

The worst scars are in the mind: psychological torture

Hernán Reyes*

Dr Hernán Reyes, MD, of the ICRC's Assistance Division, is a specialist on medical aspects of detention and has visited numerous detention centres around the world.

Abstract

Torture during interrogation often includes methods that do not physically assault the body or cause actual physical pain – and yet entail severe psychological pain and suffering and profoundly disrupt the senses and personality. Solitary confinement and prolonged sleep deprivation are just two examples of these psychological torture methods. Even psychological methods which do not amount to ill-treatment when considered in isolation, amount to inhuman or degrading treatment or torture, when applied in conjunction with other techniques, cumulatively and/or over a long time. Often they are part and parcel of the whole torture process and constitute a “background environment” of harassment and duress. The “cumulation over time” factor must thus be considered as part of a system of psychological torture.

: : : : : :

Interrogators often – sadly – take pride in the fact that they do not resort to “crude physical methods” in their work, but rely only on psychological “methods”,¹ which they do not consider as torture. This calls for a discussion on what exactly is meant by the term “psychological torture”. The following pages will examine what constitutes torture per se and, in particular, whether psychological methods used during interrogation can produce effects, mental or physical, that amount to torture.

Torture may occur during detention, with the aim of punishing or degrading and humiliating a person.² This article will, however, focus only on torture applied during interrogations with the aim of extracting information.

* The author would like to thank Jonathan Beynon, MD, Co-ordinator for Health in Detention of the ICRC's Health Unit, for his valuable comments on the various drafts of this article. The article reflects the views of the author alone and not necessarily those of the ICRC.

During interrogations, psychological methods are used specifically with the aim of “softening up” and thus breaking detainees’ resistance so as to make them “talk”. Their use often results from a state policy authorizing them either directly or indirectly, in the latter case by “condoning” them.

From the outset, it should be stressed that interrogations as such, so long as the methods used respect the rule of law, are legitimate. These methods have been described elsewhere,³ and include different forms of interrogation techniques and the use of psychological ploys. The challenge is thus to determine which methods are legitimate and which are illegal, causing pain and suffering that fall into the category of “cruel and inhuman or degrading treatment” or torture. Some of the methods used are physical methods, acting on the body and generally producing pain; others are psychological, that is, non-physical, and act on the mind. Some methods are recognized forms of torture; others – which also may produce pain and suffering, but to a lesser degree – may not “qualify” as torture according to the definition. Yet other “non-physical” methods may appear to be “minor” or even innocuous when taken separately one by one. This paper will attempt to explore the use of non-physical methods, and will consider whether and when their use can amount to torture according to the established definition. It will in particular look into whether the use of such “minor” and apparently innocuous methods, when applied repeatedly, either singly or in combination and over a period of time, can also amount to cruel, inhuman and degrading treatment, or even torture.

On the legal definition of torture

Defining exactly what torture means seems to be as complex as defining what shocks the conscience in the case of pornography. A US Supreme Court Justice once said with regard to the definition of pornography,

I shall not today attempt further to define the kinds of material I understand to be embraced [by the term pornography] ... but I know it when I see it!⁴

There is nevertheless a universally accepted definition of torture today, namely the one contained in the 1984 UN Convention against Torture (CAT),

- 1 This acknowledgment was made to the author on several occasions by detaining authorities, in different contexts, during ICRC visits to prisoners during the last two decades.
- 2 In the case of Raquel Marti de Mejia (*Raquel Martín de Mejía v. Perú*, Caso 10.970 Informe No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 168, 1996), the Inter-American Court of Human Rights stressed that the “purpose” element can include punishment or humiliating and intimidating the person. It is not restricted to extracting information from a detainee.
- 3 Legitimate “psychological methods of interrogation “go beyond the scope of this paper, but the most well-known ones can be listed here: “fear up”; “pride and ego”; “futility”; “we know all”; “good cop/bad cop”; silent questioning and others. See *Field Manual* (FM) 34–52, Intelligence Interrogation, US Department of the Army, Washington DC, 28 September, 1992, Chapter 3, “Approach phase and questioning phase”, 3–10 and 3–20. Available at www.fas.org/irp/doddir/army/fm34-52.pdf (last visited 9 October 2007). See also Raúl Tomás Escobar, *El interrogatorio en la investigación criminal*, Editorial Universidad, Buenos Aires, 1989, pp. 312–30.
- 4 Justice Potter Stewart trying to explain “hard-core” pornography, or what is obscene. *Jacobellis v. Ohio*, 378 US, 184 (1964), Appeal from the Supreme Court of Ohio (in footnote 11), available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=378&invol=184> (last visited 8 October 2007).

which defines as torture any act that consists of the intentional infliction of “severe pain or suffering, whether physical or mental”, involving a public official and carried out for a specific purpose.⁵ The Inter-American Convention to Prevent and Punish Torture has a broader definition of torture,⁶ which does not have to include the infliction of severe pain and suffering. In international humanitarian law (IHL), torture does not have to be inflicted by or with the acquiescence of a public official, but can be perpetrated by any individual.

Despite these various interpretations, when it comes to defining “torture” the main elements remain those laid down in the CAT. An important characteristic of this Convention is that it introduces a significant difference between the term “torture” and “other acts of cruel, inhuman or degrading treatment or punishment” (CIDT): it bans torture completely and absolutely (Art. 2),⁷ while imposing on states “only” the obligation to “undertake to prevent” cruel, inhuman or degrading treatment (Art. 16). States have used this to argue that while torture is forbidden, cruel, inhuman or degrading treatment may be justified under exceptional circumstances. If such treatment is to be allowed in certain circumstances, but not torture, the differentiation between these two notions becomes important.

Other legal instruments, however, do not differentiate between the two terms. The International Covenant on Civil and Political Rights (ICCPR), for example, prohibits in absolute terms both torture and inhuman or degrading treatment.⁸ The same is true of the European Convention on Human Rights (ECHR).⁹ International humanitarian law equally forbids torture (whether physical or mental) and cruel, humiliating or degrading treatment, as well as any form of physical or moral coercion.¹⁰

In the practical application of the provisions, the European Court of Human Rights has distinguished between torture and “cruel, inhuman or

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

6 The Inter-American Convention to Prevent and Punish Torture defines torture in Article 2 as “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”

7 Article 2 (2) of the CAT states that “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

8 ICCPR, Articles 4 and 7.

9 European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3: “No one shall be subjected to torture or inhuman or degrading treatment or punishment.”

10 See Article 3 common to all four Geneva Conventions of 1949, and Article 17 of the Third Geneva Convention of 1949 relative to the treatment of prisoners of war.

degrading treatment” by attaching a “special stigma” and “particular intensity and cruelty” to torture.¹¹ In the early case of *Ireland v. UK*, methods such as hooding, sleep deprivation, wall-standing and constant noise were considered *not* to amount to torture.¹² Conversely, in the discussion whether similar methods used by the Israeli General Security Service for interrogating suspected Palestinian terrorists in the late 1980s and 1990s amounted to torture, the UN Committee against Torture and the Special Rapporteur on Torture found that these methods *did* constitute torture.¹³

In more general terms, it is possible to differentiate between the two notions by referring to the UN Declaration of 1975, which defines torture as an “aggravated form of cruel, inhuman or degrading treatment”.¹⁴ Torture thus implies the infliction of more severe suffering or pain – arguably a very subjective concept.

The definition of torture, as opposed to cruel, inhuman or degrading treatment, is thus not very clear and a constant issue of debate. An interpretation in good faith of the relevant human rights instruments, however, makes the differentiation between these notions legally irrelevant, as the intention was to prohibit *both* torture *and* inhuman or degrading treatment, and not to allow states to circumvent the absolute prohibition of torture by classifying methods as cruel, inhuman or degrading, rather than as “torture”.

Defining psychological torture

The term “psychological torture” can relate to two different aspects of the same entity. On the one hand, it can designate *methods* – that is in this case the use of “non-physical” methods. While “physical methods” of torture can be more or less self-evident, such as thumbscrews, flogging, application of electric current to the body and other similar techniques, “non-physical” means a method that does not hurt, maim or even touch the body, but touches the mind instead. Just as readily recognizable as methods of torture in this category are prolonged sleep deprivation, total sensory deprivation or having to witness the torture of family members, to cite only three examples. On the other hand, the term “psychological torture” can also be taken to designate the psychological *effects* (as opposed to

11 *Ireland v. United Kingdom*, App. No. 5310/71, ECtHR, Strasbourg, 18 January 1978, para. 167.

