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Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – National Interest Analysis

The Executive Council of Australian Jewry, as the elected representative organisation of the Jewish community in Australia, appreciates the invitation to participate in this consultation process.

Even without becoming a party to the Optional Protocol, Australia already gives effect to the provisions of Article 2.1 of the Convention requiring state parties to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. The provisions of the *Crimes (Torture) Act (Cth) 1988* and Chapter 2 of the *Criminal Code* and the associated practices of Australia's law enforcement agencies clearly fulfil those requirements. For a country like Australia, where the rule of law is well established, the system of international inspections envisaged by the Protocol would not add anything further to the existing regime of protection against torture and ill-treatment.

On the other hand there is no doubt that a regime of international inspections, if universally accepted, and conducted confidentially and without prejudice or partiality, could make an essential contribution to human rights in relation to countries where the rule of law is less firmly established. The question therefore is whether Australia, as a good international citizen, should set the example of ratifying the Optional Protocol in order to contribute to an international climate of opinion which might possibly encourage countries at risk to join the system.

In this regard we note that so far some 35 states have so far ratified or acceded to the Optional Protocol, and that these include the United Kingdom and New Zealand, countries with legal and administrative cultures similar to our own. It may also be significant that some of the most powerful and populous states, including the United States, Russia, China, India and Japan, have not ratified or acceded to the Protocol.

There are, of course, some difficulties in the Protocol. Article 16, for example, creates an effective discretion for the monitoring Sub-Committee to breach confidentiality and make a public report if it asserts that a State Party has “refused to co-operate with the Sub-committee”. This makes sense as a final sanction. However, given the less than creditable past record of United Nations human rights Committees, it is not inconceivable that false allegations against State parties and other abuses by the Sub-Committee might emerge.

The composition of the Sub-Committee will therefore be critical. In this context it may be relevant that the membership of the Sub-committee is based on “equitable geographic distribution and...the representation of different forms of civilization and legal systems”,

and that the Sub-committee could include representatives from countries with ideological differences from those inspected. However it may be considered that there is some safeguard in that nominees for appointment to the Sub-committee must have the nationality of a State Party to the Protocol.

Our concern is that, as in the past, States Parties that have a poor record on human rights and the rule of law become a majority, and use their numbers to divert the Sub-Committee's attention from grave abuses committed by their own governments and to focus instead on the far less serious infractions of others. We hope that this short note may be of some assistance, and we look forward to reading the Department's Analysis.

Yours sincerely