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NOTE

The Fight against Torture

Summary of the Public Hearing, DROI, 4 May 2006

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The Fight against Torture
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Eric Prokosch (Former Theme Research Coordinator - Amnesty International)

The persistence of torture

I first got into the issue of torture in 1983 when I was given the assignment of organising AI's second worldwide campaign against torture. A few years before that, AI had held its first worldwide campaign against the death penalty. At that time, the authorities in the countries to which we addressed our appeals could quite easily respond: 'the death penalty is provided in our laws; it's used by the majority of countries; public opinion in our country supports it, and it's not a violation of human rights'. In contrast, I thought that, when we started sending appeals on torture, the authorities wouldn't be able to make any of those excuses. It is a shameful practice, it is prohibited by law, and so, I thought, when we expose torture, we will see results.

Twenty years later, we can see how wrong I was! Look at the tremendous progress we've seen in the world in abolishing the death penalty. Look at the fact that the EU is now totally free of the death penalty and has a foreign policy to promote its abolition throughout the world. And then look at the situation on torture. The overall incidence of torture and ill treatment does not appear to be diminishing in the world, and often the authorities are doing little or nothing to stop it.

Two factors often associated with increases and decreases in torture are political repression and armed conflict. If a government starts to engage in political repression, torture may appear, along with the demolition of the rule of law. If political repression ends, you are likely to see the end of political torture. But then, other pervasive patterns of torture and ill treatment may persist, like beating confessions out of common criminal suspects.

The legal status of the prohibition of torture

Torture is wrong, that's one of the starting points. Therefore, torture must be stopped. Torture is prohibited; Article 5 of the Universal Declaration of Human Rights says 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. These terms 'torture' and 'cruel, inhuman or degrading treatment or punishment' (ill-treatment) go together, they are not separated in the main international human rights treaties.

And from that prohibition in 1948 (and at the same time the prohibition in the Geneva Conventions), came the other main international and regional human rights treaties where similar language is used. In the 1970s and 1980s, a second wave of standard setting and drafting of international laws went more into the details of what we need to do to stop torture: the UN CAT,

and created mechanisms of control: the UN Special Rapporteur on Torture, the UN Committee Against Torture, the European Committee for the Prevention of Torture.

The guidelines

In 2001, the EU adopted guidelines on torture. Like the guidelines on the death penalty which were adopted a few years before, this is really something new on the international scene.

That a group of countries actually decided collectively to promote the abolition of the death penalty towards the world would have been unthinkable twenty years ago. The guidelines on the death penalty envisaged *demarches* to countries where there are urgent cases, for example where a moratorium risks being broken. Their implementation was slow at first but now is well established practice. The guidelines on torture are extremely comprehensive, they lay out a programme to prevent torture, to be recommended to third countries. But the implementation of the torture guidelines seems to have been very slow. There is very little public information about this but it is certainly the impression we get from reading the public documents.

Recommendations

1. The European Parliament should consider conducting a comprehensive review of the EU's efforts for the prevention and eradication of torture and ill-treatment in third countries. The review should make recommendations for enhancing the coherence and effectiveness of those efforts. The views of other relevant actors such as the UN High Commissioner for Human Rights, the relevant UN special procedures and treaty-monitoring bodies, the Commissioner for Human Rights of the Council of Europe, the European Committee for the Prevention of Torture (CPT), the Office for Democratic Institutions and Human Rights of the OSCE and NGOs should be sought.
2. The review should consider how the European Parliament itself can best contribute to the EU's anti-torture effort, for example, where appropriate, by encouraging national parliaments to make legislative improvements for the prevention of torture and the institution of protective safeguards and/or to ratify the relevant international instruments.
3. The European Parliament should urge EU Member States that have not already done so to ratify the Optional Protocol to the Convention against Torture and to set up national preventive mechanisms as provided under that Protocol.
4. In connection with counter-terrorism, the EU should press the US Administration to desist from any practices which are incompatible with international human rights and humanitarian law norms, and to ensure that anyone arrested, captured or detained by or at the behest of US agents is fully protected against torture and ill-treatment, including protection through procedural rights.
5. The EU should give priority to the adoption by the UN General Assembly in 2006 of the draft *International Convention for the Protection of All Persons from Enforced Disappearance* as agreed in 2005 by the UN working group entrusted with drafting the instrument. The European Parliament may wish to underline that priority.

