



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-fourth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 646th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 6 May 2005, at 4.05 p.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.646.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The public part of the meeting was called to order at 4.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Fourth and fifth periodic reports of Canada (continued) (CAT/C/55/Add.8 and
CAT/C/81/Add.3; CAT/C/33/L/CAN)

1. At the invitation of the Chairperson, the members of the delegation of Canada took places at the Committee table.
2. The CHAIRPERSON invited the delegation to reply to the questions raised by the Committee at its meeting on 4 May 2005.
3. Ms. McPHEE (Canada), replying to a question about the delay in submission of the fourth periodic report (CAT/C/55/Add.8), said that her country took its reporting obligations seriously but had experienced difficulties owing to the number and complexity of reports required simultaneously under the various human rights treaties. Over the past year, however, the backlog had been eliminated and Canada had been able to produce its most recent reports - the fifth periodic report to the Committee against Torture and the fifth periodic report to the Human Rights Committee - in a much shorter time. Canada realized that the submission of its fifth periodic report (CAT/C/81/Add.3) immediately prior to its scheduled meeting with the Committee in November 2004 instead of by the target date of July 2004 had created a dilemma and agreed that deferral of the meeting until the current session had permitted a more focused dialogue.
4. Her delegation recognized that the core document (HRI/CORE/1/Add.91) needed to be updated, inter alia to reflect new aspects of the legislative framework, to address changes in the geopolitical framework such as the creation of the territory of Nunavut, and to update information pertaining to aboriginal peoples and demographic information. As no treaty body reports were due in 2006, it hoped to begin updating the core document during the course of the year. Canada was monitoring developments with respect to reform of the reporting system and would bear them in mind.
5. Reports for treaty bodies were prepared under the auspices of the Continuing Committee of Officials on Human Rights, which was the principal mechanism for consultation on human rights issues among the federal, provincial and territorial governments. The Department of Canadian Heritage coordinated all human rights reports, provided guidelines and advice, reviewed and revised all submissions, and ensured publication and distribution to the public of all reports in both official languages. The reports now focused on key issues and significant developments since submission of the previous report and placed greater emphasis on results than on descriptive information. Canada determined key issues through analysis of treaty body recommendations and through close collaboration with federal, provincial and territorial partners. NGOs were routinely invited to share their views on what issues should be covered in the light of the preliminary issues identified by the authorities. Most departments had procedures

for consulting NGOs on specific programmes and policies. However, the need for a regular and clearly understood procedure for NGOs to provide their views on Canada's implementation of treaties was recognized. Federal government officials had been discussing the feasibility of further enhancement of the process of consultation of civil society, and further progress on that front was expected over the next year.

6. The Department of Canadian Heritage web site contained extensive information on human rights in Canada, including the reporting process. It would be amended to reflect the new enhanced approaches.

7. Canada's standing Senate Committee on Human Rights was consulting human rights experts, academics and organizations on related issues in the context of the Convention on the Rights of the Child. Its conclusions would be taken into account in the recommendations of the Department of Canadian Heritage regarding approaches to all human rights treaties.

8. Ms. JOHNSTON (Canada), replying to questions pertaining to article 3 of the Convention, said that Canada had a responsibility to take action against individuals within Canada or attempting to enter the country who presented a risk to national security or the security of persons. To meet the challenge of upholding article 3 of the Convention while at the same time protecting those threatened by terrorists and serious criminals, Canada was considering augmenting the alternatives to removal that were currently at its disposal. Criminal prosecutions were a possibility, provided that available evidence met the requisite evidentiary standards and provided that witnesses were not placed at risk. Canada was focusing, however, on measures to prevent the infliction of harm, such as detention with regular judicial review and supervised release. In addition, two parliamentary committees, one in the Senate and one in the House of Commons, were examining the issues involved as part of their review of the 2001 Anti-terrorism Act.

