Forensic Evidence of Torture:

Investigations into Human Rights Violations

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ABSTRACT

It is demonstrated in this thesis that there is a major potential for effective recovery and documentation of evidence relating to torture and fatal human rights violations from clandestine graves and human skeletal remains. Investigations into these types of crimes are justified legally, ethically and for humanitarian reasons. The secrecy surrounding torture further emphasizes the need for impartial investigations where documentation of evidence should have top priority, alongside the identification of victims. Evidence of torture from graves and skeletal remains are divided into three main categories. First, skeletal trauma is often present after physical torture, and by gaining knowledge about specific torture methods it may be possible to determine the origins of such trauma. Secondly, material evidence in form of implements used to inflict pain, cause death or to restrain a victim are commonly found in clandestine graves. Thirdly, the contextual evidence from graves is important, particularly spatial relationships between human remains and associated objects, positions of individual victims within a grave, and all other general archaeological information such as stratigraphy. A thorough understanding of physical torture methods and their sequelae will provide possibilities for recognizing important evidence related to fatal human rights abuses.

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Chapter one - Introduction

"It happened, therefore it can happen again: this is the core of what we have to say.
It can happen, and it can happen everywhere" (Primo Levi, referring to the Holocaust)

This thesis is, at least in theory, the result of one year's research - and the timing of this has been extraordinary. The year, beginning in October 1998, has witnessed a number of spectacular events including the arrest of a notorious dictator and former president, General Augusto Pinochet, on charges of torture and crimes against humanity, and the capture of equally notorious Khmer Rouge leaders in Cambodia. Unfortunately there were also severe human rights violations around the world, such as ethnic cleansing, massacres, torture and extrajudicial executions.

Coincidentally, this year has also seen the 50th anniversaries of two major legal documents, one devoted to human rights and the other to the protection of people during war. These are the *Universal Declaration of Human Rights* of the 10th of December 1948, and the four *Geneva Conventions* of the 12th of August 1949. The main influence behind the creation of these two documents was World War II and its major atrocities. However, returning to the words by Levi, similar atrocities can and will be carried out again, in any place at any time. For example, many were those who thought that Europe would *never again* be the arena for atrocious events resembling World War II - the Federal Republic of Yugoslavia was to prove them wrong by instigating wars against Bosnia-Herzegovina, Croatia and Kosovo. Similarly, the 1980s and 1990s have seen many former military dictatorships, notably those in Latin America, diminish in favour of democracy. Human rights crimes had been committed on large scale in all of these countries, and with the return to democracy came the possibilities to look into the past abuses. In most cases justice was prevented through the establishment of amnesty laws, but at least part of the truth behind these crimes was acknowledged with the work of investigative commissions. In Argentina the Dirty War was summarized in a report titled *Nunca Más* (Never Again), a phrase which originates from the aftermaths of the Holocaust. One major question arise here - what can we do to prevent atrocious wars and human rights violations from happening again? The fifty years that have passed since the initiatives were taken to promote human rights and fundamental freedoms, and to protect people during armed conflicts, have not provided the answer.

The main aim of this thesis is to demonstrate that there are potentials for effective documentation and recovering of evidence relating to human rights violations, primarily torture, from the context of graves and from human skeletal remains. Each of the three main chapters also have their individual aims, and these are as follows:

- To show that forensic investigations of human rights violations can be legally justified, as the majority of abuses involved constitute crimes under international law.

- To express grave concern that torture in recent years has been practised systematically, and it *still continues* in a variety of different contexts, including within judicial systems.

- To highlight the reasons why there may be evidence of physical torture present in the context of graves and on human skeletal remains.

In order to provide an introduction, or background, to the human rights violations of concern to this thesis some of the legal issues involved will be explored in chapter two. This will involve first an overview of specific crimes, as defined judicially, followed by an outline of current judicial and investigative authorities working with human rights and war crimes. There are at present two *ad hoc* international criminal tribunals which undertake investigations into war crimes committed in the former Yugoslavia and in Rwanda, and the establishment of a permanent international criminal court is on the horizon. With the creation of such permanent judicial authority with worldwide jurisdiction, forensic investigations are likely to increase in the future. For judicial purposes forensic evidence is essential, and may prove invaluable in collaboration with testimonies by witnesses. Important evidence can often be collected through the exhumation of deceased victims from clandestine mass and single graves.

It is estimated that just under one-hundred countries around the world are currently involved in acts which would qualify under the definition of torture. The practice of torture can be found in many different contexts, and these will be described in chapter three, with examples from countries worldwide. Torture may be part of armed international and civil conflicts, where individual victim are tortured in order to subdue opposing parties and to induce fear, or as part of larger military operations, such as ethnic cleansing and counterinsurgency campaigns in which the majority of victims are killed after being subjected to torture. The practice of torture may also be found in association with suppressive regimes, in which case it may be widespread, systematic and institutionalized, leading to the unlawful arrest and detention of individuals labelled "subversives". Torture may also be found within facilities where people are deprived of their liberty, such as in police stations, prisons and mental institutions, where it is being used as forms of interrogation or punishment.

Methods of physical torture will be described in great detail in chapter four, including the immediate physical reactions reported by the victim or other witnesses to the torture. Possible short- and long-term sequelae following various physical torture methods will also be included here. The emphasis throughout the chapter is on skeletal injuries, material and contextual evidence, all of which are of importance in the exhumation of deceased victims from graves. However, since there are numerous methods which include combinations of physical and psychological abuse, there will also be brief descriptions of some psychological methods of torture, and also the long-term psychological sequelae of *post-traumatic stress disorder,* which appears to be very common in survivors of torture.

This research has been based on medical, legal and political literature, with particular focus on forensic sciences and human rights. There is only a limited number of professional publications on forensic sciences that are specifically concerned with the investigation and documentation of human rights violations. However, the medical literature contains numerous studies of torture survivors, and these proved invaluable to this research. Another major source of information have been the many publications by Amnesty International which covered some aspects highly relevant to this thesis. Finally, with the examples and illustrations given there may be a slight bias towards two areas of the world, the former Yugoslavia and Latin America. This is caused by the fact that there is extensive material available from these two areas, together with my own special interest in these regions.

Chapter two - Human Rights and Legal Issues

The aim of this chapter is to explore the judicial framework of international law which has developed since World War II, with a particular focus on various human rights issues. Throughout the recent history war and human rights have become inevitably interlinked, as many of those suffering the consequences of ongoing wars are civilians. It has been estimated that approximately 13% of the casualties in World War I were civilians, in World War II similar estimations have risen to around 70%. This increase in civilian deaths was a contributing factor to the emergence of new legal systems for war crimes and human rights crimes respectively.

It is in the post-World War II era that legal developments have taken place to create norms for the protection of peoples lives, human rights and fundamental freedoms. The emphasis of this chapter is on crimes violating the lives of civilians, irrespectively of whether the crime was carried out during war of any kind or in peace-time. There are certain acts of violence which will be continually mentioned throughout this chapter, these include: murders, extrajudicial executions, forced "disappearances", and torture.

Part one of this chapter contains a brief presentation of the relevant charters, conventions and declarations which have been created since World War II, and these are the references for the definitions of crimes which follow. These legal instruments provide the important foundation of human rights and humanitarian law, under which investigations into alleged breaches can be carried out and legal action pursued. For an introduction and background to the emergence of human rights legal standards and international humanitarian law consult Appendix I.

There is a common link between most of the crimes defined in part two - that they constitute acts of wilful and unlawful killings. Whether these acts were extrajudicial executions of individuals, or a pluralistic form of killing, such as genocide or ethnic cleansing, or even an "accidental" death in association with severe torture, these victims are often buried in clandestine mass or single graves. The exhumation of victims from such graves can provide crucial evidence in the prosecution of perpetrators, whether legal action is pursued through international tribunals or national courts.

Recent advances in international law, such as the development of two international *ad hoc* tribunals, for the former Yugoslavia and Rwanda, have led to an increasing demand for human rights crimes investigations under international criminal jurisdiction. These two current judicial authorities which are investigating allegations of human rights violations and war crimes, and prosecute the alleged offenders, will be described in part three. Some issues surrounding past, present and future forensic investigations of war crimes and human rights violations will also be discussed.

With 160 nations voting for the establishment of an International Criminal Court (ICC) in 1998, it is very likely that requests for human rights crimes investigations will increase even more in the future, this time under the auspices of the proposed ICC. A brief account of the present situation of such an international court will also be given in part three.

PART ONE - THE LEGAL INSTRUMENTS

A presentation of relevant legal documents

There is a common misconception that "human rights" refer solely to peace-time situations and "humanitarian law" to war and armed conflicts. Human rights crimes are present in almost every conflict, but as Levie describes (1996:123):

> "it must be borne in mind that although all of the law of war is humanitarian, not all of the humanitarian law involves human rights."

Since there are legal distinctions between human rights and humanitarian law instruments from both areas will be used. The documents stated below form the reference for the definitions of crimes relevant to this thesis found in part two of this chapter. They are divided into categories depending on their nature or supervising authority and are cited in chronological order.

Customary international law

It has become widely accepted that the Geneva Conventions are part of customary international law. All of the Geneva Conventions are concerned with the conduct of war and the protection of civilians during armed conflicts. The *International Committee of the Red Cross* is the supervising and monitoring agency for the following documents:

1949 *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Geneva Convention I)

1949 *Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (Geneva Convention II)

1949 *Geneva Convention Relative to the Treatment of Prisoners of War* (Geneva Convention III)

1949 *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva Convention IV)

1977 *Protocol Additional to the Geneva Conventions of August 12, 1945, and Relating to the Protection of Victims of International Armed Conflicts* (Protocol I)

1977 *Protocol Additional to the Geneva Convention of August 12, 1945, and Relating to the Protection of Victims of Non-International Armed Conflicts* (Protocol II)

The United Nations

Contrary to the Geneva Conventions which are solely focused on war and the civilian population during war, the legal instruments adopted by the United Nations focus on human rights and a variety of specific crimes. The following declarations, conventions, covenants and statutes are under the auspices of the United Nations:

1948 *Universal Declaration of Human Rights* (see Appendix II)

1948 *Convention on the Prevention and Punishment of the Crime of Genocide*

1966 *International Covenant on Civil and Political Rights*

1966 *International Covenant on Economic, Social and Cultural Rights*

1973 *International Convention on the Suppression and Punishment of the Crime of Apartheid*

1984 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

1993 *Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia* (hereafter the 1993 ICTY Statute)

1994 *Statute of the International Tribunal for Rwanda* (hereafter the 1994 ICTR Statute)

1998 *Rome Statute of the International Criminal Court*

The *Universal Declaration of Human Rights*, together with the two 1966 Covenants, are generally referred to collectively as the United Nations' *International Bill of Human Rights*. The human rights and fundamental freedoms set forth in this Bill are summarized in Table I.

The International Law Commission (ILC)

The following codes and statutes have been outlined by the International Law Commission, but are still in drafting or revision stage:

1991 *Draft Code on Crimes against the Peace and Security of Mankind* (hereafter the 1991 Draft Code)

1994 *Draft Statute for a Permanent International Court* (hereafter the 1994 Draft Statute)

1996 *Draft Code on Crimes against the Peace and Security of Mankind* (hereafter the 1996 Draft Code, full text in Appendix III)

The 1996 Draft Code is a revised version of the 1991 edition and, although especially the content of the 1996 Draft Code is incorporated in several later documents, neither of these drafts will be legally binding until they are completed and ratified (possibly as treaties). The 1994 Draft Statute was extensively incorporated, with elaborations, into the 1998 Rome Statute under the auspices of the United Nations.

Internationally Recognized Human Rights

The International Bill of Human Rights recognizes the rights to:

Equality of rights without discrimination (D1, D2, E2, E3, C2, C3)
Life (D3, C6)
Liberty and security of person (D3, C9)
Protection against slavery (D4, C8)
Protection against torture and cruel and inhuman punishment (D5, C7)
Recognition as a person before the law (D6, C16)
Equal protection of the law (D7, C14, C26)
Access to legal remedies for rights violations (D8, C2)
Protection against arbitrary arrest or detention (D9, C9)
Hearing before an independent and impartial judiciary (D10, C14)
Presumption of innocence (D11, C14)
Protection against ex post facto laws (D11, C15)
Protection of privacy, family, and home (D12, C17)
Freedom of movement and residence (D13, C12)
Seek asylum from persecution (D14)
Nationality (D15)
Marry and found a family (D16, E10, C23)
Own property (D17)
Freedom of thought, conscience, and religion (D18, C18)
Freedom of opinion, expression, and the press (D19, C19)
Freedom of assembly and association (D20, C21, C22)
Political participation (D21, C25)
Social security (D22, E9)
Work, under favourable conditions (D23, E6, E7)
Free trade unions (D23, E8, C22)
Rest and leisure (D24, E7)
Food, clothing, and housing (D25, E11)
Health care and social services (D25, E12)
Special protection for children (D25, E10, C24)
Education (D26, E13, E14)
Participation in cultural life (D27, E15)
A social and international order needed to realize rights (D28)
Self-determination (E1, C1)
Humane treatment when detained or imprisoned (C10)
Protection against debtor's prison (C11)
Protection against arbitrary expulsion of aliens (C13)
Protection against advocacy of racial or religious hatred (C20)
Protection of minority culture (C27)

D = Universal Declaration of Human Rights (1948)
E = International Covenant of Economic, Social, and Cultural Rights (1966)
C = International Covenant on Civil and Political Rights (1966)
Numbers refer to the Article number of the respective document.

Table I: The International Bill of Human Rights
(table influenced by Donnelly 1993:9)

PART TWO - DEFINITIONS OF CRIMES

Crime of Aggression

The definition of "a crime of aggression" has changed repeatedly in international law, and the reasons for that will be explained here. Crimes of aggression, although not necessarily directly resulting in the killing of people or other severe human rights violations, are of major importance in the context of international humanitarian law. The earliest definitions of aggression date back to the 1920s, and were a consequence of emerging questions on what types of conduct should be considered as "offensive" or "defensive" in terms of hostilities between counties. These early definitions were mostly associated with "war of aggression", and therefore limited in the interpretation of aggression as a crime (Clark 1997:173-5). A contributing factor to the early definitions was that, prior to World War I, individuals were not recognised as legal subjects under international law - but States were (Wolfrum 1996:238). By labelling aggression in nexus with war, States could be held responsible for acts of aggression.

It is only recently that the interpretation of aggression in association with war has changed. To explain why these changes were made, the concept of aggression has to be examined. The word "aggression" itself, can be explained as either of the following:

> (a) an attack or harmful action (for example an unprovoked attack by one country against another);
> (b) any offensive activity or practise (such as aggression against personal liberty);
> (c) a hostile or destructive mental attitude or behaviour (Collins English Dictionary 1993:29).

The ILC's 1991 Draft Code includes a detailed description of what constitutes a crime of aggression (Article 15), and further, Article 16 describes "threats of aggression". These definitions clearly prove that both individuals and States can be held responsible for a crime of aggression in accordance with this Draft Code. However, as the definitions were of a very descriptive nature they also had negative impact on the interpretation of the term, resulting in limited and narrower possibilities for the application of these articles (McCormack & Simpson 1997:250-1, Tomuschat 1996:54). This was raised as criticism against the 1991 Draft Code, and contributed to the latest changes of the definition. "Threats of aggression" is not included in the 1996 Draft Code, and Article 16 reads:

> "An individual, who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State, shall be responsible for a crime of aggression."

The specific descriptions of a crime of aggression have been excluded, in favour of a more open and unlimited interpretation of the term. It is important to note that there is individual criminal responsibility associated with the crime of aggression under international law, independently of the intention of the act, and no reference is asserted to the instigation of war. The interpretation of a crime of aggression is now flexible, and can be decided with reference to the particular case in question.

If documented and recognised, rising levels of aggression within a country may indicate that an internal conflict is impending, and measures can be taken by concerned parties to prevent such outbreak. Acts of aggression between States can also be seen as early indicators of future hostilities which, if these acts are ignored, could escalate into severe conflicts. International humanitarian law is violated in most acts of aggression, and rising levels of aggression can lead to a rapid decline in the respect of even the most fundamental human rights.

Apartheid

Apartheid, which is the Afrikaan word for "separateness" (Ayto 1990:29), has often been associated with South Africa. When the 1948 presidential elections brought the conservative Nationalist party to power, racial division became the norm in South Africa as policies based on apartheid were integrated into the political and legal systems (Donnelly 1993:70). The United Nations had expressed concerns about racial discrimination in South Africa already in 1946, but it was not until the 1960s that serious campaigns against apartheid were launched. In 1962 the United Nations created a *Special Committee on Apartheid*, and the General Assembly suggested to break further diplomatic relations with South Africa together with a boycott of all trade. However, this suggestion was not implemented until the 1980s, when the situation in South Africa had deteriorated to a level where it was impossible to ignore the severe human rights violations that accompanied the practice of apartheid (Donnelly 1993:74).

In the beginning of the 1970s, measures were taken to create a convention prohibiting the practice of apartheid. This effort resulted in the *International Convention on the Suppression and Punishment of the Crime of Apartheid*, which was adopted by the General Assembly on November 30, 1973, and came into force in 1976 (Budlender 1988:95-8, Tjønneland 1988:85-94). Article 1 of the Convention describes apartheid as a crime against humanity, where the policies and practices of racial segregation and discrimination violates international law, as well as poses threats to international peace and security. According to the Convention, the crime of apartheid includes the following acts, under Article 2(a):

> "Denial to a member or members of a racial group or groups of the right to life and liberty of person:
>
> (i) By murder of members of racial group or groups;
>
> (ii) By the infliction upon the member of a racial group or groups of serious bodily or mental harm, by infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
>
> (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups."

The Apartheid Convention has been seen as an attempt to get apartheid recognised under international law, and as a crime to which individual criminal responsibility could be applied (Donnelly 1993:75). Due to the lack of prosecutions that have taken place under this Convention, it has been seen as a symbolic rather than an applicable document. However, the crime of apartheid has often been included as a crime against humanity in legal documents since 1973, for example in resolutions from the General Assembly and the Security Council, and, therefore, the importance of the Apartheid Convention should not be understated. The 1991 Draft Code comprised an article on the crime of apartheid (Article 20), but due to lack of precision in the

definition of apartheid as a crime, and the difficult nature of the subject, the Article was excluded from the 1996 Draft Code (Sunga 1997:119-22).

South Africa has, in a series of events since the end of apartheid in March 1992, become transformed. The first democratic elections were held in 1994, and the appointment of *African National Congress* (ANC) leader Nelson Mandela as President came as no surprise. Under a Parliament Act, the new government established the *South African Truth and Reconciliation Commission*, with an aim to investigate human rights violations which had taken place under the apartheid regimes between 1960 and 1994. The Commission, chaired by Archbishop Desmond Tutu, was appointed a mandate period from April 1996 to July 1998 to preform this task. The Commission worked on the principle of amnesty for full disclosure of the truth, where the defendants had to apply for amnesty prior to public hearings. These hearings, which should not be confused with trials, have provided truth and reconciliation but not justice, as the perpetrators are immune from civil and criminal liabilities when amnesty has been granted.

The final report of the Commission's findings has now been presented to President Mandela, together with suggestions on restitution for the victims and measures to be taken to prevent similar human rights abuses in South Africa in the future. This is, hopefully, the end of a very grim chapter in South Africa's history, where apartheid has finally been exterminated.

Crime of Genocide

The word "genocide" entered United Nations terminology in 1944, after it had been introduced to the Member States by Raphael Lemkin, a Polish-born American jurist. The term has its origin in the Greek word for race or tribe *(genos)* and the Latin word for killing *(cide)*, which Lemkin combined in his attempts to find recognition for the major atrocities committed in the recent war (Ayto 1990:252). The *Convention on the Prevention and Punishment of the Crime of Genocide,* adopted by the United Nations General Assembly in 1948, defined in Article II the crime of genocide (McCormack 1997:58-9). This specific definition has since been adopted elsewhere, with minor changes in the wording of the original article - but not in the content (Blakesley 1997:209, Rosenne 1996:95). This definition of genocide has been included in the 1993 ICTY Statute (Article 4), in the 1994 ICTR Statute (Article 2), and in the ILC's two Draft Codes (Article 19, 1991 and Article 17, 1996). These draft codes contain the following definition:

> "A crime of genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) killing members of the group;
>
> (b) causing serious bodily or mental harm to members of the group;
>
> (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) imposing measures intended to prevent birth within the group;
>
> (e) forcibly transferring children of the group to another group."

Prior to the 1948 Genocide Convention the act of genocide and massacres of civilians were seen as war crimes, and were prohibited if these occurred during an international armed conflict where

parties in the conflict killed civilian groups of the opposing side. However, the act of genocide, if committed by the government against its own population, was in this respect not recognised as a war crime. In response to this, there were several examples of inter-State armed conflicts (and civil wars), where acts of genocide were carried out without them being seen as crimes under international law (Sunga 1997:107). The labelling of genocide as a crime under international law solely in terms of international armed conflicts was a contributing factor to the creation of the 1948 Genocide Convention, under which the civilian population also became protected from mass extermination by its own government. It has been recognised that some of the more serious acts of genocide have, indeed, been carried out by governments against a targeted group of its own population. As Kremnitzer argues (1996:325):

> "Genocide is usually committed by a State by means of an organized and sophisticated recruitment of all its systems: the legal system, the governmental systems, the bureaucracy and the educational and propaganda machines. This constitutes an absolute distortion of the essence and the function of the State, and of its said systems, the fundamental aims of which are to assure the *existence* of persons living together, under conditions respectful of human dignity."

