DOSSIER: *THE PREVENTION OF TORTURE IN SOUTHERN EUROPE*

AN EDITORIAL INTRODUCTION

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The European Convention against Torture is certainly not the only document published by the international community to compel its states to fight and prevent torture in all its forms. The European Convention, as Rod Morgan observes in his essay published in this journal, does not establish new rules for the prevention and fight against torture but strengthens the obligations which have previously been listed in, for example, the European Convention on Human Rights (art. 3).

The European Convention against Torture, however, represents one of the most efficient documents in this area, particularly where it provides for some form of control over abuse committed by States in the form of violence and ill-treatment of prisoners as well as in the raising of public conscience and awareness of prison conditions.

There is no doubt that in this sense the most significant element of the European Convention against Torture really consists in the creation of a Commission for the Prevention of Torture. The Commission's role is two-fold, to regulate the place and form of detention by collaborating with state authorities and mostly by carrying out inspections inside prisons, and to publish reports on visits made by the Commission inside prisons. These reports carry a critical analysis of the situation, advises on how to improve it as well as the replies provided by the governments concerned to the Commission's observations.

The articles published also in this dossier on torture in Southern Europe and written by Marco Mona & Claudine Haenni, Rod Morgan, Renate Kicker, Didier Rouget and Malcolm D Evans strike a balance

from the experience gained by the Commission in all these years. They tend to put the Commission's role and activities into the perspective of the present international situation, characterized by the overtaking of those political and ideological blocs which have divided the world for more than 40 years. A political and ideological division has also influenced the concept of human rights and states' obligations to guarantee such rights.

Today, we are fortunate to find ourselves in a world with an ever increasing demand for the respect of human rights. It is a world increasingly critical of any arrogant manifestation of state sovereignty, without being justified by the protection of the collective interests of the population or, even less, individual needs.

Today, the problem in the fight against torture, is not that of compelling all countries to commit themselves on paper to prevent and fight torture. If one were to think of the conventions against torture which have been ratified at a regional and international level, we have to acknowledge that torture is the most condemned human right violation by the international community. But notwithstanding the solemn commitments by governments, it is probably the most frequent violation. The truth is that most of the states making solemn declarations of principle in this field, often do it with mental reservations as well as guilt complexes, bearing in mind some dark moments in their history in this field. The most arduous task is not how to fight and condemn acts of torture but how to single out and prevent such acts. The act of prevention does not always emerge as the most adequate, also because in most cases it is entrusted only to campaigns planned by non-governmental organizations. These normally prepare a worthy action of sensibilisation and declaration but they are in no position to exercise any state power, imposing, for example, an effective control of suspect or 'at risk' situations.

In this field, it is moreover difficult to overcome the reticence shown by states or their open hostility towards any form of more or less penetrating control at the level of their internal rule. They either deny the facts or they diminish them explaining that it is not a matter of torture but of non-vexatious treatment and justifiable, bearing in mind the need of taking action against dissident political movements and the necessity of defending the state for the sake of peaceful cohabitation.

One also has to consider that torture is the most violated human right because it is the most easy to violate considering that the victim is in a condition of isolation, whereby he or she is not in a position to

pursue his or her rights. And yet the damage incurred by torture in terms of destruction of personality are often irreparable.

International law on torture singles out any fact of physical and mental violence on a prisoner capable of forcing him to change his will and behaviour. Article 1 of the 1984 Convention against Torture says that torture is any pain or suffering inflicted, physically or mentally, to obtain information or confessions.

Torture is condemned in all its forms in the Declaration on the Protection of Persons from Torture and Degrading Treatment approved by the UN General Assembly on December 9, 1975 in the Convention against Torture approved by the UN General Assembly in 1984, and in the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment of 1989, now ratified by 34 states. Torture is defined in the UN Convention of 1984. The international community has no doubts when it comes to singling out those behaviours which aim solely to inflict pain and suffering on human beings. The international community has appeared to be very rigorous in the identification and condemnation of these behaviours. This attitude cannot be belied by an ambiguous claim like, for example, that used by the Landau Commission (nominated by the Israeli government to investigate the practices of the General Security Service) which stated that "moderate physical pressure" should be tolerated.

This is a concept belied by experience which indicates that there are no half measures when it comes to torture.

