The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

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Introduction
On 26 June 1987, the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment came into force. At the time of writing, it has been ratified by 20 states belonging to all regions of the world.1 All the Scandinavian countries are parties to it. Sweden, the initiator of the treaty, was also the first country to ratify it on 6 January 1986.

The Convention has several antecedents. The terms used in its title are borrowed *verbatim from Article 5 of the Universal Declaration on Human Rights of 10 December 1948. They were reproduced with very little changes and without any definition in: Article 3 of the European Convention on Human Rights (1950); Article 7 of the UN Covenant on Civil and Political Rights (1966); Article 5 of the American Convention on Human Rights (1969); and Article 5 of the African Charter on Human and Peoples’ Rights (1981).

The most direct antecedent of the Convention is the 1975 UN Declaration against Torture and other Cruel, Inhuman and Degrading Treatment and Punishment2 which includes a definition. Shortly after the UN Convention was adopted by the General Assembly in 1984, an inter-American Convention to Prevent and Punish Torture was proclaimed by the Organization of American States (OAS) on 9 December 1985.3 Lastly, a European Convention against Torture, dealing only with international supervision, was adopted by the European Committee of Ministers in June 1987.4

It is rare indeed when a universal consensus is achieved – East and West, North and South – on a far-reaching treaty involving divisive issue of this kind, fraught with political implications. This was achieved through the sustained efforts of the UN Commission on Human Rights and its open-ended working group from 1978-1984 in Geneva. Tributes should be addressed to: the representative of Sweden, Mr. Danielius, who proposed the first governmental draft; the successive chairmen of the working group, Mr. Papastefanou of Greece and Mr. J.H. Burgers of the Netherlands, the latter having exercised leadership in the decisive years 1982 to 1984; various committed delegates; and dedicated NGOs, including Amnesty International, the International Association of Penal Law, the International Commission of Jurists and the Swiss Committee against Torture. Technical advice was given by the UN Secretariat team, for which I had direct responsibility in this field.

We shall study the Convention in the light of the *travaux preparatoires and in the context of existing international law against torture and other inhuman treatment. Our analysis will bear successively on: (I) the definition of basic concepts; (II) the obligation of states to combat torture and other forms of inhuman treatment; and (III) international supervision.

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I. Definition of Basic Concepts
The question of defining the concepts of "torture" and "other cruel, inhuman or degrading treatment or punishment" is one of the most intricate issues of international human rights law. It has been discussed in international fora with very little success since 1945. The 1975 Declaration does contain a schematic definition, somewhat enlarged in the Convention.

A. Definition of Torture
Article 1 of the treaty reads as follows:

"1. For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act that he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of a wider application."

1. Core element of torture
The definition of "torture" in Article 1 is indeed a narrow one. Taken literally, the word "act" in the second line would exclude "omissions", leaving out such well-known forms of torture as deprivation of food. This was probably not the intent of the authors. Giving them the benefit of the doubt, we may admit that the treaty embraces any behaviour, active or passive, which shows the characteristics of torture.

The other parts of Article 1 raise more serious issues. In essence, torture is viewed as the intentional infliction of "severe pain or suffering whether physical or mental". This is the traditional, pain-centred, concept of torture, flowing from the mediaeval Inquisition, adopted in most dictionaries, reflected in the case-law of the European Convention on Human Rights and confirmed in Article 1 of the 1975 UN Declaration.

These definitions ignore a whole aspect of the problem: the mind-control techniques – psychological, chemical, electronic or otherwise – whereby the will of man is reduced and his autonomy surrendered, without any conscious pain or fear. Modern developments of this type raise the question whether torture should continue to be defined solely in terms of pain. It is not freedom from suffering only, but the broader ideal of human dignity and its corollary, the integrity of the conscious mind, which are at the core of international human rights law. These inter-related concepts are articulated with great clarity in Article 1 of the Universal Declaration. Practices, even pain-free, which aim at destroying the integrity of the human mind must therefore be condemned as strongly as consciously-suffered torture.

The UN Convention does not follow this broader path. The wish was perhaps to avoid parametric stress in the treaty, the "torture" concept having been