On the legal status of the prohibition of torture

The prohibition of torture is a non-derogable right, a *jus cogens* right and a right which applies to all, an *erga omnes* right. It is worth turning our attention briefly to these rules, at a time when they are being called into question.

- **Non-derogable right:** Article 4 of the ICCPR¹ states that no derogation may be made to the prohibition of torture and cruel, inhuman or degrading treatment², whatever the circumstances or the situation prevailing in a state.
- **Jus cogens:** The prohibition of torture and other inhuman or degrading treatment is a *jus cogens* norm, i.e. according to the Vienna Convention system, it is a norm which takes precedence over the positive law of all states, even over international treaties and normal customary law. This has been reaffirmed by the European Court, the Inter-American Court and the Tribunals on the former Yugoslavia, in which the rule has been reiterated clearly and unequivocally.
- **Erga omnes right:** i.e. which applies to all.

On the mechanisms for ensuring respect for the prohibition of torture

In this area Europe has established mechanisms which are more effective than in other parts of the world, and more effective than the international system, thanks to the system of prevention, of visits by the European Committee for the Prevention of Torture (CPT) to all places of detention. But also – and this does not solely concern torture – by introducing human rights clauses in international agreements. It is to be regretted, however, that the Barcelona process, for example, which includes an appropriate and graduated system, does not operate as it should.

On the dangers involved in current developments

I wish to raise five points of serious concern concerning developments over the last few years:

1. **The erosion of the absolute ban on torture:** in the United States, the prohibition of torture has been called into question since 11 September, including on the part of the most senior legal figures.
 - (a) By referring to a **false concept of proportionality**, based on the idea: 'is it not better that one person suffer rather than that two or three thousand should die?' It's the old debate that we all know so well and which is reflected in many TV serials, where a Head of State is shown to have the courage to use torture in order to protect his fellow citizens. This is a serious problem. Fortunately, however, it is being seriously challenged at legal level.

¹ International Covenant on Civil and Political Rights (1966).

² Underlined by the author in his presentation.

(b) By introducing **more restrictive criteria** for determining what can constitute torture. The definition states that torture involves severe pain or suffering. Some people are now asking how far the pain can be taken without entering the realm of torture. This debate took place, for example, with the US administration's memorandum. This is to forget that cruel, inhuman or degrading treatment is also prohibited. All such efforts to draw a distinction between what is and what is not torture is fairly futile as far as the prohibition is concerned. However, what is of real concern at international level, including at European Union level, is that the question of the absolute prohibition is currently being discussed. The mere fact that it is being discussed is serious. In 2002 I suggested to the drafting group for the Omnibus resolution (annual CHR resolution on torture) to add the point that the prohibition of torture and ill-treatment was a *jus cogens* norm. To my great surprise, this proposal was rejected, in particular by EU countries. It took four years and the support of all NGOs for this reference to *jus cogens* to be inserted. And, in the final text, the reference to cruel, inhuman and degrading treatment was withdrawn. The texts are clear, but there are now interpretations which are unacceptable and dangerous, according to which a treatment should only be considered as torture if it leaves physical or psychological scars for life.

2. The spread of practices contrary to the Convention against Torture in European countries, in particular with regard to the **prohibition of *refoulement*** of individuals towards countries where they risk being tortured (Article 3). This prohibition clearly states that consideration must be given not only to the person's own circumstances but also to the situation of the country to which he is being returned. Its purpose is to avoid running any risk. And yet 'diplomatic assurances' policies have developed, whereby people are sent back to countries which are known to use torture but from which assurances have been obtained.

However, given that torture is prohibited in all circumstances, how can a government which violates this prohibition be relied on to keep its word? This is a very dangerous trend. Europe must react, especially in view of the fact that European case law rules out the possibility of returning a person where there is a risk of cruel, inhuman or degrading treatment, and not merely where there is a risk of torture.