The most serious problem in the prevention of torture, one should repeat, is how to find out and verify the existence of violent treatment with regard to prisoners.

It is clear that one cannot simply trust the word of individual governments, who will never admit they are resorting to torture to make strong pressures on the prisoner to obtain collaboration or a confession.

No government will ever admit resorting to torture, not even in the face of unequivocal facts and an accusation by public opinion worldwide. Neither would it submit itself to controls (if it knows it has committed violations of rights) in a bid to verify in what conditions prisoners actually live and to what kind of treatment they are subjected.

And on this matter, the international community has to be demanding, particularly because violence on prisoners is not easy to ascertain, even when the accusation is supported by circumstance, bearing in mind the psychological condition of the victim of such violence.

Moreover, moral violence is difficult to confirm because it can be closely related with an "ordinary" form of detention. Obviously it is not enough that the law limits itself to punishing moral violence. The difficult part is knowing how to single it out even when it is exercised through mechanisms which formally respect the law.

One has to exercise an extraordinary type of vigilance which goes beyond a formal respect of the law above all when serious criminal occurrences could induce the authorities to resort to forceful measures in order to come out on top of the situation.

There is no need for exceptional laws or mass physical violence, i.e. a formal clamorous suspension of the rights to reveal the emerging politics of public order founded on "violent use" of the law.

There is a lot of atypical violence which is difficult to single out from afar. And it is very difficult to defend oneself from this type of "new torture".

In the past, the fight was against the "serum of truth" because this induced the prisoner to talk beyond any form of self-control since it reduced his freedom to take decisions.

But without resorting to the "serum of truth", the very fact of being subjected to interrogation *in vinculus*, for example an interrogation conducted with the threat of grave or very grave afflictions if the prisoner does not collaborate, constitutes a form of physical or mental violence which is absolutely illicit.

There is certainly no scarcity of national penal laws which severely punish torture. But these tend to be unused laws and maybe even inapplicable laws. Authorities consenting to or even authorising violence or ill-treatment against prisoners are often also vested with the power of providing for the singling out of such crimes and for the application of punishment.

Moreover, penal rules are hardly efficient rules. They are difficult to apply because the injured party almost never has the possibility to avail himself of them.

It is impossible to prove how much violence has been suffered except when this leaves indelible traces even after a length of time and as such can be pointed out, for example, by persons capable of conducting appropriate inquiries on the violence suffered by prisoners.

These are some of the reasons why the national laws in this field are inefficient. Above all there is a lacking or inconsistent political will by the authorities to impede the setting up of a repressive mechanism directed against the state itself.

The prisoner, even if tortured, is hardly ever in a position to

collaborate with an authority external to the institutional system, which could take the state to a national or international court.

If one excludes the violence carried out or tolerated by individual public officers acting without the explicit authorisation of the political authority or even openly without the authority's backing, there is no doubt that the authority cannot be said not to know of cases of violence or ill-treatment of prisoners.

Usually it knows and tolerates this. So what use can recognised instruments be to the individual prisoner trying to react judicially with regards to the violence he has suffered and to attack the highest authorities?

Could the state sue itself when it is faced with "crimes of state"? In these cases the only possible defence is the appeal made to the international community, the international protest against impunity. It is the judgement of public opinion, the condemnation and the eventual isolation handed down by the international community vis-à-vis the state which violates human rights which could stop "state violence", and not a normal trial entrusted to normal judges of that state.

The judicial process, when it is a matter of reacting to torture, in many cases does not lead anywhere because it is difficult if not impossible to punish those responsible through the ordinary channels of national justice.

Against these difficulties, what can one do to prevent torture and the other forms of violence on prisoners? In the first place, evidence obtained through the exercise of violence should not be admissible in a court of law. If such evidence cannot be used, the recourse to violence would, as a consequence, be discouraged. One has to gaurantee in this field, the rights established under international law to ensure a fair trial. One must also ensure that after an arrest, a *super partes* judicial authority and the defence can immediately enter into the judicial process to avoid the irregular collection of evidence.

The time during which the prisoner is subjected to the control of state police or judicial inquiry has to be somewhat reduced. The right of defence during preliminary investigation should be guaranteed in an efficient manner. It is necessary that the judge is in a position to discover immediately any violations committed by public officers in this phase of the inquiry, bearing in mind that a mutual cover-up by inquiring magistrates and police may occur, both working towards the establishment of the truth and unfortunately, sometimes, towards any truth.