12 *Ibid.*, para. 168. However, the Commission on Human Rights, through which cases had to pass before submission to the Court, had found that the acts did constitute torture, a position which many would support today.

13 Israeli Information Centre for Human Rights in the Occupied Territories (B’Tselem), “Legislation allowing the use of physical force and mental coercion in interrogations by the General Security Service”, Position Paper, January 2000, available at www.btselem.org/Download/200001_Torture_Position_Paper_Eng.doc (last visited 15 October 2007).

14 This UN Declaration does not clearly define such treatment, except for this comparison to torture. See UN Declaration on the Protection of all Persons from being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 3452, available at www.unhcr.ch/html/menu3/b/h_comp38.htm (last visited 7 October 2007).

physical ones) of torture in general – torture “in general” meaning the use of either physical or psychological methods, or both. There is sometimes a tendency to merge these two separate concepts into one, which leads to confusion, between methods (or “input”, as it were) and effects (or “output”). This confusion has led some authorities to deny the very existence of “psychological torture” as a separate entity.

It has been stated that it can be difficult to define torture in general. It is even harder to define “psychological torture”. As has been seen, the definition of torture is firmly based on “severe pain and suffering”. The fact that this notion is qualified as being both “physical and mental” is a recognition that both aspects go together. Physical torture produces both physical and mental suffering; the same applies to psychological torture. It therefore becomes difficult to isolate psychological torture per se as a separate entity and define its different features.

A report by Physicians for Human Rights (PHR) in 2005 broke new ground by providing a definition of the term “psychological torture”, based on the interpretation formulated in the United States Code (USC) – the codification of the general and permanent laws of the United States – of the prohibition of torture.¹⁵ The Code’s interpretation refers to

“severe mental pain or suffering” caused by the threat of, or actual, administration of “procedures calculated to disrupt profoundly the senses or personality”.¹⁶

Here the effects that will qualify as torture are clearly defined. If the methods used during interrogations – in this case, what PHR calls “psychologically coercive tactics” – produce the said effects, then those psychological methods do indeed qualify as constituting “psychological torture”. They are used to break down any will prisoners may have to resist interrogators’ demands, and are discussed in detail further on.

Similar to the definition of torture in the CAT, this definition requires a measurement of the gravity of suffering, as the methods must be calculated to disrupt “profoundly” the senses or the personality, and the effects they produce must be “severe” mental pain or suffering. The difficulties linked to measuring mental pain and suffering now need to be considered.

15 Federal Criminal Anti-Torture Statute, 18 USC, Section 2340: “(1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control; (2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality;” available at http://caselaw.lp.findlaw.com/casecode/uscodes/18/parts/i/chapters/113c/sections/section_2340.html (last visited 15 October 2007).

16 *Break Them Down*, Report by Physicians for Human Rights (hereinafter PHR Report), Washington, D.C., 2005.

Measuring mental pain and suffering

The threshold that must be reached for acts to amount to torture is, as mentioned above, the causing of severe pain and suffering. The Convention against Torture explicitly prohibits the infliction of severe physical or mental (or psychological) suffering. *Physical* forms of pain and suffering are more readily understood than *psychological* forms, although physical suffering may also be hard to quantify and measure objectively – defining severe pain and suffering involves an assessment of gravity that is difficult to make, as these notions are highly subjective and may depend on a variety of factors, such as the age, gender, health, education, cultural background or religious conviction of the victim.¹⁷ How should the distinction be drawn between different levels of pain: mild, moderate, substantial, severe, intense, extreme, unbearable, intolerable, excruciating, agonizing ...? – And the list could go on ...

An objective assessment of psychological suffering is especially difficult. Sir Nigel Rodley, former UN Special Rapporteur on Torture and one of the leading experts on the subject, has stated,

[T]he notion of “intensity of suffering” is not susceptible of precise gradation, and in the case of mainly mental as opposed to physical suffering, there may be an aura of uncertainty as to how ... [to assess] the matter in any individual case.¹⁸

This aura of uncertainty is problematic, as it has been used to exclude certain treatment from being qualified as torture. As far as physical pain and suffering are concerned, it is perhaps useful to recall that the debate has at times gone well off track. In Jay Bybee’s famous (some would say “infamous”) memorandum (Bybee memo) of 2002, which sought to qualify the definition of torture for purposes internal to the US government, the severity of pain or suffering necessary for any method of interrogation to “qualify” as a form of torture had to be of a “high level of intensity”.¹⁹

With regard to physical suffering, the author of the memorandum defined “severe” as having to

17 See Cordula Droegge, “In truth the leitmotiv: the prohibition of torture and other forms of ill-treatment in international humanitarian law”, in this issue, pp. 515–541.

18 Report of the Human Rights Committee, GAOR, 37th Session, Supplement No. 40 (1982), Annex V, General Comment, 7(16), para 2.

19 Memorandum from Jay. S. Bybee, Assistant Attorney General for the Office of Legal Council at the US Department of Justice, to Alberto Gonzales, Counsel to the President (1 August 2002), in Karen Greenberg and Joshua Dratel (eds.), *The Torture Papers*, Cambridge University Press, Cambridge, 2005, pp. 172–218. It should be noted that debates internal to the US government that began with the issuing of “Internal Memos” by the Office of Legal Council (OLC) have come to light, mainly in the aftermath of well-publicized scandals, such as the graphic ill-treatment of detainees at Abu Ghraib. Such openness in discussing the inner reasonings behind the development and wielding of certain methods of interrogation in the interest of national security is certainly not present in most countries. Many other governments would undoubtedly have a great deal to “contribute” to these arguments, either in the light of what they have done or condoned in the past, or what they may be doing at the present time, but do not “share” their lines of reasoning thus openly.

rise to a ... level that would ordinarily be associated with a sufficiently serious condition or injury such as death, organ failure or serious impairment of bodily functions.²⁰

The reasoning that pain, in order to qualify as “severe”, has to produce permanent damage and impairment may be valid for insurance compensation.²¹ But it is most certainly flawed for any definition of torture, for which there is no requirement that the pain and suffering be long-lasting, let alone permanent. The use of domestic legislation for assessing insurance claims has no bearing whatsoever on the interpretation of international law prohibiting torture. Suffering from illness and suffering from torture are two completely different things. Besides being flawed, the threshold proposed for physical pain is also extremely high and does not take into account mental suffering.

With reference to psychological torture, another most extraordinary condition was proposed in the same Bybee memo,²² suggesting that in order to constitute “severe mental pain or suffering” there had to be “prolonged mental harm”, “of substantial duration”, “lasting months or even years”. This meant that any objective qualification of psychological suffering had to be proven to be long-lasting. The ICRC visits prisoners around the world, and encounters many who are still under interrogation in situations where torture is being used. According to the above interpretation, any meaningful assessment of “prolonged” damage would thus have to be done months or years after the fact, which would defeat the very purpose of qualifying a situation of ongoing torture as such.

Post-traumatic stress disorder (PTSD)²³ found in prisoners subjected to coercive interrogations would certainly qualify as “significant” psychological harm of “significant” duration. This diagnosis, however, can only be made if the symptoms have been present for more than one month and requires suitable conditions and sufficient time for interviewing the person. These optimum conditions are very difficult to secure whilst prisoners are still in custody, all the more so if they are still under interrogation and are thus being subjected to ongoing stress! Acts deliberately causing PTSD thus might qualify under the Bybee memo as torture, but that qualification would require waiting for a proper assessment several months or years down the line to determine what was happening to prisoners not yet released at the time such acts were perpetrated. This not only constitutes an unnecessary barrier to the classification of certain

20 Ibid., p. 176.

21 Ibid., p. 176. The memorandum specifically mentions that “the phrase severe pain applies in statutes defining an emergency medical condition for the purpose of providing health benefits”.

22 Ibid., pp. 195 ff.

23 The discussion of whether torture produces PTSD is a complex one and goes well beyond the scope of this paper. PTSD as originally defined was meant to apply to extreme situations, in fact “near-death” situations, which resulted in serious psychological trauma to the victims. This would for example be the case of someone who survived an air crash, or who narrowly survived dying in a fire. The common denominator differentiating these “near-death” situations from torture is that torture is “man-made” and intentional. The PTSD-like effects after torture are consequently different. The debate among specialists today has, however, largely blurred this distinction.

psychological effects as amounting to torture, but defeats the very goal of any psychological evaluation for the purpose of rehabilitation.

