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**Report of the Open-ended Working Group to consider options regarding
the elaboration of an optional protocol to the International Covenant
on Economic, Social and Cultural Rights on its third session***

Chairperson-Rapporteur: Catarina de Albuquerque (Portugal)

* The annexes are being circulated in the language of submission only.

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Introduction

1. In its resolution 2004/29, the Commission on Human Rights decided to renew for a period of two years the mandate of the Open-ended Working Group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR/the Covenant) and to convene it for a period of 10 working days prior to the sixty-first as well as the sixty-second sessions of the Commission. The present report summarizes the discussion of the third session of the Working Group (6-17 February 2006).

I. ORGANIZATION OF THE SESSION

2. The third session of the Working Group was opened on 6 February by its Chairperson-Rapporteur, Catarina de Albuquerque (Portugal). The Chairperson reported on activities undertaken since the last session of the Working Group, in particular her briefing of the Committee on Economic, Social and Cultural Rights (the Committee) in November 2005 as well as participation in seminars on economic, social and cultural rights organized in Nantes, France, Lisbon and Dublin. The Chairperson convened an expert seminar in Cascais (Portugal) to discuss her analytical paper on elements for an optional protocol to the ICESCR (E/CN.4/2006/WG.23/2).

3. In her statement to the Working Group, the High Commissioner for Human Rights emphasized the importance of strengthening protection of economic, social and cultural rights through the adoption of an optional protocol as a key element in meeting the objectives of United Nations reform as well as treaty body reform. Concerning the issue of justiciability, the High Commissioner mentioned several court decisions demonstrating how the judiciary can play an important role in providing relief to individuals. The High Commissioner stated that the time was ripe for the adoption of an optional protocol in the form of a communications procedure which would assist States to honour their commitment to the realization for all people of a life of dignity, free from want.

4. The Working Group adopted its agenda (E/CN.4/2006/WG.23/1) as well as its programme of work.

5. Annex I sets out a list of participants. Annex II sets out the list of documents submitted to the Working Group.

II. OPENING STATEMENTS

6. Brazil, on behalf of the Group of Latin American and Caribbean States (GRULAC), welcomed the Chairperson's elements paper, expressed full support for efforts to draft an optional protocol and an extension of the Working Group's mandate to that effect. The historical imbalance between economic, social and cultural rights and other rights needed to be remedied. Without a communications procedure similar to the ones of other treaty bodies, economic, social and cultural rights would remain an intangible ideal. There was a need for better coordination among treaty bodies, the avoidance of duplication of international procedures, and increased cooperation among the international community for the realization of economic, social and cultural rights.

7. Morocco (on behalf of the Group of African States) expressed the hope that the Working Group could reach a consensus at its third session to lay the foundations for the elaboration of an optional protocol. The representative emphasized the importance of strengthening international cooperation and assistance in conformity with article 2, paragraph 1, of ICESCR and suggested that a future optional protocol should include the establishment of a fund to assist developing States in the implementation of the Committee's recommendations. Complementarities between an optional protocol and national and regional complaint mechanisms should be considered in order to avoid duplication. He stated that the option of including a provision on permissible reservations in an optional protocol could be explored, and supported a comprehensive approach to the scope of rights to be included in any future protocol.

8. Austria, on behalf of the European Union,¹ welcomed the Chairperson's analytical paper as a sound basis for informed discussion of a possible optional protocol. The representative underlined the need for a better understanding of the requirements for an enhanced implementation of the Covenant, as well as the need to consider the next steps to be taken upon the expiry of the Working Group's mandate.

9. Australia expressed the concern that economic, social and cultural rights were too broadly phrased to lend themselves to the investigation of possible violations of such rights, and scarce United Nations resources should not be diverted for that purpose.

10. Belgium, Croatia, Finland, Portugal and Spain identified potential benefits of an optional protocol. The representative of Portugal stated that a communications procedure would contribute to secure States parties' compliance with their obligations under the Covenant, enhance the visibility of economic, social and cultural rights and have a catalytic role at the domestic level. Finland noted that an optional protocol would strengthen the principle of international accountability and contribute to the interpretation of economic, social and cultural rights. Nepal questioned the way in which an optional protocol would enhance the implementation of economic, social and cultural rights. Croatia stated that an optional protocol would clarify States parties' obligations under the Covenant, provide guidance to national courts and remedies to victims.

11. Australia and Japan stated that the analytical paper did not sufficiently address the question of the option of having no optional protocol and India and the Republic of Korea, noting that there were still many outstanding issues, stated that the question of no optional protocol should also be considered. However, South Africa expressed the view that the option of not adopting an optional protocol did not require any further consideration.

12. China, Cuba, Egypt, the Islamic Republic of Iran and Nepal emphasized the importance of strengthening international cooperation and assistance. Cuba, highlighting the primary

¹ The European Union acceding countries Bulgaria and Romania, the candidate countries Turkey, Croatia and The former Yugoslav Republic of Macedonia, the countries of the Stabilisation and Association Process and potential candidates Albania, Bosnia and Herzegovina and Serbia and Montenegro, as well as Ukraine and Moldova aligned themselves with the European Union's statement.

responsibility of Governments in relation to economic, social and cultural rights, emphasized the responsibility of other actors such as international financial institutions and transnational corporations. China expressed the hope that the international community would strengthen its cooperation in the area of economic, social and cultural rights and, in particular, its assistance to developing countries.

13. Similarly, several countries stressed the developmental aspects of an optional protocol. India emphasized that the realization of economic, social and cultural rights depended on a State's development. The adjudication of these rights required elaboration of universally applicable standards; however, the representative queried whether the Committee was the right body to define such standards. The Islamic Republic of Iran stated that an optional protocol would have to be applicable to all States parties, taking into account their different levels of development. Indonesia stressed that the diverging levels of development of States parties and the need to enhance international cooperation should be given priority during the Working Group's deliberations.

14. On the question of the effects of an optional protocol on resource use, Argentina expressed the view that a communications procedure would not necessarily have an impact on States parties' decisions on resource allocation. Norway expressed the hope that the core elements of a potential optional protocol, including the issue of resource allocation, would be clarified during the Working Group session, although Norway did not yet have a position on the extension of the mandate of the Working Group.

15. Egypt emphasized that the optional protocol should take due account of the nascent African regional human rights protection mechanism. The representative also stated that a future optional protocol should not include an inquiry procedure.

16. Chile, Cuba, Ecuador, Finland, Mexico, South Africa and Spain supported the extension of the Working Group's mandate with a view to drafting an optional protocol. Ecuador emphasized that a vital element of a legal norm was its justiciability. The Russian Federation stated that the critical mass of knowledge had been reached to equip the Working Group with a drafting mandate.

17. Greece stressed the need to ensure the consistency of a communications procedure with other international protection mechanisms and, noting the specific nature of economic, social and cultural rights, was open to consider all options.

