REPORT OF THE INTERNATIONAL SEMINAR ON TORTURE AND HUMAN RIGHTS

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I. INTRODUCTION

by Professor Mümtaz Soysal, Chairman/Rapporteur of the Seminar.

An important feature of the relationship between the Council of Europe and the non-governmental organisations in consultative status with the Council are the periodic meetings of non-governmental organisations that take place at the initiative of the Council's secretariat. The model for these has been the series of tri-annual meetings convened by the Council's Directorate of Human Rights to which all non-governmental organisations interested in human rights questions are invited.

Having, in 1976, organised a colloquium on teaching on human rights and the campaign against racial prejudice in primary and secondary schools, the meeting decided that it would be appropriate to organise a seminar that would deal with the question of implementing the various international standards against torture at the national level. The Council of Europe would represent the proper context for such a discussion, given its unique contribution to the international protection of human rights. Amnesty International agreed to undertake the responsibility of organising the seminar which was made possible financially by a generous contribution of 30,000 French francs from the Council's Committee of Ministers, as well as the provision of the splendid premises of the new Palais de l'Europe. It must be noted that the seminar remained a wholly non-governmental organisation authorised and organised project.

In the event, the seminar was attended by some 92 persons representing 20 governments, three intergovernmental organisations, 36 non-governmental organisations or just themselves as individual experts. The list of participants is to be found in section IV of this report which indicates the names of those who attended the seminar as observers (insofar as they have indicated this on their registration forms). It was, in fact, agreed that all those attending could and should participate freely in the discussions and proceedings without commitment of their organisation or government. All the conclusions and recommendations in Section II of this report were adopted by consensus in the working group or the closing plenary session.

Amnesty International commends these conclusions and recommendations to the serious attention of all governments, organisations and individuals willing to work to ensure that the disease of torture be wiped out from the world body politic.

II. CONCLUSIONS AND RECOMMENDATIONS

as agreed by the Plenary Session of the Seminar, 5 October 1977.

A. WORKING GROUP I

Topic : a consideration of the domestic application and implementation of international instruments and standards for the protection of persons deprived of their liberty against torture and maltreatment, including the adoption of and adherence to professional codes of conduct.

Code of Medical Ethics

1. Condemns the use of medicine in any way for political ends and reaffirms the need for complete independence of the medical profession in carrying out its professional duties.

2. Commends the Declaration of Hawaii of the World Psychiatric Association to the attention of the World Health Organisation and of the Congress of International Organisations of the Medical Sciences in connection with the Code of Medical Ethics which the World Health Organisation has been requested by the United Nations General Assembly to formulate.

3. Recommends that the Code of Medical Ethics, when approved, should be published in all medical journals and included in the training programs of all medical personnel.

4. Notes with approval the decision of the World Psychiatric Association to establish a commission of enquiry to investigate complaints of psychiatric abuse.

5. Urges the medical profession to recognise and study the medical effects of torture and to give all necessary medical and psychiatric aid to torture victims and to exert their moral authority to prevent torture practices.

6. Urges that all medical professional bodies should come to the support of any colleagues who are victimised, harassed or placed in difficulty by reason of their adherence to the Code of Medical Ethics and recommends the establishment of appropriate machinery for this purpose at the national, regional and, if necessary, world levels.

7. Recommends that there should be available in all countries procedures for impartial enquiry into complaints either against medical personnel by torture victims or by medical personnel in case of victimisation for adhering to the code of medical ethics.

Code of Police Ethics

8. Urges the adoption by the United Nations General Assembly of the Draft Code of Conduct for Law Enforcement Officials.

9. Urges the Council of Europe to reach an early agreement on a Code of Conduct for the Police, based on the drafts which have been submitted to it.

10. Stresses the importance of education and training programs within all police forces explaining the terms and implications of these codes.

11. Welcomes the fact that the police federations and trade unions of 14 European countries have proposed the establishment of a Code of Police Ethics, including provisions relating to the protection of prisoners against torture and ill-treatment.

12. Urges the establishment of regular inspection without notice by senior police officers, or where the national legislation so provides, by magistrates, of police stations and other places where suspects are interrogated to ensure that the codes of police conduct are strictly observed.

Code of Military Ethics

13. Recommends that, following the example of the Netherlands, and the International Institute of Penal Law in San Remo, attempts should be made to engage the military authorities in different countries in discussions about the application to the armed forces of the international standards for the prevention of torture or other ill-treatment of prisoners.

14. Recommends that the possibility of formulating a similar code of ethics for military personnel should be given consideration within the framework of such discussions.

15. Recommends that all armed forces should instruct their military personnel of all ranks on the prohibition under national and international law, of torture or other cruel, inhuman or degrading treatment or punishment, and that training should be given in the proper treatment of prisoners and detained persons.

Code for Lawyers

16. Recommends that action be taken within the United Nations with a view to the adoption of an appropriate code for lawyers including judges, prosecutors, officials, practioners and academics, dealing with the protection of prisoners and detainees against torture and other ill-treatment.

17. Recommends that professional lawyers' organisations be urged to consider and comment upon the existing Draft Principles, with a view to the adoption of an appropriate code.

18. Recommends that lawyers' associations encourage demonstrations of solidarity, particularly of the sort that lead lawyers to lend their professional services to victims of torture.

19. Recommends that professional lawyers' organisations be urged in particular to come to the support of lawyers, in their own or in other countries, who are being victimised or penalised for adhering to the principles of the Code.

General

20. Recommends that all Codes of Ethics, including those applicable to Police and Military personnel, should be incorporated in the rules of the professions.

21. Recommends that torture should be specifically prohibited in all national constitutions, should be included as a grave penal offence in all civil and military penal codes, and that civil remedies for compensation should be available to victims of torture.