In the following description of what has been called “input” (psychological methods of torture) and “output” (psychological effects of those methods), the issue of “psychological torture” will first be considered from the “input” point of view.

Psychological methods used during interrogations

Psychological methods used during interrogation are those that cause disruptions of the senses or personality, without causing physical pain or leaving any visible physical sequelae. These non-physical methods are many and their use is widespread. They include:

- sleep deprivation;
- solitary confinement;
- fear and humiliation;
- severe sexual and cultural humiliations;²⁴
- the use of threats and phobias to induce fear of death or injury;
- use of other “techniques” such as forced nudity, exposure to cold temperatures, light deprivation, etc.

The US Department of State, in its *Country Reports on Human Rights Practices 2004*,²⁵ quotes a report by the US Committee for Human Rights listing various psychological methods which it describes as torture:

[M]ethods of torture included ... prolonged periods of exposure; humiliations such as public nakedness; confinement to small “punishment cells,” in which prisoners were unable to stand upright or lie down, where they could be held for several weeks; being forced to kneel or sit immobilized for long periods.²⁶

Although many examples mentioned here will be from the context of US detention in the so-called “global war on terror”, there are many other contexts in which “aggressive psychological techniques” amounting to torture are likewise used or have been used. Harsh techniques employed by the East German secret police or “Stasi”, for example, have been documented since the fall of the German Democratic Republic. The use of various forms of humiliation, degrading treatment, threats, hunger and cold, isolation and other psychological methods

24 In the PHR Report, above note 16, which deals with US detention, the effects of these sexual and cultural humiliations are considered in relation to detainees of the Muslim faith.

25 *Report for North Korea, Country Reports on Human Rights Practices 2004*, released by the Bureau of Democracy, Human Rights, and Labor, 28 February 2005, available at www.state.gov/g/drl/rls/hrrpt/2004/41646.htm (last visited 15 October 2007).

26 The first two methods cited here, forced nudity and solitary confinement in a small cell, are typical non-physical methods. The latter two, forced positioning and immobilization, are on the borderline between physical and psychological. Their psychological effects are certainly deeper than the physical ones.

during interrogations was found to cause “persisting and paranoid anxieties, re- arousable by specific situations; persecution dreams, mood disturbances, suicidal tendencies, and shattering of confidence”.²⁷

As pointed out above, consideration must be given not only to what is done to a person, but to the overall situation and circumstances and the individual susceptibilities and vulnerabilities. The ethnic and religious contexts certainly have to be taken into account. Any of these factors will of necessity be subjective and case-related. The discussion of torture cannot merely be narrowed down to “acts causing pain and suffering” in an abstract sense.

Apart from the psychological methods which cause disruption of the senses and personality, there are other methods used during interrogations which in themselves are not deemed to be a form of psychological torture. They could be termed “minor” or “innocuous” methods; they can, however, become coercive if used over prolonged lengths of time. These ancillary methods can also produce a situation of duress that can in fact amount to a form of cruel, inhuman and degrading treatment, and in some cases even torture. They are considered later on in this paper.

Psychological effects of torture

Torture in general, meaning the use of psychological and/or physical methods of torture, has been shown to have “destructive health consequences on detainees”.²⁸ The use of these methods in many ways makes detainees feel responsible for what is happening to them, inducing feelings of fear, shame, guilt and grief, as well as intense humiliation.²⁹ On a more clinical scale, victims of psychological torture present symptoms associated with anxiety disorders. These symptoms are described further on and undoubtedly cause disruption of the senses and personality as stated by Physicians for Human Rights. The many negative effects on health of psychological torture have been documented widely by others as well.³⁰

It has thus been proven that psychological methods can be extremely coercive, constitute torture and be unlawful. The first UN Special Rapporteur,

27 See Uwe Peters, “Über das Stasi-Verfolgten-Syndrom” (The Stasi persecution syndrome), *Fortschr Neurol Psychiatr*, Vol. 59, No. 7, July 1991, pp. 251–65. See also Christian Pross, *Social Isolation of Survivors of Persecution in a Post-totalitarian Society*, Behandlungszentrum für Folteropfer, BZFO/Arch, Berlin, 1995, p. 346.

28 “Health consequences of psychological torture”, PHR Report, above note 16, pp. 48–51.

29 These same symptoms and effects have been encountered by ICRC staff in their visits to prisoners in many countries. The ICRC documents torture in order to make official representations to the states responsible, in order to try to put a stop to such practices.

30 See Pétur Hauksón, *Psychological Evidence of Torture*, CPT, Council of Europe, 2003, p. 91; see also Metin Başoğlu, *Torture and its Consequences*, Cambridge University Press, Cambridge, 1992, and *Psychological Evidence of Torture: A Practical Guide to the Istanbul Protocol for Psychologists*, Human Rights Foundation of Turkey (HRFT), 2004.

Professor Peter Kooijmans, accordingly made a statement in which he merged the methods and effects of torture:

This distinction [between physical and psychological torture] seems to have more relevance for the means by which torture is practised than for its character. Almost invariably the effect of torture, by whatever means it may have been practised, is physical and psychological ... A common effect is the disintegration of the personality.³¹

The Istanbul Protocol

Both the physical and psychological effects of torture are comprehensively discussed, analysed and fully documented in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, a landmark publication otherwise known as the Istanbul Protocol.³²

Compiled over several years by a wide selection of experts from many countries, the Istanbul Protocol considers virtually all aspects of torture and its consequences and establishes a procedure for governments or independent bodies to conduct a standardized investigation of the use of torture. It also broke new ground by covering issues that had never been fully acknowledged before.

The Istanbul Protocol states categorically that torture, to be qualified as such, need not leave any visible scars or marks. In a nutshell, it states that torture without any visible physical evidence is nonetheless torture and therefore can still have severe consequences. In other words, torture is not a “WYSIWYG” issue.³³ The “size of the scars” has no relation to the extent of the trauma: the fact that no scars are left therefore does not mean the person was not tortured. For many decades, numerous courtrooms tended to dismiss allegations of torture on the grounds that the plaintiffs had “nothing to show” on their “allegedly tortured” bodies. The Istanbul Protocol officially establishes³⁴ that absence of evidence is not evidence of absence,³⁵ thus affirming that *torture is torture*, even if it leaves no

31 Report of the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. UNGAOR, 59th Session, Agenda Item 107(a) 2004, UN Doc. A/59/324, para. 45.

32 Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professional Training Series No 8/ Rev.1, Office of the United Nations High Commissioner for Human Rights, Geneva, 2004, available at www.ohchr.org/english/about/publications/docs/8rev1.pdf (last visited 15 October 2007).

33 Abbreviation borrowed from computer engineers: WYSIWYG = “what you see is what you get”, in this case meaning that a victim of torture may well have no scars or traces at all on the body, but this in no way diminishes credibility, which must be established separately. See Michael Peel and Vincent Iacopino (eds.), *The Medical Documentation of Torture*, Greenwich Medical Media, London, 2002, ch. 5.

34 Istanbul Protocol, above note 32, ch. V, p. 160: “To the extent that physical evidence of torture exists, it provides important confirmatory evidence that a person was tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.”

35 Paraphrasing Carl Sagan in a different context; see *The Demon-Haunted World: Science as a Candle in the Dark*, New York, 1996.

physical traces at all. By extension, psychological methods of torture, which are not expected to leave any “physical marks”, also constitute a form of torture. This had of course already been common knowledge for many years in centres for the rehabilitation of torture survivors, where torture was found to have produced serious trauma and health problems without leaving any physical evidence.³⁶ The late Professor Sten Jacobsson, a Swedish expert on torture, always stressed that “the worst scars are in the mind”.³⁷

The Istanbul Protocol also says that a victim’s testimony on the torture experience may be patchy or “muddled”. It may be imprecise in time, location, or in its details – or all of the above – and this can be quite normal after torture. Unconsciously or even deliberately “forgetting” about torture is often part of a person’s coping mechanisms. This, too, has been known for several decades among people working to help torture victims and applies to both physical and psychological forms of torture.³⁸

The Istanbul Protocol rightly considers torture as a holistic process that can involve both physical and psychological methods, producing both physical and psychological effects. This reality was first stated and documented by medical researchers in Toronto (Federico Allodi et al.) and Copenhagen (Inge Genefke et al.), in the first rehabilitation centres that began to work systematically and scientifically with survivors of torture some thirty years ago.