18. The United States of America stated that the Covenant lacked any meaningful criteria which would permit the adjudication of economic, social and cultural rights. To the extent that these rights were justiciable, they were fully covered by existing international procedures such as the complaint procedure of the International Labour Organization (ILO). The representative emphasized the need to consider the option of not adopting an optional protocol.

19. France emphasized the country's commitment to the protection of economic, social and cultural rights and referred to the useful results of a seminar held in Nantes on justiciability of economic, social and cultural rights, which would be shared with the Working Group.

20. Switzerland stated that many questions relating to an optional protocol had yet to be clarified on the basis of the Chairperson's analytical paper.

21. The United Kingdom of Great Britain and Northern Ireland stated that in that country, judicial remedies existed with regard to some economic, social and cultural rights but not others. Significant questions remained in relation to the Committee's competence to consider national decisions on resource allocation.

22. Sweden stressed the importance of considering all options as well as the legal status of the Committee on Economic, Social and Cultural Rights, as compared with that of other treaty bodies.

23. The Netherlands fully supported the indivisibility of human rights, but noted that there were significant differences in their implementation - the argument that a lack of a communications procedure for economic, social and cultural rights created inequality with other rights was an oversimplification.

24. Canada reiterated its full commitment to the Covenant and stated that the Working Group should identify the most efficient means to improve the implementation of human rights and discuss the impact of a complaints mechanism on different choices by States on policy and resource allocation.

25. The NGO Coalition for an Optional Protocol to the ICESCR expressed the view that it was time to draft an optional protocol which would allow for individual and collective complaints, include an inquiry procedure, cover all rights and preclude reservations. Representatives of the American Association of Jurists, Franciscans International, the Centre on Housing Rights and Evictions (COHRE), Amnesty International, the FoodFirst Information and Action Network (FIAN), the International Commission of Jurists (ICJ) and the Europe-Third World Centre (CETIM) also took the floor in support of an optional protocol to the Covenant.

III. COMMUNICATIONS PROCEDURE

A. Scope of rights subject to a procedure

26. The Working Group discussed the scope of rights subject to a procedure and the issue of reservations to an optional protocol.

27. Angola, Argentina, Azerbaijan, Belgium, Brazil, Ecuador, Egypt, Ethiopia, Finland, Italy, Mexico, Morocco (on behalf of the Group of African States), Nigeria, Norway, Portugal, Senegal, Spain and Switzerland expressed their support for a comprehensive approach to the scope of rights subject to a communications procedure. Switzerland stated a preference to include provisions of Part III of the Covenant read in conjunction with Parts I and II. The Group of African States indicated that it supported the inclusion of a comprehensive approach including Parts I, II and III of the Covenant. They stated that an "à la carte" approach would contradict the interrelated, interdependent, and indivisible nature of all human rights, as reflected in the Vienna Declaration and Programme of Action, and would lead to a hierarchy among economic, social and cultural rights. A comprehensive approach would facilitate the task of the Committee,

particularly where the communication involved more than one treaty provision, and make it easier for States parties to anticipate the Committee's approach to communications. The experience of other treaty bodies was referred to as an appropriate model. Portugal and Mexico suggested that a comprehensive approach should cover all rights rather than all provisions in the Covenant.

28. Switzerland suggested that an optional protocol could combine a comprehensive approach pertaining to the non-discriminatory application of economic, social and cultural rights with an "opt-out" option that might exclude the "fulfil" dimension of these rights or limit the scope to their hard core. Sweden noted that an optional protocol was a procedural instrument which would not change existing obligations. By its very nature, the protocol would be optional.

29. The United Kingdom of Great Britain and Northern Ireland noted that a comprehensive approach might not be viable in situations where all of the rights contained in the Covenant were not enshrined at the national level and suggested that one option could be to limit communications to claims of discrimination. India supported this suggestion.

30. Canada, Greece and the Russian Federation noted that an "à la carte" approach would provide flexibility and would encourage a greater number of ratifications. It would be a way of recognizing that some rights had been more clearly defined and would allow States to expand the list of rights over time. Canada noted that the type of views that a monitoring body could issue should be considered.

31. China stressed that the purpose of an optional protocol was to enhance the implementation of obligations under the Covenant, and that the various positions of States parties should be given due consideration in determining the best approach to the scope of rights to be included.

32. Mr. Riedel, member of the Committee on Economic, Social and Cultural Rights, stated that the Committee favoured a comprehensive approach. The principles enshrined in Part II of the Covenant were always considered in conjunction with the rights set out in Part III.

33. The NGO Coalition supported a comprehensive approach covering all articles, noting that a more limited approach would not provide an effective protection to victims. National and international jurisprudence had shown that all economic, social and cultural rights were justiciable and that all levels of State party obligations were subject to review. An "à la carte" approach would go against the principle of effective remedies, would run counter to the practice of existing human rights mechanisms, and would weaken the Covenant. It would allow for a prioritization of some rights over others and would have an adverse impact on work done at the national level, where courts regularly referred to developments at international level. Representatives of COHRE, ICJ, FIAN and the International Federation of Human Rights Leagues (FIDH) also made interventions building on the comments made by the Coalition.

34. On the question of reservations, Azerbaijan, Belgium, Mexico, Portugal and Spain referred to the principles reflected in the Vienna Convention on the Law of Treaties, which required reservations to be in line with the object and purpose of the instrument. It was noted, however, that reservations to human rights treaties were by nature different from those in relation to other treaties and a cautious approach to reservations would be preferred. Azerbaijan,

Portugal and Amnesty International stated that allowing reservations or declarations in the protocol would risk permitting an “à la carte” or “opt-out” approach through the back door. Azerbaijan favoured a clause excluding reservations.

35. The United States of America stressed that human rights treaties are the same as any other treaty under international law, and that reservations had played an important role in allowing States to ratify human rights treaties, in particular where the provisions of a treaty were not clear. According to the Vienna Convention on the Law of Treaties, States may object to a reservation by another State and a treaty body should not have this authority.

36. Canada, France, India, the Netherlands and the United Kingdom noted that the discussion on reservations was premature. The issue would depend upon the approach taken in relation to the scope of communications.

37. Angola, China and Japan suggested that the possibility of reservations should remain open as a way to encourage wide ratification. The Committee’s comments on reservations were non-binding and ultimately it was up to States parties to decide on the issue of reservations.

38. The Russian Federation noted that there were established international legal norms on this issue, including the Vienna Convention, and that reservations should be allowed. Angola stated that the possibility of lodging reservations was up to States parties and should not be excluded.

39. The NGO Coalition underscored the procedural nature of the optional protocol. The representative of Amnesty International stressed that reservations to an optional protocol would be highly inappropriate. The starting point for a coherent approach should be the object and purpose of the optional protocol, which was to give victims access to an effective remedy.