3. The calling into question of the rule whereby **confessions extracted under torture are inadmissible**, a rule set out in Article 15 of the CAT and whose case law has been based on Articles 3 and 6 of the European Convention on Human Rights (ECHR). The well-known British case, which, fortunately, ended positively before the House of Lords, is interesting. The question was whether the inadmissibility of confessions extracted under torture applied to foreigners whose names appeared on the list of persons accused of terrorism, on the basis of information believed to have been received from third persons tortured outside the United Kingdom. The twin argument used by the Immigration Appeals Commission was, first, that the case did not relate to criminal proceedings and that the applicable rule could therefore be slightly different; and, secondly, that there was no connivance of the British state with countries which had extracted such confessions, which is correct. The Court of Appeal had accepted this line of argument. Fortunately, the House of Lords overturned the ruling. However, the matter is not resolved. In Paris, one of the defendants in the 'Chechen network' case was charged on the basis of his own confessions. These were obtained in Syria on letters rogatory. The defendant is known to have spent some time in the Palestine section in Syria,

where torture is virtually systematic. The question was whether the confessions obtained could be used.

4. Cooperation in the fight against terrorism, in the name of which the USA has built up its *renditions policy* and in which it is becoming increasingly apparent that Europe was not sufficiently vigilant. The CIA flights affair is currently being examined by the EP. There is therefore no need for me to dwell on the matter, but I believe it is an important issue.
5. There is a tendency to call into question the **duties of the State**. Human rights, by definition, and first and foremost the right not to be tortured, call for an asymmetric situation: they provide rights on one side but also impose a number of duties on the State. With respect to torture, it is the State's duty not only to prevent torture by prohibiting it and controlling public officials (since the definition refers to acts committed by public officials themselves or with their consent) but also to take all the necessary measures to prevent torture or acts equivalent to torture from being committed¹. It is under an obligation to show diligence. This is a fundamental issue in many countries where the law does not adequately protect certain categories of potential victims, such as women and children. We opened a programme for children and women in the early 1990s because we realised that in very many cases, although the perpetrators of acts of violence were not public officials, the violence had only been possible because the state had remained passive.

We should not, therefore, accept the claim that such cases are merely a matter for a country's domestic law: the fact that the state has not taken appropriate action when it was aware or could have been aware of the situation must be taken into account and denounced.

On the guidelines

The OMCT and other organisations were closely involved in the drafting of the guidelines. We believe that they are a fundamental instrument providing a wide range of means of intervention. We believe, as Eric Prokosch said, that they are underutilised and that work needs to be done in this area.

One point which I consider important and which should form the basis of discussions on the guidelines is the fact that torture never appears in isolation. It is always linked to malfunctions in state institutions. These malfunctions may be the fight against terrorism or the collapse of state structures, internal conflicts, etc. I am thinking of the DRC, where I went as an expert to redefine torture within the penal code and discovered that the judges with whom I spoke had not been paid for several years and had no budget for their court. How can they be expected to administer justice and thereby protect people effectively?

I have also spoken already of the negation or restriction of rights of certain categories of people – women and sexual minorities.

Lastly, an important issue on which we have been working at the OMCT since the late 1980s is that of growing social disparities. Socio-economic imbalances in a region automatically generate conflicts, and a weak state will be unable to restore a minimum level of social protection. It is in fact more likely to repress movements for social change. This explains why those countries that

¹ Under Inter-American and European human rights systems and the various committees in response to individual communications.

have development problems tend to be those where torture is widespread. It is very important to take account of this type of situation. What is interesting is that the guidelines emphasise the need to take preventive measures and to promote rehabilitation of victims. These are two essential aspects but, as Eric Prokosch reminded us, while constant efforts are needed to implement new international instruments, other measures are also necessary. Ratifying a convention in no way guarantees that it will be enforced. Efforts are needed to provide information and documentation, as well as to assess the situation in a country in order to prevent torture. Similarly, as regards rehabilitation of victims, centres are essential because that is where victims can find help. However, in many countries people cannot gain access to a centre for all sorts of reasons, e.g. centres are prohibited or these persons cannot leave the country. Here again, 'rehabilitation' should be viewed in a broader perspective.

Recommendations

On the forthcoming study

In the study to be carried out, consideration should be given, on the basis of the situation in specific countries, to the causes behind the appearance of torture. It is not that some cultures are more torture-prone than others. There are situations that give rise to torture. Europe has also, in the fairly recent past, experienced serious malfunctions and been known to use torture on a large scale. It is important to identify the causes so that appropriate policies can then be devised to tackle the problem through demarches, denunciation and also action vis-à-vis the underlying causes.