The crime of genocide, especially when carried out in an inter-State conflict, has severe implications on the very foundation of the society in which it occurs. Human dignity, personal characteristics, and individual identities are being totally denied in regard to the peoples affiliation to a particular collective unit. It is not realistic to suggest that every individual's links to a specific group can be verified as such. This is particularly evident in cases of ethnic and racial origin, as intermarriages and migration challenge the classification of people on such anthropological basis (Sunga 1997:112).

Genocide is today a punishable crime under international law, with no difference to whether the act was committed during armed conflict or in peace-time (Bothe 1996:298, Lescure & Trintignac 1996:24). The Genocide Convention aims to protect the members of collective units where the group identity is more permanent than, for example, political affiliations (Sunga 1997:113). However, crimes against members of a group bound by political beliefs can often be labelled as crimes against humanity under international law.

Crimes against Humanity

The present definition of crimes against humanity contains the very essence of fundamental human rights. Most of the acts covered under this heading have their origin in the *Universal Declaration of Human Rights* of 1948 and other contemporary documents, but almost half a decade was needed to reach the present summary. Although most of the acts labelled under this definition are punishable crimes in accordance with numerous conventions, declarations, and treaties, under both international and national laws, these latest changes have provided a new dimension to its uses by including acts and circumstances not previously covered in this context.

Crimes against humanity were not included in the ILC's Draft Code of 1991. Instead there was a reference to "systematic or mass violations of human rights" (Article 21, 1991), which contained some, but not all, of the acts which are covered today (Sunga 1997:124-5). Major criticism was

raised against this particular article as the definitions appeared difficult to interpret as they were not well-defined, and throughout the Draft Code the acts under various articles seemed to be overlapping each other. The revised definition which is included in the 1996 Draft Code (Article 18) provides the following:

> "A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a government or by any organization or group:
>
> (a) murder;
>
> (b) extermination;
>
> (c) torture;
>
> (d) enslavement;
>
> (e) persecution on political, racial, religious or ethnic grounds;
>
> (f) institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population;
>
> (g) arbitrary deportation or forcible transfer of population;
>
> (h) arbitrary imprisonment;
>
> (i) forced disappearance of persons;
>
> (j) rape, enforced prostitution and other forms of sexual abuse;
>
> (k) other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm."

This definition stretches well beyond the scope of international human rights law (Sunga 1997:159). It also clearly expresses that a crime against humanity has no association with war, and can therefore be applied equally to cases of crimes committed during armed conflicts, whether international or national in character, and in peace-time situations.

The two current international *ad hoc* tribunals have adopted articles on crimes against humanity in their respective Statutes, but with definitions less developed than that of the 1996 Draft Code. The acts which constitute crimes against humanity are similar under both Statutes, containing the following: murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecution on political, racial and religious grounds; and other inhumane acts (Blakesley 1997:208-9). However, the conflicts in question were of distinct characters, and whereas both examples clearly provide that individual criminal responsibility applies to the above acts, the circumstances in which these acts are seen as crimes against humanity are dissimilar. In accordance with Article 5 of the Statute of the tribunal for the former Yugoslavia, the acts that constitute crimes against humanity can be prosecuted:

> "when committed in armed conflict, whether international or internal in character,
> and directed against any civilian population"

Whereas Article 3 of the Statute of the tribunal for Rwanda provides that the acts of crimes against humanity can be prosecuted:

> "when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds"

It appears that the Statutes have adopted rather undeveloped approaches in their definitions of crimes against humanity. In the case of the former Yugoslavia the Statute draws on past misconceptions of this type of crimes by linking them to armed conflicts (Lescure & Trintignac 1996:26), and thereby ignoring international legal developments aimed toward broader interpretations of crimes against humanity. In the Statute for Rwanda international customary laws are followed to some extent, but there is a potential problem with distinguishing the "widespread or systematic attacks" from common crimes in regard to some of the acts covered under this article.

To summarise this, the definition of crimes against humanity found in the 1996 Draft Code is a major step forward for international humanitarian law as it provides extensive and flexible approaches to these crimes. It is a major advantage that clear distinctions have been drawn between war crimes and crimes against humanity, even if some of the acts labelled under these two types of crimes are, inevitably, similar (Meron 1996:222-3, Sunga 1997:159-60). By distinguishing the two, these crimes become illegal under international law, independently of the circumstances in which they were committed, and international prosecutions of the perpetrators of these crimes can be undertaken.

Ethnic Cleansing

The words "ethnic cleansing" entered United Nations terminology in August 1992, when the *Commission on Human Rights* used this expression with reference to the major atrocities that were unfolding in the former Yugoslavia (Lerner 1996:110). The expression "ethnic cleansing" has been applied to describe a certain form of genocide, and was extensively used in the general media in relation to the former Yugoslavia, but has also appeared in connection to conflicts with ethnic motivations elsewhere, such as in the Czech Republic where Gypsies were persecuted, and in Georgia (former Soviet Union), where some 200,000 people were forcibly driven away from the area of Sukhumi (Lerner 1996:108).

The practice of "ethnic cleansing" contains a variety of acts which are illegal under international humanitarian law, including grave breaches of the Geneva Conventions. The *United Nations Commission of Experts* (created in October 1992 under Security Council Resolution 780) summarized some of these crimes in their first interim report:

> "Based on the many reports describing the policy and practices conducted in the former Yugoslavia, "ethnic cleansing" has been carried out by means of murder, torture, arbitrary arrest and detention, extra-judicial executions, rape and sexual assaults, confinement of civilian population in ghetto areas, forcible removal, displacement and deportation of civilian population, deliberate military attacks or threats of attacks on civilians and civilian areas, and wanton destruction of property. Furthermore, such acts could also fall within the meaning of the Genocide Convention" (paragraph 56:UN Doc. S/25274).

With the crime of genocide the intent is to "destroy in whole or in part, a national, ethnical, racial or religious group, as such", whereas in the practice of "ethnic cleansing" the intent is to eliminate a certain group, bound by national, ethnical, racial, linguistic or religious characteristics, from a particular area or territory (Lescure & Trintignac 1996:26). The General Assembly states in Resolution 47/121 (18 December 1992) that, with reference to the conflicts in the former Yugoslavia, "ethnic cleansing" is a "form of genocide", and that:

> "ethnic cleansing" did not appear to be the consequence of the war, but rather its goal."

The process of "ethnic cleansing" in the former Yugoslavia stretched well beyond the people belonging to the targeted group (primarily, but not limited to, Muslims). The aim of "ethnic cleansing", in this case, was to remove all traces of the group's history, religion and culture. Many buildings, historic landmarks and monuments associated with the targeted group were destroyed, including Mosques, museums, libraries and schools.

Forced labour was common in Serb-held territories of Bosnia-Herzegovina, where men were taken away to preform dangerous or tedious tasks. A report from Banja Luka describes how, on July 20, 1994, 18 Bosnian-Muslim men, ranging between the ages of 52 and 63, were taken away by uniformed personnel, allegedly to do some work (Humanitarian Law Center 1995:143). The fate of these men remains unknown, and there are several other cases of similar "mass disappearances" from the Serb-held territories. Rumours that the victims of these mass abductions and disappearances were taken away to be killed have, in most of these cases, neither been confirmed nor denied by the Serb authorities. With the increasing evidence of mass killings carried out by Serbs, these rumours may well be true.

The first shocking news about concentration camps within the province of Bosnia-Herzegovina reached the international media during the summer of 1992 (Bildt 1997:170). Half a decade had passed since similar pictures of victims living under extreme conditions in concentration camps during World War II were brought to international attention, and the notion that history was repeating itself upset the world. The people in these camps were from areas which had been "cleaned" by the Serbs. Torture was frequently carried out in the camps, and witnesses have described how victims were tortured to death and buried in the surrounding fields (Bildt 1997:169).

The existence of mass graves throughout the former Yugoslavia sparked highly political debates in 1996. Graves containing victims from one party to the conflict were buried on the territory of the opposing side (or scattered on the ground), which led to numerous controversies around exhumations, gathering of bodies, transportation of the deceased to other areas and identification of the victims (Bildt 1997:447). Even after some issues had been resolved by appointing international forensic experts to carry out these missions, deliberate obstacles were still common.

The crime of "ethnic cleansing" is not included under a separate article in the Statute of the tribunal for the former Yugoslavia. However, the practice of "ethnic cleansing" contains several acts which are punishable under international law, labelled under genocide, crimes against humanity (especially in the 1996 Draft Code), crime of aggression and war crimes.

Mass Rape

During most wars and other armed conflicts there have been an increase in sexual crimes such as rapes of civilian women (Askin 1997:1-4). It can be suggested that when soldiers rape women, this does no longer constitute an isolated form of violence which takes place in the private sphere, but an act of torture for which the State should be held responsible. First for failing to control its soldiers, and secondly, for failing to protect its civilian women from such abuses (Amnesty International 1995:18). If Seifert's interpretation of rape as "a sexual manifestation of aggression" is adopted (1994:55), then this would imply that rapes committed by soldiers are crimes of aggression carried out by the State. Serious violations were committed against women, for example during World Wars I and II, including rape, enforced prostitution and sterilization (see Askin 1997, chapters 1 to 6), and in many other conflicts since, for example in Kuwait, Peru, Liberia, Papau New Guinea, East Timor, India (including killing victims afterwards), Haiti, and Djibouti (Amnesty International 1995:20-2). However, the definition here will focus primarily on the more recent crimes committed against women in the former Yugoslavia, as the severeness of these violations resulted in new international awareness and contributed to further understanding of this phenomenon.

In the former Yugoslavia it appears that rapes have been carried out as an integral part of ethnic cleansing. Mass rapes of women within a particular community, such as the Muslims in the former Yugoslavia, also represent a symbolic rape of the community itself and its culture (Seifert 1994:63-4). Furthermore, these are often gang rapes carried out with the specific intent to demonstrate power and superiority of the perpetrators over their enemies, resulting in severe damage to the identities of the rape victim in person and to the group as a collective unit (Folnegovic-Smalc 1994:175). Stiglmayer offers the following explanation to the violent acts carried out by Serb forces within the territory of the former Yugoslavia (1994b:85):

> "Their purpose is to drive Muslims and Croats away from the conquered territories. Besides brutal terror, deliberate murders, mass executions, internment camps, deportations, and torture, one of the means that they are employing is rape. Rape spreads fear and induce the flight of refugees; rapes humiliate, demoralize, and destroy not only the victim but also her family and community; and rapes stifle any wish to return."

The pattern appears to be consistent in the areas of Bosnia-Herzegovina and Croatia which were "cleaned" by Serb forces. This generally started with the immediate killing of "suspicious" individuals (for example: politically active, rich, intellectuals, and influential people within the community) and public rapes, followed by the imprisonment in concentration camps of large numbers of men, women and children, where further killings, torture and rape were common before survivors were forcibly deported, exchanged as prisoners of war, or released (Stiglmayer 1994b:87). In addition to this confinement of people were the establishment of what have been referred to as "rape camps" (Stiglmayer 1994b:115) or "rape / death camps" (Allen 1996:65) in which women of all ages were incarcerated for prolonged periods of time and subjected to severe humiliation, ill-treatment (including torture), rapes and enforced impregnation.

In their 1994 report, the *United Nations Commission of Experts* divided the mass rapes carried out in Bosnia-Herzegovina and Croatia into five categories. These were: rapes committed by

individuals or a small group before any fighting (or ethnic cleansing campaigns) occurs; public rapes related to the fighting; rapes by individuals or groups within detention / internment or concentration camps; rapes as ethnic cleansing, possibly resulting in pregnancy; and rapes committed in brothels as a form of entertainment for the soldiers. This account, given by the *Commission of Experts,* further indicates the deliberate practice of rapes as an integral part of warfare, and provides an estimate of the very large scale on which these atrocities were committed. As MacKinnon (1994b:187) suggests:

> "mass rape is a tool, a tactic, a policy, a plan, a strategy, as well as a practice"

Ethnic cleansing has been described as a euphemism for genocide (MacKinnon 1994a:73), and in the case of the former Yugoslavia this practice included the deliberate mass rape of women. The reasons for using rape as a tool of warfare have been interpreted in a variety of different ways. Some scholars talk about "genocidal rape" (Allen 1996:62-5) or rape as an act of genocide (MacKinnon 1994b:188), where the intention behind the rapes contributes to the elimination of a certain group of people. This can for example be seen in the deliberate impregnation of women, who will give birth to children who are not of "pure" ethnic or religious descent. Furthermore, it is also apparent in the more long-term effects on the society as a whole, as female victims of rape may become ostracized from the society (Sunga 1997:175). If the rapes have been committed on such large scale as in the former Yugoslavia (or Rwanda), the society may produce less children in the future, due to the very large number of women who, because of their rapes, are seen as unsuitable for marriage by religious or cultural beliefs and traditions, for example after becoming pregnant following rape and giving birth to a child outside marriage (Copelon 1994:203). The following summary of genocidal rapes, which includes reference to enforced pregnancies, has been presented by Allen (1996:62-3):

> "1. Chetniks or other irregular forces enter a Bosnian-Herzegovinian or Croatian village, take several women of varying ages from their homes, rape them in public view, and depart. The news of this atrocious event spreads rapidly throughout the village. Several days later, regular Bosnian Serb soldiers or Serbs from the Yugoslav Army arrive and offer the now-terrified residents safe passage out of the village on the condition that they never return. Most accept, leaving the village abandoned to the Serbs and thus furthering the genocidal plan of ethnic cleansing.
> 2. Bosnian-Herzegovinian and Croatian persons being held in Serb concentration camps are chosen at random to be raped, often as a part of torture preceding death.
> 3. Serb, Bosnian Serb, and Croatian Serb soldiers and the militias and irregular forces known as Chetniks arrest Bosnian-Herzegovinian and Croatian women, imprison them in a rape / death camp, and rape them systematically for extended periods of time. Such rapes are either part of torture preceding death or part of torture leading to forced pregnancy. Victims who do not become pregnant are often murdered. Victims who do become pregnant are raped consistently and subjected to severe psychological abuse and other forms of torture until such time as their pregnancies have progressed beyond the stage when a safe abortion would be possible, at which point they are released."

Another highly disturbing part of these mass rapes is the extensive evidence suggesting that many of these acts were filmed. The recordings were made either for the purpose of creating

pornography (so called "snuff movies") for the perpetrators to motivate torture and rape by enhancing the ethnic hatred that lies underneath this particular act of aggression, or to be used as propaganda on television (MacKinnon 1994a:75). In the case of the latter, testimonies given by Muslim and Croatian women confirm that victims were regularly forced to lie about the ethnic origin of the Serb perpetrators on taped interviews aimed to be broadcast as propaganda on Serbian television (MacKinnon 1994a:75-7). Furthermore, evidence suggests that other acts of aggression, torture and murder were also filmed, particularly within the concentration camps. As MacKinnon (1994a:79) rightly points out:

> "We will never know what happened to the women who were killed until we uncover the mass graves or the pornography."

Depending on the definition and interpretation of these rapes they can be prosecuted under a variety of different international legal instruments, and they should, therefore, not be referred to only in terms of acts of genocide. Several scholars points out the similarities between rape and torture (Amnesty International 1995:87, Copelon 1994:201, Seifert 1994:55). Sexual abuse and humiliation is common in torture (see chapter four - sexual torture) and, apart from physical and psychological torture, rapes may also be seen as constituting cruel and degrading treatment - all within the scope of the 1984 convention against torture (see chapter three). The two *ad hoc* tribunals have included rape in their respective Statutes, under the heading "crimes against humanity". This has caused some concern as the atrocities committed against women in both Rwanda and the former Yugoslavia were far beyond common and / or isolated rapes. The best solution would be to have mass rape as a category of crime on its own, eliminating problems with definitions which occur when it is included in the context of other crimes (Sunga 1997:176-80).

War Crimes

The definitions here will focus on available contemporary interpretations, but developments resulting from World War II can be found in Appendix I. The approaches adopted in the Statutes of the two International Criminal Tribunals (for the former Yugoslavia, 1993, and Rwanda, 1994), and in the ILC's 1996 Draft Code, will be analysed. It should also be noted that serious violations of the laws and customs applicable to armed conflict have been recognised under the jurisdiction of a future International Criminal Court, in the ILC's Draft Statute of 1994 (Dinstein 1996:17-8). Additionally, references to war crimes and crimes against the peace and security of peoples are also included in the 1998 *Rome Statute of the International Criminal Court.*

Starting with the 1993 ICTY Statute, it contains two separate articles which refer to war crimes specifically. The first of these, Article 2, sets out grave breaches of the Geneva Conventions of 1949, for which persons can be prosecuted (Lescure & Trintignac 1996:19). It provides:

> "The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
>
> (a) wilful killing;
>
> (b) torture or inhuman treatment, including biological experiments;

(c) wilfully causing great suffering or serious injury to body or health;
(d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
(f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trail;
(g) unlawful deportation or transfer or unlawful confinement of a civilian;
(h) taking civilians as hostages."

This Article is largely based on the Geneva Conventions, but it has improved the language used in 1949. It is stated that, within the scope of this Article, civilians are protected whether the conflict is of international or internal character (Blakesley 1997:207). Furthermore, it has been suggested that Article 2 is broad enough to comprise all offences found under Common Article 3 of the Geneva Conventions of 1949 (Blakesley 1997:206, referring to a statement by the US Ambassador to the UN, Madeleine Albright, on May 25, 1993). However, there is no reference to either Common Article 3 of the Geneva Convention of 1949 (see Appendix I for further details), or to the Additional Protocol II of 1977 present in this Statute.

Continuing with the same Statute, Article 3 states the violations of the laws or customs of war which are punishable offences within the jurisdiction of the Tribunal. These offences include, but are not limited to:

"(a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
(b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
(c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
(d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
(e) plunder of public or private property."

Questions have been raised on how the content of this Article applies to the conflicts in the former Yugoslavia, mainly regarding military necessity and attacks on undefended places (Blakesley 1997:208). As with Article 2 of this Statute, Article 3 also appears to have little reference to the Common Article 3 of the Geneva Conventions of 1949, and to the Additional Optional Protocol II of 1977.

On the contrary, the 1994 ICTR Statute has resolved this issue in Article 4, which provides:

"The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:
(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
(b) Collective punishments;

(c) Taking of hostages;
(d) Acts of terrorism;
(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
(f) Pillage;
(g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
(h) Threats to commit any of the foregoing acts."

The explicit references to Common Article 3 of the Geneva Conventions, and to the Additional Optional Protocol II, have provided a clear interpretation of this Article. Related to the conflict in Rwanda, civilians are protected in armed conflicts of both internal and international character, and any violations against the provisions set out in the above mentioned documents, and stated in Article 4 of this Statute, are prosecutable under the jurisdiction of the tribunal for Rwanda.

The most extensive definition of war crimes is found in the ILC's 1996 Draft Code. According to Article 20:

"war crimes constitutes a crime against the peace and security of mankind when committed in a systematic manner or on a large scale"

The Article is divided into several areas of offences, these include: violations of international humanitarian law; causing death or serious injury to body or health to civilians or persons who have stopped to participate in the hostilities; outrages upon personal dignity, such as, humiliating and degrading treatment, rape, enforced prostitution and other forms of indecent assault; violations of the laws and customs of war, including the humanitarian laws applicable in armed conflicts of internal character; and the use of warfare not justified by military necessity with the intent to cause widespread, long-term and severe damage to the natural environment, and thereby have a negative impact on the population living in the affected areas. Article 20 of the 1996 Draft Code provides the most comprehensive definition of war crimes available today, and it is quoted in full length in Appendix III.

PART THREE - CURRENT JUDICIAL AND INVESTIGATIVE AUTHORITIES

The International Criminal Tribunal for the Former Yugoslavia (ICTY)

Created under Security Council Resolution 827 (1993), the *International Criminal Tribunal for the former Yugoslavia* (ICTY) has the power to prosecute persons responsible for serious violations of international humanitarian law carried out on the territory of the former Yugoslavia since 1991. The *Commission of Experts*, which had begun gathering evidence and information related to grave breaches of the Geneva Conventions and other violations of international humanitarian law already a year earlier, continued their work. As the conflicts in the former Yugoslavia have been referred to earlier in this chapter (ethnic cleansing and mass rape), and appear throughout the coming chapters, no summary of the conflicts will be given here.

Exhumations of victims from mass graves have been carried out on large scale since 1996, for the main purpose of collecting forensic evidence to aid the prosecution of the persons responsible for these atrocities (Blewitt 1997:287-8). The forensic evidence from such graves indicate that the victims were civilians, rather than combatants, and that many were killed in systematic executions by firing squads, and some victims were still blindfolded and / or with their hands tied behind their backs (Blewitt 1997:287, Vanezis 1997:280). Throughout the exhumations it has also become apparent that graves have been tampered with, including the removal of bodies from graves, which strongly indicates that efforts were made to conceal possible evidence of the atrocities which had been committed (Blewitt 1997:288).