II.
B. WORKING GROUP II

Topic : Human rights with specific reference to freedom from subjection to torture as a relevant factor in international relations, taking into account bilateral and multilateral relations between governments as well as the role of intergovernmental and non-governmental organisations.

1. Recommends that the repeated and systematic use of torture in any state should be recognised as a situation of gross violation of human rights and as a proper matter of international concern. Accordingly the principle of non-intervention in the internal affairs of states can never be recognised as a valid reason for objecting to interventions relating to such situations.

2. Recommends that torture as defined in the Declaration on protection from torture contained in resolution 3452 (XXX) adopted by the United Nations General Assembly on 9 December 1975 should be recognised as an international crime of the same gravity as war crimes, genocide and apartheid.

3. To this end the seminar calls upon all governments which have not yet done so to ratify the United Nations International Covenant on Civil and Political Rights which, in its article 7 (as in article 3 of the European Convention on Human rights), prohibits torture. Similarly the seminar urges the acceptance by all contracting states of the procedure laid down in article 41 of the Covenant. Meanwhile the seminar recommends that the obligatory reporting procedure under article 40 be developed as far as possible into a regular supervision of the protection against torture at the national level.

4. Recommends that with a view to reducing as far as possible the political implications of interstate action, the existing machinery of international supervision should be strengtheneed by the acceptance of the optional provisions according the right of individual petition (Optional Protocol to the International Covenant on Civil and Political Rights and article 25 of the European Convention on Human Rights).

5. Recommends that appropriate machinery be provided within the framework of existing universal and/or regional intergovernmental organisations' structures enabling objective fact finding enquiries to be made wherever and whenever there are reliably attested allegations of systematic torture.

6. Recommends that to further these aims, all states should act;

i. unilaterally in all cases which call for such actions;
ii. bilaterally in their contacts with other states;
iii. multilaterally within the framework of international organisations, conferences or machinery.

7. All international non-governmental organisations in consultative status with inter-governmental organisations are urged to fulfill their responsibilities by submitting evidence where appropriate of reliably attested cases of torture to the competent international organs, and, through their national affiliates, to persuade their governments to take all necessary measures to implement the provisions of the United Nations Declaration on protection from torture.

8. The seminar requests all governments and intergovernmental organisations to recognise the crucial importance of the role and status of non-governmental organisations in combatting torture and facilitating the attainment of the objectives of relevant United Nations resolutions in this field.

9. The seminar further stresses the importance of the function of international and national professional associations of doctors, lawyers, judges and others who in their particular professional capacity may be exposed to or involved in acts of torture and who in such circumstances require and deserve the support of their counterparts in maintaining professional standards and integrity.

In addition to the above recommendations, the following suggestions emerged from the discussions for consideration and action where feasible by the competent organisations and authorities at the international and national levels :

i. As regards the improved utilisation in cases of allegations of torture, of existing machinery at the regional level of the European Commission and Court under the European Convention :

a. Facilitating access by enabling states to refer allegations to the Commission without necessarily endorsing them.

b. Improving national and international legal aid for victims of torture and providing more professional assistance in such proceedings.

c. Improving the efficiency of the machinery by accelerating the protracted procedure particularly at the stage of admissibility; ameliorating fact finding methods; developing information about its activities whenever possible, having regard to the requirements of confidentiality of documents and proceedings, and bearing in mind that results based on respect for human rights may be achieved through the "friendly settlement" procedure as an alternative to the finding of breaches of the Convention.

d. Making provision for interim measures of protection where appropriate.

ii. At the level of the United Nations, the new Human Rights Committee should be granted the necessary staff and facilities (as foreseen in article 36 of the International Covenant on Civil and Political Rights) without delay. The Committee should explore the possibility of developing a working relationship with non-governmental organisations, which, although not referred to in the Covenant or Optional Protocol, might assist it in its task in various ways; for example, by making world opinion aware of the existence of the new machinery; by providing additional information to the expert members of th e Committee for their examination of State reports; and by giving publicity to the Committee's own recommendations and reports.

The present shortcomings of the fact finding procedures of the United Nations should be examined with a view to making use of the experience within the European system and that of non-governmental organisations. This relates in particular to the Commission of Human Rights and its sub-commission (- procedures for undertaking a thorough study or establishing a committee of enquiry in respect of situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights -) as well as ad hoc committees and working groups.

iii. Both at the regional and the global level the contacts between official implementation machinery and the non-governmental organisations will assist both sides in their activity, and protect their respective independence from governments and intergovernmental organs. Insofar as formal relations exist they can be further strengthened, and informal relations, in particular through the secretariats, should be further developed.

iv. To meet the recognised need for effective measures of prevention of torture, particularly with respect to the abuse of interrogation practices after arrest, there should be elaborated an international supervisory commission, based on treaty obligation, with transregional participation, which would have full and unimpeded access without notice to all places of arrest, detention and imprisonment.

v. Finally it was agreed by the seminar but without formal recommendation, that the media must never lose sight of the fact that freedom o f the press is inseparable from the whole cannon of human rights and that violations of such rights deserve to be exposed and condemned whatever the political, ideological or economic complexion or geographical location of the régime concerned.

III. REPORTS OF THE RAPPORTEURS OF THE TWO WORKING GROUPS

A. WORKING GROUP I

Chairman	Niall MacDermot
Secretary	Nigel S. Rodley
Rapporteur	Nic Klecker

Papers presented by : Peter Baehr
Nigel S. Rodley
Otto Triffterer

Topic : a consideration of the domestic application and implementation of international instruments and standards for the protection of persons deprived of their liberty against torture and maltreatment, including the adoption of and adherence to professional codes of conduct.

To give a clear direction to the discussions in the working group, the Chairman singled out the following three points from the proposed topic :

1. Legal measures of protection. Under this heading would be studied the problems of detention of arrested persons, torture as defined in criminal codes and the measures taken in the case of states of emergency.