On the implementation of the guidelines

- European Union declaration recalling the *jus cogens* nature of the prohibition of torture and other cruel, inhuman or degrading treatment.
- The European Union Member States should set an example by ratifying the Optional Protocol to the Convention against Torture.
- Ensure that Commission delegations and Member State missions have the necessary human and financial resources to deal with human rights, in particular issues relating to the fight against torture and inhuman and degrading treatment.
- Officially include measures contained in the guidelines in the mandates of Member States' Heads of Delegation.
- Exchanges of good practice between Member States' delegations through regional or local brainstorming meetings.
- Ensure greater consistency and complementarity between Member States' delegations and Commission Missions by referring current debates to their respective offices or in relations with the national authorities.
- Envisage the strict implementation of the human rights clause in the event of blatant violations of *jus cogens* norms, including the prohibition of torture and inhuman or degrading treatment.

- Increase the transparency and visibility of demarches and initiatives undertaken by the European Union in order to facilitate the formulation of criticism by other players, in particular the European Parliament and NGOs.
- Guarantee consistency between the integrated approach recommended by the guidelines and the practical implementation of European human rights and democracy policy by the new human rights instrument.
- Introduce measures to combat impunity, involving civil society, not only at international level but also nationally and locally.
- Ensure greater reciprocity of obligations between third countries and Member States, in particular as regards protection of victims or potential victims of torture or inhuman or degrading treatment (e.g. ensure consistency between asylum and immigration policies and measures taken to combat trafficking in human beings).
- Regular contacts and exchanges of information between local NGOs and Member State missions and Commission delegations in the countries concerned.
- The European Parliament should take a more dynamic approach to fighting torture, seeking to include the issue more systematically in its various activities. This could take the form of resolutions, own-initiative reports, informal meetings, establishment of an informal working group or grouping of MEPs prepared to take responsibility for monitoring the issue of combating torture.

The guidelines to European Union policy towards third countries on torture, in their operational part, indicate and stress that the EU will support actively the work of the regional mechanisms and will stress the need for states to cooperate with the CPT.

The CPT's mandate

The work of the CPT is designed to be an integrated part of the Council of Europe system for the protection of human rights, placing a proactive non-judicial mechanism alongside the existing traditional mechanism of the European Court of Human Rights. The CPT implements its essentially preventive functions through two kinds of visits: periodic and ad hoc visits.

- Periodic visits are carried out to all parties to the Convention on a regular basis.
- Ad hoc visits are organised in those states where it appears to the Committee to be required in the circumstances.

As of 1 May 2006, 132 periodic and 80 ad hoc visits have taken place since this mechanism entered into force in the year 1999.

Two fundamental principles govern relations between the CPT and parties to the Convention, namely cooperation and confidentiality. In this respect, it should be emphasised that the role of the Committee is not to condemn states but rather to assist them to prevent the ill-treatment of persons deprived of liberty. After each visit, the CPT produces a report which set out its findings and includes, if necessary, recommendations and other advices on the basis of dialogue.

The Committee's visit report is in principle confidential. However, almost all states have chosen to waive the rule of confidentiality and publish the reports. Currently, 157 visit reports are in the public domain. The recommendations of the CPT have been developed dynamically and were published in substantive sections of its annual report. This compilation of standards supplements and broadens the revised European rules, soft law, etc.

Monitoring of the treatment of persons deprived of liberty is not an end in itself. It must be accompanied by effective means of ensuring the implementation of recommendations made. It is first for the parties to the Convention. They are currently 46 European states to take decisive actions to improve the situation in the light of the CPT's recommendations. However, it is also incumbent upon the Committee itself to explore all avenues to promote the taking of such action by the parties. It is on the initiative of the CPT that a pilot project is currently discussed in the Council of Europe for a limited number of countries which experience difficulties with the implementation of the CPT's recommendations, especially those regarding significant financial investment. Three countries are covered by the project: Albania, Georgia and Moldova. It is hoped that the final report of the international consultancy engaged in implementing this project will advise the countries in a strategy for financing the recommendations of the CPT, including for seeking financial support from EU institutions. This could do much to ensure that the CPT's recommendations lead to tangible results.