Shestack (1996:210) suggests that the creation of ICTY is a major advancement for international law, and that it also act as a deterrent for future war crimes. This is true in the sense that there is an emerging consensus that the international community has to act to protect and defend human rights and, furthermore, resulting in the fact that certain acts are seen as crimes under international law. There is also another advantage with international prosecution - that all sides to a conflict can be tried, and not only the defeated parties. However, as to the deterrent effects of creating the ICTY, it is unlikely that it has changed the course of violence even in the former Yugoslavia itself, hence Kosovo. The ICTY has arrested and prosecuted very few offenders, but it has now extended its jurisdiction to cover the more recent atrocities which were committed in Kosovo, where forensic teams are currently collecting and documenting important evidence.

The International Criminal Tribunal for Rwanda (ICTR)

Created under Security Council Resolution 955 (1994), the *International Tribunal for Rwanda* (ICTR) began the process of collecting evidence for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law, carried out on Rwandan territory, or by Rwandan citizens on the territory of neighbouring States.

The conflict in Rwanda was of a very different nature to those experienced in the former Yugoslavia. The Rwandan Hutu president, Juvenal Habyarimana, was killed when his aircraft was shot down - the Tutsi population of Rwanda was to be punished for this through genocide. Hutu militia and government troops massacred between 500,000 and one million Tutsis, most of these in the one-hundred day period succeeding the plane crash on April 6, 1994. The majority of the victims were either slaughtered with machetes, gunned down, beaten and / or stabbed to death with nail-studded clubs or hoes, burned alive or drowned in cesspits (Vanezis 1997:280). Exhumations of victims from mass graves have been carried out in Rwanda, for the purpose of gathering forensic evidence to aid the prosecution of persons responsible for these atrocities. Skeletal remains of victims (men, women and children) have been located inside buildings such as churches, in graves, and also often in large quantities scattered on the grounds of massacre sites. Individual identification of victims is virtually impossible, especially since few are alive who could verify the identities of those who were killed.

The case of Rwanda is a clear-cut example of genocide, with one group, the Hutus, eliminating another, the Tutsis. The victims constituted those who were administratively designated as Tutsis by Rwandese law, but as Sunga argues (1997:112):

> "Given the high rate of intermarriage in Rwanda and a common language, religion and geographic area of habitation over several centuries, it is unlikely that the Hutus and Tutsis can be distinguished from each other on an exclusively anthropological bases, despite distinct origins and histories."

The ICTR has been successful in arresting and prosecuting persons responsible for the 1994 genocide. Those found guilty on charges of genocide have included the former Prime Minister of Rwanda, Jean Kambanda, sentenced to life-time imprisonment in May 1998. Another 2,000 persons, currently held in prison, have also confessed to their participation in the genocide.

Towards an International Criminal Court

Although the intention to create an International Criminal Court was first announced in 1948, it took fifty years to accomplish that objective. This was largely due to the Cold War which had created an atmosphere where the emergence of respected international legal standards seemed inconceivable. The major atrocities which were carried out in the former Yugoslavia and Rwanda introduced the need of an international court once more, and the International Law Commission presented a Draft Statute in 1994. As Broms rightly points out (1996:186), the creation of the two *ad hoc* tribunals, and the work carried out under their jurisdiction, is likely to have influenced the 1994 Draft Statute and the continuance of work to ensure that an international court was established. However, the 1994 Draft Statute was largely revised in the 1998 *Rome Statute of the International Criminal Court*. The preamble to the 1998 Rome Statute states that:

> "during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shocked the conscience of humanity"

The International Criminal Court will have jurisdiction over war crimes, crimes against humanity, and human rights violations, independently of whether these crimes are committed in the course of a war or during peace-times. All crimes are associated with individual criminal responsibility, and persons of all positions can be tried by the court, including high-profile leaders. The Court has no intention of prosecuting States, only individual offenders. The preamble of the 1998 Statute further states that:

> "the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation"

The International Criminal Court will not replace national courts in prosecuting persons responsible for international crimes, but it will act in cases where a State fails to undertake a prosecution of an identified offender or when a State is unable to try the perpetrators at a national level.

Through the establishment of an International Criminal Court, the international community has finally expressed its determination to secure a safer environment for its citizens. Hopefully, the court may also deter future perpetrators from carrying out crimes which would fall under the jurisdiction of the ICC.

Concluding remarks

It has been established throughout the chapter that crimes such as torture, extrajudicial executions, massacres, and "disappearances", together with a variety of other violations are illegal under international law. However, some of the definitions of these crimes still have a tendency to be focused towards armed conflicts rather than peace-time, which may narrow the interpretation and application of some legal instruments.

It has become obvious that, apart from ethical, humanitarian and official purposes, there are sound legal reasons to investigate allegations of all the crimes mentioned above. Nevertheless, this is a task which is often made difficult due to a multitude of practical constraints, such as the dangers associated with working in a hostile environment where the State, local peoples, or security personnel are interfering with the investigation even though official authority to carry out such work has been given to the investigative team. Similarly, there may not be sufficient security personnel available where there are obvious threats to investigative teams, or the persons assigned to oversee the investigation may be biased, and may create deliberate obstacles, or simply appear hostile towards the team. Another practical problem for these types of investigations is security, including the possibilities of an on-going or impending armed conflict and, furthermore, the dangers of land mines in the areas which are being investigated.

Even when investigations have been carried out, there may not be any possibilities to prosecute the individuals identified as perpetrators. Such prosecutions may be prevented through amnesty laws passed by a military regime before transfer to democracy, or even as part of a peace settlement (Domb 1996:305-20). Under other circumstances justice may be sacrificed for the full disclosure of the truth, whereby a truth commission is appointed but no prosecutions are undertaken. As La Rue argues (195:73):

> "In some countries even the right to truth, which is a fundamental and basic right, is difficult to achieve; much more difficult to achieve would be the right to justice."

Retrospective cases present other legal problems such as *nullum crimen sin lege,* namely the fact that crimes can only be tried if there was a law prohibiting the offensive act at the time it was carried out. Similarly, a State can only arrest, detain and try suspected offenders under international treaties for crimes committed from the date the detaining State ratified the specific treaty under which prosecution is taking place. One recent example of this dilemma is the arrest of former military dictator and subsequent president of Chile, General Augusto Pinochet, in London in October 1998, on an extradition order from Spain where the General is wanted in connection with crimes against humanity and torture. This arrest sparked a major debate in international law, particularly in association with questions around the diplomatic immunity which has previously been granted to former heads of States. Whatever the outcome of the Pinochet case the arrest and ongoing extradition proceedings in London have made tremendous contributions to human rights already. First, it has sent a clear message to other abusive State leaders that legal action may be taken against them if they leave their own countries, and that the assumed diplomatic immunity is not guaranteed anymore, not even to former heads of States. Secondly, it has brought attention to crimes against humanity, as defined earlier, and torture, which is the main topic in the following chapters.

Chapter three - Torture in Context

"Everyone has the right to life, liberty and security of person"
(Article 3, *Universal Declaration of Human Rights* 1948)

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

"No one shall be subjected to arbitrary arrest, detention or exile"
(Article 9, *Universal Declaration of Human Rights* 1948)

The aim of this chapter is to place the practice of torture in its context. Due to advances in technology and sophistication the emphasis will be on modern-day torture, focusing primarily on the period from 1970 and onwards. Acts of torture assume the participation of at least two individuals; the victim and the torturer. Part one of this chapter focuses on the victims of torture, from the time of their initial arrest and to their release from detention, prison, death or "disappearance". Torture carried out as part of a larger operation, such as a massacre, ethnic cleansing or genocide, will also be described. The torturers are analysed in part two, where the intent is to put their participation, as individuals, professionals or as State instruments, into perspective. The types of torture practised in a certain place, whether of psychological, physical and / or pharmacological nature, will be dependent upon the available torturers, and the direct or indirect involvement of professionals such as medical doctors and psychiatrists. Part three is devoted to the delicate issues of the death penalty and corporal punishments. Several major contradictions exist between what is prohibited as torture under international law and what are legally justified practices in form of judicial executions or corporal punishments in some countries, and these will be examined here. Lastly, there is a brief summary of the most obvious points which have been introduced in this chapter.

For the purpose of this thesis the preferred definition of torture is that of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, as adopted by the General Assembly of the United Nations on December 10, 1984. Article 1 states:

> "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.
>
> 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application."

Since the creation of the torture convention there have been further developments of regional instruments, including the *Inter-American Convention to Prevent and Punish Torture* (1985), and the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1987), and their importance cannot be overstated (see Appendix IV).

In his book *Discipline and Punish: The Birth of Prisons* (1977) Michel Foucault provided a thoughtful analysis of the relationship between forms of punishment and the society of which they are a part. Although clear distinctions are drawn up by Foucault between public torture and executions practised in the *ancien régime* and the modern capitalist society's preoccupation with imprisonment, they are based on the same phenomenon - that of physical integrity and the way in which another human being can interfere with it. The concern is still with the power of a body (deliberate confinement) and over a body (possibilities of inflicting pain), although today the control over an offender lies in taking away his or her rights, liberties and free choices by long-term disciplinary confinement. Hudson (1996:119) has suggested that this suspension of rights is a replacement for the infliction of pain, which also demonstrates a shift of emphasis where it is possible for punishments prescribed by the authorities to be of significantly less gravity than the violation carried out by the prosecuted citizen.

According to Foucault, discipline is an integral part of modern day society, which has resulted in the rise of imprisonment, hence the birth of the prison. Disciplinary measures have moved from the public's eye in order to be carried out within the walls of a prison. However, as will be clearly demonstrated in this chapter, this does not mean that the gruesome practices of the *ancien régime* do not exist anymore. For example, torture is still carried out, the only difference between the past and the present being that it now takes place in secret, but often with the approval from the State in which it is practised. Furthermore, death penalties are imposed on convicts in many countries, which are certainly more drastic measures than disciplinary confinement of human beings. Some judicial executions, as well as corporal punishments, are still carried out in public in accordance with decisions made by courts (see part three of this chapter for further details).

There are several profound differences between the torture practised in the past and that of the modern day. In the past torture would be prescribed, in accordance with a judicial decision, as a legal remedy which was widely accepted. It was often carried out in public, and the injuries inflicted upon the victim were often severe and highly visible. This could not be more different than the torture carried out today, which is illegal under international instruments as well as condemned by public opinion. Therefore, modern day torture is practised in secret, with the intent to destroy a human being without causing visible damage to the body. The methods and techniques used in torture have been refined to suit this aim and their newly calculated sophistication is frightful.

In Western societies the word torture has its origin in the Latin words *tortura*, a twisting, and *torquere*, to twist (Collins English Dictionary 1993:1582). However, it must be remembered that the word used to describe the violent acts that our societies refer to as torture may have different connotations in other languages, such as in Cambodia where the word used, *tieru na kam*, has its origin in the Buddhist term for *karma* (Mollica & Caspi-Yavin 1992:256). Cultural variations of the ways in which torture is perceived and referred to may have far-reaching implications.

PART ONE - THE VICTIMS

Arbitrary arrests, detention and interrogation

From the available evidence there is reason to believe that torture is most commonly practised during the very first days of a victim's detention. The explanations for this clearly demonstrate the aims of modern day torture. In many cases torture is in practice due to the involvement of the State, either directly, whereby the State is taking measures to track down on subversives, terrorists or other "suspects", or indirectly, where the State gives unlimited power and control to the police, military or security forces who are free to operate on their own initiatives.

Torture within national legislations and policies

Arbitrary arrests and detentions may occur under a variety of pretexts, frequently on orders from the State. The legal justification for these acts may be found in the national legislation which, as we shall see, was the case in the former USSR, where even a slight suspicion of anti-Communist activities was enough to forcibly confine a dissident after declaring that person mentally ill. Numerous countries have passed similar provisions to allow arrest and detention on political, religious or other circumstantial charges of crimes against the State. In addition, arrests and detentions have been justified under alternative arrangements, such as the declaration of a "State of Emergency", where special security measures are introduced by the State after a temporary suspension of the national legislation. In emergency procedures, which are often the result of political unrest, guerrilla activity or a State's deliberate attempt to maintain the *status quo*, the State aims at suppressing opposing parties through actions which would generally not be allowed under the national legislation (Hampson 1995:7-8). For example, in South Africa long-term incommunicado detention could be carried out in accordance with two separate legal provisions, the 1953 *Public Safety Act* (including state of emergency legislations) and the 1982 *Internal Security Act*, both providing the perfect conditions for widespread and systematic torture (Dowdall 1992:456, Foster & Davis 1987:30-56). The security forces, or another institution acting in the name of the State, may be given the power to control the uprising and take action against suspected offenders. Cases of arbitrary arrests and detentions, as well as isolated incidents of torture, do occur without the involvement of the State, under totally illegal circumstances. However, if the State fails to acknowledge such incidents by refusing to investigate allegations of arbitrary arrests and detentions, it should not be exonerated.

Torture, extrajudicial executions and "disappearances" are often part of larger operations such as massacres, ethnic cleansing and genocide. One country that illustrates this very well is Guatemala where, during *La Violencia* (1978-1985), large scale counterinsurgency campaigns were repeatedly carried out in the *altiplanos* (the mountainous area of the country, mainly populated by Guatemala's various indigenous groups). The military was trying to eliminate the guerrilla movements present in the area, but to the large expense of the indigenous population. The abuses included to collect a group of individuals from a particular village, then the rest of the village population would be forced to watch the torture, mutilation and possible execution of the individuals from that selected group (Zur 1995:63). Another practice was enforced "disappearances", where the victim was abducted and never seen alive again. It has been estimated that at least 45,000 individuals have "disappeared" in Guatemala since 1954 (La Rue 1995:75). Alternatively, bodies tortured beyond recognition, often including symbolic mutilation

such as ears and tongue cut off and the eyes gauged out, would frequently appear in public places and along roadsides (Zur 1994:14). A small number of these bodies were identified, but the majority were not, and there is reason to believe that these individuals were "disappeared" persons from other parts of Guatemala. "Scorched earth" policies were in operation, during which entire village populations would be massacred, the domesticated animals slaughtered, the crops burned and the villages demolished. Some 446 villages are known to have perished in this way, and the estimated number of casualties for these operations alone is between 50,000 and 75,000 (Schirmer 1996:86). The *World Council of Indigenous Peoples* later referred to these operations as a "systematic extermination of Indian population" (Barry 1992:302).

Ignorance of habeas corpus

Emergency procedures or national legislations which provide for the detention of individuals on abstract charges such as political activities facilitate the practice of torture. In most of these cases long-term incommunicado detention, where the victim is denied access to lawyers, relatives and independent medical doctors, become possible, especially where the authorities regularly fails to admit any knowledge of the wrongdoings of the security forces or of any other detaining power. When a suspected unlawful arrest, or an arrest on ambiguous grounds, has taken place the relatives or another representative of the victim can file a petition of *habeas corpus*. In effect the *habeas corpus* is an order that the victim should be brought, within a limited period of time, before a court or a judge to determine whether the detention is unlawful. *Habeas corpus*, Latin for "you may have the body" (Collins English Dictionary 1992:681), indicates the individual's rights to be recognized, immediately after arrest, by the law. Amnesty International (1984:32-3) describes this legal remedy as follows:

> "In theory, *habeas corpus* is a mechanism that provides for judicial restraint on the security forces. In practice, it depends for its effectiveness on the independence, integrity and courage of the judiciary and on the susceptibility of the security forces to control by the judiciary. In some countries *habeas corpus* is rendered inoperative in political cases or during states of emergency because the law is so drafted as to make a wide range of detentions legal, making it easy to satisfy the test of legality provided by *habeas corpus*. Elsewhere, judges may not respond to petitions for *habeas corpus*, or if they do, the security forces may simply ignore them."

Is the State involved?

When the authorities deny or fail to recognize an individual's arrest and detention, especially when that individual's whereabouts are known only to the captors, the life and well-being of that detainee are seriously threatened. Under these circumstances the detaining power has full control over the victim, which facilitates systematic torture (possibly resulting in the death of the victim), extrajudicial executions and enforced "disappearances". The State's or the judiciary's failure or ignorance to investigate petitions for *habeas corpus* further contributes to these practises as the crimes perpetrated by the detaining power can continue. Consequently, these crimes have, to some extent, gained the approval from the State, and it is very unlikely that the detaining power will be charged for any of the human rights violations that they perpetrate, unless a surviving victim files charges after his or her release. However, due to amnesty laws, corrupt judiciaries, or emergency legislations, very few officials working for detaining powers have been successfully prosecuted even after a victim has reported alleged abuses suffered in detention.

Extrajudicial executions, "disappearances" and other forms of severe human rights abuses are not only focused on those of an opposing political opinion or members of such political parties, but the victim may also be characterized by ethnicity, religion, sex, colour or language (Amnesty International 1983:6). Similarly, it is not always the State which bears responsibility for these incidents. However, if States participate in, or are responsible for any of the following, their involvement must be questioned (Amnesty International 1983:5):

- Failure to investigate alleged offences carried out by armed forces, police etc.
- Failure to prevent that similar incidents happen again
- Participation in cover-ups (including the fabrication of "crime scenes")
- Denial of any killings
- Blame incidents on the oppositional forces
- Suggest that the suspicious deaths were due to "armed encounters"
- Suggest that victims died while escaping from custody (also referred to as *Ley de Fuga)*

The use of torture

Interrogation involving torture is most often carried out during the initial period of detention, particularly in cases where the victim is kept incommunicado. There is a combination of reasons which could explain the practice of torture under these circumstances. First, the torturer has total control over the detainee who cannot prevent the abuses as all contact with the outside world has been broken. The victim cannot raise complaints about his or her ill-treatment, or even notify relatives about the place of detention. Additionally, representatives of the detainee may face severe problems in locating a victim who is held in a clandestine detention centre, especially when petitions for *habeas corpus* have been ignored, or where the authorities deny that an individual has been incarcerated (the beginning of an individual's "disappearance"). This can further contribute to prolonged detention and torture of a victim, as the detaining power is under no pressure to release their prisoner. The second reason is the torturers' preoccupation with minimizing the risks of leaving visible physical marks on the bodies of their victims. As a result of this, modern day torture has been developed and refined to suit this aim (see the following chapter). By keeping the victim incommunicado the physical injuries caused by some torture methods cannot be used as evidence against the perpetrators. These injuries are then allowed to heal or fade before the victim is transferred to official detention. Furthermore, throughout the process of systematic torture precautions are often taken by the torturers to conceal possible evidence. For example, Cassese (1996:78-9) reports on creams used to reduce the swelling of the feet and the hands of victims who had been subjected to phalanga torture (beatings of the soles of the feet or the palms of the hands), which also resulted in that the victims developed unexpectedly smooth skin on the affected areas. Similarly, the *Humanitarian Law Center* (1995) has frequently reported that, in the former Yugoslavia, victims of phalanga torture were forced to walk around on cold concrete or stone floors in order to reduce swelling.

The blindfold

During interrogation and torture it is very common that the victim is kept blindfolded or hooded (Goldfeld *et al.* 1988:2726, Hougen 1988:7-8, Hougen *et al.* 1988:155, Jadresic 1980:125). Many victims also report that they had their eyes covered when they were initially arrested, and that the torture and interrogation started without the blindfold, or hood, ever being removed. The

perpetrators justify this practice by suggesting that they are protecting themselves from possible recognition and future reprisals when dealing with "dangerous" detainees (Cassese 1996:22-3). However, the blindfold and the hood are integral parts of the torture itself, as forms of sensory deprivation and complete isolation. To keep a victim blindfolded or hooded during torture further enhances the experience for the victim, who is made totally helpless by not seeing what takes place around him or her (Basoglu & Mineka 1992:203), but also for the perpetrator who gains total power and control over the situation. There is a non-personality issue involved in the fact that the detainee's face cannot be seen, which makes it easier for the perpetrator to abuse the victim (this can also be seen in the methods used in judicial executions, where the accused very often is blindfolded, hooded, or has the head covered). The isolation and helplessness already experienced by the victim is maximized by constant threats of more violence or death.

Part of the torture experience is to make the victim feel that the torturer has power over everything, including life itself. However, the aim of torture is usually not to kill the victim, but to subject him or her to extreme physical and psychological pain. Nevertheless, deaths do occur during torture sessions (Kordon *et al.* 1992:440), particularly out of two reasons; miscalculation or excess. With many of the modern day torture methods it is possible to kill a victim by "mistake". This usually happens after miscalculations of the victim's susceptibility to a particular method have been made, and subsequent attempts to resuscitate the victim have failed. The other reason, excess use of violence by the torturer, is a contributing factor to many fatal "accidents". The main cause for this excess is likely to be the torturer - victim relationship, in which the torturer has lost control and out of anger or frustration torture the victim to death.

Transfer to official detention or release

In order for wounds to heal, and other evidence of abuse to fade, some time may elapse before the victim is transferred to a place of official detention after having been subjected to systematic torture. A victim who has been held incommunicado will have access to people from the outside as his or her detention is finally acknowledged. Others may simply be released and never charged with any offences, although they will live under the constant threat of being detained again, at a later date, and subjected to the same treatment all over again. However, some detainees are never officially recognized and will remain "disappeared", including a number of victims whom have been subjected to extrajudicial executions following their unlawful detentions.