40. With regard to reservations, Mr. Riedel stressed the need to balance the objective of universal ratification with the integrity of the Covenant. He noted that virtually every provision of a human rights treaty goes to the object and purpose of the treaty. He encouraged delegates to bear in mind the optional nature of the protocol and avoid entering into a discussion on the use of reservations.

B. Admissibility criteria, including standing

41. The Working Group discussed the existing and innovative admissibility criteria in relation to a communications procedure.

42. Delegations agreed on the importance of strict admissibility criteria in a complaints procedure. Belgium, Bolivia, the Russian Federation, Sweden and the United Kingdom indicated that the Working Group should refer to existing mechanisms for guidance in this regard.

43. In relation to standing to submit a communication (*ratione personae*), Argentina, Azerbaijan, Brazil, Finland, Italy, Mexico, Norway, Portugal, Spain, South Africa and the NGO Coalition favoured allowing both individuals and groups of individuals to bring a communication. Brazil, Spain and Greece underlined the need to ensure the informed consent of the person concerned if a communication was brought by a third party. Finland, Norway and the

NGO Coalition, FIAN and FIDH stressed that non-governmental organizations (NGOs) and national institutions should be able to bring complaints on behalf of victims. Greece expressed a preference not to allow collective communications (communications by collective entities) and the representatives of Canada, Finland, Mexico and Portugal did not rule out this approach. South Africa and the NGO Coalition discussed the possibility of allowing collective complaints.

44. Azerbaijan, Italy, Portugal and South Africa underlined the importance of including a criterion requiring a connection between the alleged victim and the State party against which the communication is brought (*ratione loci*).

45. On the question of *ratione temporis*, Finland favoured a provision similar to the one in relation to the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which stipulated that communications had to concern violations that had occurred or whose effects continued after the entry into force of the optional protocol. Portugal noted that an explicit provision might not be necessary, as the issue was covered in the Vienna Convention on the Law of Treaties.

46. Canada, Portugal and South Africa underlined that only communications from victims who were identified should be admissible. All delegations that took the floor agreed that communications which were anonymous or contrary to the object and purpose of the treaty should be inadmissible.

47. Several delegations stressed the importance of a criterion on non-duplication of procedures. Canada, Finland, Mexico, Portugal and the United Kingdom expressed a preference for a criterion, similar to the one in the optional protocol to CEDAW, which excluded communications which were being examined or had been examined by another international mechanism. The United Kingdom pointed out that such a criterion should prevent “forum shopping” and guarantee that a case could not be considered at the global level once a case that was substantially the same had been considered at the regional level.

48. Spain stressed that an optional protocol must not be used as an alternative channel to other effective remedies, but rather as a final resort.

49. The Russian Federation and others stressed the importance of a criterion requiring an author of a communication to have exhausted all available domestic remedies. Argentina, Azerbaijan, Finland, Mexico and Portugal noted that there should be an exception to this criterion where the application of the remedies was unreasonably prolonged or useless, as provided for under the procedures of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and CEDAW, or where the domestic legislation did not afford due process of law or access to remedies had been denied or unreasonably delayed, as provided for in the inter-American system.

50. CETIM noted that the procedure should include specific criteria to provide for a reasonable time frame for the exhaustion of domestic remedies.

51. Delegations emphasized that all communications should be in writing. Greece, Sweden and Spain suggested adding a provision similar to that in the CEDAW optional protocol which

rendered inadmissible communications which were manifestly ill-founded or not sufficiently substantiated. Portugal recommended that the issue of substantiation be left to the Committee's rules of procedure.

52. Delegations proposed a number of other admissibility criteria. Angola, Egypt, Ethiopia and Nigeria reiterated a call by the African Group that regional remedies should be exhausted before a communication could be submitted at the global level. This requirement would ensure that a communications procedure under ICESCR would not undermine existing procedures in the African regional human rights system. Moreover, regional mechanisms were better positioned to take into account a State's level of development.

53. Argentina, Azerbaijan, Belgium, Bolivia, Brazil, Chile, Finland, Italy, Mexico, Norway, Portugal and the United Kingdom suggested that a victim should be free to decide which procedure to use. Delegates indicated that not all regions had their own mechanisms, that these mechanisms differed widely, and that no regional mechanism corresponded fully with a procedure under ICESCR. Moreover, delegates pointed out that a criterion on the exhaustion of regional remedies would prevent communications from reaching the international level and introduce a hierarchy among regional and universal mechanisms. The NGO Coalition for an Optional Protocol and other NGO representatives expressed similar concerns.

54. Brazil, Chile, Mexico and Portugal acknowledged that, while it was important to recognize the role of regional mechanisms and to consider how they could be strengthened, other means should be found to do so. Portugal and Mexico suggested that wording from the optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) concerning the need to consult and cooperate with regional mechanisms and avoid duplication could be useful in this regard, while Brazil suggested specifying that a complaints procedure under ICESCR would not interfere with regional mechanisms as a way of recognizing their importance.

55. China noted that the issue of how to give adequate consideration to different situations in different areas, including the role of regional mechanisms, needed further discussion.

56. Canada, South Africa and Sweden suggested that communications should be submitted within a reasonable time limit after the exhaustion of domestic remedies. Moreover, Canada recommended a criterion to avoid admissibility of many complaints concerning cases which were substantially the same.

57. The Republic of Korea suggested that only cases involving serious violations should be admissible. Sweden and the United Kingdom also noted that a criterion on the level of violation, such as gross violations and core aspects of rights, merited further discussion.

C. Merits, friendly settlement, interim measures, views

58. The Chairperson introduced the elements in her analytical paper on merits, friendly settlement of disputes, interim measures and views.

59. Portugal stated that the proceedings on the merits under an optional protocol should follow the example of existing communications procedures of other treaty bodies. Azerbaijan,

Belgium and Portugal noted that an optional protocol should not contain too detailed procedural provisions. Many of these issues should rather be dealt with in the Committee's rules of procedure.

60. Canada expressed the view that submissions under an optional protocol should be made in writing and the rules should ensure the rapid consideration of communications. However, Finland and Mexico stressed the usefulness of oral hearings as provided for in the rules of procedure of CAT and CERD. Canada, Mexico and Portugal underlined the importance of deadlines for parties' submissions to avoid unduly prolonged proceedings.

61. Brazil and Finland stated that an optional protocol should provide for the possibility of seeking additional information on a case from international and regional bodies.

62. Argentina, Azerbaijan, Mexico, Morocco (on behalf of the Group of African States) and Spain stated that the merits of a communication should be examined separately from, and after the examination of, its admissibility. Portugal argued that the question of the concurrent or separate examination of merits and admissibility should be left for the Committee to decide. Canada stressed that simultaneous consideration of the admissibility and merits was conducive to the rapid consideration of a communication. A State party should be able to request that admissibility be examined separately from the merits.

