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SUMMARY RECORD OF THE PUBLIC PART* OF THE 337th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 May 1998, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.337/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Israel (continued) (CAT/C/33/Add.3)

1. At the invitation of the Chairman, the members of the delegation of Israel resumed their places at the Committee table.

2. Mr. SHAFFER (Israel), replying to the questions raised by members of the Committee at the 336th meeting, said that, like other Constitutions, the Basic Law: Human Dignity and Liberty, left it to the Constitutional Court to determine whether it was breached by a specific law. The judicial review was currently being conducted by the High Court of Justice, in accordance with the Basic Law, although it was true that a declaration of a state of emergency had been in effect since 1948. Under the proposed amendment to the Evidence Ordinance, "independent evidence of guilt of the accused unearthed as a result of the admission obtained through torture shall not be banned, even though the admission itself shall be disallowed as evidence". Thus, for example, if, in an admission obtained by torture, the accused told where a gun was hidden and said that a crime had been committed with it, then the finding of the gun in that place would not be admissible evidence. However, if the fingerprints of the accused were found on the gun, and they constituted independent evidence of his guilt, then they would be admissible evidence against him. Under the present law, an admission during an interrogation could form the basis for a conviction, provided there existed an additional element supporting its credibility. That requirement, deriving from the case law, was meant to prevent reliance on false admissions, made after the use of banned measures, or from the personal motives of the accused.

3. In that context, regarding the education of the police and the nature of the interrogation process in Israel, he quoted from the Landau report, which stated that General Security Service (GSS) personnel interrogated the accused on the interrogation premises when the main object was to induce him to show readiness to give information and in the process admit to the act attributed to him. Once that stage had been completed successfully and the suspect was actually ready to confess, he was handed over to a police investigator, who took down his confession in accordance with the law. The confession was subsequently presented in court by the policeman who had taken it down and who appeared as a witness for the prosecution.

4. Since police officers were not authorized to exercise any physical pressure, the proposed amendment was sufficient for educating police; the GSS was another matter, but it had nothing to do with the criminal process or the amendment to the Evidence Ordinance.

5. The word "real" ("real violence") in paragraph 91 of the report (CAT/C/33/Add.3) was a mistranslation of the Hebrew word mamash; in any case, the wording was only a draft and would presumably be improved during the legislative process. As to the personal responsibility of GSS personnel, according to section 17 of the proposed General Security Service Law 1998, "An employee of the Service or a person acting on behalf of the Service shall not

bear criminal liability for an act or failure to act which he committed in good faith and reasonably in the framework of and for the purpose of carrying out the duties of his position." Such a provision was common where public servants were concerned; he saw no contradiction between it and the Convention.

6. The powers of administrative detention that had been a part of Israeli law since the British mandate had been abrogated in 1980 with the enactment of the Emergency Powers (Detention) Regulations, according to which administrative detainees must be brought before a judge for judicial review within 48 hours. In the territories, where Israeli law did not apply, military law held that administrative detention was possible only if the commander had evidence that it was crucial for the security of the area. Appeal could be made to the Military Appeal Judicial Board, and later to the High Court of Justice. The maximum period of detention was six months, and only in very few cases had it been extended beyond that for a second or third six-month period. Over the past few months, some of the longest-serving detainees had been released.

7. Detainees held in administrative detention under military law were not kept incommunicado. The question of the Lebanese detainees was currently pending before the High Court in a special enlarged forum, following the initial decision by the three-judge panel. In rare cases, persons who had served out their criminal sentences were held in administrative detention, but that was done on the basis not of the facts that had brought about their punishment, but of evidence presented to the military commander which showed that the person constituted a danger to the area. Habeas corpus procedures were always available in Israel, including to administrative detainees. Whenever anyone was arrested, with no exception, the family was notified. Detainees were generally not permitted to use a telephone while under GSS investigation; no contact between the individual being interrogated and other persons was allowed at that stage.

8. The principles of the Convention were part of the curriculum at the Police Academy. Police personnel were not authorized to apply any physical pressure to detainees, and therefore education on the Convention was directed more towards GSS personnel. Very little discretion was accorded to GSS personnel with regard to the degree of severity applied in any case, which was precisely why the Landau Commission had set out very specific instructions, according to which the authority to approve the application of moderate pressure was given to senior GSS officers, as stated in paragraph 35. There was therefore no danger of the "reasonable interrogator" discretion being used, as mentioned by Mr. Yakovlev.

