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*Torture in the International Community—
Problems of Definition and Limitation—The
Case of Northern Ireland*

I. INTRODUCTION

IN AUGUST OF 1971, pursuant to powers conferred under the Special Powers Act,¹ the Northern Ireland Parliament invoked the interment provisions² to incarcerate those suspected of threatening peace and order in Northern Ireland. In December 1971, the government of Ireland filed an inter-state application against the United Kingdom with the European Commission of Human Rights. This application alleged, *inter alia*, that the British government endorsed the use of brutality and torture during the interrogation of those internees.³ Before the European Court of Human Rights, in February of 1977, the government of Britain conceded that it had used five torture techniques on detainees in Northern Ireland.⁴

Britain has long been considered the bastion of democracy, one of the most civilized nations in the Western Hemisphere. The United Kingdom's admission to allegations of torture, a practice so foreign to the precepts of democracy, naturally shocked the rest of the world. "Torture" is traditionally defined by assumptory reasoning premised on the techniques used. Thus the techniques used by the military government in Chile are *per se* torture.⁵ Though the torture employed by Great Britain pales in comparison,⁶ the difference is a matter of degree. It is important to recognize that "torture" is a medical, psychological, and political as well as a jurisprudential concept. An effective

¹ The Civil Authorities (Special Powers) Act 1922, 12 & 13 Geo. 5 (N.I.) [hereinafter cited as Special Powers Act].

² The Special Powers Act of 1922, 12 & 13 Geo. 5 (N.I.), Regs. §§ 11-13.

³ Ireland v. United Kingdom, [1971] (Eur. Comm. on Human Rights) 41 (Application No. 5310/71).

⁴ N. Y. Times, Feb. 9, 1977, at 3, col. 1.

⁵ The techniques included the application of electric shocks to sensitive parts of the body, sexual abuse and rape including the use of animals, torture by burns, and programmed beatings. See Ad Hoc Working Group of the Commission on Human Rights, 30 U.N. Doc. A/10285 (1975); Ad Hoc Working Group of the Commission on Human Rights, 31 U.N. Doc. A/31/253 (1976).

⁶ Britain admitted hooding prisoners, harassing them with noise, making them lean against walls for long periods, and to the use of bread and water diets, and sleep deprivation.

definition and one which would aid in the implementation of efficacious legal remedies must account for the concept of torture, not the techniques of torture. Clearly, while some governments may offer more plausible justifications for the use of torture than others by means of a legal, moral, consequentialist or utilitarian analysis, it is a most difficult endeavor to find circumstances under which torture should actually be permitted.

In analyzing torture in Northern Ireland and other "grey area" cases where the techniques used are not as deplorable as in uncontested torture cases and the government is operating under a clear and imminent threat of internal instability, the difficulty lies in balancing the government's desire to establish order against the desire to minimize the abrogation of liberty and fundamental human rights. It has been stated that:

Liberty depends upon recognition of two realities: first, that men who mean to enjoy it must run some risk for the sake of maintaining it; and second, that through excessive zeal, or through the incorrigibly corrupting influence of power, authority is forever in danger of overstepping its boundaries.

The central problem of political science in a free society is the preservation of a rational balance between order and liberty. But it is imperative to remember that the vigilance against duly constituted authority—against the forces of order—a resolute containment of those forces, is the price of liberty.⁷

II. POLITICAL AND LEGAL EVENTS LEADING TO TORTURE

A. *The Political Environment*

As a preface to analysis of the consequences of internment and torture, the social and political context of internment in Northern Ireland and its function as an instrument of domestic policy should be examined.

During the mid 1960's, the Ulster Volunteer Force (UVF), an extreme right-wing Protestant group began an offensive to inhibit the right-wing Unionist government of Northern Ireland from engaging in a policy of narrow rapprochement with the Republic of Ireland. At the same time, the Northern Ireland Civil Rights Association, a non-sectarian and non-violent civil rights movement, emerged demanding

⁷ A. BARTH, PRICE OF LIBERTY 193 (1961).

equality of treatment for the repressed Catholic minority of Northern Ireland. Specifically they campaigned for:

1. One-man-one-vote in local elections.
2. The removal of gerrymandered boundaries.
3. Laws against discrimination by local government, and the provision of machinery to deal with complaints.
4. Allocation of public housing on a points (*i.e.*, objective) system.
5. Repeal of the Special Powers Act.
6. Disbanding of the 'B Special' police force. This was a wholly Protestant armed militia particularly hostile to the minority, which was later disbanded and replaced by a similar creature entitled 'The Ulster Defense Regiment.'⁸

The economic and social oppression experienced by the minority provided a classic setting for civil unrest. Religious intolerance, a constant irritant to an already precipitous situation, divided the population. The government of Northern Ireland responded by banning civil rights demonstrations. With all legitimate avenues of protest closed, both protestors and police became increasingly violent as the Irish Republican Army (IRA), a revolutionary group of militant Irish Nationalists, rapidly increased in size and prestige. Internment was subsequently introduced as one of the government's counter-insurgency tactics, under the common cry for the preservation of "law and order." Pursuant to internment regulations, invoked in August of 1971, 1,576 men were arrested by December of 1971, and 934 were subsequently released. The existence of draconian emergency powers in Northern Ireland, whose calculated use severely abrogated civil liberties, is responsible for the actual detention of suspected political terrorists, and the creation of a political mentality which allowed for the use of the torture in question. "Legal" condonation of internment is at the core of these emergency powers.

Internment may be defined as an extra-judicial deprivation of liberty by executive action. The essence of internment lies in incarceration without charge or trial. It may be distinguished from pre-trial detention during which a person so detained will ultimately be charged and tried by criminal process. Similarly, internment may be distinguished at the outset from unlawful arrests or unlawful executive acts as in-

⁸ Lowry, *Ill-treatment, Brutality, and Torture: Some Thoughts Upon The "Treatment" of Irish Political Prisoners*, 22 DE PAUL L. REV. 553, 558 (1973) [hereinafter cited as *Treatment of Irish Political Prisoners*].

ternment, as used in the United Kingdom . . . is founded upon a validly made statutory power given to the executive branch of government by a sovereign parliament.⁹

At this juncture it is important to bear in mind that political violence began after acts of government repression, and that internment and subsequent allegations of torture acted as a catalyst for further opposition to the government.

B. *Provisions and Use of the Special Powers Act*

Non-violent civil rights demonstrations, having met with government intransigence and repression, had escalated into violent displays, and culminated in August of 1971 when the Special Powers Act was invoked (for the last time) to intern suspects.