63. The Islamic Republic of Iran stressed the need for confidentiality of a communications procedure.

64. Argentina, Azerbaijan, Brazil, Canada, Finland, the Islamic Republic of Iran, Mexico, Morocco (on behalf of the Group of African States), the Russian Federation and Switzerland expressed support for including a provision on the friendly settlement of disputes in an optional protocol. The Netherlands, stating a preference for a collective complaints mechanism, stressed that the friendly settlement of individual cases relating to economic, social and cultural rights was more complicated than of those relating to civil and political rights. The representative did not envisage a linkage of friendly settlement in the event of a collective complaints mechanism. Azerbaijan, Ecuador, Finland, Mexico, Portugal, the ICJ and the NGO Coalition suggested that the friendly settlement of disputes should be subject to one or more of the following principles and safeguards: fairness; good faith; respect for human rights; optional character; close monitoring of implementation of settlement; possibility to return to the adversarial procedure in case the friendly settlement fails or is unduly delayed. Portugal and the NGO Coalition stressed that the terms of a friendly settlement should be subject to review and approval by the Committee. The Russian Federation stated that the Committee should be able to refuse a settlement only in exceptional cases. Argentina stressed the positive use of friendly settlement of disputes within the inter-American system.

65. Angola, Argentina, Belgium, Brazil, Canada, Finland, Mexico, Morocco (on behalf of the Group of African States), Portugal, the Russian Federation, Spain, Switzerland and the NGO Coalition expressed the view that the treaty body supervising a communications procedure should have the power to request interim measures of protection from the State to prevent irreparable harm to the alleged victim. Canada and Spain stated that, if there were such a procedure, it should include specific criteria for the applicability of interim measures. Amnesty International argued that it should be left to the Committee to determine when interim measures

apply. Morocco, the Russian Federation, Switzerland and the ICJ stated that the interim measures procedure should be based on similar provisions in other mechanisms and the rules of procedure of treaty bodies.

66. Mexico stressed that interim measures should be envisaged in an optional protocol. Argentina, Mexico, Morocco and the Russian Federation emphasized that interim measures should apply only in exceptional cases where the life of the victim was at risk. Among the examples cited by Belgium, Brazil, Finland and the Russian Federation were measures to ensure access to food and water in situations of famine, and access to HIV/AIDS medicines. Poland stated that such situations could be better addressed by emergency relief programmes. Japan found it difficult to imagine an urgent situation requiring interim measures given the nature of economic, social and cultural rights and questioned the need for such measures. Canada and Poland expressed the view that States parties should be given an opportunity to comment on the appropriateness of interim measures prior to their application. If there was not enough time to await these comments, the State party should have the possibility to request the withdrawal of the Committee's interim measures request.

67. As regards the content of interim measures, Switzerland inquired whether, in addition to measures preserving the status quo, the Committee would also have the power to ask the State party to take positive interim measures, for example by providing life-saving drugs to an alleged victim under article 12, paragraph 2, of the Covenant. Angola emphasized that any interim measures request should respect the principle of progressive realization of the Covenant. Poland asked whether interim measures would have a strict *inter partes* effect or whether they would also apply to third parties and to the international community.

68. The Netherlands, Poland and the United States of America stressed that they considered economic, social and cultural rights to be of a different nature; the procedure to give effect to these rights should not be copied from instruments on civil and political rights.

IV. INQUIRY PROCEDURE

69. The Working Group discussed the issue of an inquiry procedure allowing the committee to undertake an inquiry, with the agreement of the State concerned, upon the receipt of reliable information indicating a grave and systematic violation of a provision of the Covenant.

70. Azerbaijan, Finland, Mexico and Portugal spoke in support of including an inquiry procedure under the optional protocol. Such a procedure would be an important means of addressing situations where an individual communication did not adequately address the gravity or systematic nature of a violation. It was noted that the Committee had already undertaken several country visits at the invitation of the State party concerned. Through an inquiry procedure, an optional protocol would allow the Committee to take preventive measures. Azerbaijan supported the inclusion of an "opt-out" clause in relation to any inquiry procedure.

71. Belgium, France, Italy and the United Kingdom stated that their delegations had not yet taken a final position on this issue. Questions were raised about the potentially large scope of

investigations under an inquiry procedure, the establishment of a procedure which would allow for claims without a victim, the costs of a country investigation and whether these would have to be met by the State party concerned.

72. Argentina, Brazil, Chile and Spain noted that their delegations had not yet taken a final position on the issue of an inquiry procedure, although they had accepted similar procedures in relation to other instruments. The issue would require further reflection and discussion, in particular on the concept and definition of “systematic violations”.

73. Egypt, Nigeria and Angola stated that they would not support an inquiry procedure. Several questions and concerns were raised including, for example, what criteria would be used to determine whether information was reliable and what sources would be considered. In the absence of an identified victim, would anonymous information be considered? What would the criteria be for “gross and systematic violations” of human rights? What would be the role of this procedure vis-à-vis other human rights mechanisms, such as special procedures of the Commission on Human Rights? Would the consent of the State party be required at all stages of the inquiry procedure?

74. The NGO Coalition, as well as representatives of Amnesty International, CETIM, COHRE and the ICJ, all spoke in favour of an inquiry procedure. On the issue of potential overlap between an inquiry procedure and existing mechanisms, it was noted that special procedures were not treaty-based procedures. Furthermore, these mechanisms were not designed to react to gross and systematic violations, and did not cover the full spectrum of economic, social and cultural rights.

75. Mr. Riedel noted that, under an inquiry procedure, the Committee would determine whether information was “reliable” on the same basis as under the reporting procedure. Any inquiry mechanism would involve costs but from the experience of other treaty bodies such costs would be manageable. Mr. Riedel suggested that the number of investigations would be limited, given that the information available must indicate gross and/or systematic violations, and the State party would have to give consent. Although the Committee can already undertake this kind of procedure, establishing such a mechanism within an optional protocol would allow for more predictable, consistent practices.

V. INTER-STATE PROCEDURE

76. The Chairperson introduced a discussion on an inter-State procedure, which would enable a State party to present communications before the Committee in cases of alleged violations of the provisions of the treaty by another State. No statements were made under this item.

VI. INTERNATIONAL COOPERATION AND ASSISTANCE

77. The Working Group addressed international cooperation and assistance.

78. Angola, Egypt, Ghana, Indonesia, the Islamic Republic of Iran, Morocco (on behalf of the Group of African States) and Nigeria emphasized that international cooperation and assistance was a legal obligation enshrined in the Covenant. Countries had different capacities

and structures which affected their ability to implement their human rights obligations. Article 2, paragraph 1, was central to any discussion on the implementation of the Covenant. This obligation had to be considered in the light of the various political declarations and commitments, including the Monterrey Declaration and the Millennium Declaration. The concept of maximum available resources included both resources available to the State and to the international community. A trust fund should be established to assist States to implement their obligations. Ecuador stressed that international cooperation was one of the purposes enshrined in the Charter of the United Nations.