2. Codes of ethics and their implementation.

3. The question of supervision and inspection at the national as well as at the international level.

The working group first broached the problem of psychiatric abuse.

The representative of the World Psychiatric Association recalled that psychiatrists have certainly been alerted to possible abuses within the field of psychiatry. He mentioned in particular three of these abuses, namely :

i. deprivation of liberty

ii. incarceration among dangerously ill people of people who are not sick

iii. the administration of drugs to people who are not sick.

By way of illustration of this last point he said that in many countries a drug known as Haliperodol has for several years been administered which, in large doses, provokes Parkinson's disease unless antidotes are given.

To deal with such abuses the World Psychiatric Association had discussed in Hawaii the functions of two separate commissions :

i. The Commission of Psychiatric Ethics that would deal with the elaboration of principles of professional ethics. This Commission, which had for several years already been functioning on an unofficial basis, had now been formalised.

ii. The creation of a new commission was envisaged, that is to say, a commission of enquiry whose task would be to proceed to detailed investigation of all psychiatric abuses coming to its attention.

In addition, an ethical charter - the Declaration of Hawaii - was adopted unanimously by the Congress.

The discussions in the working group spent a while on the effectiveness and value of these instruments. Will the Charter of Hawaii be addressed to the World Health Organisation ? Will the World Psychiatric Association be able to elaborate a sort of convention against psychiatric abuse ? Could our seminar be in a position to support the Charter of Hawaii in its conclusion ?

Several of the participants insisted that the discussion should be simply extended to deal with the question of the abuse of medicine. The necessity of condemning the use of medicine for political ends, without distinction as to country, was emphasised. What was at stake was the independence of the doctor confronted by political power and social and economic factors. We were witnessing at present a veritable misdirection of medicine from its true goal : doctors were caring for people who were not ill and non-doctors were practising medicine. These were the essential points that the code of ethics should take account of.

The question of a code of ethics for doctors having been raised, different participants made several clarifications on this. It was recalled that there exists a code of behaviour binding doctors in all countries of the world. There was also the Declaration of Tokyo adopted by the World Medical Association unanimously on 10 October 1975 (by the World Medical Assembly), which provides "guidelines for medical doctors concerning torture and other cruel, inhuman or degrading treatment or punishment in relation to detention or imprisonment".

It would be necessary for national associations to monitor the observation of existing codes and draw attention to them by publishing them in their medical journals.

Two specific questions highlighted two basic aspects of this debate. The first question was how to exercise supervision over the activity of the doctor ? It is not easy to judge, to assess what a doctor does. How to enquire into the activity of people whose activities are shrouded ? To that it was necessary to respond however, that there are disciplinary organs and that it is not rare that doctors find themselves accused before these organs. The second question was how to protect doctors who have the

courage to comply with the code of ethics when in some countries this courage carries with it the risk of grave consequences for themselves, for example, imprisonment ? In the light of this question, that is, the question of the implementation of a code of ethics, its risks and its difficulties, the working group, rather than pursue consideration of a code applicable at the universal level, considered possibilities for ensuring the application of already existing rules at the national and regional levels.

Turning to the problem of a code of ethics for the police, the working group had before it three detailed texts. First there was the Declaration of the Hague, resulting from a seminar organised in June 1975 by Amnesty International, in which representatives of police authorities and police organisations, both national and international, had participated.

The text of this declaration had served as the basis for a draft code of conduct for law enforcement officials, a draft accepted by the United Nations Committee on Crime Prevention and Control in 1976 and which was to be discussed by the United Nations General Assembly. Finally, there was the Code of Ethics for Police drafted by the International Union of Police Trade Unions. The representative of the Fédération Autonome des Syndicats de Police recalled that, since 1973, at its congress in Royan, a preliminary draft ethical code, which was communicated to the Council of Europe and which was to serve as a basis for the Declaration of the Hague, had been adopted.

The draft which had been further elaborated was submitted to the present seminar and in its articles 2 to 10 covered the area of human rights. It had been communicated to governments and to the Council of Europe whose Parliamentary Assembly was to discuss it in the Spring of next year. The representative of the Fédération, speaking, it must be recalled, in the name of a trade union comprising 400,000 European policemen, stressed the fact that the police trade unions were waiting with impatience for the code for police officers to be officially adopted soon. Meanwhile efforts were being made at the disciplinary level to exclude those policemen whose behaviour was not compatible with the moral demands of professional conduct.

It was stressed that two points appear fundamental in such a police code : the policeman must have the right to refuse an order incompatible with human rights and also to denounce and disclose infringements of these rights; and he should be protected in case of conflict with his superiors.

From the beginning of the discussion it had been suggested to the working group that the causes that could lead a policeman to practise torture should be analysed.

The question which received our attention was posed with respect to countries whose governments do not order torture. It appeared that what leads a policeman to exceed what he is permitted to do is that the misbehaviour is covered up by the authorities. Policemen go too far because governments do not punish them. In regard to this the question of supervision of policemen arises. It could be particularly difficult to obtain evidence when it is a question of cruel treatment which does not, however, leave visible traces.

It would be important to be able to prevent excesses by the institution of a system of inspection in places of interrogation.

On this matter it was noted that legally there exists the right of supervision by magistrates who have the right to enter a police station without warning. But magistrates are not exercising this right of supervision. There too it was learned that the police trade unions were working to make such supervision effective.

It was suggested that our seminar should ensure that there appear amongst its conclusions a recommendation to the effect that regular inspection of police stations should be made by magistrates. This was a suggestion that would, however, have to be studied with caution if an Austrian participant was to be believed. He warned that there were countries (Austria for example) where there would be constitutional difficulties in instituting such supervision given the principle of separation of powers.