9. Her Government supported the legal analysis underlying the Supreme Court's decision in the Suresh case. However, although the Court had noted that removal to a country that practised torture was contrary to international law, the question it had decided was one involving domestic law, namely the definition, under the Canadian Charter of Rights and Freedoms, of the right not to be deprived of life and security of the person except in accordance with principles of fundamental justice. In domestic law, the Government believed that the Suresh decision and the Immigration and Refugee Protection Act provided sufficient authority for those acting within their ambit not to be found liable for any wrongful act.

10. The Supreme Court had not defined the "exceptional circumstances" in which removal to a country that practised torture might be justified under the Canadian Charter in the Suresh case. It was anticipated that the interpretation and application of the term would be very narrow. The Court had implied that exceptional circumstances might include wars and national emergencies. Another example might be cases where alternatives to removal might not effectively address the risk to life and security posed by terrorists and serious criminals.

11. While judicial review of such decisions was limited to questions of law and jurisdiction, those questions included considerations such as whether the decision maker had considered all the evidence and whether its assessment thereof had not been manifestly unreasonable. A significant number of administrative decisions were set aside every year pursuant to judicial

review. Three removal decisions had recently been set aside by the Federal Court where exceptional circumstances had been invoked. The Court had found that the decision maker had not independently considered and tested all the evidence relevant to the danger that the person to be removed actually posed to national security. The cases were now under re-examination.

12. Canada did not apply the “safe country of origin” concept. The country of citizenship or permanent residence of an asylum-seeker thus had no bearing on the process of protection. The “safe third country” concept related to an asylum-seeker’s last country of embarkation and was based on the principle of responsibility-sharing, in other words that the asylum-seeker had access to full and fair procedures in another country. It made no presumptions regarding the validity of the protection claim. The concept of safe country of origin had not come into play in the case of the following individuals currently subject to security proceedings: two from Egypt; one from the Syrian Arab Republic; one from Algeria; one from Sri Lanka who had been released on conditions; and one from Morocco who had also been released on conditions.

13. With regard to members of the South Lebanese Army resident in Canada, the Government was unable under Canadian rules to confirm or deny the existence of a criminal investigation regarding any individual or group. The Government’s policy was that Canada should not be a safe haven for individuals who had committed war crimes, crimes against humanity or other reprehensible acts during times of conflict, regardless of where or when the alleged acts occurred. Immigration and citizenship proceedings, criminal proceedings and extradition were legally sound and fair methods that gave effect to that guiding principle. The decision to use any of those mechanisms was based on factors such as the strength of the evidence, obligations under international law, the availability of resources and whether a request for extradition had been made. A decision as to which legal course of action to pursue was made after careful consideration of those factors to ensure that Canada was not a safe haven. Any serious allegation was investigated by the War Crimes Program. Officials were currently investigating more than 80 war crimes allegations with a view to criminal prosecution.

14. With regard to revocation of citizenship, whenever the Minister of Citizenship and Immigration received information indicating that misrepresentation, fraud or concealment of material circumstances had occurred in a citizenship or immigration process, the case was reviewed to determine whether revocation action was appropriate. Such information could come from, inter alia, a law enforcement agency or letters from the public. If naturalized Canadian citizens were found to have misrepresented themselves on a material fact in the immigration or citizenship process, their citizenship could be revoked. However, the procedure was very rarely used.

15. Mr. HEAD (Canada), replying to a question about the small number of women offenders, said that the proportion of incarcerated women at the federal, provincial and territorial levels had remained close to 3 per cent in recent years. International data from a sample of jurisdictions were roughly comparable to the Canadian data, being in the range of 4 to 6 per cent. Possible explanations for the low number included intervention programming, which reduced recidivism; supervision and support on release; and the fact that since 1992 women who killed an abuser were no longer automatically sentenced to life imprisonment.

16. As a follow-up to the report of the Arbour Commission of Inquiry, inmates had the opportunity to contact legal counsel prior to the conduct of a body cavity search. Such searches, conducted by a qualified medical practitioner, were a very rare procedure in the correctional services. As a more common alternative, inmates could be requested to consent to an X-ray. If they refused, they could be placed in a “dry cell”. No body cavity searches had been ordered since the Commission report. X-rays had been ordered twice and placement in a dry cell on four occasions.