Historically, the Special Powers Act has been used almost exclusively against the Catholic minority in Northern Ireland.¹⁰ Since 1921, the date of its creation, Northern Ireland has been ravaged by internal strife. In order to cope with the unrest the fledgling Northern Ireland Parliament passed, in 1922, the Civil Authorities (Special Powers) Act,¹¹ thereby empowering the government with sweeping provisions permitting internment of suspects. Although originally designed as a temporary measure, requiring annual renewal by parliament, in 1933 the Act was made a permanent statute.¹² The powers bestowed upon the Minister of Home Affairs, as enunciated in the Act, clearly derogate common law notions of criminal justice:¹³

If any person does any act of such a nature as to be calculated to be prejudicial to the preservation of the peace or the maintenance of order in Northern Ireland and not specifically provided for in the regulations he shall be deemed guilty of an offense against the regulations.¹⁴

⁹ Lowry, *Internment: Detention Without Trial in Northern Ireland*, 5 HUMAN RIGHTS 261, 261 (1976).

¹⁰ *Treatment of Irish Political Prisoners*, *supra* note 8, at 557.

¹¹ The Special Powers Act of 1922, 12 & 13 Geo. 5 (N.I.).

¹² The Special Powers Act of 1922, 23 & 24 Geo. 5, § 2 (N.I.).

¹³ The Magna Carta provides that:

No man shall be taken or imprisoned or disposed or outlawed or banished, or in any way destroyed, nor will we go upon him, nor send him, except by the legal judgment of his peers by the law of the land.

Magna Carta of 1297, 24 Edw. 1, Halsbury's Statutes (2d ed.) 20.

¹⁴ The Special Powers Act of 1922, 23 & 24 Geo. 5, § 2(4) (N.I.).

The Minister of Home Affairs also has jurisdiction over the police and is empowered to delegate all or any of the powers enumerated in the act to police officers. Notably, the act confers powers including: arrest without warrant; search without warrant; and imprisonment without trial, denying recourse to *habeas corpus* or a court of law.

In August of 1971, people suspected of advancing divergent political beliefs, aiding insurgents, or suspected of political violence were interned pursuant to the authority of an executive act, regardless of the presence of evidence to support a criminal charge. This alone is a flagrant contravention of the procedural safeguards upon which liberty¹⁵ is based; the alleged torture arising therefrom attacks the concept of liberty itself, and what democracy deems the most basic of human rights. The British government appointed a Commission of Inquiry chaired by Sir Edmund Compton to investigate these allegations.¹⁶ The reasoning of the Compton Report was fallacious and the report lacked credibility. This required the appointment of a second Commission of Inquiry chaired by Lord Parker.¹⁷ Both Committees acknowledged the use of "ill-treatment," *i.e.*, treatment that did not amount to "physical brutality." The dissenting minority report, appended to the second Commission's report, was authored by Lord Gardiner and went further than this; it denounced the procedures as both morally unjustifiable and illegal. The government accepted the minority report and before the European Court of Human Rights admitted to the use of torture as a means of interrogating internees.

III. THE CONCEPT OF TORTURE

A. *Elements of Definition*

Prior to analyzing the findings and the reasoning of the Compton, Parker, and Gardiner Reports, patterns and characteristics of torture must be reviewed in an effort to arrive at a conceptual definition of

¹⁵ Internment violates procedural safeguards as contemplated by the Magna Carta and United States Constitution.

¹⁶ REPORT OF THE ENQUIRY INTO ALLEGATIONS AGAINST THE SECURITY FORCES OF PHYSICAL BRUTALITY IN NORTHERN IRELAND ARISING OUT OF EVENTS ON THE 9TH AUGUST 1971, CMND. NO. 4823 (1971) (Chairman Sir Edmund Compton) [hereinafter cited as COMPTON REPORT].

¹⁷ REPORT OF THE COMMITTEE OF PRIVY COUNSELLORS APPOINTED TO CONSIDER AUTHORIZED PROCEDURES FOR INTERROGATION OF PERSONS SUSPECTED OF TERRORISM, CMND. NO. 4901 (1971) (Chairman Lord Parker, C.J.) [hereinafter cited as PARKER REPORT].

the word. At the outset, it is clear that "once one group of citizens has been set on one side as licensed to torture and another as a group so far beyond consideration as human beings that any brutality can be inflicted on them the fatal step has been taken."¹⁸

As it describes human behavior, the concept of torture resists precise definition. Each human being is unique; pain threshold, psychological make-up, and cultural conditioning are individual. Furthermore, torture is a concept that must account for a continuum of behavior, ranging from the infliction of discomfort to intolerable pain and death.

"Torture is the systematic and deliberate infliction of acute pain in any form by one person on another, or on a third person, in order to accomplish the purpose of the former against the will of the latter."¹⁹ This definition includes certain essential elements which should be included in any comprehensive definition of torture. First, torture assumes the "involvement of at least two persons,"²⁰ the torturer and the victim, carrying the implication that the victim is subject to the physical control of the torturer. Second, the means used by the torturer (which distinguishes torture from interrogation) results in the "infliction of acute pain and suffering."²¹ As regards this element, definitions should not be limited to physical assaults, but should incorporate "mental" and "psychological" torture. The concept of torture implies a strong degree of suffering, *i.e.*, "severe" or "acute." It encompasses continual beatings over a two day period, but does not encompass one blow, which may be considered mere "ill-treatment." Third, implicit in the notion of torture is the effort by the torturer to break the victim's will, to destroy his humanity in obvious disregard of the inherent dignity of the human person. Finally, torture implies a "systematic activity with a rational purpose."²² Torture is the deliberate infliction of pain accompanied by specific goals or motives for its use. It is generally designed to obtain confessions or information, as punishment, and to intimidate the victim and third persons.

In defining torture, emphasis should be placed on its evaluative content, the idea that torture is repugnant to humanity. Likewise in the "grey area," the area of "ill-treatment," of "degrading," or "in-

¹⁸ AMNESTY INTERNATIONAL, REPORT ON TORTURE 10 (1st American ed. 1975).

¹⁹ *Id.*

²⁰ *Id.* at 34.

