceptance of the procedure. It was not fully satisfied with the language intended to ensure appropriate deference to sovereign State prerogatives for resource allocations and policymaking. It did not support the inclusion of a trust fund, was concerned that the inclusion of additional mechanisms would overburden the Committee and duplicate existing mechanisms, emphasized the non-binding character of interim measures, and noted that the Committee should only consider documentation from regional human rights systems concerning instruments ratified by a State party.

227. Spain would have liked a higher threshold for protection of Covenant rights, but recognized that the text reflected a consensus and was a significant step towards the effective protection of these rights. It addressed an historic inequality between artificially created categories of rights.

228. Poland was not fully satisfied with the text and reserved its position with a view to further deliberations in the Council. It noted that Poland would not be bound by case law developed under the protocol if it did not ratify this instrument; Part II of the Covenant should be applied in line with article 31 of the Vienna Convention on the Law of Treaties; article 8, paragraph 4 of the protocol would be interpreted in the light of the whole text of article 2, paragraph 1 of the Covenant; as to the material scope of application, Part II of the Covenant could only be invoked in conjunction with the rights in Part III; the application of interim measures would be left to the discretion of the State party and the non-application of an interim measure would not imply a violation of the protocol's provisions; and article 9 excluded the possibility of recommending

specific corrective measures or reparation. It regretted the absence of a provision on the participation of social partners and non-governmental organizations in the procedure, and reserved the right to make further comments at a later stage.

229. Greece noted that the text contained positive elements but did not fully meet all its concerns. It would have preferred more flexibility concerning its scope and explicit language on a broad margin of appreciation. It considered requests for interim measures to be of a non-binding nature.

230. Norway regretted that article 5 did not underline the non-legally binding character of requests for interim measures, and that article 8, paragraph 4 did not clarify the State's broad margin of appreciation. It reserved its position on the draft optional protocol as a whole.

231. Austria reiterated that the protocol needed to allow for national specificities to be taken into account in the implementation of the Covenant. The final text contained important language to guide the work of the Committee and to allow it to take into account the variety of means and choices available to States in implementing their obligations under the Covenant.

232. Guatemala considered the final draft to be the best possible text.

233. Finland reiterated its full support for an optional protocol covering all rights, contained in the Covenant.

234. The Republic of Korea stated that the draft did not fully succeed in reflecting the distinct nature of economic, social and cultural rights, nor fully accommodate the various views and concerns about how the protocol could be operationalized.

235. Sweden remained unconvinced that an optional protocol was the most effective way of promoting economic, social and cultural rights. It regretted that some of its key positions, including criteria for admissibility, were not reflected in the draft and remained sceptical about the provision on the establishment of a trust fund. It was concerned by the haste in which the negotiations had been conducted and noted that transmission of the text to the Council did not mean general acceptance of the draft protocol.

236. Belgium stated that the optional protocol filled a gap in the international human rights system. It could accept article 4, stressing the need for a strict respect for the condition "if necessary", and article 8, paragraph 4, noting that the concept of "reasonableness" did not in any way imply a new interpretation of the Covenant. Belgium regretted the choice of an opt-in approach in article 11, having preferred the opt-out option. In a spirit of compromise, it could accept the establishment of a trust fund, noting that it should be managed by OHCHR.

237. Turkey supported an opt-out approach and expressed disappointment at the deletion of article 2, paragraph 2, noting the distinct nature of economic, social and cultural rights characterized by the principle of progressive implementation.

238. New Zealand noted how all delegations had worked in a cooperative spirit and had made compromises. It reserved its position on the text as a whole.

239. Switzerland reiterated its view that most obligations under the Covenant were of a programmatic nature and were not justiciable within its legal order. It could only support an à la carte approach, which would allow more States to ratify the protocol. Switzerland was satisfied that article 5 did not refer to the voluntary nature of interim measures. It regretted the opt-in approach in articles 10 and 11, having preferred the opt-out option. It expressed reservations about the reference to a trust fund in article 14, noting the risk of duplicating existing development funds.

240. Germany could agree to the draft only on a preliminary basis, pending further examination. It understood that the word "may" in article 4 implied that it was the prerogative of the Committee to decide whether it would make use of this provision, and that article 8, paragraph 4 did not diminish the scope of examination or protection of victims. Germany accepted the wish of the majority to establish a trust fund in article 14, paragraph 3. It did not see a real need for such fund, regretted the absence of a victims-related component and would not accept the trust fund being used to reward those violating their obligations. It interpreted the term "States parties" as recipients under article 14, paragraph 3, in a broad sense, covering Governments, non-governmental organizations and other civil society organizations.

241. Mexico welcomed the final draft, noting that the text reflected a compromise. It would have preferred not to include article 4 in the protocol and stated that article 8, paragraph 4 should be interpreted in line with the provisions of the Covenant.

242. Croatia noted that not all delegates could be fully satisfied with the text as it reflected a compromise. It looked forward to the adoption of the protocol by the Council and the General Assembly.