17. A “major violent incident” was any incident in which serious bodily harm occurred, including murder of staff or inmates, suicides, major assaults on staff or inmates, and hostage-taking, which might cause serious psychological harm. Since 1999-2000 there had been a significant decrease in the average number of major violent incidents in detention facilities. There had been 52 such incidents in 2004-2005, a 26 per cent decrease from the previous year. The number of inmate murders had declined from eight to three. The ethnocultural composition of inmates involved in major violent incidents was proportionate to the total offender composition with some regional variations. Other contributing factors were changes in length of sentence, offence characteristics, initial custody placement level, criminal associations and mental health issues.

18. There were a significant number of external review bodies at the federal, provincial and territorial levels to review complaints about torture or torture-related conduct by officials: independent review bodies for police and federal correctional services, ombudsmen’s offices, provisional and federal human rights commissions, criminal and civil courts, NGOs and advocacy agencies. In addition, government agencies had investigation processes that could lead to disciplinary or criminal sanctions. It was possible that in some cases the alleged conduct met the Convention definition of torture or torture-related conduct and that the complaints were not being classified as such by the review bodies handling them. A better understanding of whether such conduct fell within the scope of the definition might be needed.

19. The decision to implement cross-gender staffing of detention facilities was based on the need to balance women inmates’ right to privacy with the right of equal access to employment. An extensive review had been conducted to ensure that the right balance was achieved through appropriate procedures. There was also a 10-day mandatory national women-centred training programme for front-line staff in women’s institutions.

20. The Canadian Human Rights Commission had concluded that it was appropriate to maintain gender-neutral staffing procedures. The Commission had conducted a three-part test on the employment of men in front-line positions and concluded that the Correctional Service of Canada must vigorously pursue other alternatives before impairing the employment rights of men in that context.

21. Certain functions or duties were carried out only by women, such as camera surveillance when an inmate was on suicide watch, strip searches, frisking and sole escort through areas that were not generally observable.

22. Replying to a question about the effectiveness of “healing lodges”, he said that the success of Okimaw Ohci Healing Lodge (OOHL) had been assessed from largely qualitative perspectives such as feedback and support from elders and other aboriginal stakeholders.

Quantitative measures included the relatively small number of security incidents despite the lack of a perimeter fence. The OOHL had also successfully communicated aboriginal perspectives on readiness for release to the National Parole Board and had assisted in reintegrating several aboriginal women inmates who had not engaged in programming interventions in other women's institutions.

23. Replying to Ms. Gaer's question regarding training in the use of force, he said all incidents of the use of force were carefully documented and recorded, and then reviewed by the institution concerned at the local, regional and national levels. The primary concern during such reviews was to ensure compliance with the "situation management model", an approach designed to help staff resolve situations in a consistent, safe and reasonable manner, with due regard for human rights and using as little force as possible. Training in crisis management and the situation management model was provided to senior staff, team leaders, correctional supervisors and other categories, as well as during initial training for emergency response teams and recertification training for officers trained in the use of firearms or chemical or inflammatory munitions.

24. On the subject of community members' participation in the segregation review process, he said pilot projects had tended to show agreement between the community member and the senior institution official on release or otherwise from segregation and on steps to be taken to find alternatives to segregation. Their presence was seen as providing a third party opinion and an additional element in ensuring a fair review, by enabling management and systemic issues to be raised, the institution to be challenged and questions to be put by offenders themselves.

25. Initiatives that could be considered in addressing issues regarding segregated populations included research into the behaviour and special needs of higher-risk offenders; identification of alternatives such as increased one-on-one interaction; extensive personnel training in policy and legal frameworks; and a rigorous audit and evaluation framework to identify and eliminate systemic barriers.

26. On the subject of restraint devices, he assured Committee members that Canada did not use any type of electric chair.

27. The correctional services and the police made use of "hard restraints" (handcuffs, leg irons and belly chains, among others) and "soft restraints" (soft leather or nylon straps) to prevent escape or to restrain unruly individuals, or to defuse a situation and prevent an individual from harming himself or damaging property.