There is, however, a gap in this holistic approach. It lies in the fact that in considering the effects of torture, the Istanbul Protocol took an evidence-based approach and furthermore describes the effects of torture in general. It does not separate the effects caused by “purely physical methods” from those caused by methods that are “purely non-physical”. This could seem to be a non-issue, since in most torture situations both types of methods are combined for interrogations. Is it not artificial to want to separate the effects of the physical from the effects of the psychological, having clearly stated that torture is a holistic phenomenon and that both methods produce both types of effects? How can separating them help to clarify the entity of “psychological torture”?

The reason for considering the effects of “psychological methods” separately is to see whether these methods alone – that is, without any physical assault – produce “pain and suffering” that reach the threshold of cruel, inhuman or degrading treatment or torture.

In the last two decades the use of torture has followed two different paths. In some states torture continues, even today, to be physical and very brutal.

36 Hauksson, above note 30, p. 91.

37 Personal communication to the author from Prof. Sten Jakobsson, Kaorlinska Institutet, University of Stockholm, at the IVth International Symposium on Torture and the Medical Profession, Budapest, October 1991.

38 Physical torture has psychological effects as well as physical effects, and psychological torture likewise produces both psychological and physical effects. See Anne Goldfeld, Richard Mollica et al., “The physical and psychological sequelae of torture”, *Journal of the American Medical Association*, 1988, pp. 2725–9; see also Metin Başoğlu, Murat Paker et al., “Psychological effects of torture: a comparison of tortured with nontortured political activists in Turkey”, *American Journal of Psychiatry*, No. 151 (January 1994), pp. 76–81.

Leaving physical evidence on the bodies of the tortured has not troubled those oppressive states where impunity is widespread and the perpetrators have no reason to fear prosecution, let alone condemnation, for following what is de facto (although usually unwritten ...) state policy. But this situation is not the subject of the present analysis.

Other states, while also choosing narrowly to interpret torture as implying only physical acts, have increasingly changed their practices owing to growing accountability or perhaps to moral or other pressures and are thus resorting more and more to coercive psychological methods in their interrogations.

The point here is that states that use torture seek to narrow the definition thereof, taking into consideration only its physical “severe pain and suffering” aspects. As the person is not assaulted, the reasoning goes, the “severity of pain and suffering” criterion (here meaning physical only) is not met. This line of argumentation is effectively used to manipulate wider public opinion, which has largely come to consider torture to be mainly a “physical phenomenon”, thus accepting the (flawed) reasoning that without physical assault there is no torture.

The psychological effects of torture – that is, of all methods combined, both physical and psychological, described in detail in the Istanbul Protocol and many other medical publications – are well known.³⁹ Those most frequently encountered are

- re-experiencing the trauma (flashbacks, nightmares, stress reactions, mistrust – even of family members – bordering on paranoia);
- avoidance of anything recalling the torture experience (also called emotional numbing);
- hyper-arousal (irritability, sleep difficulties, hyper-vigilance, constant anxiety, difficulties in concentrating);
- depressive symptoms, and what is known as depersonalization (acknowledged atypical behaviour, feeling detached from one’s body).⁴⁰

It is thus virtually impossible to determine from the Istanbul Protocol alone what types of non-physical methods of ill-treatment⁴¹ produce what symptoms and effects, and thus by extension determine what non-physical

39 Compare Federico Allodi, Glenn Randall et al., “Physical and psychiatric effects of torture”, in Eric Stover and Elena Nightingale (eds.), *The Breaking of Bodies and Minds: Torture, Psychiatric Abuse, and the Health Professions*, Freeman & Co., New York, 1985, pp. 58–79.

40 Istanbul Protocol, above note 32, Başoğlu et al., above note 38, pp. 72–82; see also Hauksson, above note 30. Other psychological effects of torture can also be much more focused and relate directly to what has been done. To give but one example from a situation in an Asian country, detainees were found to have been brutally tortured by very physical means, by the crushing of their limbs and applications of electricity all over the body. It was found that the most traumatic consequence of such torture was in fact psychological: the fear, for the young men concerned, all in their early manhood, of having been rendered impotent by repeated violence – beatings and electricity – on their genitals. This fear was instilled in them on purpose by the torturers, who knew its cultural significance, and was described by the victims as “the worst part” of what they had suffered. Even reassurance by doctors about their “genital integrity” did not dispel it. From ICRC field experience in Asia, 1996–2006.

41 The term “ill-treatment” is used here so as not to get into the debate of whether one is talking about torture, cruel, inhuman or degrading treatment, or something lesser that constitutes wrongdoing.

methods could, by applying the criterion of “severe pain and suffering”, be considered as a form of torture – in this case (purely) “psychological torture”.

Psychological torture: specific examples

Now that the definitions and references have been established, specific consideration will be given to several methods of psychological torture and their effects, in fact combining the “input” and “output” approaches mentioned above. First, however, one undoubtedly very “physical” method of torture will be discussed as a typical example of a method with both physical and psychological effects, the latter – the psychological effects – being much longer lasting than the physical.

Submarino

The physical example that will make the case for “physical methods with psychological consequences” is a method known as “*submarino*”,⁴² a term coined from its extensive use in Latin America in the 1970s and 1980s. It is used during interrogations and has been widely documented in all centres for the rehabilitation of torture victims, as well as by the ICRC in its work. It consists of dunking a victim’s head into a vat filled with water, to which urine, excrement or other contaminants may have been added to increase the torment.⁴³ This leads to a “near-drowning” experience in which victims are suffocated by having to hold their breath under water or inhaling the water, and which has been described as one of the most traumatic a human being can endure.⁴⁴ This method is well known; it has been described in many texts⁴⁵ and often portrayed in the cinema.⁴⁶ The physical consequences of *submarino* are usually short-lived, consisting mainly of uncontrollable coughing from the inhaled “water”,⁴⁷ but it can also cause acute brain damage due to deprivation of oxygen, as well as death from asphyxiation. The acute suffering produced during the immediate infliction of *submarino* is superseded by the often unbearable fear of repeating the experience. In the aftermath, it may lead to horrific memories that persist in the form of recurrent

42 In all publications by specialists on the subject of torture, “*submarino*” is the term recognized, just as “*telefono*” has become the “official” term for boxing of the ears during torture.

43 In some countries, chilli powder is added to the water to add to the torment.

44 The National Commission on Political Imprisonment and Torture Report, Chile, June 2005 (also called Valech Report), gives an overview of *submarino* torture in chapter 5. It is available at www.gobiernodechile.cl/comision_valech/index.asp (last visited 15 October 2007).

45 See Boston Centre for Refugee Health and Human Rights, available at www.bcrhhr.org/pro/course/physical/signs.html (last visited 15 October 2007).

46 Since *submarino* was a favourite method of the Gestapo, there is an eloquent scene of it in the 1974 film *Lacombe Lucien*, directed by Louis Malle, and recently in the biographical film about Jean Moulin, Pierre Aknine’s *Une affaire française*, 2003. Another recent very convincing example of its use was seen in Paul Verhoeven’s 2006 film *Black Book*, which clearly depicts the anguish and despair caused by the “near-drowning” experience of *submarino*.

47 A resulting chest infection is possible, but rare.

“drowning nightmares”. It has been condemned as torture for several decades, and as such is prohibited under international law and domestic US law.⁴⁸ The method typically leaves no outward effects and is often monitored by medical staff ensuring that the victim does not actually drown. One variation of *submarino* is called “*chiffon*”,⁴⁹ which induces the same near-drowning experience through a cloth or similar material being applied to the face and covering both nostrils and mouth, which is then slowly and steadily soaked with water. This variation has been used in many countries and continents.