243. Brazil welcomed the draft and reiterated that the protocol should cover all rights of the Covenant. An à la carte approach would have been a retrogression, not in keeping with other United Nations procedures and the principles of universality, indivisibility and interrelatedness of all human rights. It expected that it would be possible to adopt the protocol in 2008.

244. Senegal noted the objectives of the optional protocol were to provide relief to victims and to ensure freedom from poverty. The adoption of the protocol was only the first step. What was needed now was its widest possible ratification.

245. Pakistan expressed reservations to the exclusion of Part I of the Covenant, noting that it did not favour artificial distinctions between Covenant rights. If specificity had led to a deadlock, then generality might be a way out; article 2 should either be kept general or specify all parts of the Covenant. Pakistan reiterated that the draft did not enjoy the support of all States. It would remain constructively engaged in negotiation prior to the session of the Council to find a solution acceptable to all.

246. The United Kingdom reserved its position on the draft. It remained sceptical about the practical benefits of the protocol, considering that economic, social and cultural rights did not lend themselves to adjudication in the same way as civil and political rights. It favoured

an à la carte approach, and questioned whether the comprehensive approach was the best way to ensure an effective mechanism which would be ratified by the widest number of States. It understood that "all available domestic remedies", under article 3, paragraph 1 included judicial, administrative and any other remedies. It noted that the reasonableness test in examining rights contained in Part III read in conjunction with Part II of the Covenant should be applied so as not to second-guess a State's reasonable policy choices, including by applying similar considerations as those in the Committee's statement of May 2007. It did not support the establishment of a trust fund.

247. South Africa aligned itself with the statement of Egypt (on behalf of the African Group), welcoming the compromise text.

248. China welcomed the decision to transmit the text to the Council. Though it was not entirely satisfied with some articles, it believed that the consensus text was the best outcome the Working Group could expect at this stage of its work. It reserved its final decision on the text as a whole pending thorough study of the draft by relevant Government departments.

249. Bolivia reiterated its support for the optional protocol, but regretted that article 2 only covered Parts II and III of the Covenant.

250. Indonesia noted that the draft was a compromise that did not reflect all interests and views; however, States should look at it positively. It emphasized the importance of a balanced approach between economic, social and cultural rights and civil and political rights. It had transmitted the text to its capital for review and reserved its right to comment further on the draft at a later stage.

251. The Syrian Arab Republic requested that a comprehensive approach encompassing all rights, including articles 1, 2 and 3 of the Covenant, be incorporated into article 2 of the protocol, noting that the existing formula was selective and unhelpful to the realization of equal and universal treatment of all rights.

252. The Islamic Republic of Iran stated that the protocol provided an opportunity to reiterate the equal status of all human rights. It noted that constructive approaches, such as enhancement of international cooperation in conformity with article 1, paragraph 2 of the Covenant and the universality of human rights coupled with cultural diversity should be highlighted more appropriately. The scope of the protocol should cover all Covenant rights consistent with other human rights instruments. It reserved its right to comment further on the draft at a later stage.

253. France stated that the approved text constituted a balanced compromise which covered all the rights set forth in the Covenant and met the concerns of States.

254. The NGO Coalition noted, inter alia, that the intent of article 2 should be that admissible communications may be considered in the light of all parts of the Covenant, including Part 1;

that article 4 should not impose a new burden of proof on the author of a communication and that "clear disadvantage" should be interpreted taking into account the particular circumstances of indigenous people, women, persons with disabilities and other groups; and that article 8, paragraph 4 should be read consistently with the fact that many obligations under the Covenant are not subject to progressive realization. Nord-Sud XXI regretted the exclusion of the right to self-determination, which would exclude communications concerning rights to land and resources.

255. On 4 April 2008, the Working Group adopted the report of its fifth session ad referendum.

Annex I

DRAFT OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Preamble

The States Parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that the Universal Declaration of Human Rights and the International Covenants on Human Rights recognize that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural, economic, political and social rights,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Recalling that each State Party to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures,

Considering that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it would be appropriate to enable the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the Committee) to carry out the functions provided for in the present Protocol,

Have agreed as follows:

Article 1

Competence of the Committee to receive and consider communications

1. A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.

2. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Communications

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in Parts II and III of the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Admissibility

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.

2. The Committee shall declare a communication inadmissible when:

(*a*) It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;

(*b*) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;

(*c*) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(*d*) It is incompatible with the provisions of the Covenant;

(*e*) It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;

(*f*) It is an abuse of the right to submit a communication; or when

(*g*) It is anonymous or not in writing.

Article 4

Communications not revealing a clear disadvantage

The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.

Article 5

Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of the respect for the obligations set forth in the Covenant.

2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol.

Article 8

Examination of communications

1. The Committee shall examine communications received under article 2 of the present Protocol in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. When examining a communication under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including from regional human rights systems, and any observations or comments by the State Party concerned.

4. When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with Part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

Article 9

Follow-up to the views of the Committee

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

2. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State party's subsequent reports under articles 16 and 17 of the Covenant.

