

Midwinter 2004

COUNCIL DOCUMENT # 43
Assigned to Council Resolutions
Committee
Member

On Intellectual freedom & the use of torture in war or peace

Whereas ALA is among the preeminent defenders of intellectual freedom and government openness in the US.

Whereas intellectual freedom, our primary value as librarians, cannot be more seriously violated than by forcing speech through systematic violence by government against detained individuals.

Whereas the US government has announced its readiness to use torture (as well as hooding, shackling, drugging, sleep deprivation, etc.) in the interrogation of suspected terrorists or their suspected accomplices

Whereas the use or possible use of torture and coercive interrogative practices is inhumane, illegal and destructive of the democratic sensibilities of a free society, the cultivation of which we as an Association and as a profession are committed.

Whereas the secrecy which will undoubtedly attend the use of torture will also violate our commitment to open government and the necessity of true and accurate information of our government's actions

and

Whereas the threat of torture of the use of torture and similar practices of coercing testimony, confessions, information is, universally condemned under international law and US law (see addendum)

Be it resolved that the ALA condemns the use or threat of torture by the US government, its police or military as a violation of human rights, intellectual freedom, and the rule of law. The ALA decries the suggestion by the US government that under a 'state of emergency' in this country torture, here or abroad, is an acceptable tool in pursuit of its goals.

submitted by Mark C. Rosenzweig ALA Councilor at large

seconded by AL KAGAN, SRRT COUNCILOR

ENDORSED SRRT.

REVIEWED FOR CONFORMATION WITH
GUIDELINES
by Council Resolutions Committee

SUPPORTING DOCUMENTATION

The legal basis for this follows, including some explication of issues raised by these references: ,

*Universal Declaration of Human Rights 1948, Article 5 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

*Article 7 of the International Covenant on Civil and Political Rights

(ICCPR), ratified by 153 countries, including the U.S. in 1992

*Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), ratified by 136 countries, including the U.S. in 1994.

*European Convention for the Protection of Human Rights and Fundamental Freedoms African Charter on Human and Peoples' Rights.

*American Convention on Human Rights [Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969].

*The 'Laws of War': the prohibition against torture is also fundamental to international humanitarian law which governs the conduct of parties during armed conflict.

Article 3 to the Geneva Conventions, for example, bans "violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment."

Article 31 of the Fourth Geneva Convention: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."

1999 Initial Report of the United States to the U.N. Committee against Torture: in the United States, the use of torture "is categorically denounced as a matter of policy and as a tool of state authority

No official of the government, federal, state or local, civilian or military, is authorized to commit or to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form

Every act of torture [...] is illegal under the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987]. is illegal under existing federal and state law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes."

*The US Constitution: Torture violates rights established by the Bill of Rights.

The U.S. courts have located constitutional protections against interrogations under torture in

a) the Fourth Amendment's right to be free of unreasonable search or seizure (which encompasses the right not be abused by the police)

b) the Fifth Amendment's right against self-incrimination (which encompasses the right to remain silent during interrogations),

c) the Fifth and the Fourteenth Amendments' guarantees of due process

(ensuring fundamental fairness in criminal justice system), and

d) the Eighth Amendment's right to be free of cruel or unusual punishment.

*In numerous cases, the U.S. Supreme Court has condemned the use of force amounting to torture or other forms of ill treatment during interrogations, including such practices as whipping, slapping, depriving a victim of food, water, or sleep, keeping him naked or in a small cell for prolonged periods, holding a gun to his head, or threatening him with mob violence.

*"Miranda v Arizona: The U.S. Supreme Court in 1966 also established a rule requiring the police who seek to question detainees to inform them of their "Miranda" rights to remain silent and to have an attorney present during the questioning [Miranda v. Arizona, 384 U.S. 436 (1966)].

In explaining the need for this rule, the Court noted the continuing police practice of using physical force to extract confessions, citing, as an example, a case in which police beat, kicked and burned with lighted cigarette butts a potential witness under interrogation.

*Torture would also violate state constitutions, whose provisions generally parallel the protections set forth in the federal Bill of Rights. Article 4 of the Convention against Torture obligates state parties to ensure that all acts of torture are criminal offenses under domestic legislation.

*The principal federal law that would apply to torture against detainees is 18 U.S.C. 242, which makes it a criminal offense for any public official to willfully to deprive a person of any right protected by the Constitution or laws of the United States.

*Neither international nor domestic law conditions the right not to be subjected to torture on citizenship or nationality. No detainee held by U.S. authorities - regardless of nationality, regardless of whether held in the U.S. or in another country, and regardless of whether the person is deemed a combatant or civilian - may be tortured. All applicable international law applies to U.S. officials operating abroad, including the Convention against Torture and the Geneva Conventions.

Some explication relevant to the particular questions raised by the government's consideration of the use of torture in its "War Against Terrorism"

1) The prohibition against torture is universal and covers all countries both regarding U.S. citizens and persons of other nationalities.

2) The Convention against Torture provides that any statement that has been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

3) Under customary international law as well as under international human rights treaties, torture or other cruel, inhuman or degrading treatment is prohibited at all times and in all circumstances. It is a non-derogable

right, one of those core rights that may never be suspended, even during times of war, when national security is threatened, or during other public emergencies.

4) According to the U.S. government, " U.S. law contains no provision permitting otherwise prohibited acts of torture or other cruel, inhuman or degrading treatment or punishment to be employed on grounds of exigent circumstances (for example, during a "state of public emergency") or on orders from a superior officer or public authority."

5) The European Court of Human Rights has applied the prohibition against torture contained in European Convention on Human Rights in several cases involving alleged terrorists. As it noted in one case, "The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct." (Chahal v. United Kingdom, Nov. 15, 1996)

6) The Committee against Torture, reviewing Israel's use of torture as a method of interrogation against suspected Palestinian terrorists, stated, "The Committee acknowledges the terrible dilemma that Israel confronts in dealing with terrorist threats to its security, but as a State party to the Convention Israel is precluded from raising before this Committee exceptional circumstances as justification for [prohibited] acts" [United Nations Committee against Torture. "Concluding observations of the Committee against Torture" (1997), A/52/44, paras.253-260. (15 Nov. 2001).]

Some people argue that the goal of saving innocent lives must override a person's right not to be tortured. Although such an exception might appear to be highly limited, experience shows that the exception readily becomes the standard practice. For example, how imminent must the attack be to trigger the exception and justify torture - an hour, a week, a year? How certain must the government be that the detainee actually has the necessary information?

The international community, however, rejected the use of torture even in this type of case. International human rights law - as well as U.S. law - do not contain any exceptions to the prohibition against torture.

Respectfully submitted,
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Seconded by Alfred Fagan, SRRT Councilor

endorsed by SRRT

{The legal premises are adopted from a document on torture issued by Human Rights Watch

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