28. Only duly approved equipment was authorized for use. In the case of soft restraints, health-care professionals were always required to be on hand to ensure that the use of such equipment was not likely to aggravate any existing health conditions.

29. Ms. McPHEE (Canada), replying to the question on Quebec's policy on youth in detention, said that, following inquiries by the Commission on human rights and young people's rights into the use of isolation in some juvenile centres, Quebec had implemented a number of measures, including new legislation on the exceptional use, in juvenile centres, of containment and isolation measures and chemical substances, as well as personnel training in control measures.

30. In general, each province and territory set its own policy on the use of force and isolation in juvenile institutions, subject to strict limitations. Corporal punishment was not used in juvenile detention centres. Segregation and isolation were not used as punishment but rather as a form of “time-out”, often for the person’s own safety or the safety of others.

31. In the event of complaint there were various avenues of recourse.

32. Mr. LEWIS (Canada) said that, in Ontario, all juveniles in contact with the justice system were given a booklet explaining their rights and responsibilities in a detention or custody facility.

33. The goal of those working in the correctional system was to help young people move in a more positive direction and reintegrate into society, through a progressive approach that did not permit torture or any action that could reasonably be construed as torture.

34. There were now no youth custody centres sharing premises with adult facilities, and the Ontario authorities were not aware of any systemic problems pertaining to the issue of isolation in its youth facilities that could be deemed to constitute torture.

35. There were various avenues for complaint. To begin with, each custody facility had its own complaints procedure, but those who were not satisfied with the outcome could request an independent review of their complaint. They could also request a review of the decision regarding the place of custody to which they had been assigned. The Child and Youth Advocate could be asked to look into the matter; or a complaint regarding treatment in a custody facility could be made to the Ombudsman. Both the Advocate and the Ombudsman were authorized to inspect facilities. Lastly, juveniles could file a complaint with the Ontario Human Rights Commission.

36. Ms. McPHEE (Canada), replying to Ms. Gaer’s question on corporal punishment, said the Government did not support the spanking of children but neither did it condone the criminalization of Canadian parents for disciplinary conduct undertaken in a reasonable manner and taking into account the needs and best interests of the child. Its approach to the issue was a two-pronged one: to provide programmes and policies promoting children’s well-being and including parenting education; and to implement appropriate measures in criminal justice to protect children from abuse.

37. The Supreme Court had provided welcome guidelines and stated that corporal punishment that caused harm or appeared likely to cause harm was not protected under the law. Section 43 of the Criminal Code only applied in situations where minor corrective force of a transitory nature was used. It did not apply to children under 2 years of age or over 12, or to the use of implements or blows to the head, or degrading or inhuman treatment.

38. Ms. KENT (Canada), replying to a question by Mr. Mavrommatis, said Canadian consular, diplomatic and government officials had engaged in lengthy and ultimately successful efforts to obtain Mr. Maher Arar’s release and return to Canada. A commission of inquiry had been appointed to investigate the actions of Canadian officials in that regard and it would not be appropriate to comment on those actions until the commission had completed its work.

39. On the question of Canadians detained abroad, raised by Mr. El-Masry, she said there were currently just over 2,000 such cases, over 1,500 of them in the United States, and her Government was not aware of any incidents of torture of Canadian citizens in such circumstances. It was, however, monitoring several cases where the potential existed, the greatest difficulties arising in the case of Canadian dual nationals detained in the country of their other citizenship.

40. The approach adopted varied from case to case but the goal was to keep Canadian citizens safe and enable them to return home as soon as possible. Typical actions included maintaining a dialogue with the foreign Government in question; ensuring access to legal representation; seeking transfer of detainees to Canadian facilities; emphasizing Canada's opposition to torture of any kind and reminding other States of their own obligations; and encouraging NGOs to take up a case, where such an approach might prove fruitful.

41. Ms. FITZGERALD (Canada), replying to various questions raised regarding article 14, said that, on the basis of the text of the article, State party practice and the travaux préparatoires, her Government took the view that article 14 established an obligation to ensure redress where an act of torture took place within the State's own jurisdiction but did not modify the well-established principles of State immunity.