79. Argentina, Belgium, China, Finland and Mexico stressed the importance of international cooperation and assistance to the fulfilment of human rights. Argentina, China and Finland stated that international cooperation and assistance had to be taken into account under any optional protocol and recalled that, as a procedural instrument, an optional protocol would not create new rights. Argentina, Chile, Egypt and France stated that international cooperation should not be seen as a precondition for the fulfilment of human rights obligations.

80. France referred to the work of other treaty bodies in interpreting collective obligations such as international cooperation and assistance. The practice of the Committee on the Rights of the Child suggested that this principle had not been interpreted as a means of direct recourse by one State party against another. The representative recalled that member States of the Francophonie had adopted at Bamako, in November 2005, a declaration supporting the negotiation of an optional protocol, underlining the importance of international cooperation. The representative stressed that mainstreaming human rights through development cooperation should be seen as a means of assisting States in identifying policies that could be improved.

81. The Netherlands, Spain, Sweden and the United Kingdom emphasized that the State had the primary responsibility to implement its obligations. Mainstreaming of human rights, as well as cooperation between various actors, should be strengthened before additional mechanisms and procedures were established. Spain noted that the role of the Committee in relation to international cooperation and assistance needed clarification. The Netherlands stated that international cooperation should be based on genuine dialogue, partnerships and technical cooperation programmes and strongly doubted whether an inter-State complaints mechanism was compatible with this notion.

82. Canada stated that international cooperation and assistance was a moral obligation, not a legal one. Canada supported the mainstreaming of human rights throughout United Nations development programmes, including through the work of the Office of the United Nations High Commissioner for Human Rights.

83. Brazil, Finland, Mexico, Portugal and Spain supported the Chairperson's proposal outlined in paragraphs 54 and 55 of her analytical paper, suggesting that an optional protocol could give the Committee a specific role to activate the procedures under articles 22 and 23 of the Covenant in a meaningful and effective manner. Portugal noted that international cooperation and assistance required collaboration among a number of actors at the international level, and suggested that an optional protocol could request the Committee to transmit its views on international cooperation and assistance to United Nations agencies through the Economic and Social Council (ECOSOC). Brazil also stressed that article 2, paragraph 1, should include

cooperation from United Nations agencies. Switzerland maintained that the Committee was already now in a position to take a specific role in order to activate the procedures under articles 22 and 23.

84. The United Kingdom and the Netherlands questioned the establishment of a mechanism which would allow complaints to be brought under article 2, paragraph 1, and/or articles 22 and 23 of the Covenant. The United Kingdom also questioned the Committee's competence to provide advice on a complex area of development policy and suggested that it was better placed to address core obligations.

85. Argentina and Portugal supported the inclusion of a provision in the optional protocol similar to article 45 of the Convention on the Rights of the Child.

86. Norway cautioned against creating new obligations and suggested that a reference to international cooperation and assistance could be included in the preamble of the optional protocol.

87. The NGO Coalition stressed that an inquiry procedure would provide an impartial accountability mechanism for evaluating the effectiveness of international cooperation and assistance. The ICJ, COHRE and CETIM also took the floor on this question.

88. Mr. Riedel noted that the Committee always emphasized positive developments, including on international cooperation and assistance, in the reporting procedure. A distinction had to be made between international cooperation and assistance - which was a legal obligation under article 2, paragraph 1, of the Covenant - and development cooperation. He noted that the Committee could take a more proactive role in relation to the procedures under articles 22 and 23.

VII. DOMESTIC DECISIONS ON RESOURCE ALLOCATIONS

89. The Working Group considered the implications of an optional protocol on domestic decisions on resource allocation.

90. Brazil, Chile, Finland and Portugal underlined that implementing civil and political rights also required considerable resources and that the findings and recommendations under existing communications procedures equally had financial implications. Finland and Portugal drew attention to the fact that only a small number of cases concerning economic, social and cultural rights would have important resource implications. Similar points were raised by representatives of the NGO Coalition and the Danish Institute for Human Rights. Canada noted that, while civil and political rights also had financial implications, the fulfilment of economic, social and cultural rights implied costs on a larger scale.

91. Canada, France, Germany and Senegal drew attention to the difficulties the Committee would face in determining whether measures corresponded to the best use of available resources and questioned whether the Committee would be in a position to assess all the elements influencing the policy choices of Governments. Poland indicated that, before applying the law in specific cases, international bodies with quasi-judicial powers - unlike domestic courts - would first have to give precise meaning to deliberately general formulations of social rights in

international instruments. Portugal, supported by Nigeria, pointed out that a number of universal and regional bodies already assessed national application of economic, social and cultural rights. Equally, Mexico and Finland noted that while the Committee might not have the most in-depth knowledge of national structures, it would bring a global perspective and provide valuable guidance on the basis of its accumulated knowledge on good practices.

92. Poland raised the issue of whether decisions on national resource allocations were not better left to domestic courts than to an international body which was not subject to a national democratic process. Brazil, Chile, Portugal and Mexico pointed out that the Committee's recommendations would not interfere with policymaking, as States would have a sufficiently wide margin of discretion in selecting the means of implementation. Belgium noted that interference with policy decisions was more likely in the context of the State reporting than in the review of individual cases. Greece suggested that the Committee should consider only cases of "manifest errors". The United Kingdom, noting that national courts have given the executive and legislature a wide margin of appreciation when passing judgements on the fulfilment of economic, social and cultural rights, questioned whether the Committee, divorced from any domestic balance of powers, would grant Governments the same margin. Canada, Norway and the United Kingdom suggested that guarantees concerning States' margin of appreciation and a test of "reasonableness" could be inserted into an optional protocol to safeguard against undue interference with national policymaking.

93. Several delegations raised the issue of the standards and criteria the Committee would use in determining whether resource allocations complied with the Covenant. France, Germany, the United Kingdom and Canada underlined the difficulty of establishing objectives in this regard. Nigeria noted that the issue of corruption added to the difficulty of developing such criteria, while the representative of France underlined the need for simple criteria such as a distinction between rights of immediate application and those related to resource availability. Norway noted that one option would be to limit the communications procedure to the fulfilment of minimum standards. Canada suggested that an optional protocol should specify the "intervention criteria" that would trigger action by the Committee. The United Kingdom expressed concern about granting the Committee powers to assess a State party's obligations to fulfil economic, social and cultural rights, suggesting that its competence could be limited to issues concerning non-discrimination and core rights.

94. The NGO Coalition stressed that excluding questions relating to resource allocation from the Committee's review would have discriminatory effects on the most vulnerable and disadvantaged. At the national level, courts often reviewed the effects and compatibility of legislative measures with constitutional provisions. This often involved important budgetary implications, according to the representative of Belgium. Spain stated that Spanish courts frequently required the legislator to enact changes.