Chile after the 1973 coup

The case of Chile following the military coup of September 11, 1973, illustrates the above issues very well. From a country which had enjoyed democracy since its independence in 1818 Chile was transformed into a military dictatorship under General Augusto Pinochet. The military immediately dissolved the Congress, suspended the constitution, and declared a state of siege (Skidmore & Smith 1997:114-146). Political parties were banned, and the definition of an offence of political nature was unlimited, which resulted in the arrest of individuals on minor suspicions of political activities. Thousands of people were arrested on political charges and held in detention, often incommunicado, whilst being subjected to torture. Some victims were released after a period of time, others were extrajudicially executed and thousands are still among the"disappeared". Furthermore, numerous political assassinations were carried out, both within Chile and of Chilean citizens abroad (Brogan 1998:659). It has been estimated that around one

million Chileans went into exile (Jadresic 1980:124), many of whom had already been subjected to torture and feared for their lives and well-being if they stayed. Under *Transitory Provision 24* of the 1981 constitution the practice of torture was further facilitated. This Provision allows for certain categories of detainees to be lawfully held in incommunicado detention for up to twenty days, on the order of the President. Provision 24 could be applied in cases of "terrorist activities with serious consequences" (Amnesty International 1984:151), but the definition of these alleged activities lacked precision which resulted in that many offences of political nature were interpreted as being within the Provision's application. Accordingly, the majority of detainees held under the Provision were never charged with any terrorist offences. Systematic torture took place during these twenty days of incommunicado detention, as the detainees were subjected to a variety of physical and psychological abuses in connection with interrogation. Throughout the military dictatorship which finally ended in 1989, the State failed to prevent the systematic use of torture and also, regularly, to investigate any allegations of severe abuses of detainees. Furthermore, petitions for *recursos de amparo* (similar to *habeas corpus*), were largely ignored although the law provided that a detained person had the right to appear before a court within a 48-hour period. The few cases of torture and ill-treatment during detention which reached the courts were often handled by military tribunals that never convicted the offenders. Even after the return to democracy the offenders of severe human rights abuses still enjoy the benefits of total impunity (Pearce 1995:45-56).

PART TWO - THE TORTURERS

Torturers and their victims - putting the perpetrators in perspective

The practice of torture requires the involvement of at least two subjects - the torturer and the victim. In this situation the torturer obtains unlimited physical control over the restrained victim, who will be forced to maximal submission by a variety of physical and psychological abuses (Bendfeldt-Zachrisson 1985:340). With the aim of torture being to break a human being's mind, body and dignity (Amnesty International 1984:18), it has been assumed that a psychopath with sadistic motives is needed to achieve this goal. The evidence given by self-confessed former torturers suggests, on the contrary, that those who torture may have obedient and submissive personalities which can easily be manipulated by the authorities in charge (Jadresic 1990:199).

Torturers in Latin America

In Latin America torture has been identified as an activity carried out by the State, as a part of a wider programme of repression (Bendfeldt-Zachrisson 1988:301). The general trend throughout Latin America has been that a small percentage of the population controls most of a country's wealth. This uneven distribution is well illustrated in the case of El Salvador where, before the civil war, an estimated 0.5 percent of the population known as "the fourteen families", controlled 90 percent of the national wealth (Murray 1995, Skidmore & Smith 1997:321-58). Inequalities in the Latin American society have been the predominant factor for oppositional uprising. Military interventions and the introduction of systematic and institutionalised repression, supported by the oligarchy and international powers, were common in countries where the authoritarian regimes were threatened by growing opposition. Repression occurred on two levels; the *extensive* repression, such as counterinsurgency campaigns (massacres and scorched earth policies), bombing and mass executions, and *intensive* repression which is dominated by the systematic use

of torture (Bendfeldt-Zachrisson 1988:301). In this context torture was probably not aimed at the individual *per se*, but at the whole group of the society which opposed the regime. However, death due to torture was a recurring phenomenon, as were extrajudicial executions and enforced "disappearances", all introduced for the purpose of producing fear.

Clandestine detention centres, where victims were kept incommunicado while subjected to torture, were introduced in several Latin American countries. Information about the torturers who worked in these centres has become available in recent years, especially from testimonies given by those few who survived their incarceration, but also from self-confessed former torturers. These centres were operated by special sections of the military or police forces, which also provided education in the techniques and methods of torture (for torture schools in Uruguay see BMA 1986:7-10). The torture trainees were characterized by personality traits such as obedience, intelligence and discipline, together with family background and political conviction, both preferred to be influenced by anti-Communism. In work-shops the trainees were subjected to indoctrination aimed at justifying, and making acceptable, the use of torture. This process took place on an intellectual level, through continuous ideological verifications of "national security", "eliminating the enemy" and general anti-Communist propaganda. In the practical sessions the aim appears to have been to psychologically undermine the trainees and produce a sense of group bonding and identity by forcing everyone's participation. Illegal acts of torture were demonstrated by a powerful instructor (acting as a military role-model), using a living victim. In order to leave no one with a clear conscience, or a possibility of claiming innocence, these acts were to be repeated by the trainees, on the victim, in front of the instructor and the rest of the group (Bendfeldt-Zachrisson 1988:304).

The Milgram experiment at Yale University (1965)

Research carried out at Yale University (Milgram 1965:57-74), concerned with obedience to authority, warrants some consideration. Nearly one-thousand male subjects were used in a series of experiments to determine under what circumstances a person (the subject) would hurt a victim (who, unknown to the subject, was part of the experiment) on the demands of an authority (the experimenter). The subjects were falsely informed that they were participating in an experimental study on the effects of punishment on memory. The experiments were carried out using a teacher and learner situation, in which the subject would always be the teacher, and an accomplice to the experiment would act as the learner. The punishment would be in form of electric shocks of increasing voltage, administrated by the teacher. The learner was strapped in an "electric chair" in an adjacent room and the teacher began asking sets of questions. For each wrong answer provided by the learner the teacher was asked to administer an electric shock from a generator where the voltages were marked from 15 to 450 volt, which also included verbal descriptions ranging from "slight shock" to "danger: severe shock". The learners were instructed in advance on how to act to the electric shocks provided by the teacher (this was an experiment and no shocks were given). Throughout most of the experiments a tape recording of a victim's distressed voice was used, on which the protests increased with the voltage. The experimenter, acting as the authority, would encourage and demand that higher voltage shocks be administrated after each wrong answer, as intended by the experiment. The first stage of the experiment included four separate conditions, which provided the following results:

- Remote Feedback, in which the learner (victim) was placed in a room where he could not be seen or heard by the teacher. At 300 volts the victim would bang on the wall, after 315 volts he would no longer make any noises. A staggering 66 % of the subjects continued to administer shocks up to 450 volt, despite the silence of the victim whose health could have been in danger.
- Voice Feedback, in identical setting to the previous, but with the introduction of the victim's vocal complaints to the electrical shocks, which could be heard clearly by the teacher (at 150 volt the victim would ask to be let out of the experiment, at 270 volts there were agonized screams, between 315 and 450 volts there were shrieks of agony). Of the subjects 62.5 % administered shocks up to 450 volts.
- Proximity, where the learner was placed in the same room as the teacher, and very close by. The vocal complains were similar to those above, and the victim was also instructed to use bodily reactions to the shocks. Under these conditions around 40 % of the subjects still carried on up to 450 volts.
- Touch-Proximity, which was similar to the above, but shocks could only be applied to the victim through a shock-plate on which the victim was asked to put his hand. After a few shocks the victim would refuse to touch the plate, and the subject would be asked to force the victim's hand on to it. In this situation around 30 % of the subjects administered shocks of 450 volts, even after having forced the victim's continued participation in the experiment.

There are several psychological explanations why such a high number of subjects continued to administer electric shocks of an increasing voltage despite the victim's complaints, but these will not be discussed here. Instead the focus is on the contradictive relationships that develop between the three actors: the authority, the subject and the victim. The obedience displayed by the subjects in the above tests raised some interesting points.

First, the constant pressure from the experimenter (the authority) on the subject is believed to be of significant importance. Further tests, in which the experimenter was not present, but instead gave instructions by phone communication confirmed this. The level of obedience dropped drastically as many subjects refused to carry on. Other subjects even lied to the experimenter over phone by saying that they administered shocks of increasing voltage when, in fact, they continuously used the lowest possible voltage after the victim had started to complain. Additional tests were carried out in which the experimenter would walk in half way through the experiment, normally at the point where the subject had started to object. In many cases the experimenter succeeded in convincing the subject to carry on with the shocks. It has been concluded that the proximal relation between the authority and the subject is a highly contributing factor for the subject's obedience to carry out an act which has severe consequences for a third party, namely the victim.

Secondly, the setting in which this research was undertaken may have contributed to the high levels of obedience displayed by the subjects, as it provided major credibility to the experiments. The background authority (Yale University) may have had an impact on some subjects who, due to respect for the institution, acted with obedience to the authority. Conclusively, obedience to authority can often occur as a result of the larger context of the situation itself, which means that a respectable and authoritative institution undoubtedly will have some effect on a subject's judgement.

Thirdly, the final issue is that of group pressure which was studied in some experiments by using group scenarios where the subject would be placed with several accomplices to the experiment. Subjects were given different tasks within the group, and the rest of the people were instructed to act in various ways depending on the role of the subject. As the tasks of the subjects varied greatly throughout these tests, so did the results. However, the effects of group pressure could be detected in some behaviours, for example: when a few people in the group refused to participate any longer most subjects would agree with them; when no objections were raised throughout a test subjects would remain obedient to the experimenter; when subjects were not administering the shocks but played a less active role in the group the majority (37 out of 40) let others administer shocks of 450 volts without any objections. Group pressure is certainly an influential factor for the development of destructive behaviour and the carrying out of malicious acts directed at a third party.

The making of perpetrators in the former Yugoslavia

Further evidence on the issues of obedience and group pressure have been brought forward as a result of the recent conflicts in the former Yugoslavia. For example, three similar testimonies given by individual Serb men (cited in Stiglmayer 1994b:82-170) describe how Serb troops entered areas of Bosnia-Herzegovina and forcibly mobilized all Serb men aged between eighteen and sixty. These three individuals are all responsible for rapes and murders, and their testimonies witness about the circumstances under which these crimes were committed. The rapes, often gang rapes, took place under group pressure including threats to the life of new "recruits" who were not, according to the surrounding crowd, *performing* well. Demands that the newcomers should obey orders or suffer the consequences were made frequently during these criminal events. Similar pressure was used to force individuals to become murderers, which can be seen in a confession by one of the perpetrators, which describes how he was forced to kill eighty people with a machine gun whilst being subjected to death threats and verbal abuse. Other forced murders included in these testimonies are; the executions of rape victims after the event, and the torturing and executions of other Muslim civilians.

Testimonies given by surviving female victims and the confessions by perpetrators indicate that the orders to carry out these rapes and killings often appear to have come from "above", namely the higher authorities in Serbia (Stiglmayer 1994b:161). Questioned about *why* he was forced to rape and kill, one of the perpetrators offered the following explanation:

> "It's because of territory - they have to drive out the non-Serb people in Brcko and annihilate them so that Brcko can become Serbian. Otherwise this Brcko could never belong to Serbia; too many Croats and Muslims would be living there [before the conflicts the district of Brcko had a population of 44% Muslims, 25% Croats and 21% Serbs]. The rape is part of it; it spreads fear and terror so that people flee and don't come back. This expulsion and all, it's made the Serbian people in Bosnia into haters, it's sown hatred. *The killing and the raping were supposed to teach us to hate"* (as cited in Stiglmayer 1994b:158, emphasis added).

Furthermore, the propaganda coming from the higher Serbian authorities has been provocative, for example by infiltrating the language with terms such as "fundamentalist Muslims" and "fascist Croats", and was explicitly supportive of the practice of ethnic cleansing. The

propaganda was further enforced by the controlled Serbian State television, which clearly stated messages that it was the Serbs who where threatened by genocide from the Croat and Muslim populations within the former Yugoslavia (Parin 1994:35-53, Stiglmayer 1994a:1-34). The practice of ethnic cleansing encourages the forcible removal of people from a certain area, in this case Muslims and Croats from an area wanted by Serbs, and it also promotes the annihilation of members of these groups if they refuse to leave. Given this, it can be assumed that the rapes and killings described above were carried out, if not on direct orders, then at least with the consent and approval from the higher Serbian authorities.

Additionally, the Serbian State's television, and the wide implementation of propaganda from this controlled media (and others such as the radio), can be seen as a major contribution to the hatred leading to ethnic cleansing in the former Yugoslavia, and on a more personal basis also as the justification needed for Serb soldiers to participate in ethnic cleansing campaigns (Parin 1994:35-53, Stiglmayer 1994a:1-34). Similarly, controlled media in Croatia (including television and radio) also used propaganda to stigmatize the Serbs, although on a much smaller scale (Parin 194:35-53). Copelon (1994:206) suggests that it is the combination of an ongoing war and an intense propaganda machine which lead to neighbours becoming enemies, and thus creating an atmosphere in which violations against persons of the opposing ethnic origin somehow have become justified.

Summarizing the prospective torturer

The cases of Latin America and the former Yugoslavia, together with the Milgram study, serve the aim of briefly explaining what makes a prospective torturer. The recurrent themes include the personality of the prospective torturer (rapist or executioner) in terms of his or her obedience and submission to authority, and the ability to resist group pressure. However, it should be borne in mind that this is an attitude which may change in accordance to the situation, such as when receiving death threats for refusing to participate in destructive and violent acts. It may be important to the new torturer to justify, and make acceptable, the practice of torture. The combination of ideological verification, in which role models may figure, and continuous propaganda often fulfil that need. It appears to be common that torturers have to dehumanize the victim in order to carry out the abuse (de Zulueta 1996:99-100). This is part of the ideological justification process, where the torturers are made to believe that "the enemies get what they deserve" and that it is their duty to defend the State against threatening individuals - for which they are acknowledged and rewarded (Basoglu & Mineka 1992:212). It has been suggested that primal and profound unconscious defence mechanisms are essential in order to carry out such abusive acts, the most prominent of these is probably projective identification (Bendfeldt-Zachrisson 1988:305).

Dr Death - Part I

There is an increasing evidence which suggests and often proves that, in many countries, a small number of medical doctors have participated in the torture process. The involvement range from medical examinations of victims throughout the torture, to the development of new techniques and methods. As will be discussed in the following section, similar participation has also been proved within the field of psychiatry.

Under international law there has been very limited reference relating to the medical profession's participation in torture, the only exception being Article 7 of the *International Covenant on Civil and Political Rights* (1966), which briefly states that medical or scientific experimentation needs the consent of the individual in order to be carried out. However, the *Principles of Medical Ethics* (as adopted by the United Nations on December 18, 1982) explicitly forbids all participation of the medical profession in torture or other cruel, inhuman or degrading treatment or punishment.

There have been regular reports indicating that medical doctors working for the military, the police or in prisons, have performed initial medical examinations of detainees before torture sessions begin, in order to determine whether or not the victim is fit to undergo the suggested torture (for example: Chile, Turkey, Uruguay and Israel, BMA 1986:6-7). Furthermore, in some countries medical doctors have provided detaining powers with details about a detainee's health, information that was subsequently used by the torturers to find a victim's weaknesses (both mentally and physically). This enabled the torturers to devise individual programmes of torture, in which the victims were subjected to maximum violence specifically directed at their weak areas (common practice in Uruguay, see Martirena 1987:194). Reports suggest that medical doctors have been actively involved in designing individual torture programmes by advising the detaining power on the methods and techniques that a specific victim should be subjected to, including pharmacological abuse (Amnesty International & Marange 1991, BMA 1986, Zwi 1987:652-4).

Medical doctors have also supervised interrogation with torture, in order to monitor the victim's health throughout the process (for example: Brazil, Chile, Colombia, South Africa, Spain, Syria and Tanzania, BMA 1986:7-10). As already mentioned, the aim of torture is not to kill the victim, but to cause maximum damage to the victim's personality. This aim could be practically achieved by having a medical doctor present during torture sessions, as the doctor intervened if the victim's life was threatened (Jandoo 1987:242, Petersen 1990:557). The role of the doctor, under these circumstances, was to make sure that the victim would not escape the torture by death or unconsciousness, and if such incident occurred it was the doctor's duty to resuscitate the victim (Amnesty International 1984:20). In addition, doctors are known to have treated the immediate physical injuries caused by torture, for example by sewing up wounds between sessions, as well as providing medical attention to an exhausted and seriously wounded victim in order to make him or her fit enough to undergo further torture. Before a victim is transferred to official detention, or has to appear in court, the doctor may assist in the disguising and removal of marks and injuries caused by torture (Amnesty International & Marange 1991:4-5). Furthermore, evidence suggests that detainees who caused themselves injuries, possibly in attempted suicides, were cared for by doctors to make the victim fit for torture again (Petersen 1990:557).

Another problem that has become apparent with the evidence of doctors participating in torture is the appearance of false medical reports and dubious death certificates (Dowdall 1992:464). From the available evidence it is obvious that signs of torture have been ignored in many cases where victims have been medically examined between torture sessions or shortly after the abuses. This is, according to the *British Medical Association* (1986:7), particularly common under certain regimes and conditions, where the medical doctor is under the control of an abusive power. By bringing evidence of torture to the attention of others, the doctor may endanger his or her position and life. This has been confirmed by Fransisco Rivas Larrain (1987:192):

> "In Chile, physicians who practise torture are promoted in the armed forces; we doctors who denounce torture within the military circle of dictatorship are thrown into the jails of Pinochet."

Doctors have also been called on to issue false death certificates when victims have died as a result of torture (Jandoo 1987:242). The faked cause of death has, in some of these cases, been closely linked to the actual cause of death, but without specifying the circumstances (Jonsen & Sagan 1985:30-44). For example, victims in Iraq who were lethally drained of blood were certified as having died as a result of heart failure (BMA 1986:13-4). There are profound reasons to believe that autopsies carried out on deceased victims were often incomplete (Martirena 1987:194-5), and that in other cases, even involving highly suspicious deaths, autopsies were never carried out at all. The cause of death and the circumstances surrounding the event have often been fabricated after a victim has died as a result of torture, or when the victim has been extrajudicially executed following torture. One common explanation for such deaths has been that the victims were shot dead while trying to escape. In these cases independent autopsies are essential as allegations of torture and extrajudicial execution can be verified.

There is limited evidence that medical professionals have participated in the development of technology used in physical torture, but methods and techniques already in use have frequently been refined by medical personnel to become more efficient. However, disturbing evidence has become available which suggests that it was medical doctors in Iraq who developed the techniques used in bleeding victims to death in that country, and who later transferred the blood to a supply in Baghdad (BMA 1986:13-4, Zwi 1987:653). Most of the evidence in this area is concerned with psychological and pharmacological abuses, where medical professionals have invented techniques of mind and drug manipulation to be used separately, or together as psycho-pharmacological torture. Such techniques are unlikely to have developed without medical involvement as these generally, and pharmacological manipulations in particular, require monitoring by professionals in order to maximize their effects (Jandoo 1987:242).

On the contrary, in many conflicts around the world doctors and medical personnel have become the target of violence, only because they belong to the medical profession (Lundgren & Lang 1989:703, Zwi & Ugalde 1989:635). In several countries the health services have suffered tremendously due to on-going armed conflicts, state of emergency legislations, trade and aid embargoes, which may prevent doctors from treating a certain group of people, constant shortage of supplies, and above all, a dangerous environment to work in (Zwi 1989:649-52).

Psychiatric abuses

Political abuse of psychiatry is generally associated with the former Soviet Union where this practice was widely and systematically carried out under governmental policies, but evidence is also available from countries such as Romania and the former Yugoslavia. The *Criminal Code of the Russian Republic* has been used as the legal foundation to justify psychiatric abuse, as it states that a psychiatrist should be consulted in every case where doubt arise as to the mental health of the accused (Reich 1985:219). Healthy political dissidents were incarcerated in psychiatric institutions where they were subjected to compulsory "treatment" after being declared mentally ill and "not responsible" under Article II of the Code, which states:

> "A person shall not be subjected to criminal responsibility who are at the time of committing a socially dangerous act in a state of non-responsibility, that is, cannot realize the significance of his [sic] actions or control them because of a chronic mental illness. Compulsory measures of a medical character may be applied to such a person by order of the court."

This enforced confinement of dissidents started in the late 1930s, under the terror regime of Stalin, and led to the establishment of special psychiatric hospitals where convicted individuals could be imprisoned and "treated". These hospitals were managed by the *Ministry of Internal Affairs*, the driving force behind this practice, which also controlled the police, prisons and labour camps (Bloch & Reddaway 1985:133-34). Large numbers of individuals were charged with political offences between 1950 and 1965, when international attention was directed towards this unethical practice. Although the Soviet psychiatric profession was heavily criticized in international media these abuses continued until the collapse of the Soviet Union.

Only a small percentage of Soviet psychiatrists directly participated in these systematic and institutionalized abuses. Bloch and Reddaway (1985:148-60) have divided the Soviet psychiatric profession as follows: the core psychiatrists, most of these powerful professionals had ties to the *Serbsky Institute of Forensic Psychiatry*; the average psychiatrists, with limited knowledge of the political and ethical abuses of their profession; and the dissident psychiatrists, aware of the abuses and working against the core group.