Clearly *submarino* and its variants are an example of a physical method that produces immediate physical and mental suffering and major subsequent psychological distress. Just the mention of a repetition of *submarino* has been known to cause profound anguish and make detainees agree to make any confession asked of them.⁵⁰

“Waterboarding” is the name given to a technique quite similar – in fact identical – to *submarino* or *chiffon*. It has been described as an “enhanced interrogation technique” in which “simulated drowning” is produced by “strapping down a prisoner and pouring water over a cloth that covers mouth and nose”.⁵¹ The Council of Europe⁵² has specifically examined and condemned the use of this method, stating that

[T]o immerse persons under water so as to make them believe they might drown is not a professional interrogation technique, it is an act of torture.⁵³

The “near-drowning experience” has been described in some detail so as to convey clearly the psychological anguish and fear it produces while being a clearly physical method of torture.

Psychological methods used during interrogation will now be considered, together with their effects on the victims.

Phobias used during interrogation

The use of phobias is a good example of a psychological method often applied in interrogations. Phobias can be cultural, affecting a whole population,⁵⁴ or

48 See statement by Kenneth Roth, executive director of Human Rights Watch, 12 November 2005, available at <http://hrw.org/english/docs/2005/11/21/usdom12069.htm> (last visited 15 October 2007).

49 The term, from the French word for “rag”, comes from the use of the method by the French in Northern Africa.

50 Specific testimonies to the author during visits to political detainees in South America in the 1980s and 1990s.

51 See a complete overview of the waterboarding technique in *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality*, PHR and Human Rights First, August 2007, p. 17, available at <http://physiciansforhumanrights.org/library/report-2007-08-02.html> (last visited 15 October 2007).

52 Through the Committee for the Prevention of Torture and Cruel, Inhuman Degrading Treatment or Punishment (CPT), the operational mechanism of the Council of Europe for monitoring the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

53 *15th General Report on the CPT's Activities*, CPT, Strasbourg, 22 September 2005 (CPT/Inf (2005) 17).

54 Such as the quasi-phobia in many Arab populations with regard to dogs. See Rafael Patai, *The Arab Mind*, Hatherleigh Press, New York, originally published in 1976, re-edited 2002.

individual. Individual refinement of their use has perhaps best been described by Orwell in his classic novel *1984*, when the main protagonist, Winston, is tortured in “Room 101”.⁵⁵ Whether personal or “collective”, the use of phobias maximizes psychological suffering, tailoring the inducement of fear and dread to the individual. The use of dogs to induce fear among detainees at Abu Ghraib prison was tailored to the well-known Muslim dread of canines; it also exploited the fact that the dog is considered to be an unclean animal.⁵⁶ In other cultures, the fear and revulsion of pigs, for example, have been used to torment victims.

Breaking sexual taboos

Sexual taboos have always been used by interrogators, either knowingly or not. The methods used to break such taboos can be psychological as well as physical and can, depending on a variety of factors, amount to cruel, inhuman or degrading treatment or torture. In most cases, they involve crude male-on-female abuse ranging from lewd remarks and innuendos, having to undress and stay naked in front of males, crass groping or pawing, and ultimately sexual rough treatment and (but not always) rape.⁵⁷ Rape, meaning sexual aggression with penetration, has now been officially defined as being a form of torture.⁵⁸ It should be recognized, however, that the other forms of sexual abuse mentioned above, apart from rape, can also have devastating effects, precisely because of the psychological trauma they cause.

Sexual taboos have recently been highlighted in the context of Islamic countries because of the Abu Ghraib and other related incidents.⁵⁹ Such taboos exist, however, in all cultures and are merely more or less accentuated. Any sexual connotation given to coercion in custody can be extremely frightening and have shattering effects on the mind, and torturers know this.⁶⁰

There is arguably a gender difference regarding the use of sexual methods that needs to be explained. Women in custody can be more traumatized than males by any sexual innuendo made by their captors or interrogators. Aware as they often are that sexual abuse occurs during detention and interrogation, such innuendo (during arrest for example) may make women in custody wonder “how far things may go”. They may become increasingly frightened to the point of becoming traumatized, fearing that “the worst” may happen, even though

55 George Orwell, *1984* (1949).

56 Sexual and religious phobias in the Muslim world are best described in Patai, above note 54.

57 Male-on-male abuse is more often simply a targeting of the male genitalia for torment by electricity or beatings. Sodomy does occur, but proportionately less often than rape of female detainees.

58 See Christine Strumpfen-Darrie, *Rape: A Survey of Current International Jurisprudence*, available at www.wcl.american.edu/hrbrief/v7i3/rape.htm (last visited 15 October 2007).

59 Religious taboos have also been discussed in the Muslim context. They are used to humiliate, enrage or otherwise torment victims during interrogations. Interrogators introduce, as part and parcel of the whole system, desecration of anything considered holy by detainees in their custody.

60 Compare this with the trivialization of “Abu Ghraib” that has been touted by some. See Mortimer Zuckerman, “A bit of perspective, please!”, *US News and World Report*, 16 May 2004, available at www.usnews.com/usnews/opinion/articles/040524/24edit.htm (last visited 15 October 2007).

“nothing” may have actually been done to them. For this reason the traumatic effect of any sexual abuse, including “mere sexual innuendo”, should never be underestimated, even if actual rape is not the issue.

Any sexual abuse is traumatic, but for cultural reasons and all the additional concerns about pregnancy and fertility, it tends to be more traumatic in women than in men.⁶¹ This is certainly not to say that sexual abuse is “less harmful” to males. In many societies, however, the mere hint that a woman may have undergone sexual violence in detention can result in ostracization by her family and exclusion from her society, and may in some cases even lead to her “honour killing”.

In societies where sexual taboos render the whole issue of sexuality infinitely more complex, the trauma will obviously be multiplied accordingly. The differences between “guilt” societies and “shame” societies have been described elsewhere and go beyond the scope of this paper.⁶² In many rehabilitation centres for torture survivors it has been documented that women from Asian societies, for example, who have suffered even extreme sexual ill-treatment, sometimes including multiple rapes, are most often highly reluctant to seek help. To them the shame of what happened is so great that they do not want anybody to know about it. They fear that if they go to the rehabilitation centre, “everyone may think they have been abused”.⁶³

Sexual abuse of men obviously exists as well, as shown by the recent widely publicized photos of Abu Ghraib prison which illustrate how sexual taboos can be “exploited” by interrogators, apparently with the aim of making the detainees more “co-operative” during questioning. Here again the cultural dimension aggravates the serious psychological effect of what occurred,⁶⁴ as sexual taboos are inculcated in Muslim society from early childhood.⁶⁵

Solitary confinement

A method used in many countries around the world during interrogations of prisoners is solitary confinement⁶⁶ – that is, confinement alone in a cell for days on

61 Statement based on 25 years of ICRC experience visiting prisoners, both male and female, in situations of coercion and stress.

62 See Grethe Skylv, “The nature of human experience: some interfaces between anthropology and psychiatry”, Lecture at the Royal Society of Medicine, London, 1992 (copy on file with the author). See also Başoğlu et al., above note 38, p. 92.

63 In one Asian country, a group of women detainees who had been raped when arrested by the military did not say a word about it for several months, even to female ICRC delegates interviewing them in custody. It was only when a physician (who happened to be male) came to see them that they, under the cloak of medical confidentiality, timidly spoke about it – wanting to ask the doctor questions about their future fertility (author’s personal experience).

64 See the “pyramids of naked men”, “enforced simulated masturbation” and other sexually oriented ill-treatment as widely publicized in the photos from Abu Ghraib. See also PHR Report, above note 16, pp. 55–9.

65 The author was personally confronted with the psychological trauma experienced by Muslim detainees whose sexual taboos and fears were exploited during interrogations (ICRC visits in 2002–4).

