

Human Rights: From Practice to Policy

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Torture

Presentation by Nigel Rodley

Amnesty International's (AI) work on torture started off as a special campaign in 1973, not as an integral part of the organization's mandate. Amnesty at the time wasn't thinking, "What are the main policy challenges for the human rights movement?" It wasn't even really thinking about the main policy challenges for Amnesty International. It was thinking about how it could make its work more effective. AI became aware of torture because prisoners of conscience or other political prisoners were being tortured. The practice was so pervasive that eventually it became obvious that the issue needed to be addressed.

The worldwide report on torture we produced in 1973 generated a lot of publicity, and more followed when the United Nations Educational, Scientific, and Cultural Organization (UNESCO) withdrew its facility the week before the international conference against torture that was scheduled for December of that year. They couldn't have done us a better service in that sense, as we made the front page of *Le Figaro* and *Le Monde*, which is something normally reserved for major wars. All of a sudden the torture issue was big and Amnesty's association with it was big. My recollection, though, is that AI's Secretariat saw torture as somewhat of a side issue. It was important and we were certainly glad we had drawn attention to it, but torture wasn't actually in AI's Statute as a separate issue or, at any rate, we didn't feel we had the resources to maintain a permanent campaign on the issue as such, as opposed to continuing group work on behalf of individuals, a technique that didn't seem properly adapted for victims of torture. The organization's main focus was on political (prisoners of conscience or other individuals arrested or otherwise targeted for their political activities), but the torture issue was not limited to political. Yet we'd already decided at AI's International Council Meeting (ICM) that year that the death penalty was going to be an issue regardless of the status of people affected, and perhaps it was not clear that we were prepared to take up another such issue.

There was an internal debate about next steps. My recollection is that AI's International Executive Committee (IEC) met to consider follow-up to the campaign. Some senior staff proposed to hand the work over

to an organization that might really run with it, but the IEC overruled that position and decided to set up AI's own permanent campaign against torture. In that way, the torture campaign served as the precursor of AI's Campaign Department.

Origins of the Idea of a Convention Against Torture

As I recall, the idea for a Convention Against Torture was one of the recommendations of the 1973 Conference Against Torture. But this wasn't an initiative pushed by Amnesty. We had certainly been very keen on the Declaration Against Torture but we weren't particularly seeking a treaty. The Swedish Government, however, decided they wanted to pursue a treaty, and obviously once they decided to go that direction, we had to run with them! There are always reasons to be cautious about going the treaty route, and we weren't enthusiastic about it. In fact, our hesitations were such that even once we decided to advocate for the treaty, we wanted it to be debated in the UN's crime sector (as the Declaration against Torture had been), not in the human rights sector. Human rights diplomats actually used to be a problem, whereas the crime people were more comfortable addressing torture. As a matter of law, torture is prohibited—not just internationally, but nationally, in virtually all countries. So as a matter of doctrine, state officials from a law enforcement or administration of justice background working on crime issues were comfortable with the idea of an anti-torture initiative. The Swedes didn't want that, however—and I think that's probably because they were going to be on the Commission on Human Rights and they wanted to steer the process.

In the end, the Convention emerged with certain real achievements and certain real limitations. The achievements obviously included the quasi-universal jurisdiction clauses of the treaty and the provision of an automatic right to do an inquiry into a country's human rights situation and even seek to visit a country. These were significant steps. (We didn't have comparable provisions in the International Covenant on Civil and Political Rights, for example.) Let's face it, without that convention we wouldn't have had the Pinochet case. And for those of us who watched that case develop, it was exactly what we had in mind for the universal provisions, even if they haven't been used as much as we would have liked.