95. Belgium, Switzerland, the NGO Coalition for an Optional Protocol and COHRE suggested providing for a "standard of reasonableness" similar to that applied by national courts in an optional protocol. Switzerland considered it essential to provide for a wide margin of appreciation for States parties in an optional protocol. The NGO Coalition argued that the margin of appreciation of States parties should be assessed on a case-by-case basis.

96. Ecuador stressed that the obligations of States parties were subject to their available economic resources and underlined the importance of international assistance.

97. COHRE cited the standard of review concerning resource allocations contained in the draft Bill of Rights of one State. The Inter-American Platform for Human Rights, the Danish Institute for Human Rights, FIAN, Franciscans International, the Native Women's Association of Canada and the ICJ also took the floor on this issue.

98. Mr. Riedel explained that the Committee's practice in examining States parties' reports was to grant a wide margin of discretion to States parties in taking their policy choices, as well as an opportunity to justify the lack of realization of a Covenant right by reasonable and objective criteria. The Committee merely examined whether a State party had done everything within its means to comply with its obligations. Its approach would be even more careful with regard to individual communications. It was legitimate, albeit unnecessary in the light of the Committee's self-restraint, to expressly provide for a "standard of reasonableness" in an optional protocol.

VIII. DISCUSSION ON THE INTER-AMERICAN SYSTEM

99. The Working Group held an interactive dialogue with a representative of the Inter-American Court on Human Rights (IACt HR), Emilia Segares, on the protection of economic, social and cultural rights under the inter-American human rights system.

100. Ms. Segares explained that the Inter-American Commission on Human Rights (IACHR) and the IACt HR were the two principal bodies monitoring compliance with regional human rights instruments. A number of economic, social and cultural rights were covered in the Charter of the Organization of American States (OAS), the American Convention on Human Rights (ACHR) and the American Declaration of the Rights and Duties of Man, the latter of which may be cited in individual petitions to the IACHR irrespective of whether the State concerned has ratified the ACHR. For States parties to the ACHR, this instrument replaced the American Declaration as the main reference in petitions regarding human rights violations. The ACHR could be applied to economic, social and cultural rights directly and indirectly (chap. III, art. 26) as well as through their relation with civil and political rights (chap. II). Moreover, the protocol of San Salvador to the ACHR gave the IACHR and the IACt HR jurisdiction to hear petitions concerning the right to organize and join trade unions, the right to strike and the right to education.

101. Ms. Segares said that the inter-American system included mechanisms to promote human rights through IACHR thematic hearings, in loco visits and periodic reporting of States on the implementation of their treaty obligations. Moreover, the IACt HR had consultative powers to interpret the human rights instruments and consider the compatibility of domestic legislation with international standards. Both the IACHR and the IACt HR could impose precautionary measures in serious and urgent cases to prevent irreparable harm. In its jurisprudence, the IACt HR has underlined the link between the right to life and the conditions for living a life in dignity, including the right to health, education, recreation, culture, food, drinking water and housing.

102. Responding to questions from delegations, Ms. Segares explained that there were no cases as yet where article 26 of the ACHR had been applied to protect economic, social and

cultural rights. So far, the approach of the court had been to address economic, social and cultural rights indirectly through their link with civil and political rights. Ms. Segares expressed the view that an optional protocol to ICESCR would be an important means of strengthening the protection of economic, social and cultural rights. The optional protocol would complement and have a positive impact on the existing mechanism under the inter-American system.

103. Ms. Segares indicated that the IACt HR had not dealt with the issue of international cooperation directly. She clarified that the IACt HR provided a specific time within which its judgements had to be complied with, and that States failing to apply decisions were mentioned in the court's annual report. However, on two occasions, States invoked economic problems to justify a delay in fulfilment of the court's decisions. In one case, the State submitted to the court an agreement concluded with the victims for the delayed fulfilment of the right concerned.

IX. RELATIONSHIP WITH EXISTING PROCEDURES

104. The Chairperson provided an overview of the complaint mechanisms under ICERD, the Migrant Workers Convention and the optional protocols to the International Covenant on Civil and Political Rights (ICCPR) and CEDAW, as well as the ILO and the United Nations Educational, Scientific and Cultural Organization (UNESCO) complaint mechanisms.

105. The Council of Europe explained the reporting and collective complaint procedures under the (revised) European Social Charter and the 1995 Additional Protocol thereto and referred to the European Committee's case law on collective complaints. Poland drew the Working Group's attention to the fact that the member States of the Council of Europe could not come to a consensual agreement on the inclusion of an additional protocol to the European Convention on Human Rights in the area of economic, social and cultural rights.

106. Canada expressed the view that substantial overlap existed between ICESCR and other communications procedures. The representative stated that ICERD and CEDAW provided for non-discrimination in respect of economic, social and cultural rights, while ICCPR protected freedom of association, child protection, cultural rights and equality before the law. Similarly, ILO and UNESCO instruments covered a wide range of labour and cultural rights respectively, in a more specific manner than the broadly worded rights under ICESCR. There was also overlap between ICESCR and regional human rights treaties.

107. The representative of the Danish Institute for Human Rights stated that overlap between different treaties was not necessarily negative but reaffirmed the interdependence of all human rights. Portugal was of the same view and argued that there was also overlap between civil and political rights treaties with communication procedures, for example, between ICCPR and CAT with regard to the right to be free from torture.

108. UNESCO and France stressed that the risk of duplication between a communication procedure under an optional protocol and the UNESCO procedure was minimized by the fact that, unlike treaty body procedures, the UNESCO procedure was entirely confidential and supervised by Government representatives rather than by independent experts. France also felt that duplication of the ILO procedures was similarly minimized. The NGO Coalition for an

Optional Protocol added that neither the UNESCO nor the ILO communication procedures provided for redress to victims similar to the United Nations treaty-based communication procedures.

109. Brazil, Finland, Portugal, Spain and the NGO Coalition expressed the view that the existing complaint mechanisms either had only limited geographical coverage or failed to protect economic, social and cultural rights in a comprehensive manner. Complaints under the San Salvador Protocol to the American Convention on Human Rights could be based only on the right to education or on trade union freedom. Under the 1995 Protocol to the European Social Charter and the ILO procedures, individuals had no standing. Other United Nations human rights treaties either protected economic, social and cultural rights only with regard to certain groups (ICERD, CEDAW) or treated them as mere by-products (ICCPR). An optional protocol procedure under ICESCR would therefore complement the existing complaint mechanisms covering economic, social and cultural rights.

110. Brazil, Finland, Mexico, Portugal, Spain, the ILO, the NGO Coalition and the Danish Institute for Human Rights stated that “forum shopping” and duplication of the procedures under an optional protocol to ICESCR and under partly converging instruments could be avoided through clearly defined admissibility criteria and through enhanced cooperation between the Committee on Economic, Social and Cultural Rights (CESCR) secretariat and other complaint procedures.