66 Solitary confinement is also used as a punishment, which is outside the scope of the present analysis.

end, with minimal environmental stimulation and practically no opportunities for any social interaction. Being confined for prolonged periods of time alone in a cell has been said to be the most difficult torment of all to withstand – a comment made, moreover, by hardened prisoners used to rigorous conditions and abuse. The effects of solitary confinement have been widely documented. According to Grassian, in severe cases

[T]he mental disturbances among prisoners so detained ... [include] ... an agitated confusional state, characteristics of a florid delirium, [with] severe paranoid and hallucinatory features and also by intense agitation and random, impulsive, often self-directed violence.⁶⁷

According to Craig Haney, writing on solitary confinement,

There are few if any forms of imprisonment that appear to produce so much psychological trauma and in which so many symptoms of psycho-pathology are manifested ... [prisoners are held] in virtual isolation, and [subjected] to almost complete idleness ... no group or social activity of any kind is permitted ... the harmful psychological consequences of solitary confinement ... are extremely well documented ... [These include] sleep disturbances, anxiety, panic, rage, loss of control, paranoia, hallucinations, self-mutilations ... cognitive dysfunction, ... depression [and] emotional breakdown.⁶⁸

More recently, the European Committee for the Prevention of Torture (CPT) has stated that solitary confinement “can have very harmful consequences for the person concerned ... [It] can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.”⁶⁹ In Uruguay, in the 1970s and 1980s, leaders of the MLN-Tupamaro movement were imprisoned in harsh conditions of solitary confinement for several years without being allowed to communicate with anyone. Meals were delivered through a hatch by guards who were strictly forbidden to say even a word to them. Several of these prisoners confided that for them solitary confinement had been the worst form of torture. “Electricity [torture]”, said one, “is mere child’s play in comparison to prolonged solitude.”⁷⁰

The Tupamaros were held in dirty, stinking, bug-infested cells. Confinement alone in the sanitized cells of a modern maximum security prison can be much worse.⁷¹ Such conditions result not only in solitude but also in

67 Stuart Grassian, “Psychiatric effects of solitary confinement”, *Journal of Law and Policy*, Vol. 22, 2006, pp. 327–80.

68 Craig Haney, “Mental health issues in long-term solitary and “supermax” confinement”, *Crime and Delinquency*, Vol. 49, No. 1, Jan. 2003, pp. 124–56. Professor Haney is a recognized expert on the effects of solitary confinement.

69 “CPT standards: “Substantive” sections of the CPT’s General Reports”, CPT/Inf/E (2002), Rev. 2006, available at www.cpt.coe.int/EN/documents/eng-standards.doc (last visited 15 October 2007).

70 These personal experiences have been published in Mauricio Rosencoff and Eleuterio Fernandez-Huidobro, *Memorias del Calabozo*, Banda Oriental, Montevideo, 1987 and 2005, as well as interviews with leaders of the MLN between 1983 and 1985.

71 Paradoxically, being kept in a “bug-infested” cell was actually a boon for at least one of the Tupamaro leaders. The cockroaches, he said, at least gave him some sense of “company”.

sensory deprivation (no noise, no voices, utter silence) and sensory hyper-stimulation (e.g. steps in the corridor are amplified many times over).⁷² Modern cells of that kind are indeed much more “solitary” than old, dilapidated ones and consequently may be more traumatic.

It should be noted that the UN Standard Minimum Rules for the Treatment of Prisoners⁷³ as well as the European Prison Rules,⁷⁴ while not taking the bold move of completely outlawing the use of solitary confinement, do stipulate a daily medical check-up for all inmates in solitary confinement. This would hardly be necessary unless solitary confinement was considered as being potentially harmful.

Confinement alone in a cell needs to be considered in the light both of its duration and of the surrounding circumstances. The European Committee for the Prevention of Torture has determined that any use of solitary confinement should be for as short a period as possible. In its visits to Scandinavian countries, it clearly stated that prolonged total isolation “could lead to an individual’s psychological destruction”.⁷⁵ It has described the effects of prolonged solitary confinement (lasting between seven and 24 months) and noted the following symptoms: anxiety, nervousness, stress, disturbed sleep, difficulties in concentration and elocution, as well as suicidal tendencies, depression and paranoid symptoms. Thus solitary confinement, as stated by the CPT, is at least a form of inhuman and degrading treatment if applied for several weeks.

Furthermore, a detainee under interrogation to whom a combination of different methods is being applied, who is being interrogated intensively (even if no physical violence is involved) and who is suddenly thrust back into a cell alone, even if only for a couple of days, may well develop the adverse effects mentioned above after just a day or two of renewed isolation. All these factors have to be considered when determining whether a method or group of methods “qualifies” as a form of torture, in addition to the general criteria laid down in the Convention against Torture or other conventions.

72 Sensory deprivation is inflicted, for example, by using cells with quasi-total sound-proofing so as to muffle any sound. Conversely, sensory enhancement, or hyper-stimulation – often used in combination with sensory deprivation – is exaggerated amplification of *any* noise, such as the sound of boots in the corridor or the systematic banging of doors or of batons on cell bars, so as to harass the detainee.

73 Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Available at www.unhcr.ch/html/menu3/b/h_comp34.htm (last visited 15 October 2007).

74 European Prison Rules, Council of Europe, Recommendation No. R(87)3, adopted by the Committee of Ministers of the Council of Europe on 12 February 1987, Strasbourg, revised in 2006, available at www.uncjin.org/Laws/prisrul.htm (last visited 17 October 2007).

75 CPT Report to the Danish government on the visit to Denmark carried out by the CPT, December 1990, available at CPT website: www.cpt.coe.int/documents/dnk/1991-12-inf-eng.pdf (last visited 15 October 2007).

Sleep deprivation

Sleep deprivation has been used as a method of interrogation in many contexts and for many centuries. The Romans used it to extract information from their enemies, calling it *tormentum vigilae* (waking torture) or *tormentum insomniae*, and it is still very much in use today.⁷⁶ Detainees are usually kept awake for several days; when they are finally allowed to fall asleep, they are suddenly awakened and then interrogated, harshly or otherwise. They may be deprived of sleep in many ways, for instance by guards banging their batons all night long on cell bars.⁷⁷ Sometimes detainees are made to adopt what is called “forced positioning”. This may be just standing against the wall, or crouching down or in any posture that quickly becomes uncomfortable and precludes any meaningful sleep. Or interrogators may wake detainees up every time they close their eyes. Sleep deprivation is often used in conjunction with other psychological methods, including hooding, being stripped naked and the use of various restraints. The old proven method of repeatedly playing a scratched record and blaring out an endlessly repetitive tune for hours or days on end is still used as an effective way of depriving prisoners of sleep.⁷⁸

Prolonged sleep deprivation has been described by people subjected to it as being horrendous. Menachem Begin, a former Israeli Prime Minister (1977–83), described his experience of it as a prisoner of the KGB in the Soviet Union:

In the head of the interrogated prisoner a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire, to sleep, to sleep just a little, not to get up, to lie, to rest, to forget ... Anyone who has experienced this desire knows that not even hunger or thirst are comparable with it ... I came across prisoners who signed what they were ordered to sign, only to get what the interrogator had promised them. He did not promise them liberty ... [only] uninterrupted sleep! ... And, having signed, there was nothing in the world that could move them to risk again such nights and such days.⁷⁹

More generally, even short-lived sleep deprivation causes hallucinations, paranoia and disorientation and can have deleterious psychological effects on an individual. The use of sleep deprivation is a favoured “method of interrogation”,⁸⁰ as it leaves no physical mark on the victim. Interrogators will claim outright that they have not (physically) abused detainees in their custody.

76 See the discussion on sleep deprivation in the CIA’s manual on “Counterintelligence interrogation” (Kubark Manual), available at www.kimsoft.com/2000/kubark.htm (last visited 17 October 2007).

77 In a Latin American prison guards were instructed to do this all night long in the prison for political prisoners – while at the same time there were signs clearly visible everywhere specifically (and cynically) forbidding any such practice. The signs were obviously for the benefit of visitors, such as the ICRC.

78 Testimony to the ICRC from a Central Asian country in 2001.

79 Quoted in PHR Report, above note 16, p. 70.

80 See Michael Rosen, *Is Sleep Deprivation Torture?*, 28 March 2005, available at www.geocities.com/three_strikes_legal/torture_sleep_deprivation.html (last visited 15 October 2007).