9. As to publication of the confidential part of the Landau guidelines, it was vital that the State should maintain the secrecy of the GSS interrogation procedures, as disclosure would undermine the interrogations themselves and obstruct the result they were designed to achieve: the prevention of terrorist attacks. Some terrorist organizations actually prepared their members for the eventuality of arrest and interrogation, and disclosing the detailed procedures would assist them in that. In principle, there was no obligation on any State to make public the working methods of its law enforcement agencies, and he did not know of any country that had done so; nor

did the Convention set out such a requirement, so he could not see how such a recommendation reasonably came under Israel's duties pursuant to the Convention. As he had said, publication could harm the efficiency of the law enforcement agencies; the uncertainty regarding investigation practices was a weapon in the psychological battle against terrorism.

10. Even so, many allegations had been made public with regard to interrogation methods, and Israel often chose neither to confirm nor to deny them in order to maintain as much as possible the efficacy of interrogations. The guidelines on GSS procedures were not kept secret within the Service, however; on the contrary, they existed in the form of detailed instructions to GSS personnel.

11. On the question of necessity, since any physical pressure was by Israeli law a criminal offence, the Landau guidelines resorted to the "necessity" defence in order to justify moderate pressure when it was applied. Israel did not resort to the claim of necessity in the context of the Convention, since torture was not permitted.

12. Israel shared Mr. Sørensen's views on the importance of having appropriately trained medical staff in attendance during interrogation, and accordingly since 1997-1998 doctors had been present in the interrogation facilities and available 24 hours a day. The Subcommittee of the Knesset Defence and Foreign Affairs Committee had decided not to publish the findings of the State Comptroller (paragraph 33 of the report), as was within its authority; that decision had been challenged before the High Court of Justice, and the case was still pending.

13. Regarding the efficiency of the work of the Ministerial Committee headed by the Prime Minister, because of the importance of the subject of interrogation procedures and the difficult legal questions it raised, it was necessary that the highest level of Government authorities should take the decision and bear the responsibility. Thus, despite their other involvements, the Prime Minister himself and other ministers were regularly briefed on the issue. The reference in paragraph 35 to subjecting persons to extreme temperatures "for prolonged periods" was misleading; it was a quotation from an allegation denied by the Government. No one was subjected to any extreme temperatures other than those caused in Israel by "El Niño" and other natural phenomena.

14. Regarding the question of solitary confinement referred to in paragraph 56, only 14 days were allowed, and he knew of no deviation from that rule. In any case, an immediate judicial appeal could be lodged before the District Court. He also knew of no complaints about the length of family visits. As stated in paragraph 61, administrative detainees could receive visitors every two weeks, not every two months. There was no screening of complaints made to the Department for Investigation of Police Personnel (DIPP). He had no exact details concerning disciplinary actions against GSS personnel, but would point out in answer to Mr. Mavrommatis that the low percentage of justified complaints was not surprising: members of terrorist groups interrogated by the GSS were highly motivated ideologically and generally made false accusations as part of their struggle against Israel. Many of the allegations made by Mr. Ghanimat before the High Court had not

even been repeated by him when interrogated by the DIPP or when he had had the legal opportunity to do so. From that experience the Government had learned that terrorists did not tell the truth and made exaggerated assertions about their interrogations.

15. As to compensation, the draft bill dealt with a completely different subject, namely, the intifada, not with indemnification for injuries sustained during interrogation. There were court cases currently pending on such claims for damages. With respect to the specific case of Mr. Ghanimat, No. 3282/97, as the High Court had ordered, the DIPP had investigated the allegations. In response to questions raised concerning the procedure of prolonged cuffing, the GSS Interrogation Department had issued special directives both to the police personnel and to its own interrogators regarding the manner of cuffing with the aim of preventing injury to detainees. Sweatbands were to be used in every case where marks or grazing were seen to be caused by cuffing, and wide leg cuffings or handcuffings for detainees of heavier build or who had suffered injuries caused by the cuffs. In cases of exceptional sensitivity, the edges of the handcuffs were filed smooth to prevent any harm to the wrists. Those solutions, however, had proved not to be sufficient in exceptional cases, such as that of Mr. Ghanimat. It had been made clear during the investigation of his complaint that prolonged cuffing and leaning against a rough wall might cause an injury. The Government viewed the case as an exception, and had taken steps to prevent the recurrence of such incidents.