As for the investigations that should be made when there are allegations of torture by policemen the question arises as to whether it would be good to leave to policemen the obligation to conduct such investigations. This would need public support. Would it be appropriate to have people not belonging to the police participate in such investigations ? Parliamentarians! (In respect of the totality of the functioning of the police). (A médiateur or ombudsman). The view of several participants in the working group was that a certain number of measures could be taken to reinforce the prevention, and to render more effective the investigation, of cases where there are allegations of torture.

It was essential to tell governments what their responsibilities are.

At the level of the individual policeman the question of education arose. Things would not change if a representative of a trade union appended his signature to a code of ethics. Such a code needed to be promoted. If it was intended that it be useful and effective, it was necessary that once governments have adopted it that it be on the program of police training schools, that it be explained to all and understood by all. In this manner it would be possible to insist on the rigorous implementation of the code from the beginning of the career of each policeman.

Although we were aware that the work of preparation of a code of ethics for the police was already at an advanced stage, such was not the case for military personnel.

The working group tried to take account of the very different situations in which policemen and soldiers find themselves.

It was essential to see that policemen find themselves in the framework of national law. This law, of which they were the instruments, limited their powers. Only in exceptional situations might they be led to violate human rights.

Soldiers, for their part, in war time, found themselves in a situation of violence. They were trained to use force. Law did not intervene to restrain the almost limitless exercise of violence. In the "total wars" of our time, everything was permitted against the adversary, the enemy.

The moment that the adversary, the enemy, became a prisoner, without losing his enemy status (and the war not being terminated, the armistice, peace, not having been concluded), the combatant soldier found himself in a situation which contains psychological and moral problems of great gravity.

The subject of the code of ethics for soldiers was introduced by Professor Baehr. I should like to mention here some sentences from his written contribution which appear to me to establish precisely the usefulness and necessity of the codes of ethics about which we are speaking. I quote : "Torture is not a mechanical act. It is an act of will if a person performs torture. In some cases he may be free to order or to perform torture or not to do so. This is where the matter of professional codes of conduct becomes relevant".

The dilemma : to obey an order or not to obey it because it is judged to be contrary to a right conscientiously recognised as fundamental. It remains the soldiers and policemen who risk the most in having to confront the dilemma. Enclosed as they are in a hierarchical structure with authoritarian implications, they may find themselves in the position of having to collect vital information, particularly when confronted by terrorism, and they are thus susceptible to becoming involved with torture.

Though for a few moments the idea of the justification of torture - the classic argument for torture which is necessary to obtain information that would permit the saving of human lives - was discussed, this did not prevent the working group from continuing to anchor itself firmly on the only platform that a discussion of the problem of torture can provide : that is to say that torture is forbidden, prohibited, without exception by international law. The possibility of torture having some legitimacy was not even to be considered.

Now the question arose as to how the elaboration of a code of ethics for soldiers should be embarked upon in the absence of trade union organisations comparable to those for the police. In this connection an authentic pilot project had been undertaken in the Netherlands. The Dutch Section of Amnesty International had elicited from the Ministry of Defence the establishment of periodic contact between Amnesty and the

armed forces. Among the topics touched upon in the course of the meetings was the development of a code of behaviour. Contacts thus established, when there was no crisis situation, created an atmosphere that was propitious for permitting officers to devote time to reflecting upon situations where the problem of torture might threaten to arrive.

It appeared important that the soldiers themselves should elaborate their code of ethics, in the first place because that would give the code more chance of being actually adopted, but also because the code could only become a realistic and effective instrument if it was to be elaborated by those who are aware of the situations to which it was to apply.

The existence of a professional ethical standard, such as is reflected in the rules of conduct and codes of honour within the military tradition, could contribute to providing soldiers with the reply to the question concerning torture, mainly that it must never be either authorised or applied.

It was considered that three points were essential and that the code of military ethics should include :

i. the right to disobey orders which violate the fundamental rights of the individual,

ii. the obligation to disobey orders which command the use of torture, and

iii. the obligation to protest against such orders.

While welcoming the experiment conducted in the Netherlands as a very valuable attempt, it was necessary on the other hand, to pursue discussions of a code of ethics, for example, during international meetings such as that in San Remo in 1976 which have as their object the study of the problems of human rights in the armed forces.

It was also, and above all, necessary - a number of participants insisted strongly on this point - to ensure that the formal instructions prohibiting torture were to be found in the formal legal framework governing soldiers. A code, an international instrument, would in the final analysis, not suffice; it would be necessary for the military penal code to provide for severe punishment for the crime that is torture.

Much insistance was placed on the necessity of introducing humanitarian law into the education of soldiers. Detailed educational programs were necessary which should be addressed to those who would be called upon to fight, to prepare them in advance so that they would know how to confront critical situations, inculcating in them, for example, the obligation not to torture or ill-treat the disarmed adversary, the prisoner. The obligations envisaged by the code of ethics for policemen should be valid for soldiers in situations where their forces act as an extension of those of the police, that is to say, in situations of occupation, or, in time of peace, where soldiers were called upon to assist the police to perform functions which were police functions or similar to police functions.

Our working group finally devoted a lengthy discussion to the problem of a code of ethics for lawyers.

It was acknowledged in the first place that in this field professional ethics exist.

Amnesty International had asked the International Commission of Jurists to draft a code of ethics specifically on the question of torture. This text enunciated "draft principles for a code of ethics for lawyers, relevant to torture and other cruel, inhuman or degrading treatment or punishment".

The envisaged code would be valid for all lawyers, be they advocates, examining magistrates, judges, lawyers in government service, or law teachers.

That was a crucial point in our discussion because it aimed at the introduction of international provisions into national systems of judicial practice.

If, in the discussion dealing with the question of knowing whether the judge can or cannot take account of evidence illegally obtained, extorted by torture, the participants of our working group were unanimous in emphasising the solution required, it appeared that in judicial practice, according to the country in question, difficulties may arise.