Often, these gaurantees of a fair trial exist only on paper.

To think that inquiring magistrates can unilaterally guarantee the legality of the investigation is a belief nowadays increasingly contradicted by some judicial practices. Only the defence can react to abuses and work to ascertain the responsibility of the authorities practising torture or violent actions leading to a confession.

In these cases one cannot limit oneself to condemning the abuse committed by administrative officials physically responsible for the treatment. One cannot believe that they act autonomously. Just as the eventual execution of an unjust order does not render the executor not responsible for the crimes committed, the apparent autonomous inhuman treatment perpetrated by an administrative official does not exonerate his superiors from responsibility or the same magistrate who is duty bound to supervise treatment practiced on the prisoner and maybe has not done it. In this field, the duty to obey cannot be invoked as an exemption from crime. On this there is widespread consensus. Even on this point, the UN Convention against Torture should have been more explicit.

The fact is that it is difficult to place clear boundaries between those forms of investigative pressures which, although conditioning the prisoner's will are not torture, and other forms of pressure which even without resorting to the use of physical violence constitute a mental violence capable of destroying the personality of the prisoner and which should be treated in the same manner of torture.

In this field there are prejudices which have to be faced and overcome because it is a matter of discussion of the legality of the penal process. When one speaks of degrading treatment, one is mostly preoccupied with the phase of execution of the suffering, of the way of life of the prisoner.

But torture normally falls into another phase of the trial (when there is a trial) which is that of the preliminary investigation. Torture can constitute an inadmissible shortcut to acquire evidence in any way, such that a trial may take place.

If the fundamental rights are going to be guaranteed to the prisoner at the end of his trial and after judgement has been given, one cannot believe that these rights cannot be violated during the trial.

The principle of a fair trial in the first place imposes the regular collection of evidence and the correct conduction of the preliminary inquiry. This may be achieved through the observance of two fundamental principles: the judge who has to evaluate the evidence should be in reality a third party, and it is necessary to guarantee the absolute equality of the parties.

Today we are accustomed to considering torture as an abuse which matures, or in the undemocratic context, within which the rules of the relationship between authority and freedom are *in toto* upset, or even as a reply by democratic countries to a serious internal threat which risks upsetting the state. One thinks about the phenomenon of terrorism, above all about the terrorism carried out by military or paramilitary organisations which can count on a strong and diffused social presence (eg. ETA, IRA, PLO in Israeli occupied territory).

There can be different forms of violence practiced by the state, for example when it is a matter of fighting criminal phenomena having no political value. One may not resort to classic torture or to a formal suspension of rights, but seek to cope with an emergency, for example, with the creation of special tribunals or the enactment of special laws which introduce severe exceptions to the normal forms of the trial.

It may also happen, though, that the forms of trial and detention could remain normal on paper but when put into practice can give rise to proper abuses with the aim of exerting strong mental pressure on the prisoner.

From this point of view, one may mention pressure exerted on a prisoner through preventive custody without a valid reason, or prolonged custody, as happens in the case when as soon as the legal limits for detention lapse, the charge is changed and the prisoner is detained for another term.

One can also recall imprisonment lasting only a few hours, the time necessary to obtain a confession, and which is therefore not justified for cautionary reasons. But one has to think also of the manipulation of evidence or of the accusations of complicity made solely on the suggestion of the investigator to support precise investigative strategies.

With reference to detention, one should also think of prisoners transported from one place to another in inhuman conditions totally without justification, humiliating body inspections or forms of detention which can put at risk the safety of the prisoner (prisoners detained in the same cell with violent prisoners or prisoners from whom they fear retribution or sick prisoners) or the refusal of necessary treatment for the sick prisoner.

There are then situations in which the prison can reveal itself to be incompatible with the personality and conditions of the prisoner. There is no doubt that some treatments may not amount strictly to torture but tend to, like torture, condition deeply the freedom of will

of the prisoner, thus being totally incompatible with that safeguard of the human dignity which is to be respected in every person.