42. Although the text itself included no express limitations, it was implicit in the article that it intended to refer only to acts of torture committed by the State in question. It did not require States to assert jurisdiction in their domestic courts over acts occurring outside the forum State. The issue of jurisdiction over acts of torture committed abroad was expressly dealt with in the Convention's provisions on criminal jurisdiction.

43. Canada was not aware that any State had interpreted article 14 as including a universal civil jurisdiction for acts of torture committed abroad, and there had been no discussion of universal civil proceedings during the travaux préparatoires, which had focused on universal criminal jurisdiction. The States participating in the drafting would have indicated the fact had there been any intention to modify or override the fundamental principle of State immunity. In the absence of any such indication, the provision must be interpreted in a manner which permitted States to comply with that principle.

44. Canada's State Immunity Act was consistent with both international law and the practice of States, and the established principles had recently been confirmed in the United Nations Convention on Jurisdictional Immunities of States and Their Property.

45. The lack of obvious recourse for victims of torture that occurred in other countries was nevertheless an issue that should be examined by the international community.

46. Turning to a question from Ms. Gaer, she said the Canadian Charter of Rights and Freedoms did not define "cruel and unusual treatment or punishment". Canada considered it was better to have criteria that would enable cases to be assessed individually rather than a prior definition, which could prove to be restrictive. The Supreme Court had established one such criterion, namely whether the punishment prescribed was so excessive as to outrage standards of

decency; the effect of the measure must not be grossly disproportionate to what would have been appropriate. The test was tied to community standards and would therefore evolve and advance over time.

47. Replying to Mr. El-Masry's question concerning the possibility of freedom of expression being considered a "terrorist activity", she said there had been no cases to date where that had occurred. "Terrorist activity" had been carefully defined in such a way as to protect freedom of expression. The words "political, religious or ideological purpose, objective or cause" in that definition referred to motivations for terrorist activity. The motive requirement in the definition was in fact a limitation to any prosecution. The words were meant to help distinguish terrorist activity from other forms of criminality intended to intimidate people by the use of violence.

48. The words "political, religious or ideological purpose, objective or cause" should not therefore be viewed as singling out any individual or group on the basis of their beliefs; they referred to the motive for an activity carried out with a specific intention, such as causing serious risk to the health or safety of the public. Similar requirements were found in the anti-terrorist legislation of a number of other countries.

49. There were safeguards to prevent abuse of the motive requirement: the definition was worded so as not to cover protest, dissent or work stoppage; and an interpretative clause ensured that the expression of belief or opinion unaccompanied by intentional harmful conduct did not fall within the definition.

50. On a further question from Mr. El-Masry, she said the Anti-terrorism Act had not created new immunities that might prevent authorities from conducting an impartial investigation where there were reasonable grounds to believe an act of torture had occurred, or allow any statement obtained as a result of torture to be invoked as evidence in proceedings. The Act had been carefully crafted so as to balance protection of Canadians from terrorism with protection of fundamental rights and freedoms. Moreover, the relevant specific provisions of the Criminal Code were in no way weakened by the Act.

51. On the question of equipment designed to inflict torture, she said Canada was not convinced it would be practicable to provide for an offence specifically targeting the production of items designed to inflict torture or cruel, inhuman or degrading treatment, since it would be difficult to prove such purpose in the design of particular items. Consequently, the Criminal Code did not expressly deal with equipment designed specifically to inflict torture, but adopted a broad, purpose-based definition of "weapons", which embraced anything used, designed to be used or intended to be used in causing death or injury to any person, or for the purpose of threatening or intimidating any person.

52. On the question of the prohibition of torture by Canadian forces abroad, she said those forces were subject to Canadian law, and individuals accused of torture when deployed abroad would be prosecuted through the National Defence Act regardless of whether Canada had jurisdiction over the territory in question. She also pointed out that the Geneva Conventions had been incorporated in Canadian domestic law.