The Optional Protocol to the UN's CAT

It is expected to enter into force this year. This will lead to the setting up of the Subcommittee on the Prevention of Torture as well as national preventive mechanisms. The optional protocol explicitly encourages the Subcommittee and regional bodies, such as the CPT, to consult and cooperate with a view to avoiding duplication. The CPT has long been recommending independent complaint mechanisms and independent inspection mechanisms at national level. They are part of our standards for all custody settings, including psychiatric establishments and social care homes. There is great potential for advance in human rights protection if these mechanisms become fully operational. International bodies such as the CPT visit infrequently compared with national monitoring mechanisms which would be involved more often. They would provide a much fuller and more holistic picture of the scope and efficiency of human rights safeguards than is currently possible. This would in turn greatly enhance the prospects of improving protection of a person deprived of liberty.

The CPT is therefore supporting this new mechanism and is looking forward to cooperating with national visit mechanisms as they will become important interlocutors for the CPT. The CPT hopes that the EU will encourage states to ratify these new mechanisms as soon as possible.

The fight against terrorism

In the preface to its 15th general annual report, the CPT raises the question whether states in their fight against terrorism will find a way to fulfil their obligations to protect citizens while, at the same time, upholding the basic values which form part of their foundations. It comes to the conclusion that there are clear indications that to date the right way has not always been found.

There is evidence of torture and inhuman or degrading treatment in various places, in the context of the fight against terrorism.

For example, in the CPT's opinion, to immerse persons in the water, so as to make them believe they will drown, is not a professional interrogation technique; it's clearly an act of torture. There can be little doubt that such methods are on occasion used by agents of democratic societies, including in certain parts of Europe.

Of course, resolute action is required to counter terrorism but that action cannot be allowed. The CPT calls therefore upon democratic societies committed to the rule of law to remain faithful to the values that distinguish them from others.

'Diplomatic assurances'

'Diplomatic assurances' are giving rise to particular concern. If countries with a poor overall record in relation to torture and ill treatment fail to respect their obligations to the international human rights treaties ratified by them, why should one be confident that they will respect assurances given on cases in a particular situation?

It has been argued that mechanisms can be used for the monitoring of the return of a person deported in the event of this person being detained. The CPT is still waiting for convincing proposals for an effective mechanism. To have any chance of being effective, such a mechanism would certainly need to incorporate some key guarantees, including the right of independent and suitably qualified persons to visit the individual concerned at any time, without prior notice and to interview him in private, in a place of its choice. The mechanism would also have to offer

means of ensuring that immediate action is taken in the event that the assurances given were not being respected. It should also be emphasised that prior to return, any deportation procedure involving 'diplomatic assurances' must be open to challenge before an independent authority. Any such challenge must have a suspensive effect on the carrying out of the deportation. This is the only way, in the opinion of the CPT, of ensuring safety.

Recommendation

There is potential to develop good cooperation between CPT visiting delegations and EU Heads of Mission. In preparing its periodic and ad hoc visits to inspect places of detention, with the aim to improve the situation of persons deprived of liberty, the CPT bases itself on different sources of information which could be supported by the EU mission at place. On the other hand, the CPT describes in detail the situation in its visit's reports which, when published, could serve as a valuable source of information for the EU itself. For example, the CPT's report on its visit to Moldova may be useful for the European mission in Moldova working on the present reform. Heads of EU missions would be supported through the CPT's work if States were encouraged to quickly give authorisation for the publication of the CPT's reports.

Manfred Nowak (United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment)

The current situation

September 11 was a major paradigm shift in the question of the protection of the right to personal integrity or the absolute prohibition of torture. As Mr Prokosch has said, although torture is absolutely prohibited in all circumstances, it always has been practised and, in many countries unfortunately, systematically practised. But, and I think that's the major difference, governments felt that they did something wrong, they violated an absolute norm of *jus cogens*. They felt ashamed, and naming and shaming had a certain impact. After September 11, there is a very dangerous tendency to actually put the absolute prohibition of torture in question through various means and to circumvent it. In other words, and that is done by democratic and non-democratic states, to limit the definition of torture, saying it is only for the most serious forms of long-term physical after-effects. Saying at the same time that other forms of inhuman and degrading treatment or punishment (which are absolutely prohibited) should be balanced against national interests such as security in the fight or war against terrorism. This is the major threat to the international rule of law on protection of human rights as it developed and was treated gradually in half a century after WWII.