111. Brazil, France, Portugal, Switzerland and the NGO Coalition expressed support for the inclusion in an optional protocol of a non-duplication rule similar to that of article 22, paragraph 5 (a) of CAT which precluded the simultaneous or subsequent examination of the same matter by different procedures of international investigation or settlement. Among the other options proposed were the development of a common jurisprudence of the different international communication procedures (France) and provision for an “à la carte” approach in an optional protocol (Canada). The ILO stated that the ILO Committee of Experts on the Application of Conventions and Recommendations was precluded from examining not only complaints that have been examined but also those that could potentially be submitted under another mechanism such as the UNESCO complaint procedure.

112. The ILO emphasized the importance of close working relationships between the CESCR secretariat and the other complaint mechanisms for avoiding conflicting views.

113. Norway expressed the view that the supervisory body of a future communications procedure under an optional protocol would have to respect existing ILO standards relating to the rights recognized in articles 6 to 8 of the ICESCR.

114. Canada stated that, in the light of the proliferation of United Nations human rights treaty bodies, the related costs and the status of CESCR as a subsidiary organ of ECOSOC, thought should be given to the option of entrusting the monitoring of economic, social and cultural rights to one of the other existing treaty bodies or to a unified standing treaty body.

X. COSTS OF AN OPTIONAL PROTOCOL

115. The Chairperson informed the Working Group of the estimated resources, in terms of staff, editing and translation services, required for a communication procedure under an optional protocol. OHCHR provided additional information on the standard costing of an inquiry procedure.

XI. IMPACT OF AN OPTIONAL PROTOCOL

116. The Working Group discussed the potential impact of an optional protocol.

117. France noted that the examples reflected in the Chairperson's paper were instructive and agreed that an optional protocol was likely to have a positive effect. Further clarification would be required in relation to the Committee's mandate and authority and the need to avoid excessive numbers of communications against any one particular country, for example through the use of the system of pilot cases.

118. Germany expressed support for the process of enhancing the recognition of economic, social and cultural rights and agreed that the availability of a procedure for individual communications was a suitable way of improving implementation of the Covenant, if based on consensus.

119. Argentina, Brazil, Chile, Finland, Mexico and Portugal expressed the opinion that an optional protocol would greatly improve implementation of economic, social and cultural rights at the national level. The delegations pointed out that an optional protocol would provide relief to individuals, instigate legislative change and have a multiplier effect. An optional protocol would also give States a direct role in international jurisprudence on economic, social and cultural rights; strengthen notions of international accountability; strengthen domestic remedies; clarify the more complex aspects of the ICESCR through the study of individual cases; increase the profile and public awareness of economic, social and cultural rights; increase cooperation between States and the Committee.

120. Chile and Mexico stressed that the Working Group should focus on ensuring real application of economic, social and cultural rights, rather than issues of State sovereignty. Mexico noted that there were various possible forms of mediation and ways to ensure a margin of discretion for States.

121. The NGO Coalition, ICJ, COHRE, the Inter-American Platform for Human Rights and the Danish Institute for Human Rights made statements illustrating the benefits of a future optional protocol.

122. Mr. Riedel provided examples of cases considered by the Committee under the existing reporting procedure which could have been presented as communications under an optional protocol. He also noted that the decisions reached by the Committee would in effect be views, representing recommendations and thus would not have the same binding effect as court decisions.

XII. OPTIONS FOR AN OPTIONAL PROTOCOL

123. The Working Group discussed options regarding the elaboration of an optional protocol to the ICESCR.

124. Australia, while noting full support for economic, social and cultural rights, expressed serious concerns at the proposal to elaborate an optional protocol. Central to this proposal was the treaty body reform process which should streamline mechanisms and reduce duplication. Australia was yet to be convinced that the elaboration of an optional protocol would be the most effective means to improve the promotion and protection of economic, social and cultural rights. Australia repeated the request for a comprehensive and non-judgemental analysis of all options, including no optional protocol. The United States strongly opposed any notion that the Committee should be called upon as the ultimate judge and regulator to review State policy and resource decisions based on individual complaints, questioning the expertise of the Committee to do so on the entire range of matters under the Covenant. The representative also stated that there was clearly no consensus for the negotiation of an optional protocol.

125. A clear majority of delegations noted that considerable progress had been made in clarifying various questions relating to an optional protocol. In their view, the Working Group had fulfilled the mandate assigned to it by the Commission on Human Rights and could no longer make significant progress without engaging in a drafting exercise. Mexico said that, regarding the draft Disability Convention, significant progress was achieved only after the presentation of a first draft. Regarding the future role and mandate of the Working Group, Brazil (on behalf of GRULAC) and Morocco (on behalf of the Group of African States), as well as Angola, Argentina, Azerbaijan, Belgium, Bolivia, Burkina Faso, Chile, Congo, Costa Rica, Croatia, Cuba, Ecuador, Egypt, Ethiopia, Finland, France, Ghana, Guatemala, the Islamic Republic of Iran, Italy, Lesotho, Madagascar, Mexico, Mozambique, Nigeria, Panama, Portugal, the Russian Federation, Senegal, Slovenia, South Africa, Spain, Timor-Leste, Turkey and the Bolivarian Republic of Venezuela, called for the extension of the Working Group's mandate with a view to drafting and negotiating an optional protocol. Representatives of NGOs expressed support for this proposal and the representatives of Mexico and the NGO Coalition emphasized the need for the Chairperson to undertake broad consultations with regional groups and NGOs in preparing the draft text. More specific proposals were made to extend the mandate of the Working Group for two years (Portugal) three years (the Russian Federation), or at least one year (Switzerland).

126. Additionally, Brazil (on behalf of GRULAC) and Morocco (on behalf of the Group of African States), as well as Angola, Argentina, Azerbaijan, Belgium, Burkina Faso, Chile, Costa Rica, Croatia, Cuba, Egypt, Finland, Mexico, Portugal, the Russian Federation, South Africa, Spain and Timor-Leste, proposed that the present Chairperson be entrusted with the preparation of a first draft of an optional protocol, taking into account the viewpoints expressed and the discussions of the Working Group at both its present and previous sessions, which would then be the basis of future negotiations. Brazil, on behalf of GRULAC, urged that the draft be circulated in advance of the next session. Belgium indicated that a draft text would make it possible to hold consultations with all stakeholders at the national level. Other delegations noted that a draft text could identify consensus elements and resolve any additional questions or difficulties. Several delegations affirmed the need for constructive, inclusive and open negotiations on the draft text. The Philippines noted support for the mandate of the

Working Group and the need to move forward on the basis of a more detailed working text. Spain proposed that this new mandate be put in place as soon as possible in the context of the imminent establishment of the Human Rights Council.

