

In addition to a resolution adopted on the question of the draft optional protocol to the Convention against Torture (1997/24) the Commission adopted a resolution by consensus on the question of torture and the mandate of the Special Rapporteur (1997/38). The Commission, *inter alia*: urged all states to become parties to Convention against Torture; invited all states parties to make declarations under articles 21 and 22 (inter-state and individual complaints procedures); called on all governments to implement fully the prohibition on torture and other cruel treatment or punishment; urged all governments to promote the implementation of the Vienna Declaration and Programme of Action, in particular Part II, section B.5, related to freedom from torture; stressed that under international law acts of torture must be made offences under domestic criminal law; reminded governments that corporal punishment can amount to cruel, inhuman or degrading treatment or punishment; stressed that all allegations of torture should be promptly examined by an impartial and competent national authority; stressed that those who encourage, order, tolerate or perpetrate torture and related acts must be held responsible and punished; emphasized the obligation of states parties to the Convention to provide training for personnel who may be involved in custody, interrogation or treatment of persons under any form of arrest, detention or imprisonment; stressed that states must not punish individuals for refusing orders to commit acts amounting to torture or related acts; welcomed the work of Committee against Torture and its practice of formulating concluding observations after consideration of reports as well as the practice of carrying out inquiries into cases indicating a systematic practice of torture in states parties to the Convention; requested the General Assembly to proclaim 26 June as the UN international day in support of victims of torture and the total eradication of torture; commended the SR for his work as reflected in his report; recalled recommendations made in previous reports; reminded states that prolonged incommunicado detention may perpetuate torture and can itself be a form of cruel, inhuman or degrading treatment; invited the SR to continue examining questions related to torture directed against women and conditions conducive to such torture, to make recommendations concerning the prevention and redress of gender-specific forms of torture, and to exchange views with the SR on violence against women with a view to greater mutual effectiveness and cooperation; invited the SR to continue consideration of questions related to the torture of children and to make appropriate recommendations; approved the methods of work employed by the SR, in particular urgent appeals; called on all governments to cooperate with and assist the SR; encouraged all governments to consider inviting the SR to visit their countries; noted the report on the Voluntary Fund for Victims of Torture; appealed to all governments, organizations and individuals to contribute annually to the Fund; stressed the need for contributions to the Fund on a regular basis; stressed the increasing demand for assistance to rehabilitation services for victims of torture; and, urged states in arrears on funding the Committee against Torture (pre-dating the decision to fund from the UN regular budget) to fulfil their financial obligations immediately.

General Comment by the Committee against Torture (CAT) on the Implementation of Article 3 in the context of Article 22 of the Convention

The CAT, at its 19th session (on 21 November 1997), adopted a General Comment for the guidance of States parties

to the Convention and authors of communications in the context of Article 22 (on the admissibility of communications).

The CAT noted that Article 3 — “No state Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” — is confined in its application to cases where there are substantial grounds for believing that the author would be in danger of being subjected to torture as defined in Article 1 of the Convention. Further, that in paragraph 2 of article 3 — which states that “For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights” — the phrase “the State concerned” refers to the state to which the individual concerned is being expelled, returned or extradited, as well as to any state to which the author may subsequently be expelled, returned or extradited; and that “a consistent pattern of gross, flagrant or mass violations of human rights” refers only to violations by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Committee is of the opinion that it is the responsibility of the author to establish a *prima facie* case for the purpose of admissibility of his or her communication; and that, with respect to the merits of a case, the burden is upon the author to present an arguable case, i.e., there must be a factual basis for the author’s position sufficient to require a response from the State party. When the CAT assesses the risk of torture, it must go beyond mere theory or suspicion, although the risk does not have to meet the test of high probability. “The author must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present.” The CAT then provides a list of what information would be pertinent to establishing such a danger.

* * * * *

TOXIC AND DANGEROUS PRODUCTS AND WASTES

Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and wastes
(E/CN.4/1997/19)

The 1995 decision of the Commission to establish this mandate (Resolution 1995/81) was not made by consensus and the resolutions adopted in subsequent years have not enjoyed the support of the full Commission. Opposition has largely been based on the argument that the subject is not one the Commission can handle effectively and that the issue is better addressed through the mechanisms associated with the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. In 1997, the Special Rapporteur (SR) was Ms. F.Z. Ksentini (Algeria). The mandate of the SR has four components:

- ▶ investigation and examination of the effects of illicit dumping of toxic wastes and products in African and other developing countries, with particular attention paid to effects on the rights to life and health;