Indeed in one country, the judge was no longer considered as impartial if he did take account of evidence obtained illegally. On the other hand, we were informed that in Scandinavia the judges take such evidence into consideration (on the understanding that the situation would change if the accused retracts) : it would therefore be difficult to introduce international standards going against established practices.

At the practical level the working group envisaged addressing itself to professional organisations asking them to collaborate in the definitive drafting of a code and asking them for their comments with respect to the outline which might be submitted to them. The advantage of this procedure was obvious if one considered that for the code to become practically effective it was to the same professional organisations that requests for signature would be addressed : that seemed at least to be the best means of ensuring that the code be observed.

Professor Triffterer introducing his important written contribution reminded us of the correct perspective within which it is necessary to see the problem of torture, namely, that of its recrudescence in the 20th century. He recalled that it was legal for centuries in national law, was abolished during the 18th century and that torture was thus prohibited from the beginning in international law.

Now if in contemporary national law adequate rules existed in codes of criminal procedure to forbid the use of torture as a procedure, many people were not aware that these rules could be used to combat torture. It was suggested on this matter that there would be a case for approaching governments and asking them to have the prohibition against torture introduced into their constitutions.

In the presence of the frightening extension that the phenonenom of torture had undergone - should one indeed say : is undergoing, in our time ? - in the presence of new psychological information disclosed by experiments tending to establish that every man actually placed in a critical situation can become a torturer, the question was urgent to know how to arrive at a better implementation of preventive rules, how also to extend the legal basis against torture.

In this regard the suggestion was made to improve the mechanisms presently available to the Council of Europe by the creation of a commission whose function would be to receive and analyse complaints, allegations of torture and to set up investigations when the victims would not be available to testify. It was this last point which had to be stressed since it was on this point that such a commission would be differentiated in the first place from the European Commission of Human Rights which, for its part, received an individual application and had to establish whether there was a victim or not. What was therefore suggested was the creation of a preventive mechanism, the consideration of which was most certainly warmly recommended.

One of the intentions which very clearly stood out in the discussion was that, in introducing the prevention and punishment of torture into national codes, it should be considered as a severe offence for which minimum high penalties should be provided.

It was also suggested that it should be considered an aggravating circumstance when torture was the act of a government official as opposed to an act committed by a private person.

Since these measures were envisaged in the discussion, it was inevitable that the discussion also deal with the nature of torture, with its definition : particularly the question of the gravity involved in cruel treatment for it to be considered as amounting to torture.

The tendancy within Amnesty International was perhaps too much towards considering that the intention to torture as well as the systematic character are the necessary criteria. It was possible that its very nature and the type of struggle that it carried out might have contributed to such conceptions in Amnesty International.

Doubtless there was no question of excluding from the definition what might be called "light torture" because of the immediate risk of having it considered less illegitimate than serious torture. The definition - which was difficult to arrive at insofar as there was treatment which did not apparently involve anything violent, such as prolonged isolation and which no less deserved to be considered as torture - the definition of the evil which we were here joined together to combat was surely less important than the means that we could summon and together set in motion to combat it.

III.

B. WORKING GROUP II

Chairman	Heribert Golsong
Secretary	Martin Ennals
Rapporteur	Daniel Lack
Papers presented by :	Torkel Opsahl
	A.H. Robertson

Topic : human rights as a relevant factor in international relations, taking into account bilateral and multilateral relations between governments as well as the role and potential of intergovernmental and non-governmental organisations in this regard.

There were 45 participants at the opening meeting of the group and this number was maintained throughout the discussions. Most of the government nominated participants selected to attend working group II and it was agreed early in the discussion that all contributions were personal and not made on behalf of the nominating government or non-governmental organisation. It was also decided to try to achieve consensus in the discussion and to avoid voting or formal procedures. Thus one or two observers who had attended the seminar participated when their experience appeared useful. The recommendations and suggestions which form the substantive part of the report and which were approved by the plenary session of the seminar reflect this concensus.

The narrative part of the report is designed merely to give the background to the discussion but does not refer exhaustively to each intervention nor does it take up the matters of agreement which are reflected in the conclusions.

At the outset it was felt that the topic of the working group should in practical terms be re-interpreted to relate to torture in regard to human rights and therefore the topic was taken to read :

> "Human rights with specific reference to freedom from subjection to torture as a relevant factor in international relations, taking into account bilateral and multilateral relations between governments as well as the role of intergovernmental and non-governmental organisations."

Working group II had the advantage of discussion, being well prepared by the two papers submitted in writing in advance and summarised verbally by Professor Robertson and Professor Opsahl.

Professor Robertson concentrated on the question of bilateral relations between states and Professor Opsahl dwelt more particularly on the aspect of multilateral relations.

Narrowing down from the problem of seeking respect for basic human rights as more generally set out in the Universal Declaration and the Covenants, discussion focussed specifically on the prohibition of torture in relation to the following four issues :

1. How can the prohibition of torture be enforced, given the widespread practice of torture at the state level, and in the light of the objections made by states against whom this allegation is made, that this constitutes an interference in their internal affairs contrary to article 2 (7) of the Unit ed Nations Charter, concerning the principle of non-intervention.

2. To what extent has the international community recognised that the principle of freedom from torture as an aggravated form of cruel, inhuman or degrading treatment is one of the "sacrosanct rights" from which no derogation can be countenanced under any circumstances.

3. How far is it feasible and under what conditions is it appropriate to seek the enforcement of the outlawing of torture by multilateral instruments as opposed to pressures being brought by states able and willing to do so in their bilateral relations.

4. What is the role of international and national non-governmental organisations in ensuring respect for human rights. Are they free from constraints placed on intergovernmental bodies and do they enjoy certain advantages in obtaining the necessary information, thereby acting as catalysts of public opinion ? Does their consultative status with ECOSOC require further extension in relation to their standing with the new Human Rights Committee under the Covenant on Civil and Political Rights ? Is there a more direct role possible within the framework of the Council of Europe and the implementation of their conventions?

