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COMMITTEE AGAINST TORTURE

Tenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 140th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 April 1993, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.140/Add.1.

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The meeting was called to order at 3.20 p.m.

ADDRESS BY THE ASSISTANT SECRETARY-GENERAL FOR HUMAN RIGHTS

1. The CHAIRMAN welcomed Mr. Ibrahima Fall, Assistant Secretary-General for Human Rights and, on behalf of the Committee, congratulated him on his appointment.

2. Mr. FALL (Assistant Secretary-General for Human Rights) welcomed members to the tenth session of the Committee against Torture and regretted that he had been unable to attend the opening meeting. He took the opportunity to assure the Committee of his special interest in activities to combat torture, activities which constituted one of the major goals of the United Nations and the Universal Declaration of Human Rights.

3. Since the Committee's previous session, the number of States parties to the Convention had increased to 72 with the accession of Mauritius and Burundi on 9 December 1992 and 18 February 1993 respectively and the succession of the Czech Republic to the Czech and Slovak Federal Republic, which had ceased to exist on 31 December 1992.

4. With regard to the machinery for implementing the Convention against Torture in accordance with article 29 of the Convention a conference had been held in New York on 9 December 1992 to consider an amendment to the provisions of the Convention concerning financing. Under the proposal, the financing of the implementation of the Convention, hitherto based exclusively on contributions by States parties, was to be transferred to the United Nations regular budget. The proposal had already been adopted unanimously by the Conference of the States Parties and approved by the General Assembly at its forty-seventh session (resolution 47/111) and in February 1993 the Secretary-General had referred the proposal to States parties for their approval. Pursuant to article 29 of the Convention, the amendment would enter into force when two thirds of the States parties had informed the Secretary-General that they accepted it in accordance with their respective constitutional processes. The General Assembly, in resolution 47/113, had taken note of the Committee's fifth annual report and welcomed the Committee's practice of making observations following the consideration of each report submitted by a State party; it had invited all States which had ratified the Convention or acceded to it, and those which had not yet done so, to make the declarations provided for under articles 21 and 22 of the Convention and to consider withdrawing the reservations entered with regard to article 20. The debates in the Third Committee testified to the particular attention paid by Governments to the work of the Committee against Torture and their concern that adequate funding be provided.

5. At its previous session, the Commission on Human Rights had discussed issues surrounding measures which needed to be taken or strengthened to protect individuals against torture or other cruel, inhuman or degrading treatment or punishment, and in resolution 1993/37 had again urged all States to become parties to the Convention, as a matter of priority, and accept its optional provisions. It had also urged States parties to inform the Secretary-General as soon as possible that they approved the amendment to the provisions of the Convention concerning financing. The Commission had welcomed the progress made during the first session of the Working Group set up to consider the draft optional protocol to the Convention against Torture, which had opened the way for an in-depth analysis of the principles underlying the draft. The Commission had studied the report of Mr. Kooijmans, the

Special Rapporteur on questions of torture. In 1992, he had examined information concerning 58 countries, 26 of which were parties to the Convention. He had also accompanied Mr. Tadeusz Mazowiecki, the Special Rapporteur of the Commission on Human Rights appointed to investigate the human rights situation in the territory of the former Yugoslavia, on his second mission from 12 to 22 October 1992. They had visited Bosnia and Herzegovina, Croatia and Serbia, during which time, as Mr. Kooijmans noted in his report, they had received alarming information pertaining to violent deaths and fatal injuries resulting from torture, particularly in the detention camps in Serbian-controlled areas. Mr. Kooijmans, who had carried out his duties as Special Rapporteur with exemplary dedication, had recently been replaced by Mr. Nigel Rodley. Undoubtedly, the Committee would cooperate as closely with the new incumbent as with his predecessor.

6. The Commission had welcomed the consolidated report of the Secretary-General entitled "Ten years of the United Nations Voluntary Fund for Victims of Torture", which outlined the development of the Fund's financing, and the programmes it assisted, together with other aspects of its work and its success in helping individuals who had suffered serious human rights violations following torture, and their families. Since 1989, the number of programmes subsidized by the Fund had increased sevenfold whilst Government contributions had been falling. In view of that situation, the Commission on Human Rights had called upon the Secretary-General to consider organizing a special session to raise contributions for the Fund during the World Conference on Human Rights, which would be held in Vienna from 14 to 25 June 1993. The Board of Trustees of the Fund and its Chairman and members would provide the Committee with further details of its activities during subsequent meetings.