53. Responding to the perception by certain NGOs that Canada was more concerned about human rights abroad than domestically, she said that official policies of multiculturalism, bilingualism, bijuralism and constitutionally guaranteed human rights protection all reflected Canada's deep commitment to human rights and respect for diversity within the country. The Canadian Charter of Rights and Freedoms was the core constitutional instrument for enshrining human rights values domestically. Government action of all kinds was scrutinized, and laws, regulations and policies could be rejected or rewritten by the courts for inconsistency with the Charter's principles. It was interpreted to adapt to evolving circumstances, and the courts increasingly used developments in international law to enrich and broaden its interpretation.

54. In addition, there were quasi-constitutional human rights statutes at the federal, provincial and territorial levels, ensuring protection against all forms of discriminatory practices both by government and private actors. Furthermore, there were policies and programmes to promote and support the human rights of disadvantaged groups, such as aboriginal peoples, women and linguistic minorities.

55. The Government would certainly discuss the contention with the NGOs, but it disagreed with their perception. Frequently the Government sought to have others adopt Canada's human rights protections, such as its approach to multiculturalism, as a way of promoting greater respect and social peace. There was a standing invitation to all United Nations human rights bodies to visit Canada, which strove to be transparent and open to criticism and to strengthen the links between international law and domestic standards.

56. The State party welcomed the fact that the manner in which the Committee requested interim measures was under review, and that the Committee might be open to considering submissions seeking to lift interim measures or to expedite hearings of complaints, as that would ensure that interim measures were based on an assessment of all relevant circumstances, rather than being issued as a matter of course. The suggestion that, in the event of an opinion having been expressed by the Committee in relation to a particular complaint, the State party would consult the Committee before taking any action that might be viewed as inconsistent with its recommendations was also a positive development.

57. Mr. MAVROMMATIS thanked the delegation for its replies, but sought clarification on a number of issues. On the question of increasing the powers of the courts in reviewing cases such as those dealt with by the Committee, they should focus more on the facts and merits of the cases.

58. Raising NGO concerns had provided the opportunity to offer reassurances to the international community that there had been no change of policy and that alternative approaches were being studied. However, he was concerned about what might happen in the interim before the new solutions were found.

59. On the question of interim measures, in a number of cases States parties had asked for them to be reviewed and they had been dropped in at least one case. The Committee and Special Rapporteur would welcome the State party's comments.

60. Ms. GAER said that, according to NGO sources, gender and ethnicity data were not recorded in relation to violent crime statistics. She would welcome clarification on why such data were not recorded for general crime statistics, but were available within the prison system. She wondered whether there was any intention to record such data for general violent crime statistics, which might help the authorities identify better policies.

61. Regarding external review bodies, the Chair of the Commission for Public Complaints Against the RCMP (CPC) had expressed concern that the increase in oversight powers had not been followed by a commensurate increase in the powers of the CPC, and that the Security Intelligence Review Committee had been granted increased powers since the anti-terrorism legislation had come into effect, while the CPC had not. Because the process was complaint-driven, the CPC could not randomly examine cases and did not have the power of audit, so it could not balance the new powers that the government authorities had with any kind of check on them. She wondered whether there had been any reaction to that concern or if there had been any efforts to rebalance the situation.

62. Regarding restraint devices, she would be interested to hear which chemical restraints were used. For example, was pepper spray routinely used for crowd control, and were other chemicals or gases used routinely for restraint purposes? She wondered whether there had been any independent public study on the use of different kinds of weapons in the context of crowd control.

63. Regarding the Arar case, she was curious as to why there had been such a delay in reconvening the inquiry. As to State immunity and article 14, given that there was an exception to State immunity in legislation for business deals, it seemed unclear why an exception could not be considered for torture.

64. The preparatory work had not been as straightforward as had been described, although perhaps, having been involved in the negotiations, the State party might have additional information to share with the Committee. As the Committee understood it, the phrase “in any territory under its jurisdiction” had been dropped from article 14 without any reason being stated. Canada had indicated that no country had such a provision, but the United States and its Alien Tort Claims Act cases provided the opportunity for victims to bring civil suits. She wondered whether, in view of those considerations, the State party might reconsider the question.