The question of whether sleep deprivation can be a form of torture has been reviewed and commented on in detail in a very recent study on torture that leaves “no marks” by Physicians for Human Rights and Human Rights First (HRF):

Sleep deprivation is a well established form of abuse, used in breaking down interrogation subjects ... The psychological impact of sleep deprivation supports the conclusion that it would constitute torture or cruel or inhuman treatment for the purposes of criminal investigation. Sleep deprivation is known to cause mental harm ... [and] also is calculated to disrupt the senses or personality.⁸¹

A psychotherapist from the London Medical Foundation for Victims of Torture (MFVT) further describes the effects of sleep deprivation thus:

After two nights without sleep, the hallucinations start, and after three nights, people are having dreams while fairly awake, which is a form of psychosis. By the week’s end, people lose their orientation in place and time – the people you’re speaking to become people from your past; a window might become a view of the sea seen in your younger days. To deprive someone of sleep is to tamper with their equilibrium and their sanity.⁸²

The severity of suffering from sleep deprivation alone has been found to constitute torture in, for example, the jurisprudence of the Committee against Torture.⁸³ As the technique of sleep deprivation, renamed “sleep management”, has recently been openly discussed in connection with US detention, it may be useful to recall that there are relevant references in US jurisprudence, as federal courts have recurrently found incidences of sleep deprivation to violate both the 8th and 14th Amendments to the US Constitution.⁸⁴ Sleep deprivation has been considered torture in the United States since *Ashcraft v. Tennessee* in 1944.⁸⁵ Although Ashcraft was only subjected to 36 hours of sleep deprivation, the court ruled it to be both physical and mental torture. In a ruling not only categorizing sleep deprivation as torture but further emphasizing the unreliability of any information obtained in such a way, US Justice Hugo Black stated that “deprivation of sleep is the most effective torture, and certain to produce any confession desired”.⁸⁶

81 *Leave No Marks*, above note 51, pp. 22–4.

82 John Schlapobersky, quoted in Megan Lane and Brian Wheeler, “The real victims of sleep deprivation”, BBC News Online Magazine, Thursday, 8 January 2004, available at <http://news.bbc.co.uk/1/hi/magazine/3376951.stm> (last visited 15 October, 2007).

83 See Droege, above note 17; see also “Consideration of reports submitted by States Parties under Article 19 of the Convention, Concluding observations, Israel”, Committee against Torture, doc. A/57/44, 25 September 2002, para. 6(a)(ii).

84 *Leave No Marks*, op. cit. note 51, p. 24.

85 *Ashcraft vs Tennessee*, 322 US 143, 154 (1944), available at <http://supreme.justia.com/us/322/143/case.html> (last visited 15 October 2007).

86 *Ibid.*, note 6 of Judgment.

The new US *Army Field Manual* of 2006 permits a certain amount of sleep deprivation during interrogations, stipulating that detainees should get at least four continuous hours of sleep every 24 hours.⁸⁷ Thus, technically, a detainee could be allowed four hours of sleep on Day 1, and then be interrogated for 20 consecutive hours, followed by another 20 consecutive hours on Day 2, and then four hours of sleep. This would respect the letter of the rule, but still be extremely stressful.

Both methods described above – solitary confinement and sleep deprivation – are psychological, not physical, methods.⁸⁸ The former UN Special Rapporteur on Torture, Sir Nigel Rodley, defined sleep deprivation as a form of torture in several of his reports.⁸⁹ This has been confirmed by subsequent Rapporteurs on Torture, most recently by Manfred Nowak.

Recently, sleep deprivation has been the subject of considerable discussion, being promoted as an “aggressive interrogation method” that might be permissible against terrorist suspects and yet “not be viewed as torture”.⁹⁰ The question whether sleep deprivation constitutes a form of torture has been debated in public and even discussed by the highest authorities. In Australia, for example, the Prime Minister himself has (to a certain extent) taken a position: “It depends upon the severity of it, the regularity of it, the circumstances in which it is conducted. So that’s what makes yes and no answers to things like that so very difficult.”⁹¹

Cumulative methods, applied over a prolonged period of time

In examining the use of purely psychological methods during interrogation, other factors have also to be taken into account.

Some psychological methods used by interrogators are recognized as methods of torture, but they are generally used on a one-off basis rather than systematically. A typical example is the “sham execution”, a method known to be extremely traumatic in which prisoners are led out to what they believe is their

87 US Department of the Army, Field Manual 2-22-3, Human Intelligence Collector Operations, at M-30, available at www.enlisted.info/field-manuals/fm-2-22.3-human-intelligence-collector-operations.shtml (last visited 15 October 2007).

88 In stark contrast to solitary confinement and sleep deprivation, in the case of *submarino* clearly any amount of time having one’s head forced underwater can and does constitute a form of torture. A near-drowning experience, no matter how short, provokes extreme anguish and terror.

89 Report of the Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, Visit by the Special Rapporteur to Pakistan, UN Commission on Human Rights, UN Doc. E/CN.4/1997/7/Add.2 (1996), available at www1.umn.edu/humanrts/commission/thematic53/97TORPAK.htm (last visited 18 October 2007). See also Manfred Nowak, “What practices constitute torture? US and UN standards”, *Human Rights Quarterly*, Vol. 28, 2006, available at http://muse.jhu.edu/journals/human_rights_quarterly/v028/28.4nowak.pdf (last visited 18 October 2007).

90 Statement by Australian Attorney General Philip Ruddock, quoted in “Sleep deprivation “sometimes” torture”, 5 October 2006, available at www.news.com.au/story/0,23599,20528646-1702,00.html (last visited 15 October 2007).

91 *Ibid.*, quoting statement by Australian Prime Minister John Howard on ABC Radio.

summary execution.⁹² Forcing prisoners to watch sexual acts committed on an acquaintance is another method also used by torturers.⁹³ These methods will not be further discussed here, as they tend to be single events rather than repeated over time.

The psychological methods described above, such as sleep deprivation and solitary confinement, are usually not used alone but are applied alternately or cumulatively with others. They are often combined with other “non-physical” methods, which may seem insignificant considered individually but whose constant repetition and cumulation over time create a background environment that is precisely intended to accentuate the other – should they be called “major”? – methods. These “minor” methods are many, and the following list of examples is anything but exhaustive:

- constant taunting;
- verbal abuse;
- intimidations;
- insulting the honour of a family member;
- spitting in someone’s lunch container;⁹⁴
- petty humiliations (always linked to cultural values);
- petty and less petty harassments;
- repeated exasperation provoked on purpose;
- enforced artificial light 24 hours a day;
- lack of privacy exploited purposely to mock sensitivities;
- verbal threats of further torment – whether realistic or not;
- repeated annoyances petty in themselves, but magnified out of proportion by the context;
- and many more...

The point is not to consider whether such additional petty methods are anything more than “ill-treatment”, but to acknowledge that all these methods, used together, form a system deliberately designed to wear and break down, and ultimately also to disrupt the senses and personality. The effect *over a prolonged period of time* of this “grouping of methods” has to be considered as part and parcel of the effects of psychological torture.⁹⁵

Here the cumulative effect over time of psychological methods, and particularly of these so-called “minor” ones, needs to be re-emphasized. Some psychological methods are already defined as torture, as they produce “mental suffering” serious enough to qualify as torture without cumulation, for example sleep deprivation and solitary confinement as mentioned above. The use of forced nudity is also a case in point; depending on the circumstances, the cultural

92 Başoğlu et al., above note 38, pp. 204–5.

93 See Droege, above note 17.

94 This could allegedly be considered “physical”, but it is undoubtedly the psychological aspect that is traumatic, and not the few drops of saliva.

95 Quite obviously, these “minor” methods can also be used as “background” in a system that uses brutal physical torture – but that is not the subject under discussion here.

background, and the actual way in which it is enforced, stripping a prisoner naked can be considered at least as inhuman and degrading treatment. The UN Rapporteur on Torture, in a report to the UN Commission on Human Rights, has stated that

[S]tripping detainees naked, particularly in the presence of women, and taking into account cultural sensitivities, can in individual cases cause extreme psychological pressure and can amount to degrading treatment, or even torture.⁹⁶

When considering the cumulative, or “combined”, effects of methods which do not qualify per se as either CIDT or torture, the “time factor” needs to be determined. The common denominator, however, will be that each method, applied in isolation, is not considered by perpetrators as being a form of ill-treatment, let alone a form of torture.

The discussion then boils down to whether such cumulative situations over a prolonged period of time can be deemed to produce a “sufficient” degree of suffering or disruption of personality to qualify as cruel, inhuman and degrading treatment, or even torture.

There is a well-known precedent for such an “accumulation of methods” which has already been mentioned and can be recalled here. The use of the so-called “Five Methods” in Northern Ireland was hotly debated in the 1970s and came up before both the European Commission and the European Court of Human Rights for judgment. These methods were:

- wall-standing (“spreadeagled” against the wall, standing on toes only);
- hooding (black bag over the head, except during interrogations);
- constant, loud, hissing “white noise”;⁹⁷
- sleep deprivation;
- food and drink deprivation (bread and water diet only).