It should be clear that the sphere of personal liberty of the prisoner cannot be subject to an ulterior restriction, for example, with totally unjustified violence. It is true that the concept of torture is somewhat flexible, but there is no doubt that the violent use of prisons, whether on the basis of a 'violent' application of the law or whether for the purpose of the trial for political aims, for example, the use of detention, particularly preventive custody without valid reason, violate defined rules established under international conventions.

We are here not referring merely to the principle of rendering punishment more humane but that of a fair trial and fair preventive custody (justified by specific trial necessities), equality of arms, the presumption of innocence, the right to confrontation and the right to defense.

In this field, it is not necessary to invoke the rules which prohibit torture. An ad hoc norm which could apply to this phenomenon can be the one found under art. 10 of the international Covenant on Civil and Political Rights.

In the Covenant, torture is prohibited under art. 7, but under art. 10 it is stated that all persons deprived of liberty should be treated humanely and with respect to their human dignity. It is often the case that there is no torture but that the treatment does not conform to article 10.

The "violent treatment", even if it does not reach the intenstiy of torture, has the identical aim of destroying the personality of the prisoner, i.e. to force him to accept a truth imposed by the authorities. It is certainly easier to prove a violation of art. 10 of the Covenant than a violation of art. 7.

In the same way, it is undeniable that art. 10 is closely bound with the respect of art. 7. Such situations, that is of violence other than torture, but which like torture end in the obtaining of confessions, collaborations and repentance, have occurred in the most civilised and democratic countries where the control exercised by the mass media and public opinion is strong, and where the culture of rights is widespread.

The hampering of the penal process cannot be justified by any exceptional situation of public order or by any situation of criminal emergency. The violent use of investigation is perfectly identical to classic torture aimed at acquiring evidence. Spanish public opinion for example, demands transparency with reference to methods used in the fight against terrorism and the same doubts were occasionally

raised in Great Britain with reference to the treatment reserved for IRA terrorists. Similar doubts were raised in the 70s in countries where terrorism had not taken root within the masses, like in some Spanish territories (Basque countries) and in England (North Ireland) but had shown themselves capable of hitting at the pillars of the social and institutional system (Germany).

The question posed in these cases is always the same: what are the legal limits of the penal investigation? And above all, how can one ascertain that these limits have been exceeded even if one has acted in conformity with the law?

We retain that there are some elements that could reveal the existence of irregularities in a trial, capable of leading to a systematic violation of rights, especially in the case of the citizen detained while awaiting judgement.

When one takes recourse to a special trial, a special tribunal and special laws to face particular criminal emergencies, this is the most clear sign of the abuse of a trial. In this case the trial is not the arena of ascertainment of the truth, but an instrument of violent actions against individuals.

When the legal culture tolerates deep changes to the system of individual rights it is then fatal that the administration, the public officer, interprets this in his own way and resorts to very violent ways of repressing the criminal, feeling in a way justified because of the social and political climate, and the derogations introduced in the juridical system by "exceptional laws".

The justification of the illegal investigation in this environment is not different to the justification which is often given to torture as an instrument with which the state defends itself. Those who have often justified torture have brought at stake the need of the contemporary state to adopt severe mechanisms in its defence. It was maintained that the state has too much power, but is very vulnerable to its enemies whether internal or external enemies and as a consequence social order can be easily disintegrated.

There is a precise relationship between the fairness of the trial and the preliminary inquiry and the respect of the prisoner as a human being and his rights (above all, in the case of prisoners awaiting trial). To prevent and fight torture, one has to have precise knowledge of every fact relative to the detention or an accurate inquiry into indications which might reveal the existence of violent treatment on prisoners.

A democratic regime is normally difficult to attack on this matter, because it can count on the force of consensus of the public opinion.

But it is even more difficult to attack such a regime when there are signs that trial violations have occurred, such as the application of a form of moral pressure for the ascertainment of truth which is prohibited by international conventions. In summary, every democratic regime is considered to be beyond suspicion until the contrary is proven.

It does not seem to us that up to now there have been appreciative results obtained by the organisations delegated by the international community from time to time to investigate and refer to it on violations of human rights outside Europe. And when they produced some kind of result, one must understand that this was due, above all, to the extraordinary mobilisation of the global public opinion (as in the case of the Argentinian desparecidos).