The mandate of the UN's SR

My mandate is a universal mandate, irrespective of whether or not a state has ratified any treaties, in particular the UN's CAT. It consists of individual communications, in particular by urgent appeals sent directly to the Minister for foreign affairs asking to investigate a case, stop torturing and report back to me. I report to the Human Rights Council and the General Assembly. One of the most important parts of my mandate is carrying out fact-finding missions to countries, with a double purpose. First to do fact finding, secondly to start or continue a process of cooperation and assisting governments, in particular, those that went through an experience of systematic torture or any government aiming to promote a proactive human rights and anti-torture policy.

Recommendations on UN/EU cooperation

1.

I would be most grateful to the EU and also to the EP, in the context of the guidelines, if there might be some kind of follow-up to the specific recommendations in my reports. Last year, I visited Georgia, Mongolia, Nepal and China and in some of those countries, there is a regular dialogue, in particular China. It would help if in the EU/China's human rights dialogue, these recommendations were taken up and supported by the EU. I did another investigation; together with four other special procedures of the UN Commission of Human Rights, I investigated the situation of the detainees in Guantánamo Bay detention centre. We arrived at a very clear conclusion: the further deprivation of liberty violates international human rights law. There is also a violation of the right to a fair trial, certain interrogation methods which are explicitly authorised and practised amount to at least degrading, inhuman and cruel treatment and, in some cases, to torture. We recommended closing Guantánamo Bay. The EU was actually very helpful in assisting us to get into cooperation with the US Government, in particular requesting the US to invite us to visit the Guantánamo Bay detention facilities.

2.

The EU guidelines, and in general EU foreign policy, in relation to the death penalty have been very successful. Perhaps, in relation to torture, not as successful. I arrive, on the basis of international case law, at the clear conclusion that corporal punishment, as such, is a violation of international law, constitutes degrading, inhuman or cruel treatment and, in some cases, amounts to torture. If the guidelines on torture could be used to put pressure on some third countries, in particular those using corporal punishment in a systematic manner, in order to reduce corporal punishment, it would be extremely helpful.

3.

My opinion is very clear. 'Diplomatic assurances' are very useful tools in relation to the death penalty. But they are not a useful tool in relation to torture, for various reasons. The Committee of Ministers of the Council of Europe had actually started trying to find guidelines regarding 'diplomatic assurances' but came to

the conclusion that it should not continue this. This is the only proper conclusion because you never have a totally watertight system of monitoring in a country. That is the main thing. Even if you have the best method of monitoring, it just doesn't work. I strongly appeal to the EU and its Member States to send out a clear message that 'diplomatic assurances' are nothing but a circumvention of the absolute prohibition of *refoulement*.

4.

In relation to secret bases of detention and CIA flights, every secret place of detention means that all the persons who are held there are victims of an enforced disappearance. Prolonged incommunicado detention and enforced disappearances are serious human rights violations.

It is not just a violation of the right to personal liberty; it is also according to the jurisprudence of the ECHR, the Inter-American Court, the UN Human Rights Committee, etc, a violation of the right not to be subjected to torture or ill-treatment both of the disappeared person and of its family members. The EU should not only support the adoption of the UN treaty on enforced disappearances but also, in particular if such secret places of detention may be or may have been in Europe, there is an absolute need to make sure that this is truly investigated and prevented in the future.

Ambassador Kälin, for the Austrian Presidency

(Text not checked by author)

We are fully aware of the criticisms on the guidelines on torture which are included in Eric Prokosch's working paper on torture. These guidelines are far from having the same degree of implementation as the guidelines on the death penalty. The death penalty is easy to act upon. Torture is a very complex issue. Much of it takes place in secret, access to reliable information is very difficult, etc.