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1. It was agreed that the principle of non-intervention in the internal affairs of states can no longer be an effective bar against grave human rights breaches such as torture by states. The combined effect of the United Nations Charter, the Universal Declaration, the Covenants and other United Nations resolutions and human rights instruments both at the universal and regional level, take the systematic violations of basic human rights including freedom from torture, out of the realm of the essentially domestic jurisdiction of states. Article 2 (7) of the Charter would still remain a provision to which accused states will resort in their defence unless they have accepted the optional procedures on a reciprocal basis under article 41 of the Covenant on Civil and Political Rights and the Optional Protocol to it.

2. A clear consensus has emerged with regard to the Declaration of Torture as contained in General Assembly Resolution 3452 (XXX) of 9 December 1975. The definition of torture as an aggravated or deliberate form of cruel, inhuman or degrading treatment or punishment deserving universal condemnation commands general acceptance. The principle of its absolute prohibition enjoys universal support.

Effective implementation is, however, another matter. As has been pointed out with some relevance, this declaration as first adopted by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1975 reflects the concern at the practice of torture by those who deal with detainees and prisoners, who frequently are the primary victims of torture.

The repeated and systematic use of torture as an institutionalised instrument of repression has so aroused the conscience of the international community that there is a general willingness to see the practice of torture on this level condemned as an international crime of the same degree as war crimes, genocide and apartheid.

It was explained that, as in the United Nations Declaration, torture must be distinguished from less intense forms of inhuman and degrading treatment. Not to do so would be to bring into international concern brutality and other breaches of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

3. The discussion further examined the effectiveness of multilateral human rights machinery, as compared to bilateral approaches, particularly as regards allegations of violations of the systematic practice of torture. While the application of international fact-finding enquiries through existing procedures and machinery at the United Nations level has frequently been criticised as selective and opportunistic; at the regional level intergovernmental organs such as those of the Council of Europe, have achieved a remarkable degree of success. The limitations of even the European Convention machinery were also apparent and had been examined in Professor Opsahl's paper and to some extent repeated in the conclusions.

A particular psychological stumbling-block in intergovernmental procedures is the role of accuser and accused frequently attributed to the complaining and respondent governments. Ways of examining allegations of torture without an accusatory system introducing fact-finding at an early stage, should be introduced.

Some discussion was therefore devoted to devising alternative procedures so as to depersonalise the confrontational roles of the state parties and instead to encourage a more calm and dispassionate attitude on the determination of the responsibilities of allegedly offending states. Claims that grave breaches of basic human rights have occurred such as the systematic practice of torture should be investigated without any endorsement of the allegations until proper findings have been reached. Such fact-finding responsibility could be allotted to the Directorate of Human Rights within the Council of Europe or to the Secretary General or special nominee within the Secretariat of the United Nations.

The new Human Rights Committee under the United Nations Covenant on Civil and Political Rights may present some improvements in this respect but its role and effectiveness in torture cases have yet to be established. Emphasis was laid on the need to provide adequate staffing for the Human Rights Committee and for proper use to be made of the reports to be submitted by the contracting states for examination by the Committee.

4. At this point the role which non-governmental organisations can usefully play in the campaign against torture, their relative independence and freedom from formal constraints hampering the efforts of intergovernmental organisations, received critical examination.

It was generally recognised that the role of non-governmental organisations including professional organisations, trade unions, specialist groups and human rights bodies had an important role to play both in fact finding and exposure of torture. The point was made and endorsed that there was always a risk at present that non-governmental organisations making allegations of torture about any country, run the risk of being classified and condemned by that country and its friends as being subversive or other adjectives intended to invalidate the criticisms. Some non-governmental organisations were even under attack by governments as regards their consultative status because of the role they had played in bringing international attention to human rights infringements. The need to recognise and uphold the role of non-governmental organisations was therefore reflected in the consensus conclusions.

There was a generally expressed view that the existing machinery for human rights protection was extremely slow and in the case particularly of torture allegations by non-governmental organisations and others, interim measures were required to try to alleviate and prevent suffering. Once the concept of torture as an international crime was accepted, then the accountability of governments for the human rights of persons under their ju risdiction became clear and the need for rapid preventive action imperative. Reference was made to machinery within the United States Congress for human rights hearings and the consideration required by the State Department of allegations of infringements of human rights by non-governmental organisations and other reliable sources when making recommendations regarding aid, trade and arms to governments. Other governments did not act in this manner but there was a feeling expressed that so me such recognised role for experts and non-governmental organisations with regard to governments would be valuable at the national as well as international level.

Torture was an individual responsibility of the torturer. The crime was therefore one committed by individuals but responsibility clearly could not be separated from government and individuals in government. The need for an international convention which would cover all aspects of the crime of torture and would provide for inspection teams as prevention mechanisms was thus discussed. No conclusion was reached as to the nature of the international instrument required, but it was noted that an interregional convention was under discussion particularly in Switzerland but that other United Nations drafts had also been under consideration.

In considering the various mechanisms for preventing and stopping torture, the importance of publicity, well planned public information services, the press and the expert experience of non-governmental organisations was repeatedly mentioned. One suggestion made late in the

discussion which therefore did not figure in the consensus agreements was the desirability of introducing some sort of ombudsman, parliamentary commissioner or commissioner for human rights at national, regional or international levels to handle the problem of impartial investigation. The right of individuals to bring complaints either by petition or by other direct or indirect means was generally felt essential and the adoption of the optional clauses and application of articles in existing instruments was highly desirable. Closer collaboration was needed between non-governmental organisations who often did not understand and benefit from the opportunities available to them under the European Convention but who had no specific role assigned to them under the United Nations Human Rights Committee procedures. The Human Rights Committee members however, received the reports of member states which were not confidential and if briefed by experts or non-governmental organisations, could benefit from the opportunity of asking relevant questions to seek factual answers about implementation of the covenants by states parties.

