

**CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

By Hans Danelius

Former Justice of the Supreme Court of Sweden

I. The Torture Convention

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Convention”) was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46). The Convention entered into force on 26 June 1987 after it had been ratified by 20 States.

The Torture Convention was the result of many years’ work, initiated soon after the adoption of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Declaration”) by the General Assembly on 9 December 1975 (resolution 3452 (XXX)).

In fact, the Torture Declaration was intended to be the starting-point for further work against torture. In a second resolution, also adopted on 9 December 1975, the General Assembly requested the Commission on Human Rights to study the question of torture and any necessary steps for ensuring the effective observance of the Torture Declaration (resolution 3453 (XXX)). Two years later, on 8 December 1977, the General Assembly specifically requested the Commission on Human Rights to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Torture Declaration (resolution 32/62).

The Commission on Human Rights began its work on this subject at its session in February-March 1978. A working group was set up to deal with this item, and the main basis for the discussions in the working group was a draft convention presented by Sweden. During each of the subsequent years until 1984 a similar working group was set up to continue the work on the draft convention.

There were a number of issues on which it was initially difficult to reach agreement. In particular, the following issues gave rise to long discussions:

The Definition of Torture

The definition of torture which appeared in the Torture Declaration was considered not to be precise enough and was criticized on various points. The discussions resulted in a more elaborate – and also more complex – definition which appears in article 1, paragraph 1, of the Torture Convention

Jurisdiction

The discussion centred round the concept of so-called universal jurisdiction. In other words, the question was whether each State should undertake, in respect of torture, to assume jurisdiction not only based on territory or the offender’s nationality but also over

acts of torture committed outside its territory by persons not being its nationals. The principle of universal jurisdiction – which had already been accepted in conventions against hijacking of aircraft and other terrorist acts – was eventually accepted and found its place in article 5, paragraph 2, of the Torture Convention.

International implementation

As the effectiveness of the Torture Convention, like that of many other human rights conventions, would depend to a large extent on the supervision system, the implementation at the international level gave rise to extensive discussions. It was finally decided that a Committee against Torture would be set up (article 17 of the Torture Convention) with the following tasks:

- (i) To receive, study and comment on periodic reports from the States parties on the measures they have taken to give effect to their undertakings under the Convention (article 19);
- (ii) To initiate an investigation when there is reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party (article 20);
- (iii) To receive and examine complaints by one State party of violations of the Convention by another State party (article 21); and
- (iv) To receive and examine applications by individuals claiming to be victims of a violation of the Convention by a State party (article 22).

However, the competences of the Committee against Torture under (ii), (iii) and (iv) were not made compulsory but apply with the following modifications:

- A State party may “opt out” and declare that it does not recognize the Committee’s competence to initiate investigations under article 20 (article 28);
- The Committee’s competence to examine inter-State complaints only applies when a State party has specifically recognized this competence (article 21);
- The Committee’s competence to examine applications by individuals only applies when a State party has specifically recognized this competence (article 22).

A State Party’s Undertakings

Most of the provisions of the Torture Convention deal with the obligations of the States parties. These obligations may be summarized as follows:

- (i) Each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture. The prohibition against torture shall be absolute and shall be upheld also in a state of war and in other exceptional circumstances (article 2);

(ii) No State party may expel or extradite a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture (article 3);

(iii) Each State party shall ensure that acts of torture are serious criminal offences within its legal system (article 4);

(iv) Each State party shall, on certain conditions, take a person suspected of the offence of torture into custody and make a preliminary inquiry into the facts (article 6);

(v) Each State party shall either extradite a person suspected of the offence of torture or submit the case to its own authorities for prosecution (article 7);

(vi) Each State party shall ensure that its authorities make investigations when there is reasonable ground to believe that an act of torture has been committed (article 12);

(vii) Each State party shall ensure that an individual who alleges that he has been subjected to torture will have his case examined by the competent authorities (article 13);

(viii) Each State party shall ensure to victims of torture an enforceable right to fair and adequate compensation (article 14).

II. The Optional Protocol

An Optional Protocol to the Torture Convention was adopted by the General Assembly of the United Nations on 18 December 2002 (resolution 57/199). The Optional Protocol, which entered into force on 22 June 2006, establishes a system of regular visits by international and national bodies to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been set up to carry out such visits and to support States parties and national institutions in performing similar functions at the national level.

III. The Committee against Torture

The Committee against Torture holds two annual sessions. At each session, the Committee examines reports from a number of States parties. Each report is examined orally in the presence of one or more representatives of the State concerned. Each State whose report is to be examined at a session is informed in advance of the main questions the Committee wishes to be discussed. After the examination of each report the Committee adopts its conclusions and recommendations. The Committee may also adopt general comments on specific provisions of the Convention or issues related to their implementation.

The Committee against Torture has also set up a working group to prepare the examination of individual communications received under article 22 of the Torture

Convention. The working group examines the admissibility and merits of the communications and makes recommendations to the Committee.

Related Materials

A. Legal Instruments

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 18 December 2002, General Assembly resolution 57/199.

B. Doctrine

J. Herman Burgers and H. Danelius, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Dordrecht, Martinus Nijhoff Publishers, 1988.