One thing is certain. In order to prevent torture, strong legal controls on the behaviour of States, even of the ones which are most democratic, like the European states, are needed. Such controls are needed on a universal level for the adequate prevention of torture. For years the addition of a Protocol to the UN Convention against Torture or the enactment of a separate Convention to organise a system of visits in prisons on a universal level (Costa Rica Protocol) have been discussed. In this context, one has to move from abstract ideas to actual political decisions.

In particular this involves the implementation of the European model at the universal level.

The European Convention for the protection of human rights is the only one amongst the many international agreements on the subject, which has effective machinery to guarantee the rights of prisoners through the Commission and the European Court, even if it only dedicates a single article – Art. 3 – specifically to them. Nonetheless the attention which up to now has been dedicated by this organ to the phenomena herein considered is still marginal.

The number of petitions presented by single individuals to the Court in Strasbourg have not been many but this may also be due to the access mechanism to the Court. Yet the Commission, even if it has not been involved in the rights of prisoners to be reinstated in society, has adopted a series of decisions which affect the daily life of prisoners, especially prison rules and the use of force against prisoners. The results of such work are modest, also due to the absence of supervisory instruments available to the Commission, as can be seen from the activity of the Commission and the Court.

However not all the difficulties in the protection of the prisoners'

rights emanate from the system of the Convention. The rules in the Convention are in fact often neglected on a national level.

Nonetheless, they are not abstract rules but rules which should find immediate application. In this sense, the Italian *Corte di Cassazione* has been clear in judgement no. 6978 given on 14 July 1982. In this judgement it is held that the rules of the European Convention on fundamental human rights have immediate application, and should be concretely valued for their effect on other laws in consequence to their inclusion in the Italian legal system.

This judgement is particularly important because it singles out the right to a fair trial as a guarantee of the protection of fundamental human rights.

Judgement 6978 says: "the principles and rights specifically safeguarded under Article 6 of the Convention are the frame-work according to which one can determine whether a fair trial subsists or not". This means that the Court should not avail itself only of the rules of the Convention, in so far as they are on an equal level with those of the internal legal regime, but it can, or rather it should, consider them as interpretative instruments for the same internal legal regime.

In this way, the European rules are to be considered as 'a magnifying lens' for the interpretation of the rules of the national legal order.

In summary, in a contrast between a protective norm of fundamental human rights and a norm of the Italian national law, it is the former which should prevail.

No special law, nor any special tribunal, can derogate that minimum standard of protection of fundamental human rights established through many conventions by the international community in order to gradually widen and improve the protection of fundamental human rights.

With the end of the Cold War, the internal situation in many States is far from stable or peaceful. The same can be said about the international situation. The new conflicts do not only affect the impoverished world but also the developed societies. These are conflicts which give rise to all sorts of violence and sustain very strong and diffused resentment.

The truth is that the contradictions caused by unfair development on a global level are reflected in a dramatic way in the reality of many developed societies with strong democratic traditions. The society of tomorrow will be more multi-racial, especially in Europe and also in other developed parts of the world and this will create

new conflicts which were still unknown up to yesterday. What is needed are strong social policies which can face such conflicts. However up to now these tensions are only entrusted to policies of public order, that is, by making refugees, illegal immigrants and some "ideological enemies" appear as criminals. This will be the new internal conflict, the "new civil war". However, the State cannot defend itself by recurring to violence.

It is clear that these people are now at risk, not only risking violence by private individuals but also by States.

Faced with this new conflict and of the possible violence which could be committed by a State, the Commission for the Prevention of Torture (CPT) does not have the necessary instruments to intervene.

This is the inevitable limit of all the activities undertaken by the CPT. Yet this limit can be explained, considering the nature of such an organ and its origins. This is due to the fact that it does not operate in a mechanism of juridical repression which is able to react to the violation of fundamental human rights, with the aim of punishing those responsible for such violations. On the contrary it forms part of a preventive mechanism (in this context one may refer to the article of Renate Kicker, also in this dossier) which caters for particular risk situations, particularly in prisons.

In any case, visits and reports are only made occasionally: there is no permanent supervision, and neither can there be one.

Thus the Commission operates on the basis of a fiduciary and cooperative relationship with all the states parties thereto, which receive the visits of the Commission. Such states are, or rather should be supportive of the "supervisory" work of the Commission and are meant to carry out the advise given.