7. The Commission had also considered the report drawn up by the Working Group established to look into cases of arbitrary detention and had been concerned to note that arbitrary detention seemed to be facilitated and aggravated in certain circumstances, such as frequent states of emergency or when the definition of what constituted a threat to State security was too vague. The Commission considered that the Working Group, under its mandate, could on its own initiative initiate proceedings in cases of arbitrary detention.

8. The final touches were being put to the preparatory activities for the World Conference on Human Rights. The Committee had made a valuable contribution to the preparations for the Conference and Mr. Sorensen had been an active and diligent participant in meetings of the Preparatory Committee as the Committee's representative. The General Assembly, at its latest session, had called on Mr. Philip Alston, Chairman of the Committee on Economic, Social and Cultural Rights, to update his study of possible long-term methods for improving the operation of bodies responsible for implementing United Nations human rights instruments.

9. The Committee against Torture had also made a valuable contribution to various programmes run by the Advisory Services and Technical Assistance and Information Branch of the Centre for Human Rights, and in particular to activities to protect human rights in Romania, in which Mr. Voyame was involved and, since January 1993, in Guatemala, in which Mr. Lorenzo was

involved as a delegate of Mr. Tomuschat, an independent expert appointed by the Secretary-General to look into the human rights situation in that country.

10. He reiterated to the Chairman and members of the Committee his best wishes for success in their tasks, in the course of which he and the secretariat would provide their fullest support.

The meeting was suspended at 3.40 p.m. and resumed at 3.45 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Periodic report of Canada (continued) (CAT/C/17/Add.5)

11. At the invitation of the Chairman, Ms. Weiser, Mr. Low and Mr. Deslauriers (Canada) took seats at the Committee table.

12. Ms. WEISER (Canada), replying to questions raised in the course of the discussion of her country's periodic report, said that before Canada had ratified the Convention against Torture, changes had been made to Canadian law to incorporate specific provisions of the Convention and to ensure compliance. The offence of torture had been added to the Criminal Code in 1985 and its definition had been based on that contained in article 1 of the Convention. Section 269.1 of the Code stated that the defences specified in article 2 of the Convention could not be invoked as such; in other words, there was no defence of superior orders or of exceptional circumstances. Similarly, the same section provided that, as required by article 15 of the Convention, statements made as a result of torture were inadmissible as evidence, except for the purposes of showing that the statement was so obtained. Under section 7 (3.7) of the Code, universal jurisdiction applied to the offence of torture, in terms echoing those of article 5 of the Convention.

13. With regard to the question relating to private prosecutions under the Criminal Code, under section 504 a person could initiate criminal charges and proceedings before a justice and could prosecute the offence. However, the Crown could subsequently intervene and take carriage of the prosecution. In that case, the Crown also had the power to stay the prosecution where continuation was not in the best interests of the administration of justice. Actions could also be brought on the basis of section 12 of the Canadian Charter of Rights and Freedoms, which protected against cruel, inhuman or degrading treatment or punishment. Section 24 of the Charter empowered the courts to grant whatever remedy they considered just and appropriate in the circumstances. An individual had the right to file complaints with the Royal Canadian Mounted Police (RCMP) Public Complaints Commission and could also seek civil redress under the Crown Liability Act or at common law.

14. In response to the request for further information on complaints heard by the RCMP Public Complaints Commission, she said that the Commission had become operational in 1988 and since then had held 12 hearings, 5 of which had concerned excessive force.

15. Referring to the question concerning the difference between the offence of torture and that of war crimes and crimes against humanity, she stated that the Criminal Code contained both offences. While crimes against humanity could well include torture, such crimes also demanded that other conditions be met, for example, that the offending act had been committed against a civilian population or identifiable group of persons. In the Convention, the offence of torture was not restricted in the same way and so it had been deemed necessary to create a specific offence. Where an accused was charged with conduct which fulfilled the definition of both sections, the accused could only be convicted for one offence, as the Canadian Charter of Rights and Freedoms and common law protected against double jeopardy.