Article 10

Inter-State communications

1. A State Party to the present Protocol may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under

the Covenant. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(*a*) If a State Party to the present Protocol considers that another State Party is not fulfilling its obligations under the Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(*b*) If the matter is not settled to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(*c*) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(*d*) Subject to the provisions of subparagraph (*c*) of the present paragraph the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Covenant;

(*e*) The Committee shall hold closed meetings when examining communications under the present article;

(*f*) In any matter referred to it in accordance with subparagraph (*b*) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (*b*), to supply any relevant information;

(*g*) The States Parties concerned, referred to in subparagraph (*b*) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(*h*) The Committee shall, with all due expediency after the date of receipt of notice under subparagraph (*b*) of the present paragraph, submit a report, as follows:

(i) If a solution within the terms of subparagraph (*d*) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (*d*) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. A declaration under paragraph 1 of the present article shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 11

Inquiry procedure

1. A State Party to the present Protocol may at any time declare that it recognizes the competence of the Committee provided for under this article.

2. If the Committee receives reliable information indicating grave or systematic violations by a State Party of the rights set forth in Parts II and III of the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

3. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

4. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

5. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

6. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

7. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report provided for in article 15.

8. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 12

Follow-up to the inquiry procedure

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 11 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 11, paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 13

Protection measures

A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 14

International assistance and cooperation

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, along with the State party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.

3. A trust fund shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, with a view to providing expert and technical assistance to States Parties,

with the consent of the State Party concerned, for the enhanced implementation of the rights contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights in the context of the present Protocol.

4. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the Covenant.

Article 15

Annual report

The Committee shall include in its annual report a summary of its activities under the present Protocol.

Article 16

Dissemination and information

Each State Party undertakes to make widely known and to disseminate the Covenant and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State party, and to do so in accessible formats for persons with disabilities.

Article 17

Signature, ratification and accession

1. The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 18

Entry into force

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Protocol, after the deposit of the tenth instrument of ratification or accession, the protocol shall enter into force three months after the date of the deposit of its instrument of ratification or accession.

Article 19

Amendments

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 20

Denunciation

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 2 and 10 or to any procedure initiated under article 11 before the effective date of denunciation.

Article 21

Notification by the Secretary-General

The Secretary-General of the United Nations shall notify all States referred to in article 26, paragraph 1 of the Covenant of the following particulars:

(*a*) Signatures, ratifications and accessions under the present Protocol;

(*b*) The date of entry into force of the present Protocol and of any amendment under article 19;

(*c*) Any denunciation under article 20.

Article 22

Official languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 26 of the Covenant.

Annex II

LIST OF PARTICIPANTS

States members of the Human Rights Council

Angola, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Canada, China, Egypt, France, Germany, Ghana, Guatemala, India, Indonesia, Italy, Japan, Malaysia, Mexico, Netherlands, Nigeria, Pakistan, Peru, Republic of Korea, Romania, Russian Federation, Senegal, Slovenia, South Africa, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, Uruguay.

States not members of the Human Rights Council

Algeria, Argentina, Australia, Austria, Belgium, Benin, Burkina Faso, Chile, Congo, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, Greece, Haiti, Iran (Islamic Republic of), Ireland, Latvia, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Mauritania, Morocco, Nepal, New Zealand, Norway, Poland, Portugal, Serbia, Spain, Swaziland, Sweden, Syrian Arab Republic, Turkey, United States of America, Venezuela (Bolivarian Republic of).

Non-Member States of the United Nations

Holy See.

Organizations, bodies, programmes and specialized agencies of the United Nations

Committee on Economic, Social and Cultural Rights, International Labour Organization, United Nations Educational, Scientific and Cultural Organization.

National and regional human rights institutions

German Institute for Human Rights, Inter-American Institute of Human Rights, International Coordinating Committee for National Human Rights Institutions, Norwegian Centre for Human Rights.

Non-governmental organizations in consultative status with the Economic and Social Council

Actionaid International, Amnesty International, Asian Indigenous and Tribal Peoples Network, Baha'i International Community, Canadian HIV/AIDS Legal Network, Caritas Internationalis, Centre on Housing Rights and Evictions (COHRE), Earthjustice, Espace Afrique International, Europe-Third World Centre (CETIM), Foodfirst Information and Action Network (FIAN), International Commission of Jurists (ICJ), International Federation of Human Rights Leagues, International Federation Terre des Hommes, International Service for Human Rights, International Women's Rights Action Watch (IWRAW), New Humanity Amnesty International, Nord-Sud XXI.

Annex III

LIST OF DOCUMENTS

Symbol	Title
A/HRC/8/WG.4/1	Provisional agenda
A/HRC/8/WG.4/2	Revised draft optional protocol to the International Covenant on Economic, Social and Cultural Rights prepared by the Chairperson-Rapporteur, Catarina de Albuquerque
A/HRC/8/WG.4/2/Corr.1	Revised draft optional protocol to the International Covenant on Economic, Social and Cultural Rights: letter from the Chairperson-Rapporteur, Catarina de Albuquerque, to the members of the Open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights
A/HRC/8/WG.4/3	Revised draft optional protocol to the International Covenant on Economic, Social and Cultural Rights: letter from the Chairperson-Rapporteur, Catarina de Albuquerque, to the members of the Open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights

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