This collaboration is only easy, or rather easier by states which do not have any reason to fear supervision by the Commission. On the other hand, cooperation is difficult or almost impossible when the Commission feels that a particular state is not in line with the Convention or can even be covering up for perpetrators of crimes against prisoners.

Perhaps in this sense, it is ideal that governments are not the only institutional partners of the Commission. If it is suspected that a government is "the opposing party" of the Commission, is subject to its investigations or even accused by it, it is unwise to request collaboration from the same state. In such circumstances, it would be appropriate if the Commission's reports are given the widest circulation possible, not only on the social level or at the level of

experts of humanitarian law, as is already the case, but also at the institutional levels.

For instance, it could be in the interest of the Opposition Party to be aware of any liabilities and shortcomings of the Government on custodial policies and perhaps link such facts in its political strife against the Government. Doubtlessly, the handing over of the CPT reports not only to the Government but also to exponents of the Opposition as well as to parliamentary leaders of other minority groups, could strengthen not only the supervisory activities of the Commission but also help in the search for adequate solutions, particularly in countries whose governments are traditionally known to be negligent in this field.

After all, the Commission must try to reach with every possible means and within the sphere of powers granted to it, the practical results for which it was originally set up. It is necessary that in its relations with governments, the Commission makes clear the contested subject, even if this is detrimental to the harmonious diplomatic relationship between the two. There can be situations in which the state does not collaborate with the Commission by not allowing visits to places which the Commission may want to inspect, or because of such visits, the state transfers the prisoners to places which are less "conventional" than prisons. It may also happen that the state fails to respond to remarks made by the Commission, shows no reaction to its objections or even worse, does not take any heed of any proposed measures. In such cases, the responsible state is usually reproached by the international community and made subject to the pressures of public opinion and the mass media, but this is where it all ends. Indeed this can be said to be a modest and out of date result.

On the other hand today it appears possible to go beyond the present powers of the CPT, in order to organise activities for the prevention and repression of torture on a different basis, and to fit the Commission's role and work as part of a mechanism which is able to convince states to respect the laws.

It has already been explained that if torture and ill-treatment of prisoners are not an expression of "sadism of a state" or the will to anticipate or aggravate the punishment of dissidents, but is a type of a violent short-cut aimed to obtain the collaboration of the prisoner and thus strengthen the investigative and repressive activities of the state, there is no doubt that in a democratic state one must be on the look-out so that such an objective is not attained. There is no need for new regulations. It is enough to re-read the rules found in

the Covenant on Civil and Political Rights and insist on their application.

The control of trials so as to guarantee a 'fair trial' in every case and the blaming of states which do not guarantee such a right constitute some form of deterrence against the use of torture as an instrument exceptionally useful mostly in preventive custody (refer to the article by Mona & Haenni) to do away with the prisoner's resistance.

However one must go beyond this because it is necessary to punish those responsible for torture and ill-treatment of prisoners. This does not only ensure the proper use of justice whereby the guilty are punished, but also serves as an admonition to the public authorities that that violence cannot remain unpunished.

In this field, if one goes beyond the periodical visits in prisons and the publication of reports thereupon, there is no doubt that the CPT can become the connection link in an articulated and informative system based mostly on non-governmental organisations, capable of controlling daily life in prisons and establishing dialogue with the national public opinions.

In future, the role of the CPT might reveal itself to be essential not only in the field of prevention but also in the area of repression: the punishment of those responsible for torture and ill-treatment constitutes one of the main instruments to prevent the repetition thereof.

It is not with amnesties that the past is cancelled, in the hope that it does not repeat itself.

What is needed is an act of justice: it is necessary that those responsible are singled out and punished. The truth of the facts must be established in order to answer to the victims' demand for justice. It is also necessary to indemnify the physical and mental damages suffered by the victims. In short, it is necessary that the system of the European Convention, which is a system for the prevention of crimes, forms part of an international judicial system responsible for these crimes.

It is in this respect that the Convention should be complementary.

Through visits, *notitiae criminis* can be acquired. Reports can mobilise the international public opinion, satisfying the demands for justice. But it is necessary to determine the responsibility of such crimes and to punish the guilty.

The system envisaged by the Convention against Torture should be extended to other regions. There is the idea of creating a "supervisory" institution, similar to the Committee of the European

Convention, even for the UN Convention. The APT is fighting for this.