16. As to the hooding and the music, he referred to High Court decision No. 3124/1996 on the case of Khader Mubarak, which stated: "... the primary function of the head covering is to prevent the interrogatee, while awaiting his interrogation, from identifying other interrogatees the identification of whom could harm the interrogation or cause other security damage. We are satisfied that this measure is used in a reasonable manner for the purpose of the interrogation and that it does not prevent the interrogatee from breathing properly or from having adequate ventilation and it does not cause suffering that amounts to torture either in purpose or in actual practice". In connection with the petitioner's statement that very loud music was played while detainees awaited interrogation, such music was intended to prevent them from communicating with one another and was also heard by everyone in the vicinity, including the security guards in the room. The court had accordingly seen no reason to issue an interim injunction.

17. As to sleep deprivation, he referred to the case of Mr. Algazal, No. 2210/96 (para. 51), in which, after the court had issued an interim injunction, no further moderate physical pressure had been applied, which demonstrated the important role played by the High Court of Justice. With regard to the exact number of hours of sleep Mr. Algazal had been permitted, the Government did not wish to conduct an inquiry pursuant to article 20 or 22 of the Convention. The word "rest" meant total rest in the cell, with absolutely no interference. During waiting periods, the detainee commonly dozed, which was not full sleep but must nonetheless be taken into account; the Government therefore questioned Mr. Sørensen's assumption of "mental torture" in that matter. As to shaking, the numbers quoted from Prime Minister Rabin referred to periods of a few years earlier. He would not go into details about the present year, for reasons concerned with the secrecy of the regulations, but there had been only one complaint of alleged shaking,

and no contrary allegations had been made by the non-governmental organizations (NGOs) since the State party's previous report. The present situation was totally different from that described by Mr. Rabin.

18. The CHAIRMAN repeated his earlier question regarding the claim that some Lebanese had been held for a total of 11 years in administrative detention, which contradicted the Israeli delegation's reply that administrative detention could not exceed six months with very rare exceptions. The Committee had received information that Palestinians had been jailed for 6 years and Lebanese for 11 years, allegedly as bargaining counters, which seemed a clear violation of article 16.

19. Mr. MAVROMMATIS said that it was not acceptable that the Israeli delegation should argue the need to observe secrecy in Israel's counter-terrorist activities as a justification for withholding answers to questions from the Committee. He appealed for closer cooperation.

20. Mr. BAKER (Israel) confirmed that administrative detention was limited to a period of six months, extendable by additional periods of six months. His delegation had not denied that, in some cases, administrative detention might have totaled periods of, for instance, 6 years or 11 years. On the subject of the Lebanese detainees, Mr. Shaffer had earlier referred to the Supreme Court judgement which was under review by an enlarged panel. More generally, administrative detention had been used, in the territories entered by Israel in 1967, in a manner that conformed with the provisions of the Fourth Geneva Convention, and pursuant to the provisions of the British emergency regulations that had been in force since 1945. Civil law did not apply in those territories, and thus a decision to impose administrative detention was taken by the military commander, but could be reviewed up to the level of the Supreme Court, under a procedure that had existed since 1967. Therefore, Israel did not share the view that administrative detention violated article 16 of the Convention. Any request for extension was thoroughly reviewed and detainees could appeal against such decisions. The measure was necessitated by the situation prevailing in the territories in question, as a means whereby a democratic society founded on the rule of law sought to contend with a tragic dilemma.

21. Mr. SØRENSEN asked whether it was true that foreign nationals had been held as bargaining counters in exchange for Israeli soldiers. If so, would it not constitute a breach of article 16?

22. Mr. BAKER said that the reason why the case in question was before the extended panel of the Supreme Court was that others in Israel shared Mr. Sørensen's view and had lodged an appeal. It would be gratifying to see similar procedures functioning in Israel's neighbour countries. The Committee would be informed of the outcome.

23. The CHAIRMAN thanked the delegation of Israel for the very frank way in which it had responded to the Committee's questions.

The public part of the meeting rose at 3.50 p.m.