²¹ *Id.*

²² *Id.* at 35.

human" treatment, a government which escalates its means of interrogation is engaging in torture, regardless of its justifications (*e.g.*, that it perceives a threat to its security). A legal definition of torture would be inoperable if subjective considerations of "justifiability" were determinative. Avenues of abuse would be left open. Thus, the definition of torture enunciated by the European Commission of Human Rights in the *Greek Case* is unacceptable.

The word torture is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. The notion of inhuman treatment covers at least such treatment and deliberately causes severe suffering, mental, or physical, which in the particular situation is unjustifiable.²³

B. *Torture-Stress Model*

An analysis of torture invariably involves an explication of human tolerance to pain or stress. Pain or stress produces responses which are a combination of mental and physical processes.²⁴ Furthermore, as methods of torture are an integral part of the context in which they are administered, analysis of isolated methods is impossible.

It is generally held, of course, that there is a very real distinction between 'third degree methods' (physical assault such as the *falagna*) and 'fourth degree methods' (psychological disorientation such as sensory deprivation). But they are both at points on a single physical-psychological continuum. Yet differences based on technical factors do not necessarily reflect rigidly corresponding distinctions in the character of distress experienced. . . . Torture is a positive feed-back process and cannot be explained in terms limited by a passion for classification. Indeed, in light of *contemporary stress studies and conditioning theories*, it is more profitable to give secondary importance to the matters of technique and concentrate on the overall character of the torture situation as well as the short-and long-term impact on the participants.²⁵

Thus, both theoretical and practical considerations require a definition that combines elements of "third" and "fourth" degree torture

²³ The Greek Case, [1967] 2 Y.B. EUR. CONV. ON HUMAN RIGHTS 1 (Eur. Comm. on Human Rights).

²⁴ AMNESTY INTERNATIONAL, *supra* note 18, at 39.

²⁵ *Id.* at 40.

methods, and resists cataloguing techniques and effects according to the discrete categories of physical and psychological. Using this integral approach, torture can be viewed as the process by which an individual's defense mechanisms to cope with stress are severely impaired; physical and mental debilitation foster a dependency on the torturer; and dependency, in turn, leads to fear of the present and future.

Stress is any event which changes or threatens to change the stability of one's environment, or physical or mental well-being.²⁶ The aim of the torturer, to erode the individual's adaptive responses to stress, is first effected by weakening the victim's compensatory morale and habitual defenses. This is commonly achieved through systematic debilitation of the detainees, using relatively universal methods: "semi-starvation, exposure, exploitation of wounds, induced illness, sleep deprivation, lack of proper hygiene, prolonged interrogation under extreme tension, prolonged constraint, forced writing, and fatiguing physical exercises."²⁷ The processes of the tortured individual's brain are progressively impaired by the damage done to the anatomical and physiological components of his or her bodily functions. This precipitates an erosion of will and morale. A logical extension of this "passive" disordering and systematic debilitation is the application of sensory deprivation which even further impairs cognitive functioning. The victim, deprived of food, sleep, and human contact by his torturer, becomes dependent on the torturer for these things. The torturer has complete control of the situation and may thus manipulate the victim in an intermittent, temporary, and unpredictable fashion. During respites from debilitation torture, the prisoner, totally disoriented, is likely to experience dread—fear of death, fear of pain, and fear of permanent disability.

The erosion of psychological defenses and the debilitation of the mental systems with which individuals cope with stress may have long-term effects in terms of the individual's ability to return to a normal environment and to cope with ordinary life problems.

The accompanying Table I, designed by Biderman, who researched the manipulative techniques used by the Koreans during the Korean War, demonstrates the essential nature of stress manipulation, and "may perhaps, by virtue of its more 'benign' content, reveal the inten-

²⁶ *Id.* at 41.

²⁷ *Id.* at 45.

tions and results of torture with a precision that is almost impossible to achieve when dealing with those massive assaults in which pain and disorientation are compressed."²⁸

TABLE I: STRESS MANIPULATION—EFFECT AND VARIANTS²⁹

General Method	Effects (Purposes)	Variants
1. Isolation	Deprives victim of all social support of his ability to resist Develops an intense concern with self Makes victim dependent upon interrogator	Complete solitary confinement Complete isolation Semi-isolation Group isolation
2. Monopolization of perception	Fixes attention upon immediate predicament; fosters introspection Eliminates stimuli competing with those controlled by chapter Frustrates all actions not consistent with compliance	Physical isolation Darkness or bright light Barren environment Restricted movement Monotonous food
3. Induced debility exhaustion	Weakens mental and physical ability to resist	Semi-starvation Exposure Exploitation of wounds Induced illness Sleep deprivation Prolonged constraint Prolonged interrogation Forced writing Over-exertion

²⁸ *Id.* at 40.

²⁹ *Id.* at 53.

4. Threats	Cultivates anxiety and despair	Threats of death Threats of non-return Threats of endless interrogation and isolation Threats against family Vague threats Mysterious changes of treatment
5. Occasional indulgences	Provides positive motivation for compliance Hinders adjustment to deprivation	Occasional favors Fluctuations of interrogator's attitudes Promises Rewards for partial compliance Enticement
6. Demonstrating omnipotence	Suggests futility of resistance	Confrontation Pretending cooperation taken for granted Demonstrating complete control over victim's fate
7. Degradation	Makes cost of resistance appear more damaging to self-esteem than capitulation Reduces prisoner to animal level concerns	Personal hygiene prevented Filthy infested surroundings Demeaning punishments Insults and taunts Denial of privacy
8. Enforced trivial demands	Develops habit of compliance	Forced writing Enforcement of minute rules

IV. INQUIRIES ON TORTURE IN NORTHERN IRELAND

A. *Review and Analysis of the Reports*

On August 31, 1971, the Home Secretary appointed a three-man Committee of Inquiry, chaired by Sir Edmund Compton,

[t]o investigate allegations by those arrested on 9th August under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 of physical brutality while in the custody of the security forces prior to either their subsequent release, the preferring of a criminal charge on their being lodged in a place specified in a detention order.³⁰

The substance of the inquiry was narrowed to the treatment of eleven detainees. Procedures of inquiry, which were adopted "to protect the lives of those who conducted the arrest and interrogations,"³¹ effectively if not intentionally prevented the complainants from testifying before the Committee. The hearing took place *in camera*, and no opportunity was afforded the complainants to confront the members of the security forces against whom complaints were alleged. Legal representation was allowed but legal representatives were not permitted to cross-examine witnesses or to have access as of right of transcripts of evidence. Only one complainant appeared in person before the Committee, and one presented a written statement. Thus, virtually all the evidence in the complaints was hearsay and was found to be unacceptable to the Northern Ireland Civil Rights Association.³²

The Committee of Inquiry confirmed the allegations set forth in most of the cases referred to it. However, the significance of the Committee's admission was diminished by its general holding which denied that "physical brutality" had been suffered. The Committee held that "ill-treatment" here consisted of enforced wall standing,³³ hooding,³⁴ noise,³⁵ sleep deprivation,³⁶ and a diet of bread and water.³⁷ Other

³⁰ COMPTON REPORT, *supra* note 16, para. 1.