16. An explanation had been requested about the statement in the report that the defence of obedience to de facto authority was not available to an individual charged with a war crime or a crime against humanity: the effect of the provision was to hold the person charged with such an offence culpable, even if the act had been committed in obedience to, or in conformity with, domestic law in force at the time. That was consistent with the nature of a war crime or a crime against humanity.

17. Several Committee members had inquired about mutual legal assistance. Canada's report (CAT/C/17/Add.5) indicated that bilateral treaties had been concluded with several countries and negotiations were being held with several others. Bilateral treaties were advantageous in that they specified the exact procedures to be followed by each country. However, regardless of whether such a treaty existed, under the Convention against Torture Canada could cooperate with another country in accordance with the terms set out in articles 8 and 9. Pursuant to a request received in 1992 from the Supreme Court of Chile, the Attorney-General of Canada had conducted an examination of a torture victim from Chile who was residing in Canada. The transcript of the examination had then been transmitted to Chile for use in a prosecution related to torture.

18. With regard to questions concerning the federal structure of Canada, under the Canadian Constitution legislative powers were divided between federal and provincial governments according to subject matter. However, even where subjects were related, the division between the two levels of government was not necessarily the same. Thus, if a member of the RCMP was charged with excessive force under the Criminal Code, he would be prosecuted in the courts of the province in which the alleged offence had taken place. In addition, the officer could face internal disciplinary proceedings, apart from the criminal process. Those proceedings would be governed by federal law because the RCMP was a federal police force. The Criminal Code offence of torture was subject to universal jurisdiction; thus any judge, whether provincial or federal, who had authority to hear criminal trials could rely on the universal jurisdiction provision of the Code.

19. The federal Government had authority to prescribe the punishment for a particular criminal offence, including terms of imprisonment, regardless of whether they would be served in a federal or provincial institution. If the stipulated term of imprisonment was two years less one day, it would be served in a provincial detention centre. If the term exceeded that limit, the offender would be sent to a federal institution. With a view to clarifying

how the federal structure of Canada functioned, and in response to the request made by the Centre for Human Rights that States prepare a core document for use by all treaty-monitoring bodies when examining State reports, Canada had almost completed drafting such a document, which described the constitutional structure in detail.

20. A number of questions had been asked about the training given to various groups with which the Convention was concerned. The criminal law course for RCMP recruits was given by instructors within the police force. Recruit training involved sessions on the law governing arrest, detention, search, seizure and the obtaining of evidence. Emphasis was placed on training recruits to understand and abide by the provisions of the Criminal Code governing the use of force and the prohibition of torture. They also received instruction on the Canadian Charter on Rights and Freedoms, in particular the civil and due process rights of all accused persons. Members of the Correctional Service of Canada (prison guards) underwent a 12-week training course in the interpretation and application of the Criminal Code and internal directives governing the use of force. The training emphasized the importance of exercising judgement and discretion in responding to a wide variety of circumstances. Refresher courses were also given.

21. Members of the Canadian armed forces called upon to assist civil authorities during a riot or disturbance in Canada received specific training on the use of minimum force. The level of force authorized in such operations was similar to that authorized for other peace officers. Members of Canadian forces participating in United Nations peace-keeping and humanitarian assistance operations outside Canada received specific training on the level of force permitted under international law, government policy and the rules of engagement applicable to the particular operation. The level of force authorized was usually the minimum force required and based on the principle of self-defence. All members of the Canadian forces were given training on the Geneva Conventions and the Additional Protocols.

22. She was unaware of specific training for medical doctors on the detection of torture. However, she would take steps to find out more about that subject. A full review would be made of the letter referred to by Mr. Sorensen, which expressed views on the scope of the Convention, and of the interpretation contained within it.

23. As to the question concerning corporal punishment in Canada, it should be noted that the Supreme Court of Canada, in the case of Regina versus Smith, had stated that there were certain punishments which would always offend the protection against cruel and unusual punishment in section 12 of the Canadian Charter of Rights and Freedoms, including corporal punishment. The

federal Government was re-examining a provision of the Criminal Code which permitted reasonable force by a parent or schoolteacher in the correction of a child. She would try to ensure that the outcome of that examination was included in Canada's next report.

