4. Recommendations

219. The Committee recommends that the State party:

(a) Consider the possibility of making the declaration provided for in article 22 of the Convention;

(b) Adopt all necessary safeguards for the protection of refugees from neighbouring countries, in particular so as to ensure that in case of repatriation they are not placed in the situation referred to in article 3, paragraph 1, of the Convention.

N. Kuwait

220. The Committee considered the initial report of Kuwait (CAT/C/37/Add.1) at its 334th and 335th meetings, on 13 May 1998 (CAT/C/SR.334 and 335), and adopted the following conclusions and recommendations.

1. Introduction

221. Kuwait acceded to the Convention against Torture on 8 March 1996 and its initial report was due on 7 March 1997. The report was received in timely fashion on 15 October 1997.

222. The report accords generally with the guidelines for such reports.

2. Positive aspects

223. Kuwait seems to have in place the necessary legal institutions to combat torture.

224. Kuwait has confronted incidents of torture and prosecuted those responsible.

225. The Committee views as a positive step the setting up of a government-funded Torture Victims' Rehabilitation Centre in Kuwait.

3. Factors and difficulties impeding the application of the provisions of the Convention

226. The Committee is not aware of any factors that might impede the application of the provisions of the Convention.

4. Subjects of concern

227. The Committee is concerned that there is no defined crime of torture in Kuwait.

5. Recommendations

228. The Committee recommends that Kuwait consider withdrawing its reservations to the Committee's article 20 jurisdiction.

229. The Committee also recommends that Kuwait consider declaring in favour of articles 21 and 22 of the Convention.

230. The Committee further recommends that Kuwait consider enacting in its Criminal Code a defined crime of torture or, if the Convention applies by incorporation, an independent crime of torture.

231. The Committee looks forward to the additional explanations to be provided to it in writing as promised.

O. Israel

232. The Committee considered the second periodic report of Israel (CAT/C/33/Add.3) at its 336th and 337th meetings, on 14 and 18 May 1998 (CAT/C/SR.336 and 337), and adopted the following conclusions and recommendations.

1. Introduction

233. Israel signed the Convention on 22 October 1986 and deposited its instrument of ratification on 3 October 1991. The Convention entered into force in Israel on 2 November 1991. Upon ratification, Israel made a reservation in respect of articles 20 and 30. Israel has not declared in favour of articles 21 and 22. The second periodic report was due on 1 November 1996 and was received on 6 March 1998.

234. Israel had presented a special report (CAT/C/33/Add.2/Rev.1) at the Committee's request, and the Committee's conclusions and recommendations included the recommendation that the second periodic report of Israel be presented for consideration at the November 1997 session of the Committee. The second periodic report was prepared in accordance with the general guidelines concerning the form and content of such reports.

2. Positive aspects

235. Israel has embarked upon a number of reforms, such as the creation of the Office of Public Defender, the creation of the Kremnitzer Committee to recommend oversight of police violence, amendments to the Criminal Code, ministerial review of several security service interrogation practices and the creation of the Goldberg Committee relating to the rules of evidence.

236. Another positive aspect was the genuine dialogue that engaged the Committee and the Israeli delegation.

3. Factors and difficulties impeding the application of the provisions of the Convention

237. Israel points to the state of insecurity with which it copes, but the Committee notes that, pursuant to article 2, paragraph 2, this cannot justify torture.

4. Subjects of concern

238. The Committee is concerned about the following:

(a) The continued use of the "Landau rules" of interrogation permitting physical pressure by the General Security Services, based as they are upon domestic judicial adoption of the justification of necessity, a justification which is contrary to article 2, paragraph 2, of the Convention;

(b) Resort to administrative detention in the occupied territories for inordinately lengthy periods and for reasons that do not bear on the risk posed by releasing some detainees;

(c) The fact that, since military law and laws going back to the Mandate pertain in the occupied territories, the liberalizing effect of the reforms referred to in paragraph 235 above will not apply there;

(d) Israel's apparent failure to implement any of the recommendations of the Committee that were expressed with regard to both the initial and the special report.[5]

5. Conclusions and recommendations

239. Israel expressed concern that the Committee had not set out *in extenso* the reasoning behind its conclusions and recommendations with regard to Israel's special report. Of course, the dialogue between a State and the Committee forms part of the context upon which the Committee's conclusions and recommendations are made. However, in order to ensure that there is no room for doubt, it was on the basis of the following that the Committee found that its conclusions and recommendations with regard[6] to the Israeli special report should continue to form part of its conclusions and recommendations to the present report:

(a) Since the State party admits that it applies force or "physical pressure" to those in the custody of its officials, the State party bears the burden of persuading the Committee that such force or pressure offends neither articles 1 or 2 nor article 16 of the Convention;

(b) Since the State party admits to hooding, shackling in painful positions, sleep deprivation and shaking of detainees (through its delegates and courts, and supported by the findings of the United Nations Special Rapporteur on Torture)[7] the bare assertion that it is "not severe" is not in and of itself sufficient to satisfy the State's burden and justify such conduct. This is particularly so when reliable evidence from detainees and independent medical evidence made available to Israel reinforce the contrary conclusion;

(c) Given that Israel itself asserts that each case must be dealt with on its own "merits", but that for matters of security, material particulars of the interrogation cannot be revealed to the Committee, it follows that the conclusions of breach of articles 1, 2 and 16 must remain.

240. Accordingly, the Committee reaffirms its conclusions and recommendations with regard to Israel's initial and special reports:

(a) Interrogations applying the methods referred to above are in conflict with articles 1, 2 and 16 of the Convention and should cease immediately;

(b) The provisions of the Convention should be incorporated by legislation into Israeli law, particularly the definition of torture contained in article 1 of the Convention;

(c) Israel should consider withdrawing its reservations to article 20 and declaring in favour of articles 21 and 22;

(d) Interrogation procedures pursuant to the "Landau rules" should in any event be published in full.

241. The practice of administrative detention in the occupied territories should be reviewed in order to ensure its conformity with article 16.

242. The Committee would be remiss if it did not acknowledge that the Israeli delegation had initiated upon this occasion a genuine dialogue that revealed Israel's unhappiness with the current situation (without acknowledging any breach of the Convention) and its desire to cooperate with the Committee. The Committee, in its turn, respects Israel's right to present its position, even if the Committee disagrees with its reasons and conclusions, and expresses the genuine desire to continue the dialogue and to resolve the differences between Israel and itself.

P. Sri Lanka

243. The Committee considered the initial report of Sri Lanka (CAT/C/28/Add.3) at its 338th, 339th and 341st meetings, on 18 and 19 May 1998 (CAT/C/SR.338, 339 and 341), and adopted the following conclusions and recommendations.