³¹ *Id.* para. 13.

³² Brownlie, *Interrogation in Depth: The Compton and Parker Reports*, 35 MODERN L. REV. 501 (1972).

³³ According to the complainants this involved standing facing a wall with hands placed high above head on the wall; legs spread apart; forced with batons to retain the posture; kept to it until collapse, then restored to posture; maintaining this for long periods. The official records showed total periods of up to 43½ hours. The period of standing was four to six hours at a time. COMPTON REPORT, *supra* note 16, para. 57(c).

³⁴ This consisted of requiring the prisoners to wear a navy or black colored bag of tightly woven or hessian cloth over their heads at all times other than during interrogation. *Id.* para. 57(a).

³⁵ Complainants alleged that between periods of interrogation they were held in a room where there was continuous noise. The noise was described as loud and deafening like the escaping vapors of compressed air, the roar of steam, the whirling of helicopter blades or a drill. *Id.* para. 57(b).

³⁶ It was alleged that complainants were deprived of sleep for two or three days or were allowed very little sleep. *Id.* para. 57(d).

³⁷ Prisoners continuously complained that they were deprived of food for two or

complaints related to incidents unrelated to interrogation: the "Helicopter Incident" in which men were forced to take part in a deception operation absent knowledge of the nature of the operation; and the "Obstacle Course" in which men were forced to run barefoot along a route consisting in part of granite chippings and a hard-core path.

In analysis, it appears that the Compton Report lacked a high degree of credibility as it attempted to justify the methods of "ill-treatment" used, while at the same time unwittingly admitting that the treatment was designed to create a stressful situation for the victim by systematic debilitation and sensory deprivation. Furthermore, the Committee examined the methods of ill-treatment under headings, isolating the techniques, oblivious to the cumulative effect of such treatment, and thus skewing the impact of its findings. The wall posture was ostensibly to provide "security for detainees and guards against physical violence [while] imposing discipline."³⁸ Subjection to continuous noise "prevents [detainees from] overhearing or being overheard by each other . . . [while] enhanc[ing] . . . [their] sense of isolation."³⁹ Hooding was to prevent identification and "in the case of some detainees, increase their sense of isolation."⁴⁰ The diet of bread and water was to "form part of the atmosphere of discipline."⁴¹ The erosion of the individual's adaptive mechanisms was obviously the goal of the treatment, and the process was consistent with the torture-stress model.

For pedagogical purposes, the Compton Report is an excellent document to analyze in light of the concept of torture enunciated herein. The findings are premised on a fallacious distinction between ill-treatment and brutality and are viewed within the context of justifiable treatment.

On the issue of physical brutality, the Compton Commission specified that its conclusions are in terms of physical ill-treatment, not in terms of physical brutality.⁴²

Where we have concluded that physical ill-treatment took place, we are not making a finding of brutality on the part of those who handled

three days, or that their diet had been severely restricted to occasional administration of dry bread and a cup of water until the last day or so. *Id.* para. 57(e).

³⁸ *Id.* para. 48.

³⁹ *Id.* para. 50.

⁴⁰ *Id.* para. 49.

⁴¹ *Id.* para. 51.

⁴² *Id.* para. 104.

these complainants. We consider that brutality is an inhuman or savage form of cruelty; and that cruelty implies a disposition to inflict suffering, coupled with indifference to, or pleasure in, the victim's pain. We do not think that happened here.⁴³

According to this definition, brutality is in the mind of the perpetrator, whereas ill-treatment can be objectively measured. By disregarding the obvious implication of its findings, the Committee used to its great advantage its ability to diminish the gravity of its findings by changing to "ill-treatment" or torture.

The Committee then sought to offer justification for these methods of interrogation.

These methods have been used in support of the interrogation of a small number of persons arrested in Northern Ireland who were believed to possess information of a kind which it was operationally necessary to obtain as rapidly as possible in the interest of saving lives, while at the same time providing the detainees with the necessary security for their own persons and identities.⁴⁴

This supposition is indeed questionable. Revulsion to internment was so great that a virtual civil war ensued. Killings and bombings dramatically increased, while the number of weapons uncovered by the security forces remained almost the same as had been uncovered before the interrogations.⁴⁵

The methods described in the Compton Report were authorized procedures, and these adverse findings related only to misapplication.⁴⁶ However, as a result of the findings of the Compton Report, a second Committee of Inquiry, chaired by Lord Parker, was established to "consider authorized procedures" of interrogation of suspected terrorists.⁴⁷ As the Parker Committee was unable to agree on a conclusion, a majority report and a minority report, authored by Lord Gardiner, were published. The majority report concluded that, subject to certain safeguards, "there is no reason to rule out these techniques on moral grounds and that it was possible to operate them in a manner consistent with the highest standards for our society."⁴⁸ Furthermore, the majority took the view that "discomfort and hardship" are

⁴³ *Id.* para. 105.

⁴⁴ *Id.* para. 52.

⁴⁵ THE SUNDAY TIMES INSIGHT TEAM, NORTHERN IRELAND 264, 275 (1972).

⁴⁶ *Interrogation in Depth, supra*, note 32, at 503.

⁴⁷ PARKER REPORT, *supra*, note 17, para. iii.

⁴⁸ *Id.* para. 34.

conditions that any suspect might reasonably expect to endure,⁴⁹ and that discomfort, hardship, ill-treatment, and torture are merely matters of opinion.⁵⁰ The Parker Report concurred with the Compton Report in submitting that some of the techniques were adopted for the security and safety of the prisoner while also asserting that the purpose of the techniques was to make the suspect "feel that he is in a hostile atmosphere and subject to strict discipline."⁵¹ The Report attributes excessive use of these methods to administrative problems, *e.g.*, lack of manpower, and thus proposed "guidelines" to alleviate such problems in the future.⁵² Alternative techniques were examined, but were subsequently rejected in favor of those techniques that were more expedient in producing evidence.⁵³

The majority of the Parker Committee justified its conclusions by simply asserting that "urban guerilla warfare" risks innocent lives⁵⁴ and that this, coupled with the duty to protect staff and suspects, is of higher moral priority than affording fair treatment to innocent people.⁵⁵ Accordingly, when allied with the need for expediency, these reasons dismiss the moral issue raised by the use of ill-treatment of mere suspects.⁵⁶ The majority report erroneously viewed the moral question to be "dependent on the intensity with which these techniques were applied and on the provision of effective safeguards against excessive use."⁵⁷ Consequently, the substantive issue of whether desired ends could justify evil means was interpreted merely as a matter of degrees of evil, without consideration as to either the overall character of the situation or the short- and long-term impact on the participants.