In the last years there is no doubt that extensive progress has been made in the protection of fundamental human rights. Two ad hoc tribunals have been set up to deal with cases of international crimes. One of the tribunals deals with ordinary crimes in European states. However such crimes should be permanently dealt with by an international court having universal jurisdiction, capable of punishing not collective and "abstract" responsibility but individual responsibility.

Torture and ill-treatment constitute serious violations of human rights, apart from the fact that their serious character can make them look like crimes, international or otherwise. These are illegalities which can occur even outside a situtation of an international armed conflict or even of an internal conflict but still it is not only the particular political context or the character of the crimes which reduces or amplifies the seriousness thereof. For instance, the situations brought to light by the activities of the two ad hoc tribunals for the former Yugoslavia and Rwanda should help us reflect on this matter.

The Statute of the Tribunal for Rwanda defines the "serious violations of humanitarian international law" in which the Tribunal can exercise its jurisdiction according to art. 2,3 and 4. What is surprising is that amongst such violations, art. 4 includes not only those found in art. 3 common to the Geneva Conventions of 12 August 1949 for the Protection of Victims of War, but also those of the Additional Protocol II of 8 June 1977 relating to the Protection of Victims of non-international armed conflicts. The same reference to Protocol II is not found in the Statute of the Tribunal for the former Yugoslavia.

Up to then, such violations were not considered "crimes" in terms of international humanitarian law. In a way, with such a choice, the Statute of the Tribunal for Rwanda indicates a prospect of great political importance: the handling of the most significant violations of human rights and not only violations of humanitarian law, such as violations of international law.

The Tribunal for the former Yugoslavia is also following this road. With reference to the decision taken by the Appeals Chamber in October 1995 in the famous Tadic case, amongst other things, it was explained that the violations of Art. 3 and of Protocol II bring about individual penal responsibility and that customary international law imposes criminal liability for such violations, regardless of whether

they were incurred within an internal or an international armed conflict.

This is a clamorous development in international law, having great political significance. Surely, one can note that there is a great difference between internal conflicts which may have often thrown into crisis even the major State institutions and mechanisms, and the situations which a system for the prevention of torture, like the European Convention which is based on a relationship of cooperation and trust between the Commission and the States, has to face. In any case, when conflicts give rise to violence, the mechanisms for the protection of human rights should be operational. It is not really the formal definition of the conflict (whether it is an internal or an international conflict, a violent form of a political struggle, or a claim for power for the self-determination of a nation) which can set off the mechanism for the protection of fundamental human rights in the face of abuses and violations committed also by the state, but rather the fact that there are the violations of human rights which remain unpunished because the State cannot or does not want to defend them, and because such violations are relevant in the international sphere.

Therefore it is necessary to determine the responsibilities of the perpetrators thereof and to punish the guilty, indeed to prevent further violations. It is the breach of human rights beyond any realpolitik – which causes such violations – that should, in a world which finally aims for a more orderly system, always lead to the trial and the punishment of the individuals found responsible for such violations.

Conclusions

It appears to us that the CPT in these years has sought to be an efficient instrument in the fight against torture in an international situation characterised by a lot of attention to what was happening within the States, in particular in the way the penal repressive mechanism was functioning.

Today, the situation at the international level is changing, and revolutionary innovations in this field are verifying themselves, provoking convincing and diffusing consensus of public opinion.

It is enough to think of the creation of the two ad hoc international tribunals and the work being done to launch negotiations between states for the creation of a permanent international Criminal Court

by 1998. The Committee must revise its international role within this new reality.

It is promising that a committee similar to the European one has to be created with the same duties with respect to the UN Commission against Torture. The Association for the Prevention of Torture (APT) is also committed for an Optional Protocol to the UN Convention. It is also promising that the CPT has a different institutional role and more incisive powers.

The committee can be not only an organ of supervision and reporting of some of the most serious violations of human rights, which up to now are still being committed, but an organ of 'action', hastening the activity of the future permanent tribunal considering that the *notitiae criminis* which the committee is able to collect and elaborate are among the most numerous and documented which can be collected.

The committee, in this sense, can represent in Europe, at least until there is a universal institution with the duties of the European Committee (Costa Rica Protocol) the centre point of a network of public and private institutions which control prisoners' conditions of life everywhere and denounce the most frequent abuses of repressive power exercised by the States.

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