24. Questions had been raised about the availability of statistics in Canada on certain matters related to the Convention. The collection of statistical information was undoubtedly complicated by the division of powers in Canada. However, consultations with the relevant government departments responsible for collecting such data would be held and more information of that nature would be included in the next report. Similarly, her delegation would act on the comments made concerning the style and organization of certain parts of the report.

25. Mr. DESLAURIERS (Canada) said that since 1988 the Province of Quebec had been undertaking a major police reform, briefly summarized in paragraphs 87-94 of the report contained in document CAT/C/17/Add.5. Two new tribunals, the Commissioner for Police Ethics and the Committee on Police Ethics, would further enhance the implementation of the Convention's provisions in Quebec, particularly those of articles 12 and 13.

26. With regard to the allegations brought to the Committee's attention by Amnesty International, the four cases submitted to the Complaints Committee of Quebec's Department of Public Security had been rejected because there had been no collaboration or the complainant had been untraceable or the complaints had proved unfounded. The Complaints Committee's decisions were, in any case, subject to appeal. The four cases concerned were based on matters which had been raised before 1 September 1990 and had thus been considered under the former system; under the new provisions, all complaints would be considered, in the first instance, by the Commissioner for Police Ethics.

27. The last case mentioned by the Committee did involve events which had occurred after 1 September 1990 and had thus been examined by the Commissioner for Police Ethics; as a result of the inquiry, certain police officers had been summoned to appear before the Committee on Police Ethics, which would be considering the matter in the autumn of 1993.

28. With regard to Mr. Ben Ammar's request for further information about the aims and working methods of the Commissioner and Committee on Police Ethics, he suggested that, in order to save time, the Committee against Torture should be provided with the latest annual report of the Commissioner for Police Ethics, which also included information about the relevant Committee.

29. The CHAIRMAN thanked the speaker for the information provided. There being no objections, he took it that the Committee wished to receive and study the annual report mentioned.

30. Mr. LOW (Canada), referring to the relationship between the Convention against Torture and the Convention relating to the Status of Refugees, said that, in Canada's view, the two instruments should be interpreted in a compatible fashion, in accordance with the Vienna Convention on the Law of Treaties, and the Committee against Torture should seek to interpret its

governing Convention accordingly. Although the latter was more specific in some ways, the concept of persecution in the non-refoulement obligation reflected in article 33 of the Convention relating to the Status of Refugees should be taken to cover the concept of torture. Since UNHCR had been so positive about Canada's fulfilment of its obligations, the Committee should not lightly assume that general criticisms or vague allegations about Canada's record were well founded. Furthermore, in view of the provisions relating to torture in Canada's Criminal Code, there seemed no need for a specific reference, in the country's immigration laws, to the operative provisions of the Convention against Torture.

31. With reference to Amnesty International's representations about alleged ill-treatment of two persons in Vancouver, the Committee would be provided with an updated report about the findings of the independent commission appointed by the Province of British Columbia, in response to those representations, to inquire into municipal policing. But it should be noted, first, that the independent Police Complaints Commission had carried out an investigation, and secondly, that the persons in question had apparently instituted legal proceedings against the officers concerned, which showed that a remedy was available and that Canada attached importance to making provision for those who felt they had been subjected to cruel or unusual treatment.

32. Canada's refugee determination system fully complied with the Convention's requirements relating to torture allegations. With regard to different standards of proof, the fact remained that, whether the standard was "substantial grounds for believing", "reasonable grounds", "danger ... of being subjected to torture" or some other test, there must be factual evidence to support the refugee's claim. In Canada, a refugee could make a claim based on torture or other recognized forms of persecution to the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board. That body, independent of the Government and having staff specially trained by the Canadian Centre for Victims of Torture and by UNHCR, as well as a data bank with information on conditions in countries of origin, heard claimants' cases and gave them the benefit of the doubt in any unclear instances. Any claim backed by trustworthy evidence would succeed; but there had to be some evidence.