Ideological beliefs were certainly a major influence for the core group whose members most certainly belonged to *The Communist Party*. As career advancement could not be achieved without political qualifications, it must be assumed that there was profound collaboration between the Party, the *Ministry of Health* (which was responsible for matters regarding psychiatry), and the core group. This group performed psychiatric assessments of dissidents and declared anyone with an opposing view of the Party or the State mentally ill, using terms such as schizophrenia and psychopathy for their justifications.

The largest group of Soviet professionals, made up of the average psychiatrists, were either not aware of the abuses or remained passive. Most of the abuses were concentrated around the *Serbsky Institute*, which sent convicted dissidents to psychiatric hospitals participating in the abuses and supporting the cause. Only a small number of psychiatrists were employed in these hospitals, the remaining professionals may have been unaware of the abuses until stories appeared in the media. However, there are suggestions that psychiatrists knew that when the KGB ordered an assessment of a political offender, they were expected to declare that individual mentally ill and recommend confinement and compulsory treatment (Bloch & Reddaway 1985:155-6). Some chose to be non-participatory without bringing attention to their person, by refusing to make a wrongful diagnosis and referring the patient to the more authoritarian *Serbsky Institute*, where the dissident without doubt would be declared mentally ill.

The last group of professionals was made up of a small number of psychiatrists who opposed the practice of confining dissidents in psychiatric hospitals. When these individuals were found out they were either transferred to work in remote areas of Russia where they would present no threat to the ruling order, or they were themselves charged as dissidents and incarcerated in psychiatric

hospitals. One well documented example is that of psychiatrist Anatoly Koryagin (Klose 1985:169-74), who had started to question the ethics of his profession while working in a mental health clinic in a remote region of Siberia. After moving to the Ukraine city of Kharkov for another employment Koryagin realized that the problems he had identified within his profession were not due the psychiatrists themselves, it was the State who was to blame for the inadequate healthcare provided for the mentally ill and the unethical practices surrounding the confinement of dissidents. In 1979 Koryagin joined the unofficial *Working Commission to Investigate the Use of Psychiatry for Political Purposes* as a consultant psychiatrist, and started to examine political prisoners. His work for the Commission continued until early 1981 when he was arrested and detained on charges of anti-Soviet activities, and subsequently sentenced to seven years of imprisonment and five additional years in internal exile.

One of the twenty charges against Koryagin concerned an article he had written, based on examinations of dissidents imprisoned in psychiatric hospitals that he had carried out while working for the Commission. The article, *Unwilling Patients*, was published in the medical journal the *Lancet* (1981:821-4), in which the Soviet psychiatric profession's abuse in relation to political opponents was outlined and described in great detail. The victims were by Koryagin (1981:821-4) described as people who were not mentally ill, but under severe restrictions and control by the authorities. Never was the confinement in psychiatric wards carried out to treat mental illness, but instead to isolate the patients and to subject them to a series of psychological, pharmacological and physical abuse. Many patients, or dissidents, were taken into compulsory confinement in psychiatric hospitals repeatedly.

Inmates of these hospitals were subjected to different methods of torture, or *treatment* as it was commonly referred to by the authorities in these circumstances. One of the few examples of physical torture was the "roll-up" treatment, in which the patient's body was rolled into wet sheets of canvas. These sheets shrank when they dried, making it progressively difficult for the victim to breathe (Bloch & Reddaway 1985:135). Beatings took place, but have not been reported on a regular basis (Koryagin 1981:821-4), and patients were often immobilized in strait jackets over prolonged periods of time.

The most common methods of torture involved a variety of psycho-pharmacological procedures, which were controlled by the psychiatrists (BMA 1986:12, Zwi 1987:653). Insulin comas were induced in patients, and pharmaceutical products were administered and often overdosed. These included: injectable sulfizine (purified form of sulphur with no therapeutic effect) which causes excruciating pain, intense fever, convulsions, disorientation, abscesses, rheumatism of the joints, headaches and general weakness; aminazin (chlopromazine, largacitil) and haloperidol, both used for patients with severe mental illness such as schizofrenia, were distributed to healthy political prisoners, deliberately causing them depression and discomfort; tranquillizers such as butyrophenones (haloperidol); triftazin (stelazine) which results in writhes and twists of the body; as well as a magnitude of other neuroleptic and psychotropic drugs aimed at causing extreme pain, fever, disorientation, muscle-paralysation, hallucinations and general confusion (Amnesty International 1973:177, Amnesty International & Marange 1991:64, Jandoo 1987:241, Kirschner 1984:313-5, Klose 1985:164-74, Koryagin 1981:821-4, Zwi 1987:653).

PART THREE THE DEATH PENALTY AND CORPORAL PUNISHMENTS

Background

Although the research for this thesis is concerned with torture there are certain issues surrounding death penalties and corporal punishments which should not be ignored in this context. There are several contradictions between what is seen as ill-treatment and is internationally prohibited in form of torture and other cruel, inhuman or degrading treatment or punishment, and what is practised with legal justification, in cases of judicial executions and corporal punishments. These contradictions will be explored briefly here, in an attempt to see if it is possible to distinguish between what one State calls torture, whereas another State refers to the same practice as a legal necessity.

It is not surprising that all forms of judicial executions are believed to involve high levels of mental distress and physical pain for the convict. The attempt here will be to draw parallels between the current methods used in cases of judicial executions and those used in modern day torture. The similarities between physical and psychological torture and death penalties are very disturbing, and raise serious questions about the justifications from the State to kill a human being in the name of justice.

Equally, corporal punishments are frequently carried out, particularly in Islamic countries under *Shari'a* laws, but are known from other areas as well. These punishments include amputations, whipping or flogging and caning, generally carried out in public. Apart from endangering the victim's life there are high levels of pain associated with these practices, as well as severe humiliation and degradation for the victim, especially when these punishments are conducted in public. The contradictions between the international laws which explicitly prohibits torture and the passing of judicial sentences of corporal punishments are extreme.

On an international level only a few legal instruments refer to the death penalty (Wallace 1997:527). One exception is Article 6 of the *International Covenant on Civil and Political Rights* (1966) which, although it states that every human being has the "inherent right to life", also sets out strict legal regulations for the passing of a death sentence in countries which have not yet abolished judicial executions. Further efforts made by the international community resulted in the *Second Optional Protocol to the International Covenant on Civil and Political Rights* (1990), which is dedicated solely to the abolition of the death penalty.

There are even fewer references to corporal punishments under international law. Article 4 of the *Additional Protocol II of the Geneva Conventions* (1977), which is related to the protection of victims of non-international armed conflicts, clearly prohibits the infliction of corporal punishment on people who are not taking part in, or have ceased to take part in, the hostilities. However, the scope of this article is very limited, as it is only applicable to cases of civil war and other internal conflicts. The only other reference found in international law is Article 7 of the *International Covenant on Civil and Political Rights* (1966), under which torture and other cruel, inhuman or degrading treatment or punishment are prohibited along with medical or scientific experiments on people without their consent. The *Human Rights Committee*, which monitors this Convention, asserted in 1994 that:

> "The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, *the prohibition must extend to corporal punishment*, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure." (paragraph 5, Human Rights Committee General Comment No. 20 Article 7, 1994, emphasis added).

Judicial executions and corporal punishments are described in this chapter, within the context of torture, although these two topics may have been more suitable in the following chapter on modern-day methods of physical and psychological torture. This is a deliberate choice, as my intention is to present the argument that *all judicial executions and corporal punishments are acts of torture*.

The death penalty - a form of psychological torture?

The death penalty itself, together with the incarceration of convicted individuals in purpose-built "death rows" (as in the United States), include many aspects which can be compared to what, in the context of torture, is classified as psychological methods of torture. This section will briefly outline some of the most obvious comparable points, with the majority of examples drawn from the United States. Although larger numbers of executions may be carried out annually in countries such as China, Iran and Saudi Arabia the information about these is very limited, whereas the opposite is true for executions in the United States (Amnesty International 1998b).

Unethical, biased and otherwise inappropriate passing of death sentences

Racial discrimination exist within many legal systems which provide for the death penalty, notably in the United States. This is a problem which was recently highlighted by Amnesty International (May 1999), but such inequalities have been apparent for the past decade. The following points, which relate to the United States in particular and have been supported by statistical evidence, illustrate racial and other biases within the use of the death penalty (Amnesty International 1989:28-31, 1998a:13, 1998b, 1999, Amnesty International & Marange 1991:54):

- A black person killing a white is more likely to receive a death sentence than when the offender and victim are both black, or when the offender is white and the victim black.
- Proportionally, more death sentences have been passed in cases with white victims.
- Proportionally, more black than white offenders receive death sentences.
- The passing of death sentences tend to focus on defendants of inferior social and / or economic status (minority groups, poor, uneducated, illiterate).
- Racial and social discrimination is apparent within the whole of the legal system, such as having a trial with a black defendant and an all white judiciary after individuals from ethnic minorities have been (arbitrarily) excluded from jury duty.
- Defendants too poor to hire their own lawyers were often inadequately represented by the appointed state-funded lawyers, or the appointed lawyer was not experienced enough to present mitigating evidence and extenuating circumstances.
- The rights of foreign offenders have regularly been violated, such as the rights to their own legal representatives and language interpreters (the latter should also apply to nationals of ethnic groups with another language than that used by the court).

The summary above implies that there are numerous incidents of unfair trials within the system of "justice". The possibilities of executing an innocent individual must inevitably increase with the large number of clearly unfair trials. Since 1973 there have been 77 men and women released from death row in the United States, after they were declared innocent. Amnesty International (1999) suggests that in many of these cases racism was clearly detectable, especially where the defendant was black or Hispanic.

Another issue of major international concern is the United States' repeated executions of mentally ill and retarded convicts, which was legalized through a Supreme Court decision in 1989 (Amnesty International &Marange 1991:54). In these cases the mitigating evidence of brain damage, mental illness, retardation or other mental disturbances was rarely or minimally presented by the defence, or such evidence was totally ignored in the passing of the defendants death sentence (Amnesty International 1998b).

Death threats

Death threats are very common as a form of psychological torture (see chapter four - threats). To sentence a human being to death by legal means will inevitably provide psychological distress of the convict, similar those experienced by a torture victim subjected to death threats. In some cases convicts may have the threats of an imminent death prolonged due to lengthy and repeated appeals procedures (Amnesty International 1989:61, Amnesty International & Marange 1991:59). In such circumstances many convicts may chose to drop their appeals and thereby consent to their execution. However, as Amnesty International argues (1998b):

> "Consensual executions are not the product of a prisoner's freely taken decision to end their own life, but may be a refusal to face *the appalling strains of living under sentence of death*, often in harsh conditions and under almost total isolation" (emphasis added).

Additionally, several convicts have had their punishments cancelled some hours, or even minutes, before their executions were to take place (see also chapter four - sham executions). In some of these cases the convicts were subsequently released, but others had their executions rescheduled after further trials - one example of the latter being Kirt Wainwright, Arkansas, who spent more than 45 minutes strapped down and ready for the lethal injection with needles in his arms while awaiting the outcome of a last-minute appeal in 1997 (Amnesty International 1998b). Such incidents certainly raises some important questions about the ethics surrounding the death penalty itself, as well as the ethics of the whole of the legal systems of non-abolitionist states which allow for the appeals procedures to be handled in ways which only increase the psychological strain already inflicted on death row inmates.

To present the convict with the choice between methods of execution prevalent in a certain state is not only distasteful in every sense, it also appears to contravene the *Eighth Amendment* of the US Constitution (added in 1791) which prohibits "cruel and unusual punishments", as the choice may be seen as a cruel and unusual part of the punishment itself (Amnesty International & Marange 1991:59, Amnesty International 1998b). Furthermore, once the death sentence has been verified, the convict is subjected to more cruel questions and "choices", such as that described by one death row inmate (Amnesty International 1998b):

> "You're standing there alive and they're asking you where to send the body."

Related to the methods of execution used is the question of organ donation. Some countries, notably China, have made a profit based enterprise out of selling organs from executed prisoners (Radelet 1996:244). In the United States convicts have to leave their informed consent for organ donation, although some scholars argue that this is not possible to achieve as death rows do not provide the environment necessary for free choices to be made (Radelet 1996:247). However, there are cases where convicts have asked to be executed by a method such as lethal injection in order to be able to donate organs - but such wishes are known to have been turned down in favour of electrocution (Radelet 1996:244-8).

Place of detention - death rows in the United States

Inmates on death rows face cruel, inhuman and degrading treatments as a matter of policy, much of which would be classified as psychological torture in a different context. On death row the convicts are isolated from other prisoners, subjected to prolonged solitary confinement, and with no or little activity (Amnesty International 1989:61). In 1997, Amnesty International's Secretary General Pierre Sané led a delegation for visits to death rows in the United States. After a visit to the Ellis 1 Unit (400 inmates) in Huntsville, Texas, Pierre Sané was quoted as saying:

> "We have witnessed how deliberate policy *aimed at dehumanizing prisoners* is implemented coldly, professionally and heartlessly. The effect is such that it also dehumanized their keepers. The condemned await their deaths in rows of tiny cages reminiscent of the dark ages, *their spirits are slowly broken*" (as cited in Amnesty International 1998b, emphasis added).

Already discussed in this chapter is the aim of torture, namely to break the victim in body, mind and spirit, and also described were the self-confessed torturers who declared that in order to torture they had to *dehumanize their victim*. On death rows in the United States policies provide for the *deliberate dehumanization of inmates* who, as a result, break down as human beings. One of these cases constitute an international crime in form of torture, the other is a legally justified procedure which, in the majority of cases, culminates in the death of the convict. It appears, however, to be more than inappropriate to draw distinctions between the two.

Perhaps not surprising is that "death of the personality", including depression, apathy, loss of sense of reality, loss of contact with the outside world, physical and mental deterioration, may take place long before the actual execution (Amnesty International 1989:61-2, Amnesty International & Marange 1991:59). Furthermore, when a date for execution has been decided the convict may be moved to "death watch", such as the one in Pennsylvania which consists of sound proof cells surrounded by plexiglass, with cameras in front of each cell monitoring the convict 24-hours a day (Amnesty International 1998b, see also chapter four - sensory deprivation). As Amnesty International states (1989:65):

> "The condemned prisoner may be kept under special surveillance to prevent a suicide which would rob the state of its chance for punishment."

The Oklahoma State Penitentiary's H-unit, which houses death row prisoners, has repeatedly been condemned by human rights organizations as it violates all available international standards for the housing of convicts. Contributing factors in making this death row infamous include: the building itself, which appears more like a morgue than a prison; the small sizes of the cells; lack of domestic facilities, natural light and "fresh"air (Amnesty International 1994).

Methods of judicial executions - physical torture?

Several thousands of convicts are executed around the world each year, by either of the seven known methods currently used in judicial executions. These methods range from pure brutality to less violent practices which have been designed to be more *humane* for the convict. An estimated one-hundred countries still prescribe judicial executions (Hood 1996:244-6), but this number should be treated with some precaution as there are many more countries for which very little information is available. In some countries executions are carried out in public, sometimes with the audience's participation in the actual killing, in others they take place in more private surroundings, under calculated and controlled circumstances.

Although most of the methods used to execute convicts lead to a relatively rapid death it would be naive to suggest that they are painless. Hillman (1992:745-53) has analysed the possible pain experienced during execution by the official seven methods by looking at the physiology and pathology involved, and by establishing the most likely cause of death in each method. The following summary is, unless stated otherwise, based on Hillman's analysis.

Beheading

Beheading, as practised in Congo, Mauritiania, Quatar, Saudi Arabia, the United Arab Emirates and Yemen, is carried out by a guillotine, with an axe or by sword cuts. With the possible exception of the guillotine, repeated blows may be needed in order to complete the beheading. When an axe or a sword is used the duration of such execution will be largely dependent on the strength and accuracy of the executioner (Amnesty International 1989:60). Several seconds may pass before the person becomes unconscious and subsequently dies. Suggested cause of death is "anoxia consequent upon haemorrhage" (Hillman 1992:247). According to Hillman's calculations the sensation felt by the convict is that of burning and sharp pain of severe intensity. This suggestion is based on the practice of amputations, which are carried out under anaesthetics, together with the time it takes for the sensory environment to become hypoxic after the head has been severed from the body. Amputations of limbs, or parts of limbs, have frequently been carried out as a form of physical torture (see chapter four - hand and feet torture).

Electrocution

Execution by electrocution is only practised in some ten states of the US (Bedau 1996:63). It is carried out by strapping the blindfolded convict to an electric chair, after which jolts of between six and twelve amps at 2000 - 3000 volts are applied through a skullcap shaped electrode on the convict's newly shaved head, and additional electrodes bound to the legs. The convict is left alone in the room while the executioners withdraw to the observing room and a warder connects the power supply. If the convict's heart still beats after the first electric shock, which lasts a few seconds, an additional shock is provided. There have been cases where convicts have regained consciousness after the first jolt. Violent movements of the convict due to the electric current may

result in dislocations and fractures. A smell of burning, accompanied by smoke or steam from the body, is often present. It may take up to twenty minutes for the convict to die, which suggests a very painful procedure (Amnesty International 1989:58). Post-mortem findings include: third degree burns, burst tissue and severe charring of the hot and congested brain. Cause of death has been suggested to be asphyxia due to the paralysation of respiration and ventricular fibrillation, in which case the convict might have been conscious for seconds or even minutes, or, as can be suggested from the charred brain and the high temperatures of up to 60 degrees Celsius which can still be measured in the brain ten to twelve minutes after electrocution, the death could be a result of "heat denaturation of the respiratory centre in the medulla" (Hillman 1992:48). The pain felt by the convict has by Hillman been suggested to be of very high intensity, with sensations like severe heat, burning and suffocation. This suggestion is very realistic as there is an extensive material of evidence available which is relevant to electrocution, such as: a victim who survived "the chair" (Amnesty International 1989:58); torture victims who were subjected to electric shocks and survived their ordeals have provided testimonies (see chapter four - electric torture); a wide range of accidents with electric burns where victims have survived; even small electric shocks are painful; and, allegedly, an experimenter tried it on himself (Leduc 1903, as cited in Hillman 1992:750).

Hanging

Hanging is along with shooting the most common method of execution. It is used around the world, including in the states of Montana and Washington where convicts are allowed to chose between hanging and lethal injection (Bedau 1996:63, Hood 1996:129). In the United States the procedure is carried out under decent circumstances, in privacy, but in many other countries they are less sophisticated, often carried out in public, with the body left on display afterwards (sometimes for several days). However, in all cases a noose will be placed around the convict's neck before some action is taken, such as making the convict to drop - the force of gravity will do the rest. The convict may or may not be hooded or blindfolded. There is evidence submitted by the *Royal Commission on Capital Punishment* in cases of hanging in Britain (1953), which confirms that the heart may continue to beat for some 20 minutes after the drop. Post-mortem findings include hyperflexion of the neck, rotation and fracture of the junction between the body and the pedicle of the axis (see also James & Nasmyth-Jones 1992:81-91), transected spinal cord, an avulsed medulla, and extensive lacerations and bruising of the spinal cord. Fracture-dislocation of cervical vertebrae may cause immediate loss of sensations, however, if this is not rapid the cause of death is more likely to be due to asphyxiation, which under these circumstances can be very slow and painful. Unless this method is carried out in controlled manners, by skilled executioners, it is virtually impossible to determine in advance whether death will be due to neck and spinal trauma or strangulation / suffocation (Amnesty International 1989:56). Hillman suggests that there are high levels of pain involved in death by hanging, in form sensations such as burning and stretching, the painful occurrence of dislocation and fracture, along with feelings of suffocation and distress. These suggestions are based on evidence from other types of fractures and dislocations which are known to be painful, and death by asphyxiation which is believed to be very stressful. Furthermore, near asphyxiation procedures are common in torture, and survivors describe that there are high levels of psychological distress involved as this also constitute a direct death threat (see chapter four).

Intravenous injection

Intravenous injection is the favoured execution method in the US, but several of the states in which it is used provide the convict with a choice of other methods as well (Hood 1996:129). Influenced by the United States, the use of lethal injections has recently been introduced in Guatemala and the Phillipines (Amnesty International 1998b). These executions are carried out under more or less private circumstances, although some states accept "an audience" to be present, often "the injured" parties. The convict is strapped to a trolley, and a cannula is inserted in the vein in the angle of the elbow by a trained nurse or technician. If the convict is distressed there might be some struggle before the procedure of strapping and insertion of the cannula is successful. Three substances are injected: sodium thiopentone (an anaesthetic), pancuronium bromide (a muscle relaxant which paralyses the respiration), and potassium chloride (which stops the heart). The convict becomes unconscious within 10 to 15 seconds of the injection. Cause of death is the result of an "anaesthetic overdose and respiratory and cardiac arrest while the condemned person is unconscious" (Hillman 1992:748). The lethal injection is believed to be the least painful of the seven methods currently in use, and Hillman's analysis confirms this by suggesting that the only sensation felt by the convict is that of an injection. However, some pain may be caused if the cannula misses or goes through the vein. Problems associated with this practice include scarred veins (in which case suitable veins of the body other than the elbow may be used), a struggling convict, the cannula misses the vein, violent convulsions, failure of the medical equipment (leaking mixture), problems with the lethal mixture (thickening, unbalanced or prematurely given), clogged cannula, and a delayed effect of the anaesthetic agent, in which case the victim may suffocate while conscious due to the paralysis of the respiratory system following the pancuronium bromide (Amnesty International 1989:58-60, 1998b).