65. Mr. RASMUSSEN asked whether the use of chemical restraints was allowed in the context of detained juveniles. With regard to the isolation rooms being set up, he would be interested to learn whether they had natural light and were provided with a call bell, what was the minimum age for isolation, and whether the maximum length was 24 hours.

66. Mr. EL-MASRY asked whether the number given for Canadians held in foreign territories included those who had dual nationality.

67. The CHAIRPERSON asked whether the State party considered that the Convention applied in times of armed conflict. As to State immunity from civil proceedings in cases of torture, it was not likely that the draft convention on the jurisdictional immunities of States would exclude the possibility that Canada establish that exception. In any case, as a countermeasure permitted under international public law, a State could remove immunity

from another State - a permitted action to respond to torture carried out by that State. There was no peremptory norm of general international law that prevented States from withdrawing immunity from foreign States in such cases to claim for liability for torture.

68. Ms. FITZGERALD (Canada), responding to the question on the remarks by the Chair of the CPC, said that, in addition to investigating and reporting on the actions of Canadian officials in relation to Mr. Arar, the inquiry had been mandated to make any recommendations that the commissioner thought advisable on an independent review mechanism for the activities of the RCMP with respect to national security, based on an examination of domestic and international models and an assessment of how the new mechanism would interact with existing review mechanisms. The inquiry had already published a policy paper on the issue and the review was ongoing.

69. As to the timing of the Arar enquiry, the inquiry on factual elements had in fact been ongoing for a number of months in camera, as it dealt with national security information, and had only gone to public hearing that week.

70. Ms. KENT (Canada) said that the statistics on Canadians detained abroad included dual nationals.

71. Mr. HEAD (Canada), referring to statistics on major violent incidents, said that under legislation the correctional service was obliged to meet the needs of ethnocultural groups as they self-declared on entering the penitentiary system and therefore the relevant data were collected. There was ongoing discussion on the concept of racial profiling in the collection of general crime statistics, but there was no standard approach.

72. Most correctional jurisdictions and police forces had access to chemical agents which were used to de-escalate tense situations. Following reviews in the past, certain chemical agents had been banned because of the medical complications they caused. In the correctional setting, when chemical agents were used, medical personnel must be consulted beforehand, or, if there was no time, immediately afterwards, so that decontamination processes could be employed. Tasers were in use by some correctional jurisdictions and police forces, and a number of studies were being conducted by individual jurisdictions on their use. Provincial coroners had expressed the view that the use of tasers was preferable to the use of lethal force.

73. Ms. LEVASSEUR (Canada) said that the Canadian law on State immunity did indeed provide an exception in the case of business deals; it was well established in customary law and accepted by the majority of countries. An exception for acts of torture committed abroad had not yet been established. In addition to the Alien Tort Claims Act, which allowed for the prosecution of individuals who had committed acts of torture abroad, there was also an exception in the United States which allowed the prosecution of certain States designated as terrorist States for acts of torture. However, when the United States had become a party to the Convention, it had made the following declaration: "it is the understanding of the United States that article 14 requires a State party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State party". Therefore, the exception for terrorist States did not seem to be supported by an interpretation of article 14.

74. Regarding the preparatory work, during the drafting of the Convention the Netherlands had proposed adding to article 14 the phrase “in any territory”. That phrase was not to be found in article 14, which had led to differences in interpretation. Certain parties considered that to be an error, and believed article 14 should have included “in any territory”, while other experts claimed that the States parties had decided not to include the phrase as it did not seem necessary and there was already a limitation in the text of the article.

75. Ms. FITZGERALD (Canada) said her delegation understood that the issue of State immunity was a matter of concern for many NGOs. Canada was deeply committed to the promotion and protection of human rights, both domestically and internationally, and welcomed the opportunity for ongoing dialogue with the Committee.

76. The CHAIRPERSON said that the Committee appreciated the detailed legal explanations given on certain questions and looked forward to continuing dialogue with the State party.

The meeting rose at 5.55 p.m.