The minority report vigorously dissents from the distinction expressed in the Compton Report between "ill-treatment" and "physical brutality."

Lest by silence I should be thought to have accepted this remarkable definition, I must say that I cannot agree with it. Under this definition, which some of our witnesses thought came from the Inquisition,

⁴⁹ *Id.* para. 8.

⁵⁰ *Id.* para. 9.

⁵¹ *Id.* para. 11.

⁵² *Id.* para. 13.

⁵³ *Id.* paras. 19-22.

⁵⁴ *Id.* para. 30.

⁵⁵ *Id.*

⁵⁶ *Id.* para. 32.

⁵⁷ *Id.* para. 37.

if an interrogator believed to his great regret, that it was necessary for him to cut off the fingers of one detainee one by one to get the required information out of him for the sole purpose of saving life, this would not be cruel, and because not cruel, not brutal.⁵⁸

The minority report concluded that the methods used "were and are illegal,"⁵⁹ while examining the moral issues from the standpoint of the *effects* of ill-treatment—not only the desired end or end in view, but all other significant consequences of the techniques employed. The effects were analyzed in a manner consistent with the concept of torture.

In examining the physical and mental effects on the detainees of the techniques of interrogation employed, the Gardiner Report highlighted the fact that such were known to cause, *inter alia*, artificial psychosis, episodic insanity, unbearable anxiety, tension, attacks of panic, and nightmares. The cumulative effects of these techniques used simultaneously against the suspects is speculative since psychiatrists have not had the opportunity to observe such procedures in the past.⁶⁰

As to the effect of the use of these techniques of obtaining the desired information, the minority report found that the use of more civilized and subtle methods of interrogation in practice during World War II might very possibly have produced the same information.⁶¹ Thus, according to the minority report, alternatives not only existed, but may have been, in fact, equally effective in attaining the "end in view."

The minority report also concluded that as a result of the use of internment and torture, the popularity of the IRA increased. Ironically, therefore, this secondary consequence "may have, in fact, frustrated the end in view as the publication of the evil means gravely exacerbated a major side effect."⁶²

Finally, the Gardiner Report was of the opinion that Britain's standing and reputation would indeed suffer as a result of the publicized use of these torture techniques.⁶³ Concluding, Lord Gardiner states in the last paragraph of his report,

[t]he blame for this sorry story, if blame there be, must be with those, who many years ago, decided that in emergency condi-

⁵⁸ *Id.* para. 7(d).

⁵⁹ *Id.* para. 10(d).

⁶⁰ *Id.* para. 13(i).

⁶¹ *Id.* para. 14.

⁶² *Treatment of Irish Political Prisoners, supra*, note 8, at 567.

⁶³ PARKER REPORT, *supra* note 17, para. 20(5).

tions in Colonial-type situations we should abandon our legal, well-trying and highly successful wartime interrogation methods and replace them by procedures which were secret, illegal, not morally justifiable and alien to the traditions of what I believe still to be the greatest democracy of the world.

Thus, the thrust of the minority report was to question the desired end and the secondary consequences, effectively viewing the majority's justification and that enunciated in the Compton Report in a wider perspective. Accordingly, neither logic nor morals would tolerate the legalization of any degree of ill-treatment.⁶⁴

B. *Analysis of the Reports According to Theoretical Constructs*

As alluded to in the Compton and Parker Reports, and explicitly admitted in the Gardiner Report, the techniques of interrogation employed were designed to obtain information from detainees and to foster a sense of isolation and discipline. According to the analysis of torture herein, such sensory deprivation and systematic debilitation is the first step in breaking the victim's will, and, as such, part of the systematic process of torture. The effects of the specific techniques relied upon in Northern Ireland, outlined by Lord Gardiner, were of a psychological nature. The Compton Report, however, sidestepped the issue of torture by creating an erroneous distinction between physical brutality and ill-treatment that is not consistent with a definition of torture.⁶⁵ Briefly, then, the situation of interrogation in Northern Ireland encompassed all the essential elements of torture: (1) the involvement of torturer and victim; (2) the infliction of acute pain and suffering; (3) the underlying goal to break the victim's will; and (4) a systematic activity with a rational purpose.

The Compton and Parker Reports, furthermore, purported to justify the denial of the inherent dignity of mankind, by the use of rational argument. Both reports alluded to the necessity of such activities if "innocent lives" were to be saved. Lord Gardiner, contrarily,

⁶⁴ Lord Gardiner summarized his reasoning as follows:

I do not believe . . . in emergency terrorist conditions or even in war against a ruthless enemy, such procedures are morally justifiable against those suspected of having information of importance to the police or army, even in light of any marginal advantages which may thereby be obtained. *Id.* para. 20(i).

⁶⁵ See generally Pp. 164-71 *infra*.

asserted that ill-treatment of prisoners could never be morally justified.⁶⁶ Gardiner's view, when analyzed in the context of his whole dissenting opinion, is premised on the belief that ill-temperment of suspects is wrong. This implies that a moral determination may be made independent of an examination of consequences.

In contrast, the consequentialist approach implicit in the Compton and Parker Reports, premised on rational argument, reduced a moral issue to a factual issue, *i.e.*, the likely consequences of interrogation procedure. According to the consequentialist approach, when the duties of a state conflict, *e.g.*, when the duty to preserve law and order conflict with the duty to treat innocent people with human dignity, a rational mode of procedure would be to examine the available alternatives and choose that course which would seem likely to be the best for all those concerned. This approach was used in the Parker Report where alternative methods of interrogation were examined, evaluated, and rejected. In the case of "ill-treatment" of detainees in Northern Ireland the immediate result was the infliction of physical pain and deprivation which was obviously evil in itself, but which would supposedly bring about the desired end in view, the saving of innocent lives and the restoration of law and order. The analysis focused upon a consideration of conditions under which the good end in view outweighed the evil means, thus justifying the alternative chosen.