IV ATTENDANCE LIST

ACKER, Ulrich : International Association of Democratic Lawyers - observer

AKERREN, Bengt : Government of Sweden

ALI KHAN-ALLEMANN, Ursula : Government of Switzerland

AURENCHE, Guy : International Movement of Catholic Lawyers
Action des Chrétiens pour l'Abolition de la Torture (ACAT)

BAEHR, Dr Peter R : Advisory Council on Campaign Against Torture (Dutch Section of Amnesty International)

BARI, Shamsul : Council of Europe - observer

BEAULNE, Yvon : Government of Canada - observer

BEFORT, Dr Paul-André : World Medical Association
Confédération des Syndicats Médicaux Français

BEYGO, Taner : Council of Europe - observer

BOETZELAER VAN ASPEREN, C W Baron Van : Government of the Netherlands - observer

BOWYER, Philip : Postal, Telegraph and Telephone International

CAIRNCROSS, Mrs Gabrielle : Consultative Council of Jewish Organisations

CANIS, William : United States of America (representing Congresswoman Millicent Fenwick) - observer

CARVALHO, J P da Silveira : Government of Portugal - observer

DIMITRAKOPOULOS, E : Government of Greece

DINSDALE, E Jane : Council of Europe - observer

DI STEFANO, Alfredo : European Parliament - observer

ENNALS, Martin : Secretary-General, Amnesty International

FAERKEL, Jens : Amnesty International, Danish Section

FOSTER, Peter : Government of the United Kingdom - observer

FOX, Nives : American Jewish Committee

FREUDENREICH, André : Fédération Autonome des Syndicats de Police (French affiliate of the International Union of Police Trade Unions)

GAILLARD, Rolande : European Centre of the International Council of Women

GARCIA-TRELLES, J Pedro : Government of Spain - observer

GAUTIER, Jean-Jacques : Switzerland

GEBHARDT, S M : Christian Democratic World Union

GREBING, Dr Gerhardt : International Association of Penal Law - observer

GRENÉ, Jean-Pierre : Fédération Autonome des Syndicats de Police

GUARNERI, Giuseppe : Council of Europe - observer

GUILLERMOU, Georges : European Organisation of the International Federation of Employees in Public Service (EUROFEDOP) - observer

HECKER, Paul : EUROFEDOP - observer

HENNESSY, Patrick P : Government of Ireland

HILL, Humphrey : Council of Europe - observer

HINTJENS, Frans : Government of Belgium - observer

HUDE, Preben von der : Government of Denmark - observer

INSAUSTI, J : World Confederation of Labour - observer

JUNKER, Théo : European Parliament - observer

KAMBALOURIS, Nicolas : Government of Greece

KAMMERER, T : World Psychiatric Association

KAPPEYNE van de COPPELLO, Dr N J : Fédération Internationale Libre des Déportés et Internés de la Résistance (FILDIR)

KARST, Alfred : EUROFEDOP - observer

KEMP GENEFKE, I : Amnesty International Danish Medical Group

KHAN, Hussain : International University Exchange Fund

KLECKER, Nic : Luxembourg

KRAFFT, Dr M : Government of Switzerland

KUNER, Otto : European Parliament - observer

LACK, Daniel : World Jewish Congress - observer

LAGENDIJK, P : Government of the Netherlands - observer

LEE, G R : Government of the United Kingdom - observer

LEPELLETIER, Madame J C : European Union of Women - observer

LEVASSEUR, Georges : International Commission of Jurists

LEVIN, Leah : World Federation of United Nations Associations
Anti Slavery Society

LIPPONEN, Paavo : Socialist International

LOUCAIDES, Loukis G : Government of Cyprus

LUDERS, K H : Government of the Federal Republic of Germany - observer

MacDERMOT, Niall : International Commission of Jurists

McNULTY, A B : British Institute of Human Rights

MIHCIOGLU, Y : Government of Turkey - observer

MOSE, Erik : Government of Norway - observer

MUNIR ERTEKUN, M N : Cyprus - observer

MUÑOZ CAMPOS, Juan : International Association of Lawyers

NEUDEK, Kurt : United Nations - observer

OKRESEK, Wolf : Government of Austria

OPSAHL, Torkel : Member, European Commission of Human Rights etc.

PEARCE, Jenny : Writers and Scholars International

PIETTE, L : EUROFEDOP

PILICK, Eckhart : International Humanist and Ethical Union

PIVANO, Leo : Government of Italy - observer

RITTER, E : International Press Institute

ROBERTSON, A H : International Institute of Human Rights

RODLEY, Nigel S : Legal Adviser, Amnesty International

SARGANT, T : International Commission of Jurists

SCHAEFFER, Paul : France - observer

SCHNEIDER, Mark L : Government of the United States of America - observer

SCHRIEBER, Marc : Government of Belgium - observer

SESSAR-KARPP, Ellen : International Alliance of Women

SOYSAL, Mümtaz : Vice-chairman, International Executive Committee, Amnesty International

SPIELMANN, Alphonse : Government of Luxembourg - observer

STEIERT, Robert : Union Internationale des Syndicats de Police

TESTAFERRATA, A : Government of the United Kingdom - observer

TORTOP, Prof. Dr Nuri : Turkey (member of Council of Europe Cultural Committee)

TRAYLOR, Julianne : Lutheran World Federation - observer

TRIFFTERER, Otto : Federal Republic of Germany

TSOUDEROS, Virginia : Greece

UIBOPUU, Henn-Jueri : Austria

VANGEENBERGHE, Frans : Council of Europe - observer

VAN WIJK, Dr H : War Resisters International
Service Civil International

VEUTHEY, Michel : International Committee of the Red Cross - observer

VIDELIER, Jacques : Government of France - observer

WARBURG, Mrs Miriam : International Council of Jewish Women

WHITAKER, Ben : Minority Rights Group

WOURGAFT, S : World Veterans Federation

V. A Address by Mr H. Golsong, Director of Human Rights of the Council of Europe, to the opening session on Monday 3 October 1977.