Initially, the European Commission of Human Rights determined that the cumulated five methods, which were applied for hours at a stretch and for many days, amounted to a form of torture. They were found to cause both physical and mental suffering. Paradoxically, the European Court of Human Rights later disputed this designation, and stated that the five techniques did not “rise to the level of torture”. However, the Court did rule that the five methods, used together, constituted “inhuman and degrading treatment”.⁹⁸ After the first ruling the UK government suspended their use, both individually and collectively. It was the accumulation of the five that was ruled upon by both the Commission and the Court,⁹⁹ both entities admitting that the cumulative effect had to be taken into account and not only each component separately.

96 “Situation of the detainees at Guantánamo Bay”, Report to the UN Economic and Social Council, 62nd Session, E/CN.4/2006/120, 15 February 2006, p. 25, available at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_02_06_un_guantanamo.pdf (last visited 15 October 2007).

97 White noise is similar to the sound of static between two radio stations.

98 *Ireland v. United Kingdom*, above note 11.

99 In fact, the UK government responded to the first ruling by the Commission by putting a stop to use of the methods, both individually and cumulatively. Today the Court would probably not have “watered down” the Commission’s ruling from torture to cruel, inhuman and degrading treatment.

Unpredictability and uncontrollability

Finally, two additional factors need to be considered here, as they are of direct relevance to the discussion on methods of interrogation and torture and certainly have a bearing on the use of cumulative methods. They are the roles of uncontrollable and unpredictable stress in torture.

It has been found that these factors, which have been studied extensively,¹⁰⁰ always come into play in any situation involving stress. In the case of detainees held in custody and interrogated by “aggressive measures”, they will obviously influence the overall situation.

According to Başoğlu, unpredictable stimuli are much more stressful than predictable ones. Similarly, a situation one can control or has merely the illusion of being able to control is less stressful than a situation that seems beyond control. Exerting some control, even minimal, over stressful events seems to be a crucial element in the way in which torture, for example, is experienced by the individual. Hooding is a case in point of a method used in conjunction with many others, and often cumulatively. Its use is usually justified by custodial authorities as being necessary for security. While visual identification of interrogation staff may indeed be an issue, the use of the hood plays a much more important role in interrogations. A hooded detainee being beaten never knows whether, when and how he or she is going to be hit – or when a cigarette burn will be inflicted ... The physical trauma (blow, burn, etc.) is greatly increased by the psychological unpredictability. Events become unpredictable and therefore less controllable, and this intensifies the pain and emotional stress.

Thus “the most deleterious consequences stem from uncontrollable aversive events that are also unpredictable”.¹⁰¹

Both factors can make themselves felt in all the aforesaid situations. Conversely, in the case of solitary confinement, for example, the fact that a detainee alone in a cell manages to communicate with another detainee (e.g. by tapping on the wall) is important as a means of finding out what may happen, and when. He has at least the illusion of retaining some “control” and being able perhaps to “predict” what is to come. Total lack of any communication, as in a modern high-security cell, will eliminate any such controllability.

If the interrogators intentionally alternate different methods and disrupt any semblance of “schedules” or “patterns”, the situation becomes unpredictable. Interrogation sessions can occur at totally unpredictable times; detainees can suddenly be switched from one cell to another at a moment’s notice; or certain forms of behaviour may be rewarded and others penalized without any discernable logic, and the rules then reversed without warning. Interrogators are known successively to alternate at random the different methods described, thus making unpredictability part and parcel of the whole system. They also make sure that the detainees concerned know that they are unable to control any aspect of their

100 Başoğlu et al., above note 38, ch. 9, pp. 182–225.

101 Ibid., p. 199.

lives.¹⁰² Thus the use of cumulative methods over time is aggravated both by the unpredictability of the situation and by the total lack of any real control. The cumulation of the various psychological methods described above induces an utter sense of helplessness over prolonged periods of time, disrupting the senses of the individual and ultimately also his or her personality.

* * *

To sum up, it has hopefully been made clear that some methods used during interrogation do not physically assault the body and do not cause actual physical pain – and yet they do entail severe psychological pain and suffering and profoundly disrupt the senses and personality. It must be borne in mind that the severity of suffering is subjective and that the actual effects on detainees will vary greatly according to the various factors mentioned. As stated by the UN Rapporteur on Torture, Manfred Nowak,

Even the use of force that causes non-severe pain or suffering can be considered degrading treatment, if it is applied in a humiliating manner. A typical example is the forced removal of clothes for the purpose of humiliation.¹⁰³

Psychological torture is a very real thing. It should not be minimized under the pretext that pain and suffering must be physical in order to be real. Indeed, some psychological methods on their own constitute torture, such as solitary confinement and sleep deprivation.

It has been argued that the concept of the use of non-physical methods also applies to use of the many other methods which undoubtedly do not constitute torture on their own if merely considered in isolation. These so-called “minor” methods are, however, part and parcel of the torture process and constitute a “background environment” of harassment and duress for detainees under interrogation who are subjected to them for prolonged periods. Their combined use and cumulative effects over time must therefore be considered as part of a *system* of psychological torture.

What is arguably merely “malevolent” and possibly humiliating if inflicted for 24 hours has to be considered very differently if applied for 24 days – let alone 24 months. The cumulative effects will also vary greatly according to the general context and the age, gender and state of health of the detainees under interrogation.¹⁰⁴

Social and political background, cultural and religious beliefs and local sensitivities¹⁰⁵ clearly play a role in determining the effects on the persons

102 Conversely, in some cases perpetrators may let the detainee *think* he or she has some control, the better to manipulate the interrogation. This in itself is not illegal if the rest of the interrogation respects the rules of law, both national and international.

103 Nowak, above note 89, p. 838.

104 For an individual with pre-existing personality disorders, even a short period of solitary confinement may become acutely psychotic. See Grassian, above note 67.

105 Being searched naked, in the open and in front of many guards has been described as extremely traumatic in Muslim societies. For women prisoners this would also be the case.

concerned.¹⁰⁶ In order to minimize the effect of the overall situation it is often argued that detainees receive food, shelter and medical care – disregarding the general psychological conditions of detention and the use of “cumulative methods over time” accompanying interrogations. Yet human dignity is not confined to mere physical integrity.¹⁰⁷ The International Criminal Tribunal for the former Yugoslavia (ICTY) has furthermore determined that

[Torture] may be committed in one single act or can result from a combination or accumulation of several acts, which, taken individually and out of context, may seem harmless ... The period of time, the repetition and various forms of mistreatment and severity should be assessed as a whole.¹⁰⁸

The cumulative (or “combined”) use of these methods on detainees is not merely theoretical: the legality of such “combined effects” has just recently come under renewed public scrutiny and is still the subject of heated legal discussions.¹⁰⁹ Finally, the stress and hence suffering produced by the situations described above will most certainly be compounded by any ongoing uncertainty as to legal status.¹¹⁰

Governments that use coercion – which is *a fortiori* cruel, inhuman or degrading treatment or torture – are obviously reluctant to admit it, hence the recent juridical and mental contortions in an attempt to raise the threshold of the “pain and suffering” required to qualify an act as a form of “torture”. Apart from the stigma attached to any country “caught” using torture, there is the issue of eventual sanctions for torturers and redress and restitution for victims.

Finally, it may seem that to qualify these “combined” or “cumulative” situations as “torture” may trivialize the term itself when compared with brutal physical forms of torture. It can, however, surely be argued that *not* to consider the protracted suffering of detainees in such situations is, on the contrary, to trivialize the long suffering that has been or is continuing to be inflicted upon them.

106 One memorable example of what can be extremely traumatic for a particular individual was the case of an Afghan elder, well over 80 years old, who was devastated by the fact that Russian soldiers had imposed the ultimate humiliation on him by plucking out the hairs of his beard, one by one, in front of the village women. Author’s experience, Afghanistan, 1987.

107 See Droege, above note 17.

108 *Ibid.*, quoting the ICTY, *Prosecutor v. Krnojelac*, Case No. IT-97-25 (Trial Chamber) 15 March 2002, para 182.

109 Scott Shane, David Johnston and James Risen, “Secret US endorsement of severe interrogations”, *New York Times*, 4 October 2007, available at www.nytimes.com/2007/10/04/washington/04interrogate.html (last visited 15 October 2007).

110 An aspect which has not been considered here, but is taken up by Droege, above note 17.