Our line of action is to do what we can in order to support the existing instruments, particularly ratification of the Torture Convention and reporting to the Torture Convention mechanisms. We had nine '*demarches*' in countries that had not yet submitted their first report under the Torture Convention. We support, through '*demarches*', the activities of the Special Rapporteur on Torture. We are trying through '*demarches*' to get some countries to accept the visits of Special Rapporteurs and the conditions under which these visits have to take place. Special Rapporteurs and the CPT are very important instruments. They are the ones who can really establish facts in an objective manner. Therefore, it is of the utmost importance for the EU to follow-up on their recommendations.

This should be integrated into EU's human rights policy, which is not only carried out through '*demarches*' but also through political dialogues with third countries, human rights dialogues and other contacts.

As regards cooperation with the Heads of Mission, cooperation with the Special Rapporteur should be improved. We are working on this. It takes some time, it takes practice. We should see the progress that has been made, though not as visible as in the case of the death penalty. It is a priority and will remain so.

Mr Rolf Timans, European Commission, DG Relex

(Text not checked by author)

The 'fight against torture' is all the more important in the current context of the global fight against terrorism. Improved cooperation between the European Union and international / regional organisations should take place. The European Parliament has traditionally played a leading role in 'the fight against torture' by putting specific funds in the EU budget for the purpose of 'the fight against torture' and for the rehabilitation of torture victims.

The guidelines are a fundamental instrument, even if underutilised, which has been recognised at the last review (2004).

Last year alone we carried out in troika format world wide more than 40 *demarches* with various countries particularly geared towards ratification of the Torture Convention and of the Optional Protocol to the Convention. In this latter respect, it would be high time that some of our own Member States also proceeded with ratification.

In 2005-2006, funding through the EIDHR amounted to € 22 million, which probably makes us the biggest funding organisation and we will continue.

On the Convention on Enforced Disappearance, there is widespread agreement among Member States, and the European Commission, to try to get this off the hook in Geneva as soon as possible.

Last remark: the word 'torture' is a scary word for many diplomats and, therefore, it is not always easy to get everyone to agree to express their views as publicly and decisively as may be necessary. This is changing. We are making progress.

Experts' answers

Mr Sottas (Director of the World Organisation Against Torture - OMCT)

- **On the question of the guidelines:** it is true that programmes have been drawn up and progress has been achieved but, just trying to explain things, I think the fact that there have been 40 initiatives is very important, but the EU also needs to ensure a follow-up and

some more transparency in order to ensure that all the partners work more closely together. And this should also include individual cases.

- I think that it is vital that **we take each country on a case-by-case basis to analyse the real situation there** because torture is never acceptable! But all the causes of torture won't disappear overnight just because we ban it. So measures are going to be necessary. I mentioned the Democratic Republic of the Congo where they still have to reintroduce a functioning judicial system. There are other countries too where infrastructure in prisons is such that fundamental rules such as separating men and women aren't respected because the infrastructure doesn't provide for that.

- A final point **on the subject of policy**: I think all of us would agree with Manfred Nowak's statement that diplomatic assurances are never acceptable. You mentioned the moral issue, Mrs Estevez, but from a practical viewpoint, when we denounce cases of torture, contrary to what happened 20 years ago, generally speaking countries don't deny that this is the case. Instead they generally ask us to help them out of their difficulties. It is a new way of sweeping under the carpet the real situation that exists. I have seen dozens of files sent in by various countries on measures that have been so called 'adopted' but have not actually been put into practice. These are bureaucratic red-tape measures but, when you go back a few years later, you realise that there are still 200, 300 cases where inquiries were supposed to be carried out but no actual results have been obtained. I think that kind of approach is something we need to talk about together and come up with an appropriate response and actually move beyond formalities to results.

Mr Prokosch (Former Theme Research Coordinator - Amnesty International)

It is very important to develop a practice of *demarche* in individual cases because this is where you really confront the practice of torture in a country. In the type of cases where there is strong evidence that a person has been tortured, there might be a medical report. It is very important to press for an investigation under Article 12 of the CAT, stating that each state shall ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. At this moment, a *demarche* by the European Union could be very important at getting the investigation going. To bring torturers to justice (if this is as I understood your question) is one of the key ways of preventing torture, to show to public officials that they will be punished if they torture. Unless you make an investigation quickly, when signs of torture are still visible, prosecution may never work. This is one of the ways in which the guidelines may be developed.