Lethal gas

Lethal gas is used in four states within the US, two of which offer a choice between this and the intravenous injection (Hood 1996:131). Inside an airtight chamber the convict is placed in front of a canister of sulphuric acid where he or she is strapped to a chair, and a stethoscope is attached to the convict's chest for a doctor to monitor the process from an adjacent room (Amnesty International 1989:60). When the warders have withdrawn crystals of sodium cyanide is released into the canister by a lever outside the chamber. The convict is then asked to "take a whiff" , upon when many try to hold their breath and / or struggle. Cause of death is due to anoxia as the key respiratory enzyme cytochrome oxidase becomes unresponsive. According to Hillman there is pain of high intensity associated with this method of execution, with sensations like burning and suffocation. This suggestion is based on accidental cyanide poisoning, which is known to be very unpleasant. Furthermore, when Arizona tried lethal gas for the first time in 1992, the method was described as very gruesome (Hood 1996:131). Some problems associated with this method of execution include the fact that death may be prolonged if the convict is breathing slowly or holding his or her breath, vital organs may function for some time after the convict has become unconscious, and convicts are known to have suffered convulsions and gasping for air for prolonged periods of time (Amnesty International 1989:60). Some similarities with physical torture exist within asphyxiation procedures, where chemical agents often are used inside plastic bags or hoods which are placed over a victim's head to enhance the feelings of asphyxiation (see chapter four).

Shooting

Shooting is a very common method of execution. It is either carried out by one single executioner who at short range shoots the convict through the head, or by a firing-squad aiming at the head from a longer distance. In these cases the aim is to destroy the centre of the medulla, which results in a rapid death. In other cases firing squads aims at the chest, producing ruptures of the heart, lungs and great vessels of the convict, leading to a prolonged death. Death may also be deliberately prolonged, such as in Nigeria where the firing-squad starts off by aiming bullets at the ankles of the convict and moves upwards slowly (Amnesty International 1989:57). The shot may produce a cavity much larger that the bullet itself, this is particularly true with bullets of high velocity. Cause of death from one single bullet through the head is most likely to be the destruction of the medulla, whereas with one or several bullets through the chest the cause of death is generally due to haemorrhage. Hillman has described shooting as producing pain of little or moderate intensity for the victim, with sensations such as stings, punches or cracking which are caused by rupture of the skin and fractures of the bones. There is an extensive material available on gunshot wounds which confirms this suggestion. Within the context of torture documentation describes victims who have been shot in various parts of the body as part of physical torture (see chapter four - bullets and other foreign objects).

Stoning

Stoning, as practised in Iran, Mauritania, Pakistan, Saudi Arabia, the United Arab Emirates, Yemen, and possibly other Islamic countries is probably the most gruesome of all methods used for judicial executions. The convict has the legs and arms bound before being buried in sand up to the neck or is restrained in other ways, after which the head is covered with sheets. The execution is carried out in front of a crowd, which often includes the "injured parties", and the audience is encouraged to throw stones at the convict until there are no more cries or movements, the sheets are covered in blood, and the convict is presumed dead. *The Islamic Codes of Iran* (Article 119) even includes a reference as to the size of the stones used in judicial execution by stoning. They should not be too large so the victim would die immediately, neither too small to be defined as stones. Cause of death is believed to be massive extracranial and intracranial haemorrhage. Hillman describes this practice as very painful and possibly the slowest form of death offered by any of the execution methods. The pain felt by the convict is that of severe intensity, with sensations such as extreme distress, sharp pain, sensory deprivation, dehydration and exhaustion due to the multiple injuries of the head combined with the lacerations of the skin. Evidence to support these suggestions is available from head injuries caused by, for example, car accidents and, furthermore, it is known that skin lacerations can be very painful. In the context of of torture it may be appropriate to draw parallels between severe beatings and other blunt trauma which are very common during physical torture (see chapter four - beatings).

Dr Death - Part II

There are aspects of judicial executions which requires the participation of medical personnel, and these have been widely debated by both abolitionists and supporters for many years. The most obvious contribution from the medical profession is perhaps the development of execution methods believed to be more *humane* for the victim, such as the lethal injection, but participation do take place, directly or indirectly, in many other ways.

Similar to torture, medical doctors and psychiatrists may assist directly with a variety of tasks including: psychological assessment of convicts prior to sentencing; declaring convicts "fit for execution"; monitoring the progress of executions; pronounce and / or certify deaths; and, in some parts of the United States, be present during executions without participation (Amnesty International & Marange 1991:54, Radelet 1996:248-51).

The securing of organ transplants from executed convicts may be seen as a more indirect participation as the doctor may not actually participate in the execution process. Nevertheless, there are still several ethical dilemmas which evolve through such involvement. Abolitionists have implied that since there is a worldwide shortage of organ transplants and a constant need of human remains for medical research, there is a danger that such donations will somehow justify the executions of healthy individuals (Radelet 1996:246).

It has been suggested that the involvement of medical personnel in executions also have an effect on convicts psychologically, as it may contribute to feelings that the whole event is surreal and adds further degradation (Amnesty International & Marange 1991:59). Although restrictions and regulations have been developed to limit the involvement of medical doctors in judicial executions (for example by the *American Medical Association* in 1993), it has become apparent that there are still those who are more than willing to participate (Radelet 1996:248).

Concluding remarks on the death penalty

It has already been established elsewhere that judicial executions could be interpreted within the 1984 convention against torture. For example, Amnesty International (1991:33-4):

> "considers every execution to be a human rights violation, because the death penalty is the extreme form of cruel, inhuman and degrading punishment. The death penalty also denies victims the fundamental right to life proclaimed in the Universal Declaration of Human Rights."

It is an aim of this thesis to firmly express the viewpoint that judicial executions should, in fact, also be classified as psychological and physical torture, as illustrated by the previous summaries. As torture is a crime under international law it becomes impossible to justify judicial executions within the human rights context of torture.

The similarities between psychological torture methods adapted to break a human being, which is the ultimate aim of torture, and the deliberate dehumanization of inmates on death rows (particularly in the United States) are abundant and terrifying. The "death of the personality" that many death row inmates experience is very similar to symptoms found in victims of torture, even long after the abuses took place (Amnesty International & Marange 1991:59, see also chapter four).

Furthermore, the methods of judicial executions currently in practice have a lot in common with modern-day physical torture. One major difference between the two is that with torture the victim is deliberately kept alive throughout the process, whereas the opposite is true for judicial executions - *the only escape from the severe physical violation of the body is death.*

Corporal punishments

It would be appropriate to argue that under international law corporal punishments constitute cruel, inhuman and degrading punishments (Amnesty International 1991:34). Nevertheless, corporal punishments are still imposed for a variety of offences, particularly in Islamic countries. The account of different punishments which follows are by no means complete, and it should be remembered that there is only scant information available from some countries where corporal punishments are suspected to be part of the judicial systems.

Amputation

Many Islamic countries allow for the judicial punishment of amputation, particularly of hands, for a variety of crimes (Rasmussen *et al.* 1990:293). For example, *Shari'a* courts in Mauritania started to impose sentences of public amputations through an Islamic law created in 1980. Convicted thieves had their right hands amputated in public *without anaesthetic,* and afterwards the severed hands were left on public display. Also in Pakistan can amputations be imposed by military or *Shari'a* courts, notably the amputation of a hand of convicted thieves (Amnesty International 1984:197). In Sudan cross-amputations, in which the right hand and left foot are amputated, were frequently carried out during the 1980s (Rasmussen 1990:44). In 1984 it was publicly revealed in Iran that an amputation machine had been developed with medical assistance, in order to carry out amputations more efficiently, with less danger to the convict (Amnesty International & Marange 1991:56). There is extensive evidence which suggests medical involvement in this corporal punishment, although in some countries, such as Sudan, medical professionals have eventually refused to participate (Amnesty International 1984:120-1, Amnesty International & Marange 1991:56, Rasmussen 1990:44, Rasmussen *et al.* 1990:293).

Flogging (whipping) and caning

Countries with documented use of judicial flogging include: Mozambique, where public flogging with between 3 and 90 lashes can be imposed for a variety of crimes (in addition to a prison sentence), through a law created in March 1983; Mauritania, where *Shari'a* courts can impose punishments of between 10 and 30 lashes for a variety of crimes; and also in Chad, Iran, Libya, Pakistan, Saudi Arabia, Sudan, and the United Arab Emirates (Amnesty International 1984:107-8,120-1, 1991:34).

Women may be subjected to the judicial punishment of public flogging for breaching the Islamic dress code and for the crime of *zina* (wilful extramarital sexual intercourse), the latter offence may also carry a sentence of death by stoning (Amnesty International 1991:34, 1995:93-5). Furthermore, in Iran women who are convicted of the crime *mosaheqhe* (namely lesbianism) may have the punishment of flogging imposed, but if a woman is repeatedly convicted of this "crime" she is likely to receive a death penalty the fourth time (Jempson 1996:68).

In most cases, a doctor has to declare a victim fit for flogging, in other words make sure that the convict will survive the punishment (Amnesty International 1984:196-7, Amnesty International & Marange 1991:6, Rasmussen 1990:45). If the convict is unwell the punishment will be postponed until a doctor considers the convict fit enough for flogging (Mehdi 1992:475). A medical doctor is also present throughout the punishment, in order to intervene if the convict's life becomes threatened.

The flogging, or whipping, is carried out by administering lashes to the buttocks of the convict, with a cane five feet long and half-inch thick. It is not unusual that the convict collapses during the punishment, in which case the rest of the lashes may be postponed to a later session (Amnesty International 1984:196-7).

The judicial punishment of caning has in recent years been carried out in Hong Kong, Malaysia and Singapore. Before the punishment is inflicted the convict has to be declared fit for the caning by a medical professional. In Singapore, the country in focus below, the judicial punishment of caning can be inflicted for up to 30 different offences. As Amnesty International describes (1984:206):

> "Caning is reportedly inflicted on the buttocks with a one-yard long, half-inch round rattan rod which can split the skin, remove strips of flesh and leave deep scars. The prisoners' hands and feet are strapped to a wooden A-shaped trestle; the body is bent at the waist and protective padding is tied over the spine. Strokes are inflicted at intervals of 30 seconds. The punishment takes place with a prison medical officer available."

All corporal punishments constitute acts of cruel and degrading punishments, but they also have several aspects in common with physical torture methods. For example, amputations have frequently been carried out as a form of torture, notably during the recent conflict in Sierra Leone (see chapter four - hand and feet torture). Similarly, the infliction of pain through judicially prescribed flogging, whipping or caning can be compared to severe beatings which is the most common method of torture in practice today (see chapter four - beatings). It has been assumed that a variety of less "official" corporal punishments also exist, for example within facilities where people have been deprived of their liberty.

Chapter summary

Widespread, systematic and institutionalized torture requires certain levels of involvement by the State in order to function. It is often carried out during the first days of the victim's arrest and detention, while the victim is deliberately being kept incommunicado. The victims may be released after a period of time or transferred to official detention such as a prison, but large numbers have also been extrajudicially executed or "disappeared" following their detention.

Torture may be carried out on individual victims, as an institutionalized form of repression, or on multiple victims during massacres and ethnic cleansing campaigns which often culminate in the execution of these victims. In all cases, torture is applied to demonstrate who is in control and has the power (the State), it reinforces dominate - dominated relationships, and it reduces the individual to a victim completely defenceless against the State.

Finally, it is my firm opinion that corporal punishments and judicial executions, although prescribed through judicial decisions, belong within the context of torture. The sentencing to death of an individual and their subsequent execution is very similar to the psychological and physical methods of torture which will be described in great detail in the following chapter.

Chapter four - Physical Torture - Methods and their sequelae

The aim of this chapter is to analyse physical methods of modern day torture, focusing primarily on skeletal injuries and material evidence which could be attributed to alleged or suspected torture of a victim. As the main focus is on skeletal and material evidence, some physical injuries on soft tissue may be only loosely described here as these are outside the scope of this thesis. The importance of extensive documentation of human rights violations such as torture, extrajudicial executions, "disappearances" and massacres, whether committed in peace-time or during war, cannot be overemphasized. Effective documentation and investigation of alleged abuses can be carried out efficiently on several different levels, for example by independent medical examinations of torture survivors, preferably by scholars with particular knowledge of torture and its consequences. Today there are rehabilitation and treatment centres for torture victims around the world. Furthermore, new methods to detect injuries allegedly caused by torture have in recent years been used on torture survivors. One example of this is bone scintigraphy, a technique which have been used to successfully document bone lesions in torture victims, where previous clinical or radiological examinations have been negative (Mirzaei 1998:949-51).

Autopsies should be carried out in the event of a suspicious death, preferably with the participation of an independent forensic pathologist who may perform, supervise or assist the autopsy (see Table II). Similarly, in cases involving the exhumation of victims from clandestine graves, the assistance of independent forensic archaeologists and anthropologists may prove very useful. Furthermore, examination and analysis of skeletal remains should take place with the participation of independent forensic anthropologists (see Table III). In order to document suspicious deaths efficiently the United Nations adopted the *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* in 1991, in which model protocols were proposed for autopsy and skeletal analysis. These protocols have also appeared in later documents, such as the *Guidelines for the Conduct of United Nations Inquires Into Allegations of Massacres* in 1995.

The Rasmussen study

Although this research focuses primarily on skeletal trauma on deceased victims, the extensive medical study of 200 torture survivors carried out by Rasmussen (1990) is of great value as it is the only publication of its kind. This study offers descriptions of torture methods and their immediate effects on the victims, together with short- and long-term sequelae. Information from many parts of the world is available, and this forms the basis of a statistical evaluation on the correlation between torture methods and specific symptoms. Because of its statistical nature, the Rasmussen study will be referred to continually throughout this chapter.

Short- and long-term sequelae of torture

The focus of this thesis is primarily on physical sequelae on the musculoskeletal system. Short-term sequelae will refer to the natural process of healing, beginning shortly after the initial torture and ending when the healing has been completed. Long-term sequelae may be present in form of complications which may arise from the healing process and / or any other abnormalities, possibly leading to cumulative physical problems in the affected areas of the body. Although not discussed at length here, the most common long-term sequelae is of a psychological nature.

The Objectives of an Autopsy

(a) To make a positive identification of the body and to assess the size, physique, and norishment.

(b) To determine the cause of death.

(c) To determine the mode of dying and time of death, where necessary and possible.

(d) To demonstrate all external and internal abnormalities, malformations, and diseases.

(e) To detect, describe and measure any external and internal injuries.

(f) To obtain samples for analysis, microbiological, and histological examination, and any other necessary investigations.

(g) To retain relevant organs and tissues as evidence.

(h) To obtain photographs, and video films for evidental and teaching use.

(i) To provide a full written report of the autopsy findings.

(j) To offer an expert interpretation of those findings.

(k) To restore the body to the best possible cosmetic condition before release to the relatives.

Table II: The objectives of an autopsy (Knight 1991:2).

Examination of Skeletal Remains from Clandestine Graves

(a) Determine if all the remains are human.

(b) Determine how many individuals are represented (minimum number).

(c) Determine time of death and, if possible, time of the burial.

(d) Estimate the victim's age at death.

(e) Estimate the victim's sex.

(f) If possible, determine the race or ancestry of the victim.

(g) Determine the victim's stature, physique and handedness.

(h) Document all skeletal abnormalities, old injuries, diseases etc. for identification purposes.

(i) If possible, determine the cause of death.

(j) If possible, determine the manner of death (accident, homicide, suicide).

(k) Document all visible signs of torture and other peri-mortem injuries.

(l) If possible, identify the victim.

Table III: The skeletal assessment of human remians from a human rights crimes context (modified version from Henneberg 1998:17).

Part one of this chapter contains a detailed description of the most common methods of physical torture and their sequelae. For each method a basic set of questions are answered. These are:

- How common is this method and where in the world is it carried out?
- How is it carried out? Variations?
- What are the immediate, or acute, effects on the victim?
- Are there short- and / or long-term sequelae?
- What types of injuries may be present on the skeleton of a victim?
- Is it likely to find material evidence in association with a body or in a burial context?

This part will clearly demonstrate that there is a great potential to discover injuries which may be consistent with alleged torture. However, the majority of injuries are not torture-specific, but may have been caused by a variety of natural or accidental factors. Short-term sequelae will be discussed as in many countries victims of torture are held in detention over long periods of time, in which case some injuries will have started to heal. Similarly, long-term sequelae will be included as targeted victims may be taken into custody repeatedly over periods of several years to undergo torture and interrogation, in which case injuries may show different stages of sequelae.

Part two contains a summary and descriptions of the most common methods of psychological torture. It should be remembered that *all* torture methods include a psychological component as the nature and aim of torture is to break a person physically, psychologically and spiritually. However, psychological torture leaves no physical traces and is, therefore, outside the scope of this thesis. In part three possible evidence of physical torture is summarized.

PART ONE - PHYSICAL METHODS

Beatings and other blows to the body

Background, description and variations:
Violations in form of beating, kicking and other severe blows to the body of a victim appear to be the most common form of torture. A clear indication of this is the Rasmussen study of 200 torture victims, according to which as many as 198 individuals (99%) reported that they had been beaten as part of their torture (1990:8). Beatings can be inflicted in a variety of different ways, where the torturer may use hands, fists, feet, or an implement (often made of metal, rubber or wood) to inflict pain to one or more parts of the victim's body. Although the intensity of the blows may vary, the majority of the victims in the Rasmussen study (97%) confirmed that they had been subjected to beatings of severe nature, especially to the head (73%), and to the genitals (20%). The victim may be kept blindfolded and restrained while subjected to the beatings, in sessions which sometimes last several hours or even days. Testimonies are available from victims who were forced to count out loud all the blows that they received (with numbers up to 150), if a victim was unable to count some of the blows there was a "punishment" in form of further beatings (Humanitarian Law Center 1995:113). Torture methods of beatings also include a number of "specialities" such as: *el teléfono* (the telephone), where the torturer strikes the victim's ears simultaneously using the palms of the hands or hard objects (Amnesty International 1984:151), a variation on this particular method is reported within the former Yugoslavia, where

the victims' ears have been severely rubbed between the blows (Humanitarian Law Center 1995:109); *el quirófano* (the operating table), where the victim is lying on his or her back on a table with the legs firmly held in place whereas the upper body is hanging, unsupported, over the edge of the table in a very uncomfortable position (Petersen & Jacobsen 1985:184), the victim is then repeatedly beaten and may have objects inserted into the body, such as under the nails (Larsen 1978:68); in Brazil there have been reports describing beatings with a *palmatoria*, a board with holes which produces large haematoma on the bodies of victims (Larsen 1978:56), the practice of the ancient military punishment *the gauntlet,* which is carried out by forcing the victim to run between double rows of guards while subjected to severe blows, has been documented in Poland where it is known by the sarcastic euphemism *the health-walk,* (Amnesty International 1984:210). Other less sophisticated variations include: banging the victim's head against the wall or floor, and pushing victims down sets of stairs or from a considerable height such as out of a window (Rasmussen 1990:8-9).

Immediate physical reactions and short-term sequelae:

Most of the immediate and short-term reactions following torture with beatings and other forms of blunt trauma, such as kicks and punches with implements, include marks on soft tissue, such as swelling and bruises, which will fade and disappear within a short period of time. Lacerations may result in scars, but these can be very difficult to attribute to the alleged torture. In the Rasmussen study, 26 of the 200 victims suffered fractures as a result of torture, located to the chest, feet, leg and pelvis, hand and wrist, jaw, skull, spine and arm (1990:18). In the majority of these cases the fractures were a direct result of beatings, being pushed from heights, or having the head banged against the wall (Rasmussen 1990:18). The pattern of a fracture may indicate the nature of the causative violence, for example what type of implement was used to beat the victim (Adams 1983:6). Fractures that are left untreated may lead to disability of a victim and, depending on the location of the fracture, may have severe implications on surrounding organs and tissues. Fractured or crushed ribs and sternum (as documented in Argentina, Kordon *et al.* 1992:438), may puncture lungs and / or cause internal bleeding which might result in the death of the victim. Bone and joint abnormalities following torture may be detectable using methods of radiology (Cathcart *et al.* 1979:180). However, it is possible that only a few of these abnormalities or injuries can be attributed to the alleged abuse rather than to general trauma (Fitzpatrick 1984:323). Due to the nature of torture the fractures which do occur are often placed in very unusual locations, and victims who have been detained and subjected to systematic torture over a prolonged period may have fractures at different stages of healing (United Nations 1991:47). Furthermore, missing and / or fractured teeth have frequently been reported after severe beatings (Hougen 1988:9-10, Hougen *et al.* 1988:159).

Long-term sequelae:

The long-term physical sequelae of beatings and other blunt violence can be very difficult to diagnose as most of the evidence will have been on soft tissue that healed with time. However, some skeletal abnormalities secondary to beatings can still be detected (Goldfeld *et al.* 1988:2726), including the late sequelae of fractures, osteitis, periostitis, and a variety of injuries to soft tissues such as tendons and ligaments (Skylv 1992:39). Fractures resulting from torture are most often detectable on x-rays as they generally leave permanent changes on the bones even after the healing process has been completed (Rasmussen 1990:23). Post-traumatic cerebral

symptoms, including impaired memory and concentration, headaches, intolerance to alcohol, and mental changes, have been linked to cranial trauma (Rasmussen & Lunde 1980:242). This theory has been further elaborated in the Rasmussen study (1990:26), which suggests that there is a significant correlation between conditions of organic brain damage and cases of cranial trauma, especially in victims who lost consciousness as a result of the torture. Among the 146 victims who had been severely beaten on the head 20% reported that consciousness was lost as a result of trauma such as cranial fractures, intracranial haemorrhage and brain lacerations (Rasmussen 1990:28).