According to this analysis, then, the following three conditions should be met in order to allow prisoner treatment to be characterized as ill-treatment rather than torture: (1) no less odious means are available; (2) *all* consequences of the means are considered, not merely the end in view; and (3) the more probable consequences are given greater "weight" than the less probable ones.⁶⁷

In applying these conditions to the Northern Ireland problem, a rational analysis would mandate overruling the conclusions of the Compton and Parker Reports. It is now clear that less odious means of treatment were available to the Northern Ireland Parliament in the form of responsive government. The major alternative would have been to grant the Catholic minority the civil rights that were the focus of their demonstrations. On the specific issue of ill-treatment of interned suspects, Lord Gardiner suggested that alternative methods of interrogation were available, specifically those techniques used during

⁶⁶ PARKER REPORT, *supra* note 17, para. 20.

⁶⁷ *Treatment of Irish Political Prisoners*, *supra* note 8, at 576.

World War II, when expediency was essential and the threat to national security grave. As to the second condition upon which consequentialism is dependent, internment and physical brutality seems to have had the foreseeable secondary consequence of alienation of the Catholic middle class which had previously been a restraining and moderate influence.⁶⁸ And lastly, the balancing of probable consequences requires balancing the aim of the government to provide "internal stability" and to return to the *status quo* against the probability of the Catholic minority resisting a reversion to the *status quo*. "The probable result, and on the facts, the actual result, of repressive measures on the part of the state including cruelty and incarceration without trial can only mean an increased response and an escalation of terrorism."⁶⁹ Thus, even the desired end, the end in view, cannot be achieved.

In order for the consequentialist approach to have any validity in the analysis of the use of ill-treatment as a method of interrogation, it is necessary that it be applied with utmost skepticism to avoid casual acceptance of the use of brutality to achieve the end in view. Both the Compton and Parker Reports were therefore in error in stating that ill-treatment, and not torture, had been employed in an effort to save innocent lives.

V. THE STATUS OF TORTURE UNDER INTERNATIONAL LAW

At this point it should be noted that both legal definitions and an arsenal of legal and quasi-legal remedies do exist to guard against the use of physical ill-treatment is so alien to humanitarian ideals that prohibitions against it were enunciated long before the relatively recent declaration on torture was adopted by the General Assembly of the United Nations.⁷⁰ In accordance with the determination expressed in the United Nations Charter "to reaffirm faith in fundamental human rights,"⁷¹ article 5 of the Universal Declaration of Human Rights proclaims that "[n]o one shall be subjected to torture, or to cruel, in-

⁶⁸ THE SUNDAY TIMES INSIGHT TEAM, NORTHERN IRELAND, *supra* note 45, at 273.

⁶⁹ *Treatment of Irish Political Prisoners*, *supra* note 8, at 580.

⁷⁰ G.A. Res. 3452, 30 U.N. GAOR, Supp. (No. 34) 91 U.N. Doc. A/RES/3452 (1976).

⁷¹ UNITED STATES DEPT OF STATE, PUB. NO. 2368, FACSIMILE OF THE CHARTER OF THE UNITED NATIONS 1-20 (1972).

human or degrading treatment or punishment.”⁷² Likewise, article 7 of the International Covenant on Civil and Political Rights⁷³ and article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms⁷⁴ provide the same. And, although articles 4 and 15 of these conventions, respectively, allow a contracting party to derogate from its obligations under the conventions, derogation from the articles on torture is not permitted.

The problem of remedies involves two fundamental but competing principles of the international system—“one is the right of the sovereign state to be free from outside interference in its internal affairs; the other is the right of the individual to his basic human rights and the international protection of those rights.”⁷⁵ The European Convention, however, attempts to make legal obligations of the principles expressed in the Universal Declaration of Human Rights, setting forth machinery to implement remedies, and seeking in a realistic fashion to balance the rights of individuals with the rights of the state.

The bodies of the European Convention system consist of the Commission of Human Rights, the Court of Human Rights, and the Committee of Ministers. In December of 1971, the Irish government filed an inter-state application against the United Kingdom government with the Commission, alleging, *inter alia*, a violation of article 3 of the European Convention. By pleading the existence of “legislative measures and administrative practices” that were incompatible with the Convention, rather than pleading only individual cases, the Irish government successfully avoided the requirement that time-consuming domestic remedies be exhausted first.⁷⁶

In addition to the legally binding conventions, various organs of the United Nations have produced a wealth of studies and resolutions relating to torture in an effort to arouse general awareness of the problem and through the combined efforts of these bodies, prohibit its use.

⁷² G.A. Res. 217A, U.N. Doc. A/810, at 71-77 (1948).

⁷³ G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 52-58, U.N. Doc. A/6316 (1966).

⁷⁴ EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, COLLECTED TEXTS, Sec. 1, Doc. 1 (1966) [hereinafter cited as EUROPEAN CONVENTION].

⁷⁵ AMNESTY INTERNATIONAL, *supra* note 18, at 70.

⁷⁶ Ireland v. United Kingdom, [1971] (Eur. Comm. on Human Rights) 41 (Application No. 5310/71).

In 1973, the General Assembly adopted Resolution 3059 by which it rejected any form of torture and other cruel, inhuman or degrading treatment or punishment and decided to examine the question in relation to detention and imprisonment. Reaffirming Resolution 3059 the following year, it requested Member States to furnish information relating to legislative, administrative, and judicial measures, including remedies and sanctions, aimed at safeguarding persons within their jurisdictions from being subjected to torture and other ill-treatment.⁷⁷ Resolution 3218 also requested the cooperation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to give urgent attention to the development of an international code of ethics for police. At the same time, it invited the World Health Organization to draft an outline of the principles of medical ethics for the guidance of the medical profession.

In response, the Fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders recommended that the General Assembly adopt a twelve article draft resolution on the Protection of All Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.⁷⁸

Condemning the use of torture and other cruel, inhuman or degrading treatment or punishment as a "denial of the purposes of the Charter of the United Nations," Resolution 3452 was adopted by the General Assembly.⁷⁹ Article 1 of the Declaration defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.

⁷⁷ G.A. Res. 3218, 29 U.N. GAOR, Supp. (No. 31) 82, U.N. Doc. A/RES/3218 (1974).

⁷⁸ 30 U.N. GAOR, U.N. Doc. A/10260 (1975).