Main Points of Discussion, Concern and Debate on the Torture Convention, within AI

Amnesty's internal discussion took place within an IEC sub-committee on international organizations. Within that group, first of all there was agreement on the principles Amnesty should endorse including universal jurisdiction (or at least the principle of trial or extradition). We also wanted torture to be declared a crime under international law. We wanted to avoid the exclusion of corporal punishment from a definition of torture. And we wanted decent implementation machinery. That's my recollection. (And you'll find something better than my recollection in the chapter "Outlawing Torture" in the 2008 volume by Meg Satterthwaite and her associates [*Human Rights Advocacy Stories*]. Jayne Huckerby did a tremendous amount work in the AI archives for that article.) Those essentially were the issues that Amnesty saw as the main principles to be fought for.

There was also discussion within the International Secretariat (IS) and IEC about the extent to which Amnesty should be involved in drafting text for the treaty. We took the position that we should stick to principles rather than compose text. That wasn't a very difficult principle to work with, especially so far as the organization's representatives in their personal capacity were able to propose text as necessary. Certainly I've always found in any drafting exercise, whether on torture or anything else, it's always much better if you can make sure that any text being discussed already has what you want in it. The function of the NGOs is then to defend what's there rather than to be perceived in the radical role of trying to get new and difficult material in. Falling short of that, it's better to find a government willing to make a proposal rather than doing it as an organization if you can avoid it.

Negotiating the Torture Convention was a complicated exercise, and yes, there were difficulties. One of them concerned the extent to which the Convention would deal not only with torture but also other cruel, inhuman and degrading treatment or punishment. That was a tough one. I think in retrospect that we got it wrong, and that we should have tried to go the route of the Inter-American Convention on Human Rights, with just the definition of torture and nothing else at all. But

that is being wise after the event. The text was mandated to deal with both torture and cruel, inhuman and degrading treatment. We did have the unfortunate precedent set by the European Court of Human Rights that torture was worse than inhuman treatment, putting torture out there almost beyond reach and certainly not covering the interrogation techniques the British used in Northern Ireland. And so we wanted to make sure that sort of stuff didn't fall out from under the Convention. The Brits, of course, were very anxious to do the opposite. We weren't terribly successful there.

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Glossary

AI (and Amnesty) – Amnesty International. Founded in 1961, AI is one of the oldest and most prominent transnational human rights organizations, with international headquarters in London. The organization relies on 3 million members and supporters in 150 countries to carry out its work, and policies are vetted through complex processes and structures that involve membership in the decisions. (See *ICM, IEC, IS, AI mandate, and Secretary General* below.)

ICM – International Council Meeting, AI's highest organizational decision-making body.

Held every two years, the ICM today brings together approximately 500 members and staff for the purposes of planning and reviewing the direction of Amnesty International's human rights work. The ICM also elects the International Executive Committee (IEC).

IEC – International Executive Committee, a nine-person elected body that serves as the organization's international governing board.

IS – International Secretariat. Based in London, UK, it is responsible for the majority of the organization's research and campaigning work.

AI Mandate - For many years, an internal "mandate" limited Amnesty International's work to a relatively small number of issues, including the release of prisoners of conscience, fair trials for political prisoners, opposition to torture, disappearances and the death penalty. The mandate was amended several times, and was ultimately replaced in 2002 with a broader mission statement linking AI's work to the full spectrum of rights enshrined in the UDHR.

ICCPR – International Covenant on Civil and Political Rights. A core human rights treaty that together with the UDHR and the ICESCR comprise the bedrock of international human rights law. It

commits ratifying countries to respect, protect and fulfill civil and political rights. Adopted by the UN General Assembly in 1966 and in force since 1976.

NGO – Non-governmental organization. In the human rights context, NGOs are organizations comprised of private individuals working to protect and promote human rights, either domestically or internationally.

Special Rapporteur – An individual charged by the United Nations Human Rights Council to investigate a specific set of human rights concerns. (See *Thematic mechanisms*.)

Thematic mechanisms – Refers to the various special rapporteurs, representatives, independent experts or working groups acting under United Nations auspices to investigate specific human rights concerns.

UNESCO – United Nations Educational, Scientific and Cultural Organization.

UN Human Rights Division – The UN Secretariat's initial office devoted to human rights, replaced in 1993 by the Office of the UN High Commissioner for Human Rights.