Summary:
Beatings and other associated blunt trauma may result in skeletal injuries such as: fractures at different stages of healing and often in unusual locations located all over the body; fractures particularly to the chest; and fractured or missing teeth. Secondary abnormalities due to complications following fractures include: infections, delayed union, non-union, avascular necrosis, mal-union and shortening of the bone (Adams 1983:53). Furthermore, osteoarthritis, osteitis, periostitis, bone atrophy, post-traumatic ossification (after severe injury to a joint: especially elbows), and *Sudeck's Post-Traumatic Osteodystrophy* (or post-traumatic painful osteoporosis) may be detectable on the skeleton (Adams 1983:70-1).

Phalanga

Background, description and variations:
Phalanga torture, which is also referred to as *fálaka* (Cassese 1996:63), *falanga* (Rasmussen 1990:8), *bastinado* (Skylv 1992:39), *bastenado* or *bastonnade* (Bro-Rasmussen & Rasmussen 1978:3197), is a method practised worldwide. It is believed that it has its origins in the Far East, and later spread to the Mediterranean countries. The earliest known textual evidence dates to the scripts by *Demosthenes* in the fourth century BC (383-322) (Bro-Rasmussen & Rasmussen 1978:3197). Phalanga consists of severe beating of the soles of the feet, or the palms of the hands, often with instruments such as truncheons, batons, iron rods, metal sticks, cables and other metal or wooden objects. The victim is generally restrained when the blows are inflicted and, when administered to the feet (most common to the bare soles, but also with socks and shoes on), these are often raised in a fixed position. Examples of this include: victims who have been tied to inverted chairs; hung upside down by the knees and wrists (Amnesty International 1984:111); and having the body forced down inside a pile of car tires (Basoglu & Mineka 1992:203), in order to expose the feet and prevent any counter movements of the victim. After phalanga torture of the feet further pain can be inflicted to the victim by forcing him or her to walk around on an uncomfortable surface (for example: dried glue, Humanitarian Law Centre 1995:105, pebbles, broken glass or a wet floor, Skylv 1992:40), or to jump up and down, possibly while carrying a heavy weight such as the torturer (Skylv 1992:40), and putting the shoes back on straight after the torture (Forrest 1996:110). Measures can also be taken by the torturers to prevent or reduce any swelling and oedema caused by phalanga, by forcing the victim to apply creams to the affected areas, or to walk around on cold surfaces (Cassese 1996:78-9). Phalanga torture administered to the palms of the hands appear to be rare. However, there are several documented cases of such abuse from the Sanjak region of the former Yugoslavia (encompassing parts of Montenegro and southwest Serbia), where this method of torture seems to have been both

widespread and common, with numerous victims who received blows to their exposed palms while their hands were stretched out in front of the body (Humanitarian Law Center 1995:100-119).

Immediate physical reactions and short-term sequelae:
When the feet are subjected to phalanga torture the talus is forced up against the tibia, which is an action similar to that of a hard landing on the heels (Skylv 1992:42). Fractures of tarsals, metatarsals and phalanges may occur as a result, but these appear to be rare as the foot is designed to absorb major force (Skylv 1992:42, Rasmussen *et al.* 1977:1043, Rasmussen 1990:19). Intense pain will follow phalanga, either immediately after the torture or within a couple of hours. Extensive swelling has been reported in most cases (ranging from 1 to 60 days), with some victims also experiencing discolouration where, in particular the soles of the feet, have turned dark red, blue or black with an accompanying temperature increase of the affected areas (Bro-Rasmussen & Rasmussen 1978:3198, Rasmussen 1990:19). Another regularly reported reaction has been the development of oedema, sometimes so severe that blisters have occurred (Rasmussen 1990:19). Victims have reported that, while the feet were swollen, numbness and a reduction of sensation were often present, together with weakness and general loss of function of the affected areas (Bro-Rasmussen & Rasmussen 1978:3198). In one well documented case a phalanga torture victim became aware that when the swelling had subsided, a painful and partially mobile tumour had appeared (later diagnosed as enchondroma), positioned lateral to the fourth metatarsophalangeal joint of the left foot (Bro-Rasmussen & Rasmussen 1978:3199). Immediate physical reactions are also dependent on the intensity of the torture, the period of time during which the victim was subjected to phalanga, additional circumstances enhancing the effects of phalanga, and whether or not the victim was subjected to other methods of torture as well, particularly to the lower limbs (Bro-Rasmussen 1978:3198, Skylv 1992:42). Lack of medical attention, which generally accompanies the practice of torture, further contributes to the deterioration of a victim's condition. Extensive medical studies have been carried out on the effects of phalanga on feet, but such studies are, at present, not available to describe the effects on hands following the administration of phalanga to the palms.

Long-term sequelae:
The late sequelae of phalanga torture are most prominent in the lower limbs, with victims suffering from symptoms such as walking difficulties, pain of the ankles, knees and other parts of the lower extremities (Petersen *et al.* 1985:92). Medical examinations of the affected joints (hip, knee, ankle and various pedal joints) can reveal abnormalities which correspond to the alleged torture even many years after the assault has taken place (Rasmussen 1990:19-22). Medical studies of the lower limbs of phalanga victims have resulted in the suggestion that the sequelae is similar to that of *closed compartment syndrome*, a condition which can occur unrelated to torture (often in athletes), but in the case of phalanga the condition appears to have been provoked by the torture (Bro-Rasmussen & Rasmussen 1978:3200, Rasmussen 1990:23). Physical findings have included: aseptic necrosis of the bone, located to the first phalanx of the second left toe of a phalanga victim (Bro-Rasmussen *et al.* 1982:1165-66), and periosteal calcification on the medial, plantar and proximal side of the second metatarsophalangeal joint of the left foot of another victim (Bro-Rasmussen & Rasmussen 1978:3199). Another case of sequelae following phalanga describes a victim who had the left calcaneus crushed. Extensive scar formation and sclerosis of the calcaneus were documented a year after the torture had taken place (Meier *et al.* 1985).

Summary:
Immediate, short-term and / or long-term skeletal implications of phalanga torture may include: fractures, joint injuries (of the lower limbs), enchondroma and skeletal abnormalities such as bone necrosis, sclerosis and calcification.

Suspension

Background, description and variations:
Suspension is a common method of torture which is practised worldwide, either on its own, or in conjunction with other methods such as beatings, electric torture and asphyxiation procedures. It can be carried out by hanging the victim by the arms, legs, wrists, ankles, fingers, hair or any other part of the body, either in an upright position or up-side-down, and for varying periods of time. There may also be additional threats, such as when victims are suspended just above the floor which is covered in broken glass (Kordon *et al.* 1992:439). Torture by suspension comes with many distinct "specialities" and regional variations, many of which include severe beatings that will inevitably increase the pressure on the parts of the body from which a victim is suspended. Common types of suspension include: *la bandera*, where the victim is suspended by the wrists, which leaves the victim's body in a Y-shape or with the hands tied together (Cathcart *et al.* 1979:183); *murciélago*, the *bat*, suspension by the ankles (Amnesty International 1984:169, United Nations 1991:47), in addition to hanging up-side-down the victim may have the head forced into a metal bucket which is struck repeatedly to produce loud noises (Cassese 1996:65); *Palestinian hanging*, where the victim's hands are tied or handcuffed behind the back, a rope is tied to the wrists and put through a hook on the wall or thrown over a beam in the ceiling, the victim's body is then raised from the floor an left hanging in a very painful and abnormal position (Cassese 1996:78-9), also referred to as the *dog's pit* (Bendfeldt-Zachrisson 1985:342), a variation of this type of suspension is *la pita*, as practised in Peru, which adds the obstruction of breathing by placing wet rags over the victim's mouth and nose (Amnesty International 1984:171-2); *pau de arara,* the *Jack,* the *helicopter* or the *parrot's perch* (allegedly of Brazilian origins and developed to use on slaves), in which the victim is placed head down from a horizontal pole placed under the knees while the hands are tied to the ankles, leaving the victim in immense pain after a very short time as the body's whole weigh rests on the joints and forearms (Amnesty International 1984:149, Dowdall 1992:459, Larsen 1978:56); there is another type of suspension which is also known as the *helicopter,* practised Myanmar (former Burma), where victims are suspended by wrists or ankles from a fan in the ceiling, or other rotating object, whilst being subjected to beatings (Jempson 1996:74); *la barra*, *roast chicken* or *the wheel of Buddha,* where the victim's legs are bent by the knees, the wrists are tied together, lowered over the legs and then tied to the ankles - this produce a hollow under the knees and in front of the elbows in which a pole is inserted and raised, leaving the victim in a head down hanging position (Skylv 1992:43); hanging like a *hammock,* where the victim is suspended by the hands and by the feet from two rings on the wall, possibly whilst subjected to beatings (Petersen 1990:557); *the rack*, where the victim's arms and legs are strapped to a metal frame which is gradually extended, and which causes the limbs to be stretched to their very limit, is known to have been practised in Brazil (Amnesty International 1984:149); *crucifixion,* in which the victim is suspended by the arms outstretched and tied to a pole which is hanging from the ceiling, or is placed between two tall cupboards, additionally the victim might be subjected to electric shocks or beatings as part of this

suspension (Cassese 1996:65-6, Hougen *et al.* 1988:155-7); and the *hook*, or simply referred to as *hanging*, where the victim has the hands tied behind the back and is hanged from a strap around the waist (Bendfeldt-Zachrisson 1985:342).

Immediate physical reactions and short-term sequelae:
Depending on the type of suspension that a victim is subjected to there may be an immediate, or a quickly approaching threat to the life of that person, such as in suspension involving asphyxiation procedures, and other methods in which breathing is being obstructed. This is, for example, the case in the *pau de arara*, in which many victims, especially those with weak hearts, are known to have died on "the perch" (Amnesty International 1984:64). Immediate and short-term physical effects include joint dislocations and fractures which may be attributable to the alleged suspension (Goldfeld *et al.* 1988:2726), such as in Palestinian hanging, which may leave slightly dislocated humeral bones and swelling, detectable in a medical examination (Cassese 1996:78). In Argentina, victims who were reportedly suspended by their hands or feet displayed fractures of the pelvis and other parts of the body not directly affected by the suspension (Kordon *et al.* 1992:439). Suspension by long hair may produce a reaction of scalping from within (traction alopecia) if the galea start to loosen in parts or completely, which may also result in bleeding of the connective tissue (Skylv 1992:44). The sequelae to traction alopecia are known to consist of postulations and discolouration (Vesti 1988:494). Muscle pain and weakness of the shoulder and neck area have been reported following prolonged suspension by the arms and / or partial hanging where, in some cases, cervical dislocations could be detected on radiographs (Gellhorn 1978:358). Bruises, lesions, scars and joint injuries may confirm alleged suspension (United Nations 1991:47), but most immediate traces fade shortly after the event, in which case the victim could be symptom-free over long periods of time before the long-term sequelae become apparent (Skylv 1992:43). In one case, a victim was available for medical examination shortly after being subjected to long-term suspension from a rope tied around the ankles, with evidence of this in form of swelling and black discolouration of the ankles (Petersen & Vedel 1994:111).

Long-term sequelae:
A close relationship between joint pain and previous suspension has been suggested, and medical examinations may detect changes which could be attributable to the alleged violation (Skylv 1992:43). Suspension by the arms have been suggested to be the cause of reduced function of shoulder joints (Petersen *et al.* 1985:91), and also the cause of chronic upper back pain (Randall *et al.* 1985:64). However, later studies have not found any substantial correlations between chronic upper back pain and suspension by the arms (Rasmussen 1990:23, Skylv 1992:43). The long-term sequelae of suspension are, as with most methods of torture, not very specific. The sequelae are primarily found on the locomotor system which may display joint abnormalities such as: impaired and painful movements; abnormal positions due to fractures (possibly with bone or callus formation), dislocation or contraction; and osteoarthritis - none of which is torture-specific but may be caused by a variety of non-torture related factors (Rasmussen 1990:22-3).

Summary:
Suspension may produce abnormalities on hard tissues in form of joint injuries and dislocations, fractures with possible sequelae (including bone and / or callus formation), and osteoarthritis. There may be evidence of complications following the dislocation of a joint, such as: infection,

avascular necrosis of one of the articulating bones, intra- and peri-articular adhesion, Sudeck's atrophy or post-traumatic ossification about the joint, osteoarthritis, and changes of the bone due to soft-tissue injuries (Adams 1983:83). After repeated dislocations of shoulders, the spontaneous healing stops occurring. This can often result in skeletal changes, particularly in form of denting of the humeral head, postero-laterally, possibly caused by the sharp anterior margin of the glenoid fossa (Adams 1983:125).

Electric torture

Background, description and variations:
The use of electricity in torture is part of the more recent and sophisticated methods developed and refined in order to leave minimal physical evidence on the victims. In the Rasmussen study of 200 victims, 109 individuals (54%) had been subjected to electric shocks, applied with a variety of different instruments (1990:9). Stun objects, ironically created as cattle prods, are frequently used in torture, and some of these fairly small, mobile and battery-run objects have been found during inspections of police facilities (Cassese 1996:75). Electric shocks are often applied to the most sensitive areas of the body, such as the genitals, through fixed or mobile electrodes which are placed in different locations, with the victim generally kept immobile (Rasmussen 1990:9). It has been regularly reported that victims are sprinkled with water, or even soaked, in order to enhance the effects of the electricity (Kordon *et al.* 1992:438). Victims may loose consciousness as a result of electric shocks (Hougen *et al.* 1988:156), primarily because the voltage of electricity was too high, or the shocks were applied too frequently, but also as a result of having been subjected to other torture methods prior to electricity, which weakened the victim. There are some variations of electric torture, these include: *la parilla* (the metal grill), in which the victim is strapped to an iron bed, often naked, with electrodes attached to sensitive parts of the body such as the genitals (including inside the vagina of female victims), mouth, temples, toes and wrists (Amnesty International 1984:151); *la picana* (a type of cattle prod), is an instrument containing an electrically charged needle which is applied to sensitive areas of the body of the victim, including to the genitals, nipples, tongue, teeth and eyes (Goldfeld *et al.* 1988:2726); the *Bisat al-Rih*, or *the flying carpe*t, as practised in Syria, in which the victim is tied to a wooden construction shaped like a human silhouette while subjected to beatings and electric shocks (Amnesty International 1984:243); and *the dragon chair*, which is a metallic plate on which the victim is seated with electrodes attached to sensitive areas of the body such as the tongue, eyes, ears, wrists, nipples and genitals (Larsen 1978:57). In other cases electric shocks are known to have been administered through less sophisticated techniques, such as by using naked electric cables connected to a generator (Rasmussen 1990:9).

Immediate physical reaction and short-term sequelae:
When a victim is subjected to electric shocks, whether strapped to the device or through a hand-held instrument, there are violent muscle contractions. These can produce lesions of muscle fibres, especially if the victim is suspended (Skylv 1992:45), or they may even result in fractures and dislocations if the victim is tied in a manner which prevents any movement of the body, such as on the *parilla*. This is often seen in judicial executions by electrocution, where dislocations and fractures of the prisoner's limbs, which are strapped to "the chair", often occur as a result of the violent movements of the body (Hillman 1993:747). One case of multiple disc protrusions,

corresponding to alleged torture by electricity whilst being held down by soldiers sitting and standing on the victim's body, has been documented in Kashmir (Petersen & Vedel 1994:113). The instruments which are used may produce different types of injuries, such as distinct patterns on the skin of the victim. As victims of torture are generally kept blindfolded, only a few survivors can describe the instruments with which they were tortured. Minimal burns the size of black pinpricks which disappear within a few days, often located to sensitive areas such as the genitals, and in places where these could not have been self-inflicted or accidental, have been documented following electric torture with a small hand-held device (Cassese 1996:66,79). With the use of the *picana* the immediate reactions are red spots, vesicles and possible black exudate (United Nations 1991:48), within a few weeks these have developed into clusters of small, circular and reddish macular scars, 1-2 mm in size (Goldfeld *et al.* 1988:2726, Rasmussen 1990:13), and after a couple of months all that remains are small white, reddish or brown spots which resemble telangiectasias in their appearance (United Nations 1991:48). The most frequently documented early sequelae of electric torture are superficial skin lesions, often with brown scales, but more severe red skin lesions with blisters and pale lesions possibly suggesting necroses have also been found (Rasmussen 1990:13). Experiments using electric shocks have been carried out on anaesthetized pigs, in order to learn more about the sequelae of electric torture (Karlsmark *et al.* 1984:333-7). There are testimonies from torture survivors which suggest that the loss of amalgam fillings could be attributed to extreme electric shocks applied through the teeth of those victims (Gellhorn 1978:359). Other testimonies describe how incisors have cracked or broken during electric torture although the electrodes were attached to other parts of the body (Larsen 1978:60). Severe vaginal bleeding is often associated with electric torture to the female genitals (Genefke & Nielsen 1985:354).

Long-term sequelae:

Torture with electricity is one of the most sophisticated methods of torture as it leaves few detectable physical marks on the victims (Petersen & Jacobsen 1985:188). The few injuries which do occur often fade away very shortly after the torture, possibly within a couple of months. The long-term sequelae of electric torture are difficult to detect, but changes of the muscle consistency (tissue bundles) have been suggested, which may have occurred as a result of muscle lesions contracted during the alleged torture (Skylv 1992:45). Similar muscle changes are also seen in the sequelae of blunt trauma, a condition very common in torture victims, which may present problems when trying to determine the origins of a specific injury.

Summary:

Electricity often leave minimal traces also in deaths by accidental, suicidal or homicidal electrocution, with injuries primarily located to the skin (Knight 1991:294-304). However, secondary trauma may be present in these cases, such as fractures and dislocations possibly caused by falling due to violent muscle contractions or any other reaction to the electric current. The secondary trauma to fatal torture by electricity may be somewhat different, as the victim is often restrained, either in a position in which no fractures or dislocations can occur, or in other positions in which fractures and dislocations may be obtained due to being restrained. Testimonies from survivors also suggest that there may be some dental conditions associated with electric torture, such as cracked or broken teeth.

Burns

Background, description and variations:
Although this practice generally leaves distinctive scars, the deliberate infliction of burns on a victim's body, as a method of torture, appear to be common. In the Rasmussen study of 200 torture victims 27 individuals (13%) reported that they had been burned in other ways than by electricity, including from cigarettes, flames and possibly a hot iron (1990:9). Injuries in form of burns are the result of either heat, electricity, chemical or radioactive agents, which may be applied to the victim in a variety of different ways. Among the more frequently documented types of torture involving burns are: the use of cigarettes or cigars, which are held to the skin of the victim (common worldwide, see Amnesty International 1984:105-246), or stabbed out on the victim's body (documented practice during rape of women within the former Yugoslavia, see Stiglmayer 1994b:82-169); open fire or flames, with which for example nails are burned off (Larsen 1978:61); in South Africa, victims have had petrol poured over their bodies and then been set alight (Foster & Davis 1987:103); the use of boiling or very hot water or oil (Amnesty International 1984:111); heated metallic rods, as used in Pakistan (Mehdi 1992:474); the *black slave*, or *al-'Abd al-Aswad* (Amnesty International 1984:243), in which a heated metal skewer is inserted into the anus (United Nations 1991:48); *blowtorches*, directed to sensitive areas of the body of the victim (Thomsen *et al.* 1984:307); to place a boiled egg under a victim's armpit, which is then pressed as hard as possible (Cassese 1996:64, Paker *et al.* 1992:76); melting rubber dripping from a car tyre set alight above the victim (Knight 1991:274-5, Rasmussen 1990:20); the use of a hand-held, electrically heated, instrument the size of a cigarette, which is held to one area of the skin for 30-60 seconds (Rasmussen 1990:77); deliberate burning with a hot iron (Hodlevsky 1999:7); putting hot coals on the bodies of victims (Amnesty International 1984:120); and the use of corrosive acids, alkali and phenol on sensitive parts of the body, including genitals and eyes (Amnesty International 1984:187, Muir *et al.* 1987:142-3, Thomsen *et al.* 1984:307).

Immediate physical reactions and short-term sequelae:
Burns result in dermatological reactions, and the severity of those reactions will be dependent on the type of substance which caused the burn, or the intensity and period of time that an area was exposed to heat or fire. Like other burns, those resulting from torture are divided into the following pattern: 1st degree burns (superficial red skin lesions), 2nd degree burns (red lesions with blisters), and 3rd degree burns (wounds with crust). The large majority of the victims in the Rasmussen study who had been subjected to this method of torture had injuries which corresponded to 3rd degree burns, most of which were caused by cigarettes (1990:13). Many burns produce sores and scars which are characteristic of the alleged torture, such as: ulcerous sores after cigarette burns (Kordon *et al.* 1992:439), which may develop into brown, cyanotic, flat scars with possible loss of tissue thickness (Cathcart *et al.* 1979:180); peri-anal or rectal burns may indicate the *black slave* torture (United Nations 1991:48); large oval shaped burns in the armpit of victims who have been subjected to "the boiled egg" (Cassese 1996:64); melting rubber may result in keloid scars with well-defined borders and an irregular outline (Rasmussen 1990:20); black round and deep holes were documented in the skin after burning with a hand-held electrically heated instrument, with sequelae of atrophic scars with well-defined borders and loss of tissue thickness (Rasmussen 1990:13); corrosive acids and alkali often result in deep burns

and some chemicals, especially alkali, continue to penetrate deeply into the tissue even after all surface residues have been removed (Muir *et al.* 1987:142); and phenol, which penetrates deep into the tissue where it can be absorbed by systemic and local systems, and may result in kidney damage (Muir *et al.* 1987:143).