⁷⁹ See Appendix I, G.A. Res. 3452, 30 U.N. GAOR, Supp. (No. 34) 91, U.N. Doc. A/RES/3452 (1976). Also, it is interesting to note that the original language in the first draft proposal authored by an intersessional working group used the words "breach of principles" instead of "denial of purposes" in article 2. The draft proposal recommended to the General Assembly used the latter phrase which the Assembly subsequently adopted. Apparently, the wording was changed by the Fifth United States Congress on Crime Prevention and the Treatment of Offenders, but there is no reported discussion to explain the reason for the change.

Consistent with both the International Convention on Civil and Political Rights and the European Convention, exceptional circumstances such as a state of war or internal political instability may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.⁸⁰

At the same session, the General Assembly adopted Resolution 3453, requesting a joint effort on the part of the Commission on Human Rights, the Economic and Social Council, the Committee on Crime Prevention and Control, and the World Health Organization to ensure effective observance of the Declaration and form a body of principles for the protection of all persons under any form of detention or imprisonment on the basis of the *Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile*; to draft a code of conduct for law enforcement officials; and to elaborate principles of medical ethics relevant to the protection of persons subject to any form of detention or imprisonment against torture and other cruel, inhuman, degrading treatment or punishment.

The following are the results of efforts by the organizations:

Commission on Human Rights: In its resolutions 10A and 10B the Commission instructed the Sub-Commission on Prevention of Discrimination and Protection of Minorities to elaborate principles for the protection of all persons under any form of detention or imprisonment.⁸²

Economic and Social Council: The Council adopted resolution 1993 requesting all governments to observe the General Assembly resolution on torture and asked the Commission on Human Rights to formulate a body of principles for the protection of all persons under any form of detention or imprisonment.

A draft resolution has also been proposed by the Council to deal especially with the problem of the protection of persons detained on account of their political opinions or convictions. Cognizant that such persons are often exposed to "special dangers" as regards the protection of their human rights and fundamental freedoms, the proposal ensures, in particular, "that such persons are not subjected to torture or other cruel, inhuman or degrading treatment or punishment."⁸³

⁸⁰ *Id.* art. 3.

⁸¹ U.N. Doc. E/CN.4/826/Rev. 1 (1964).

⁸² 60 U.N. ESCOR, Supp. (No. 3) paras. 159-65, U.N. Doc. E/5768 (1976). *See also* 31 U.N. GAOR, U.N. Doc A/31/234 (1976).

⁸³ 31 U.N. GAOR, U.N. Doc. A/C.3/31/L.37 (1976).

Committee on Crime Prevention and Control: In accordance with General Assembly Resolution 3153, the Committee recommended a draft resolution entitled *Code of Conduct for Law Enforcement Officials*,⁸⁴ consisting of ten articles and a community to the Commission for Social Development for approval and further submission to the General Assembly through the Economic and Social Council.

In response to the Economic and Social Council's resolution 1993, the Committee has recommended that the scope of several provisions of the Standard Minimum Rules for the Treatment of Prisoners⁸⁵ should be extended to protect persons arrested or imprisoned without charge. The Committee further proposes strengthening existing procedures within the United Nations system for the implementation of the Standard Minimum Rules.

Sub-Commission on Prevention of Discrimination and Protection of Minorities: In accordance with its own resolution 7, which emphasizes that persons subjected to any form of detention or imprisonment for any reason whatsoever should enjoy basic human rights, and which denounces torture and other forms of cruel, inhuman and degrading treatment as "flagrant violations of human rights,"⁸⁶ it stressed the need for continuous and up-to-date information in order to carry out its annual review of developments in that field. In addition it recommended that a group of five of its members should meet not more than five working days prior to each session of the Sub-Commission, in order to analyze the material received concerning the human rights of detained persons and to prepare the Sub-Commission's annual review of developments in this field. The Sub-Commission also invited governments, specialized agencies, regional inter-governmental organizations, the International Police Organization (INTERPOL) and non-governmental organizations into consultative status with the Economic and Social Council to provide any reliably tested information.

World Health Organization (WHO): Prior to the adoption of General Assembly Resolution 3452 (XXX), WHO prepared and submitted an in-depth study to the Fifth United Nations Congress on Prevention of Crime and the Treatment of Offenders on health aspects of avoidable maltreatment of prisoners and detainees.⁸⁷ Annexed

⁸⁴ See U.N. Doc. E/CN.5/536-E/AC.57/30.

⁸⁵ *Id.*

⁸⁶ Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 7 (XXVII).

⁸⁷ See Fifth United States Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF.56/9 (1975).

thereto is a Draft Declaration of Tokyo of the World Medical Association, which contains guidelines for medical doctors concerning torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment. According to the guidelines enunciated therein, a doctor should not countenance, condone, or participate in the practice of torture and other forms of cruel, inhuman or degrading procedure.⁸⁸ Paragraph 6 of the Declaration stated that the World Medical Association would support and should encourage the international community, the national medical associations, and fellow doctors, to support the doctor and his or her family in the face of threats or reprisals resulting from a refusal to condone the use of torture and other cruel, inhuman or degrading treatment or punishment.

Subsequently, in 1976, the Executive Board of WHO adopted a resolution requesting that the Director-General collaborate with other organizations of the United Nations system having responsibilities in this field, as well as the World Medical Association, the Council of International Organization of Medical Services, and other non-governmental organizations concerned, for the purpose of developing codes of medical ethics, including those related to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment.⁸⁹

VI. RECOMMENDATIONS FOR THE ERADICATION OF TORTURE

If the world is to rid itself of the horrors of torture as practiced in Northern Ireland it must move toward a greater implementation of the already existing agreements concerning the eradication of torture.

Resolution, 3452 (XXX), adopting the Declaration on Torture, stands out as a veritable landmark in the struggle of mankind for the achievement of full and unimpeded enjoyment of human rights and fundamental freedoms by all. This Declaration is not at all comparable to the last chapter of an important book, which—after one finishes reading—is shelved and never looked at again. Rather, a declaration of this kind represents the beginning of an entirely new volume, dealing with the application of the norms and principles laid

⁸⁸ See Appendix II, 31 U.N. GAOR, 2 Annex (Agenda Item 74), U.N. Doc. A/31/394 (1976).