127. Canada, Germany, Greece, Japan, the Netherlands, New Zealand, Poland, the Republic of Korea, Sweden, Switzerland and the United Kingdom were of the view that a number of issues remained unresolved, and urged that future work proceed on the basis of the broadest possible consensus. The Netherlands, as other delegations, stated that discussions in the Working Group had not led to consensus on any of the six options mentioned in the Chairperson's paper. Canada, Germany, Greece, Japan, Luxembourg, the Netherlands, Poland, Sweden, Switzerland and the United Kingdom recommended that the Working Group continue to consider possible options and elements of an optional protocol, so as to clarify and build consensus on any remaining issues. The Netherlands, however, saw no merit in discussions on the basis of a consolidated draft for an optional protocol, but was willing to engage in discussions on concrete textual proposals for possible options and elements. More specifically, Canada, Switzerland and the United Kingdom suggested that, if an optional protocol were elaborated, the Working Group should proceed on the basis of a working text to be prepared by the Chairperson containing draft provisions for each of the various approaches outlined in her analytical paper and taking into account the discussions at its previous sessions on the scope and application of an optional protocol.

128. China and Romania emphasized the importance of moving forward on the basis of consensus.

129. Norway indicated that the present report should not contain recommendations on the extension or modification of the Working Group's mandate, or on the preparation of additional documents, but should be left to either the Commission on Human Rights or the future Human Rights Council.

130. Egypt and Nigeria stated that an optional protocol should not create new substantive rights or derivatives of rights, while Madagascar cautioned against creating a hierarchy of rights. The Philippines emphasized that a possible optional protocol should recognize the right of States to determine development goals and national priorities. The Bolivarian Republic of Venezuela emphasized that the State had the primary responsibility for the promotion and protection of human rights. Norway stated that an optional protocol should accord States a wide margin of discretion for decisions relating to resource allocation.

131. Morocco (on behalf of the Group of African States), while noting that an optional protocol would create a new and important international mechanism, stressed the importance of existing national and regional mechanisms and Venezuela noted that a communications procedure should be complementary to the periodic reporting procedure. Egypt and Venezuela highlighted the need to preserve and strengthen the integrity and effective functioning of such mechanisms.

132. Morocco (on behalf of the Group of African States) and Angola, Burkina Faso, China, Congo, Cuba, Egypt, Ethiopia, the Islamic Republic of Iran, Lesotho, Madagascar and Senegal underlined the importance of international cooperation in the realization of economic, social and cultural rights, as set out in article 2 of the Covenant. Accordingly, the optional protocol should

enable the implementation of the obligation of international cooperation. These delegations called for the establishment of a trust fund to assist States to fully realize the rights contained in the Covenant and to implement the views of the Committee under the optional protocol.

133. With regard to the possible scope and content of Covenant rights to be subject to a communications procedure, Morocco (on behalf of the Group of African States), Congo, Croatia, Cuba, the Islamic Republic of Iran, Madagascar, Mexico, Portugal, South Africa, Switzerland and the Bolivarian Republic of Venezuela expressed support for the comprehensive approach.

134. The Islamic Republic of Iran, the Philippines, Portugal and Spain emphasized the importance of establishing clear and well-defined admissibility criteria for the submission and consideration of communications. The requirement for the exhaustion of domestic remedies was stressed by Angola, the Islamic Republic of Iran, Madagascar, the Philippines, Portugal, Spain and the Bolivarian Republic of Venezuela. Additionally, the criterion of non-duplication of procedures was stressed by France, Portugal and the Philippines. Morocco (on behalf of the Group of African States) stated that consideration of the admissibility of communications should occur prior to any proceedings on the merits. The representative also urged that reasonable deadlines be established for the submission and consideration of communications.

135. With regard to standing, Portugal stressed that the optional protocol should provide for a communications procedure that was accessible to individuals, groups of individuals and their representatives. The Bolivarian Republic of Venezuela stated that designated representatives could submit communications on behalf of victims provided that they had been granted consent. Venezuela suggested that claims prior to the entry into force of the procedure should be inadmissible and that domestic remedies, unless unjustifiably slow, should be exhausted.

136. Morocco (on behalf of the Group of African States), as well as the representative of Venezuela, affirmed that the friendly settlement of disputes was a fundamental principle of international law, which should be incorporated in the text of a future optional protocol.

137. Morocco (on behalf of the Group of African States), called for the establishment of clear linkages between the use of interim measures and the capacity or resources available to States, particularly developing countries, to undertake such measures. Portugal stated that the optional protocol should allow the Committee to recommend interim measures, as well as to undertake inquiry procedures.

138. Angola and Egypt indicated that the optional protocol should not provide for an inquiry procedure.

Annex I

LIST OF PARTICIPANTS

States members of the Commission on Human Rights

Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Brazil, Canada, China, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Italy, Japan, Kenya, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Sudan, United Kingdom of Great Britain and Northern Ireland, United States of America, Bolivarian Republic of Venezuela.

States not members of the Commission on Human Rights

Afghanistan, Albania, Algeria, Angola, Bahrain, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Chile, Croatia, Cyprus, Denmark, El Salvador, Estonia, Ghana, Greece, Iceland, Ireland, Islamic Republic of Iran, Israel, Jordan, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Malta, Mauritius, Mozambique, Myanmar, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Senegal, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Timor-Leste, Tunisia, Turkey, Ukraine.

Non-member States of the United Nations

Holy See.

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

Food and Agriculture Organization, International Labour Office, United Nations Educational, Scientific and Cultural Organization, World Health Organization.

Regional intergovernmental organizations.

Council of Europe.

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

Amnesty International, Brahma Kumaris World Spiritual University, Centre on Housing Rights and Evictions, Conference of Non-Governmental Organizations in Consultative Status with the United Nations, Earthjustice, Europe-Third World Centre (CETIM), Fédération Internationale des ligues des Droits de l'Homme (FIDH), FoodFirst Information and Action Network (FIAN), Franciscans International, International Commission of Jurists, International Service for Human Rights, International Federation of Terre des Hommes, Lutheran World Federation, OIDEL, Permanent Assembly for Human Rights, South Asia Human Rights Centre, World Organisation Against Torture.

Annex II

LIST OF DOCUMENTS

Symbol	Title
E/CN.4/2006/WG.23/1	Provisional agenda
E/CN.4/2006/WG.23/2	Analytical paper by the Chairperson-Rapporteur on elements for an Optional Protocol to the ICESCR
E/CN.4/2006/WG.23/CRP.1	Note by the secretariat
E/CN.4/2005/WG.23/CRP.2	Note by the secretariat
E/CN.4/2005/WG.23/CRP.3	Information supplied by the Government of Portugal
E/CN.4/2005/WG.23/CRP.4	Information supplied by non-governmental organizations