I wish all participating in the International Seminar on Torture and Human Rights, organised by Amnesty International, a cordial welcome.

Here, within the walls of the Council of Europe, you find yourselves in the only international organisation committed by its statute to act for the cause which is ours, namely, that of the dignity of the human being.

Your work in which I shall, in fact, have the honour of participating, in the capacity of Chairman of working group II, will not be conducted at the request or under the auspices of the Council of Europe.

Nevertheless our organisation follows the discussions that are going to take place sympathetically and with great interest.

Why ?

The foundation and true raison d'être of the Council of Europe is to be found in the defence and protection of human rights and fundamental freedoms. This statutory objective is made concrete by an interstate convention, the European Convention of Human Rights, which henceforth binds practically all the member states of our organisation and which translates, at the European level, into precise juridical obligations, the principles of the Universal Declaration of Human Rights.

Among these principles, and these rights - since we are speaking of the European Convention of Human Rights - is the prohibition of torture. This is a particularly important provision since even in time of war or other public emergency threatening the life of the nation it may not be the subject of any derogation.

But it is not enough to forbid in a legal text the misdeeds of horrible and abominable practices that humanity has known and, alas, still knows. It remains necessary, even in the states bound by the European Convention of Human Rights, that people's minds be quickened so that they may understand the fight against torture; since recourse to torture - whether by the official authorities of a state or even, which is sadly very frequent, by private individuals or groups - constitutes an unforgiveable crime with respect to the foundation of all rights, that is to say the dignity of man; there is no case in which it can be justified even to extract confessions, save a life, protect the interest of groups or to perpetrate blackmail against a state.

Through the approach of its political organs the Council of Europe works in this direction and does not, thus, remain content with the existence of the Convention and its implementation.

Accordingly, the Assembly of the Council has added its voice when, in certain countries that are not members of the Council torture has been applied and, furthermore, human rights gravely violated. Thus, in 1975, it adopted a Recommendation on Torture in the World in which it stresses the importance of codes of professional ethics as a means of preventing abuses concerning human rights and particularly torture. In the same way, and this time at the national level and with greater specificity, the government of one of our member states, Switzerland, has floated ideas envisaging the elaboration of a convention protecting persons deprived of their liberty against torture.

It is therefore in the light of the development of these initiatives that I wish your - or rather our - discussions the success equal to the sufferings of those who have been, who are and who, alas, yet threaten to be in the future, the victims of acts of odious barbarity, that is to say, torture.

V. B Message from the President of the Parliamentary Assembly of the Council of Europe, Professor Karl Czernetz, to the opening session.

The protection and furtherance of human rights and fundamental freedoms are a constant concern of the Parliamentary Assembly of the Council of Europe.

One of the Council of Europe's cardinal achievements has been the preparation and implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms which stipulates, in article 3, that no one shall be subjected to torture. All the member states are party to the Convention, with the exception of Portugal, which has already signed and is shortly to ratify it. As such, they accept certain international law obligations, which are both extensive and specific, in the field of human rights and fundamental freedoms. The European Commission and Court of Human Rights are responsible for seeing that these commitments are in fact respected. The Convention itself has strongly influenced the development of law at both European and national level.

It is important not only to preserve this common possession but also to work for its fuller application within both international and municipal law. We must also adapt our system of protection to the pressures of the modern world. This was the chief purpose behind the Parliamentary Assembly's adoption, in September 1976, of the report on "the protection of human rights in Europe", presented on behalf of the Legal Affairs Committee.

There are many international legal instruments which prohibit torture, but the facts are there to show that numerous countries still practise it. Considering that torture is one of the gravest and most appalling forms of maltreatment which human beings can inflict on their fellows, the Assembly has already shown that it cannot remain indifferent when human rights are thus flagrantly violated. In October 1975, it adopted a report on "torture in the world", itself a product of that fruitful cooperation between the Assembly and Amnesty International to which I would like to pay tribute.

The system provided for in the Convention can protect human rights effectively in Council of Europe member countries, where the rule of law is an established fact. The governments of these countries are sensitive to international opinion and to the pressure of accurate, well-informed criticism. As the guardian of human rights, the Parliamentary Assembly will continue to work actively for a growth in public awareness, so that powerful resistance to the use of torture may develop, wherever it is practised.

It is in this spirit that I wish every possible success to the Seminar, which I deeply regret being unable to attend in person.

VI. SEMINAR DOCUMENTATION

The following texts and papers are available in English and French (except where indicated otherwise) upon request, from the International Secretariat of Amnesty International, 10 Southampton Street, London WC2E 7HF :

1. Virginia Tsouderos' speech to the opening plenary.
2. Inge Kemp Genefke's speech to the opening plenary.
3. Peter Baehr's paper for Working Group I.
4. Otto Triffterer's paper for Working Group I (in English only).
5. Nigel S. Rodley's paper for Working Group I.
6. "Professional Codes of Ethics" by Alfred Heijder and Herman van Geuns.
7. A.H. Robertson's paper for Working Group II.
8. Torkel Opsahl's paper for Working Group II.

VII. SEMINAR OFFICERS

Chairman/Rapporteur of the seminar :	Mümtaz Soysal
Secretary of the seminar :	Martin Ennals

WORKING GROUP I

Chairman :	Niall MacDermot
Secretary :	Nigel S. Rodley
Rapporteur :	Nic Klecker

WORKING GROUP II

Chairman :	Heribert Golsong
Secretary :	Martin Ennals
Rapporteur :	Daniel Lack