⁸⁹ *Id.* Annex I.

down in it Now we must stand ready, in the words of the Netherlands Foreign Minister . . . 'to transform these standards into a living reality; we must move from enunciation to implementation and effective protection.'⁹⁰

In implementing the definition of torture enunciated in Resolution 3452 (XXX), it is necessary to examine the methods of interrogation used in Northern Ireland in light of the torture-stress model proposed. (See Table I). Such an analysis would avoid the obvious fault of the Compton and Parker Reports in failing to account for the effect of systematic debilitation and sensory deprivation which the reports admitted. Biderman's study on coercion provides an exemplary framework to aid in understanding the relationship between relatively "benign" methods of interrogation and the rather serious psychological impairments resulting therefrom.⁹¹

Furthermore, article 3 of Resolution 3452 (XXX) should not be compromised; in accordance with Lord Gardiner's report, torture or ill-treatment is morally unjustifiable. Even under a consequentialist analysis it seems impossible to devise a circumstance where torture could be justified due to the lack of less odious available alternatives of interrogation. In any case, responsive government presumably would not allow economic, social and political discrimination to arise to such proportions that violence must ensue in order for the minority to be heard.

Since the concept of torture incorporates elements of the medical, psychological, and legal disciplines, the United Nations should be applauded for its integral approach to the problem, requesting cooperative efforts of various Union Nations bodies and organizations whose contributions deal with all aspects of the problem. In addition to receiving contributions from within the organizational structure of the United Nations, however, the body should emphasize national implementation of legal standards regarding torture. Non-governmental organizations may also be influential in combating torture, although their methods are limited to:

⁹⁰ Statement by Ambassador Johan Kaufman, Permanent Representative of the Kingdom of the Netherlands Delegation to the United Nations General Assembly (delivered December 1, 1976, in the Third Committee Meeting on U.N. Agenda Item No. 74, "Torture and other Cruel, Inhuman or Degrading Punishment") (copy on file at the offices of the *Case Western Reserve Journal of International Law*).

⁹¹ See Pp. 168-69 *infra*.

- (1) Gathering information about torture and disseminating it to interested parties, including the news media;
- (2) Sending investigators to the countries concerned;
- (3) Sending observers to trials where the issue of torture is likely to be raised by accused;
- (4) Lobbying with those who can influence governments that employ torture, such as other governments or institutions;
- (5) Developing and proposing long-term actions which would strengthen human rights protection and support existing mechanisms such as the European Human Rights Commission.⁹²

Finally, it is incumbent upon the legal profession to speak out against torture, as individuals or as a body when they are aware that methods of interrogation employed by their governments include the use of physical brutality. In some cases, intervention has been proven to be effective, but in others not only have the lawyer's efforts been in vain, but they themselves have had to face the severe consequences of their courageous actions—detention, torture, and even death.⁹³ Since the safety of independent members of the legal profession can thus be threatened, it is the obligations of colleagues in other countries to offer support and solidarity.

As the use of torture is more recently being viewed as an international crime, a violation of human rights which "shocks the conscience of mankind," the possibility of a convention on torture, which would be legally binding among the contracting parties, has been increasing. In fact, the Australian delegation to the Third Committee (Social, Humanitarian and Cultural) of the Economic and Social Council expressed a desire "to see consideration given eventually to the formulation of a convention or treaty to give greater force"⁹⁴ to the principles enunciated in Resolution 3452 (XXX) to protect against the use of torture and other cruel, inhuman or degrading treatment or punishment.

VII. ADDENDUM

In its final disposition of the *Northern Ireland* case, the European Court of Human Rights held that Britain was not guilty of torture, but that suspects had been treated in an inhuman and degrading

⁹² AMNESTY INTERNATIONAL, *supra* note 18, at 77.

⁹³ Amnesty International, *Lawyers Against Torture*, 16 INT'L COMM'N JUR. REV. 29, 30 (1976).

⁹⁴ U.N. Press Release, 31st Sess., 3d Comm., 63rd Meeting (AM), Nov. 30, 1976, U.N. Doc. GA/SCH/2084, at 6.

fashion.⁹⁵ The finding of the court was inconsistent with the opinion of the European Commission of Human Rights, expressing that the combined use in 1971 of the Five Techniques during interrogation amounted to "a practice of inhuman treatment *and* torture"⁹⁶

The court thus posited a novel distinction, distinguishing inhuman and degrading treatment from torture. While such a distinction may be disposed of as merely "semantic,"⁹⁷ it is suggested that in so distinguishing, the term "torture" is reserved for particularly shocking techniques such as those employed by the Chilean regime, and is not to be applied to the less repulsive techniques used in Northern Ireland. Britain could be subjected to sanctions by the court and could, at the same time, politically save face by not being condemned for the use of torture.

The positing of such a distinction finds no support in any of the international covenants or United Nations resolutions. All of the instruments uniformly refer to "torture and other cruel, inhuman or degrading treatment or punishment"⁹⁸ without differentiating as to legality or sanctions.

While it is difficult to assess the import of this decision with reference to the existing international instruments (assuming that such are not reworded to reflect the decision), it is possible to speculate on positive and negative implications.

The European Court of Human Rights and other similar fact-finding bodies may now be less reluctant to find nations guilty of inhuman treatment, as such would not necessarily carry the political consequences of a charge of torture. But this more liberal construction would subject the guilty nation to the same moral and legal castigation under the same United Nations documents as would a charge of torture. Thus, the decision in the *Northern Ireland* case might very well help effectuate the existing instruments, making their application easier.

On the other hand, the decision may be the first in a series which would help to erode the terms "inhuman treatment" and "ill-

⁹⁵ Manchester Guardian (weekly ed.), Jan. 29, 1978, at 5, col. 1.

⁹⁶ Case of Ireland v. the United Kingdom, C77, 17 HUMAN RIGHTS NEWS, Apr. 19, 1977, (European Court of Human Rights) (emphasis added).

⁹⁷ Manchester Guardian (weekly ed.), note 95 *supra*.

⁹⁸ See e.g., International Covenant On Civil And Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) 52-58, U.N. Doc. A/6316 (1966); G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34), U.N. Doc. A/RES/3452 (1976).

treatment" until they become useless as standards of censured techniques of interrogation. Torture would be the only remaining standard of ill-treatment and that would rarely be applied in condemning a nation.

In any case, the impact of the Court's holding in the *Northern Ireland* case awaits clarification in subsequent holdings. Likewise, it remains unclear whether there will be any attempt to undertake the impossible task of re-defining torture and distinguishing it from definitions of "inhuman treatment," "ill-treatment," or "degrading treatment."

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