33. If the CRDD did not accept the claim, the claimant could apply for leave to appeal to the Federal Court. If a claimant did not appeal, or if the appeal did not succeed, the claim was automatically referred to a Post-Claim Determination Officer with a view to determining whether there was any factor that would militate against returning the person. The procedure, intended to provide an automatic supplementary safety net, had been established in response to concerns voiced by refugee support groups in Canada and went far beyond the requirements of the Convention relating to the Status of Refugees. Again, however, there had to be some factual basis for the person's concern. Should that review not succeed, the person could appeal further for permission to remain in Canada on humanitarian and compassionate grounds; the decision would likewise depend on the existence of factual support. There were thus at least four opportunities for a victim to make a claim.

34. The success rate for refugee claimants in Canada had been recognized by UNHCR as the highest in the world: 57 per cent of all such claims currently succeeded. That high rate stemmed from Canada's genuine intention to comply with its obligations under the Convention relating to the Status of Refugees. His delegation would try to obtain clarification about the cases referred to the Committee; but the claims that Canada's refugee determination system was tantamount to torture, or that Canada had failed to meet its obligations under either of the two Conventions in question, would be hard to substantiate. The system would nevertheless be kept under continuous review, so as to ensure that it remained the best in the world, a fact attested to by UNHCR and implied in the award of the Nansen medal to Canada - the only instance of its award to a country.

35. The training of immigration officers of all categories consisted of very substantial programmes, including courses developed in consultation with outside organizations such as UNHCR, the Immigration and Refugee Board and Amnesty International. The training included a cross-cultural awareness module developed with UNHCR's advice and assistance.

36. With regard to the concern, mentioned by Mr. Sorensen, that a person might be extradited to face the death penalty, and the possibility of lengthy delays pending appeals prior to execution, the issue related to cases pending before the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights; it was hoped, therefore, that the Committee would appreciate the impropriety of discussing them. The matter had been fully deliberated in the Supreme Court of Canada, and there were certainly two sides to the question of delay: some delay was inevitable when, following conviction, a person had invoked legal procedures that were intended to ensure that the execution could not take place before the most exhaustive review and legal scrutiny.

37. Information on criminal injuries compensation arrangements in Canada was contained in that country's reports submitted under the International Covenant on Civil and Political Rights. Certain general factors should perhaps be mentioned. If a police investigation concluded that there had been no offence, there was no right to compensation; if an accused person was acquitted on the merits of the charge, compensation might be provided if the relevant tribunal was persuaded that the injuries had been occasioned by a criminal offence. And in the case of an acquittal on technical grounds, such as undue delay in presenting the prosecution's case, compensation might nevertheless be granted. It should be noted that such compensation provisions stemmed from special funds established by the governments; the injured party might also seek compensation or other remedies through the courts, even if the offender was a government official.

38. If the Committee had any further questions to put to him or his colleagues, they would do their best to reply or obtain the relevant details.

39. The CHAIRMAN thanked the speakers for the information they had provided. Following a brief informal consultation, he invited the Alternate Country Rapporteur to read out the Committee's final appreciation.

40. Mr. EL IBRASHI (Alternate Country Rapporteur) read out the text of the Committee's findings:

> "The Committee against Torture examined, at its meeting held on 20 April 1993, the first supplementary report submitted by the Canadian Government and presented by his Excellency the Permanent Representative and Ambassador of Canada to the United Nations at Geneva and the accompanying delegation.
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> The Committee expresses its appreciation of the comprehensive report and the excellent presentation by the Canadian delegation, as well as of the measures and efforts undertaken by the Canadian authorities in compliance with the provisions of the Convention.
>
> The Committee also took note with satisfaction of the various clarifications pointed out by the Canadian delegation in response to the questions raised by members of the Committee during the discussion of the report.
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> However, the Committee expects to be provided with more details concerning the training of doctors, the outcome of the inquiries conducted by the Canadian authorities relating to two immigrants of Chinese origin, as well as some statistics requested by the Committee".

41. Following an observation by Mr. MIKHAILOV, the CHAIRMAN said he took it that the Committee unanimously accepted the text read out by the Alternate Country Rapporteur. He reiterated the Committee's appreciation for the Canadian authorities' close collaboration and detailed information, and said that the Committee had thus concluded its deliberations on the first supplementary report submitted by Canada.

42. Ms. Weiser, Mr. Deslauriers and Mr. Low (Canada) withdrew.

The public meeting rose at 4.45 p.m.