Long-term sequelae:
Burns often leave permanent sequelae in form of scars (Rasmussen 1990:14), many of which are characteristic of the alleged torture (Goldfeld *et al.* 1988:2726). Deep burns often result in keloid scars (Rasmussen 1990:20), whereas burns of smaller areas, such as from a cigarettes, leave macular or cyanotic scars, possibly with noticeable loss of tissue thickness (Cathcart *et al.* 1979:179, Rasmussen 1990:13). If a considerable amount of tissue has been destroyed the scars may appear to be tight, in which case the victim may need attention in form of physiotherapy, massage and stretching of the scar tissue, especially if the scars are placed where they interfere with the normal movement and function of joints (Skylv 1992:46). Burns caused by acids, alkali and phenol which are left untreated can result in potentially life-threatening situations, such as renal failure (Muir *et al.* 1987:142-3).

Summary:
Burns would leave no marks on the skeleton unless the burn went through the soft tissues and affected the bones, or if injuries from burns were left untreated (which is often the case when individuals have been held in long-term secret detention) resulting in infections, septic bone erosions and other conditions which may have an impact on the skeleton.

Asphyxiation procedures

Background, description and variations:
The use of asphyxiation procedures in torture contain a major psychological component, as it is a direct threat to the life of the victim. In torture, asphyxiation procedures have been described as any act which obstructs normal breathing (Rasmussen 1990:10), and the variations include near suffocation, drowning and strangulation, which can be carried out in a variety of different ways. These may result in the loss of consciousness of the victim, who needs to be resuscitated before torture resumes (Hougen *et al.* 1988:156). In the Rasmussen study, 59 of the 200 torture victims (39%), had been exposed to asphyxiation procedures (1990:10). Frequently documented types of torture which involve asphyxiation procedures include: *la bañera, la tina, the bathtub, underwater treatment* or *wet submarino*, in which the victim's body, or only the head, is submerged in water, which is often polluted with excrement, until the point of asphyxiation when the victim is allowed to breath for a short moment before the next submersion (Bendfeldt-Zachrisson 1985:342, Petersen & Jacobsen 1985:183, Rasmussen 1990:10), the victim's head might be covered in a hood throughout this procedure (Kordon *et al.* 1992:438), or wrapped in a blanket (Larsen 1978:68); other variations of forced submersions in water which may lead to near drowning, such as throwing victims into pools or the sea, have also been documented (Berger 1980:216, Cathcart *et al.* 1979:183), in Peru victims are reported to have been tied up and put into hemp bags which were submerged in a river (Amnesty International 1984:172); *dry submarino*, or *capucha*, in which the victim's head is covered with, for example, a plastic bag or a hood until the point of suffocation (Cassese 1996:64), the bag may contain insecticide, foul

smelling material (Mehdi 1992:474), or noxious chemicals (Amnesty International 1984:158); the *gagging* of a victim who is simultaneously tortured otherwise, such as being thrown into water, beaten or suspended in a manner in which breathing has already been obstructed (Hougen *et al.* 1988:156); the use of a primitive *garotte*, consisting of a string which is tightened around the neck of a victim by turning a stick, as found on dumped or secretly buried bodies in Guatemala (Amnesty International 1984:159); and *strangulation*, until the point of suffocation, have been reported (Rasmussen 1990:10). Other procedures involve the wrapping of wet cloths, towels or similar, tightly around the head of a victim in order to obstruct breathing (Amnesty International 1984:177, Rasmussen 1990:10).

Immediate physical reactions and short-term sequelae:
Victims may loose consciousness as a result of asphyxiation procedures, in which case they may need to be resuscitated. Numerous victims may die "accidentally" during these procedures, especially if a subsequent resuscitation fails. Although unintended, victims can die from gagging, for example if the gag has become soaked with saliva and mucus and no longer let air through, or after breathing through the nasal passages has become impossible due to mucus or oedema, or because the gag moved backwards into the naso-pharynx (Knight 1991:328). Survivors display few marks of physical nature, these include superficial lacerations and bruises around the neck after near strangulation or where a plastic bag has been tied tightly, dermatological and pulmonary reactions to chemicals or other substances used inside bags, and neck injuries with pain may also follow. The practice of *la bañera* can also result in acute respiratory symptoms, which may later develop into pulmonary infections (Rasmussen 1990:15). An autopsy of a victim who died of *la bañera* may reveal debris, such as excrete, in the mouth, pharynx, trachea, oesophagus or lungs, intra- and intro-thoracic petechiae, whereas the *dry submarino* may only result the latter (United Nations 1991:48).

Long-term sequelae:
Asphyxiation procedures leave few long-lasting physical marks on the victim. However, as with all torture methods, there are possible long-term sequelae of psychological character.

Summary:
Visible injuries on the skeleton following this torture method is only likely if the victim died as a result - but even then such injuries would depend on the cause of death. If the victim died from an "accidental" strangulation, there might be corresponding fractures of the hyoid bone, but if death was caused by suffocation or drowning there will be minimal evidence. However, victims who die as a result of asphyxiation procedures might be disposed of with the killing devices still attached to the body, as seen in Guatemala, and in other cases where exhumed victims have had the head covered with a plastic bag, or a noose tied around the neck (Skinner 1987:271). There is a general assumptions that hyoid fractures indicate death by strangulation or hanging. The hyoid bone is rarely found in an archaeological context, but care should be taken to recover it in forensic cases. It should be borne in mind that hyoid fractures may be the result of trauma to the neck region other than the asphyxiation procedures mentioned above. Knight suggests that hyoid fractures due to manual strangulation often occur within a centimetre of the tips of the bone (1991:341). Furthermore, strangulation and hanging (including judicial) may not result in any responding fractures of the hyoid bone (see for example James & Nasmyth-Jones 1992:81-91).

Nail torture

Background, description and variations:
Although of ancient origins, the use of nail torture is still today a well documented practice, known to be carried out worldwide. In the Rasmussen study only 5 individuals (2%) of the torture victims had been subjected to nail torture (1990:9). However, it may be suggested that this low percentage is due to the nature of the study, which incorporated many different countries and regions. Nail torture appears to be more common in Asia than in other regions of the world (Amnesty International 1984:180-206), an area under-represented in the Rasmussen study. Nail torture can be applied to finger or toe nails, or both, and is often combined with other torture methods. There are some variations on this practice, these include: the *removal* of nails, such as in Turkey, where pincers have been used for the forcible removal (Paker *et al.* 1992:76); the *insertion of objects* under the nails, also referred to as *picada* (Bendfeldt-Zachrisson 1985:342), in which pins, nails and needles appear to be the most common (Amnesty International 1984:126, 147), but the use of razor blades and other sharp objects have also been documented (Kordon *et al.* 1992:439); the *burning* of nails, where match sticks are inserted under the nails and then lit have been documented in Indonesia, East Timor and South Africa (Amnesty International 1984:190, Foster & Davis 1987:103).

Immediate physical reactions and short-term sequelae:
Nail torture often result in broken or missing nails (Paker *et al.* 1992:76). Severe infections of fingers and toes may accompany the forcible removal of nails, especially in the unhygienic conditions in which victims are often imprisoned. This is illustrated in a case of a Chilean male victim who had all the nails of his left hand removed, whereby his hands and feet were burned. The wounds became severely infected, and three fingers were lost as a result (Cienfuegos & Monelli 1983:48). The removal of a nail represents a major trauma to the nail apparatus. In non-torture circumstances nail avulsions are only performed when absolutely necessary, and in extremely careful manners (see Baran & Dawber 1994, Baran *et al.* 1996). After the surgical procedure, the nailbed is generally left covered in order to prevent any infections, which is not the case when victims have been subjected to nail torture. Severe infections may have an impact on the bones, especially the distal phalanges, and amputations could be required following nail torture.

Long-term sequelae:
All forms of nail torture present major trauma to the nail apparatus. As a result there may be interruptions in nail growth or various forms of abnormal growth (Baran & Dawber 1994, Baran *et al.* 1996). These conditions can be long-lasting and even terminal, and are often very painful to the victim long after the torture.

Summary:
Evidence of nail torture may be discovered if the victim has not yet become fully skeletonized, and the nails are still available. Signs of nail torture may include missing nails, fractured and / or burned nails, and foreign objects found in association with nails. Severe infections of fingers and toes may also leave traces on the bones of the affected areas, including septic bone erosion (especially on manual and pedal distal phalanges).

Dental torture

Background, description and variations:
The teeth may be subjected to a variety of abuses which would classify as dental torture. Teeth are often fractured or lost as a result of severe beatings and possibly by electric torture (Amnesty International 1984:105, Paker *et al.* 1992:76, Rasmussen 1990:37). However, the number of victims who report deliberate injury to teeth is relatively low in comparison with other torture methods. Specific abuse include: the deliberate *extraction* of healthy teeth (Goldfeld *et al.* 1988:2726), such as in South Africa, where teeth have been pulled out with pliers during interrogation (Amnesty International 1984:128); deliberate *destruction* of healthy teeth, such as in *the mad dentist,* where the victim's mouth is forced open and a dentist's drill is used to drill into healthy teeth (Rasmussen 1990:36); and victims may be shot in the mouth, in which case there may be extensive injuries to teeth and soft tissue (Amnesty International 1984:173).

Immediate physical reactions and short-term sequelae:
Dental conditions secondary to prolonged detention in harsh conditions, with poor dental hygiene, may also classify as dental torture. These conditions include: gingival disease, caries, extensive loss of teeth, broken teeth and loss of amalgam fillings, the latter possibly linked to electric torture, other conditions linked to malnutrition, medical neglect, and beatings to the head (Gellhorn 1978:358-59, Skylv 1992:46). Dental care has been provided in some cases, but of poor standards and mainly in form of extractions (Rasmussen 1990:37).

Long-term sequelae:
Broken and missing teeth may cause severe problems if these are not treated. Dysfunction and pain of the temporo-mandibular joints, tension and active trigger points in the chewing muscles, bruxism, tongue pressure and malocclusion may occur as a result of dental torture (Skylv 1992:46). If the affected teeth are treated these symptoms may improve, especially if carried out in combination with physiotherapy of the facial musculature, particularly of the areas associated with chewing (Skylv 1992:46).

Summary:
Evidence is likely to consist of missing and fractured teeth, deliberately misshaped teeth, together with a variety of dental implications secondary to prolonged incarceration in deleterious conditions without medical and dental attention. Secondary conditions include: gingival and periodontal diseases, caries, and extensive loss of teeth and possibly amalgam and other fillings.

Using pressure

Background, description and variations:
The use of extreme pressure in modern-day torture has only recently been documented and, so far, it appears to be practised only in a limited part of the world. Reports describing torture with pressure have come from Bhutan, Pakistan and parts of India and contain some specific procedures. These include: *Belana,* or *the roller*, as documented in Kashmir, which is carried out by placing the victim on his or her back and press a pole, or a roller, against the thighs with immense force, possibly by two persons standing on the pole and moving it up and down the legs

of the victim by taking small steps (Petersen & Vedel 1994:106); *Daang Pherna,* as practised in Pakistan, is a similar practice where the victim is lying face up on the floor while two other persons press a bamboo against the thighs and slowly rolls it down the whole length of the lower limbs (Mehdi 1992:474); *Chepuwa,* also referred to as *leg cramps,* has been documented in Bhutan, and is carried out by placing thick planks or pieces of wood on the back and front of the victim's thighs, tightened with ropes, after which guards may stand on the planks to increase the pressure (Adhikari 1999:9). Some earlier and less specific references to this method of torture have included cases from India, describing the application of heavy roller to a victim's legs (Amnesty International 1984:186), and from Pakistan, where victims were placed on a wooden bench fitted with wooden rollers which were forced over the upper legs (Amnesty International 1984:195). In Chad a method known as *supplice des baguettes* (the "baguette" torture) has been documented, which is carried out by tying a cord around the victim's head and twist it with a pair of sticks (Jempson 1996:75). In Latin America the practice of *Mitrione's vest* has been described, where the victim is fitted with a life-jacket like garment (allegedly designed by D. Mitrione, a North American advisor on counterinsurgency techniques in Uruguay) which is gradually inflated until the ribs are crushed and breathing is obstructed (Bendfeldt-Zachrisson 1985:342).

Immediate physical reactions and short-term sequelae:
The use of the above types of pressure as torture have only recently appeared in the medical literature (*Daang Pherna* in 1992, *Belana* in 1994 and *Chepuwa* in 1999). Only in two cases of suspected *Belana* are there some substantial medical documentation available. The first is of a victim who suffered renal failure, possibly as a result of crushed muscular tissue causing a release of myoglobin similar to that experienced after other forms of trauma, and the second, a victim with dark discolouration of the thighs, possibly due to haematomas and necrosis of the skin and subcutaneous tissues (Petersen &Vedel 1994:113). It is known that the latter victim received treatment for large infected wounds of the thighs, in form of antibiotics, blood transfusions and skin transplants on arrival to the hospital (Petersen & Vedel 1994:110). In the same study it is suggested that *Belana* may result in injuries to the arteries which supply the skin, subcutaneous tissues and muscles, as anatomic layers of tissue are being displaced, possibly causing impaired bloodflow and a subsequent necrosis of the skin (Petersen & Vedel 1994:113). Forrest (1996:110) suggests that "rolling" causes extreme pain and irreparable damage to the muscles. The more specific reactions on the *supplice des baguettes* includes severe pain and possibly bleeding from the nose, and may result in unconsciousness (Jempson 1996:75).

Long-term sequelae:
As of yet, there is only scant medical information available to describe the physical long-term sequelae in victims who have been subjected to this method of torture. However, complications following skin transplants may well persist on a long-term. Extensive scar tissue may need attention in form of physiotherapy, massage and stretching of the affected areas, especially if the scars are located where they restrict natural body movements.

Summary:
The information available is very limited, which makes it difficult to determine what injuries may be present on a skeleton. However, severe infections of the injuries caused by *Belana* and the other "rolling" methods may affect the bones of the lower limbs. The *supplice des baguettes*

may cause skull injuries, and fractured or crushed ribs may be a result of "Mitrione's vest", in which case there may also be evidence in form of complications following the spontaneous healing of such fractures (Adams 1983:53).

Strapping

Background, description and variations:
Strapping can be used as a separate torture method, but it is more commonly combined with other methods, such as beatings, as it leaves the victim partially immobile or, at least, severely restrained. All parts of the victim's body can be used for strapping, including the neck and the extremities. Ropes, strings or straps are tied very tightly around the selected area, where they may be left for long periods of time. Strapping may also include the use of handcuffs, thumbcuffs, shackles, chains or similar devices that are placed tightly around certain parts of a victim's body. Examples include: tying a victim's limbs very tightly with rope or metal wire, causing deep lacerations (Amnesty International 1984:114); tying victims tightly and leave them outdoors in extreme heat or sun (Amnesty International 1984:118); the holding of victims in leg-irons (Amnesty International 1984:134); the progressive tightening of a rope around a victim's thighs (Berger 1980:215); and prolonged periods of time, often several months, with the hands handcuffed behind the back (Amnesty International 1984:185).

Immediate physical reactions and short-term sequelae:
Strapping may cause pressure injuries in the underlying tissue, resulting in impaired mobility of the muscles, tendons, fasciae, vessels and nerve sheaths which, instead of sliding freely in relation to each other, form irregular bundles of connective tissue (Skylv 1992:45). Paraesthesiae and pain may occur in the whole area peripheral to the strapping (Skylv 1992:45), and temporary paralysis of affected areas have been reported (Amnesty International 1984:114). In the Rasmussen study, 5 out of 200 torture victims suffered from paraesthesiae of the fingers as a result of having been handcuffed or tightly tied with ropes around the wrists (1990:26). Handcuffs are believed to cause injury to the radial, median and ulnar nerves, which may affect all fingers of the hand (Rasmussen 1990:28). Furthermore, scars covering the circumference of the strapped area may be present (Berger 1980:215).

Long-term sequelae:
Lesions to peripheral nerves may result in the loss of sensation and motor function which will be evident also in the long-term sequelae (Rasmussen 1990:27). In the case of tissue bundles, these can be softened with massage which may also reestablish the natural sliding movements of the underlying skin structures (Skylv 1992:45). Paraesthesiae, lack of motor function and pain may subside as a result of a successful softening of tissue bundles.

Summary:
It is very unlikely that this torture method leaves any significant skeletal injuries, unless combined with for example suspension. However, in clandestine graves corpses have frequently been found with their wrists tied or handcuffed, and the ankles tied (see for example Blewitt 1997:284-88, describing victims exhumed from mass graves in the former Yugoslavia, who were both tied and blindfolded).

Forced positions

Background, description and variations:
The use of forced positions as torture is documented worldwide and appear to be a very common practice. The victim is forced to either stand, sit, lie or to maintain an abnormal body position for prolonged periods of time, possibly whilst being subjected to other torture methods such as beatings. In the Rasmussen study of 200 torture victims, some 35 individuals (17%) had been subjected to forced standing for more than 24 hours, and another 26 individuals (13%) were reportedly forced to maintain an abnormal body position (1990:9). When victims fail to maintain a forced position there is often a punishment in form of beatings. This torture method includes several "specialities", such as: *el plantón,* enforced standing for long periods of time, sometimes in a drawn circle within which the victim has to stay, possibly whilst holding heavy weights or with the arms stretched out (Randall *et al.* 1985:62); *el moto* (the motor cycle), where the victim is seated with the hands handcuffed behind the back of a chair with the legs bent by the knees and raised up on either side of the body (heels against the buttocks), leaving heels, knees and pelvis on the same level which produces immense pain to the knees (Rasmussen 1990:10); the *cheera,* which means "tearing", is carried out by spreading the victim's legs apart until muscles tear in the groin area (Forrest 1996:110); *el caballete,* or the *saw horse,* in which the often nude victim is force to straddle an iron or wooden bar which cuts into the groin (Amnesty International 1984:175, Cathcart *et al.* 1979:183); in Bolivia victims have frequently been subjected to *el chancho,* or *the pig,* a position obtained by tying the victim's hands behind the back and then force him or her to bend over backwards until the head reaches the floor, then the victim is pushed against a wall and severely beaten (Jempson 1996:74); *cajones,* is the forced confinement of victims inside boxes or other small spaces, often in abnormal positions, such as: f*eto,* where the victim is forced to remain in a foetal position for prolonged periods of time, *guardia,* the confinement of a victim in an upright position inside a large box with holes for breathing, and *secadera,* which is carried out by wrapping the victim in a plastic sheet and place him or her inside a metal cylinder (Amnesty International 1984:169); *the banana tie* is carried out either by tying the victim's hands and feet together, or by placing the victim's back on the seat of a chair and tying the hands and feet to the legs of the chair (Prip 1994:11); a favourite in Syria is the *al-Kursi al-Almani,* or the *German chair,* in which the victim is strapped to a chair-like metal construction with a flexible backrest which then is forced down backwards (Jempson 1996:74); *squatting* for long periods of time, including in front of electric fans (Amnesty International 1984:203); kneel down and not be allowed to move (Rasmussen 1990:9); and less sophisticated practices such as handcuffing victims to radiators, door frames, walls and other solid features. Many victims are also held in cells which are too small for any movements, in which standing up, lying down or otherwise stretching the body is impossible (Skylv 1992:47). Such confinement is referred to as the *coffin* or the *refrigerator* in Israel (Forrest 1996:109).

Immediate physical reactions and short-term sequelae:
Enforced positions often have an immediate effect on the back of the victim, as the spine generally is being bent either backwards, such as in *the banana tie*, or forwards, as in *feto*. This causes a series of reactions such as overstretching of the stabilizing ligaments and joint capsules of the spine, which in turn leads to segmentary instability and dysfunctions, and may result primarily in back pain, but also in other symptoms similar to those of injuries or diseases of

specific organs (Skylv 1992:47). More specific autopsy findings suggesting torture in form of *el plantón* may include dependent edema and petechiae in the lower extremities, whereas *el caballete* may produce perineal or scrotal haematomas (United Nations 1991:48). The tearing resulting from *cheera* produces extensive bruising of the groin (Forrest 1996:110). The *German chair* may cause asphyxiation through acute extension of the spine and the severe pressure on neck and limbs of the victim, and some vertebrae may become fractured (Jempson 1996:74). Prolonged standing can cause swelling of the legs, whereas the maintaining of an abnormal position may result in position-specific injuries and sequelae, such as *el moto* during which the knee joints are subjected to both pressure and twisting, resulting in immense pain of the knees immediately as well as in the short- and long-term sequelae (Rasmussen 1990:19).

Long-term sequelae:
In most cases any long-lasting problems, particularly of the spine, can be treated successfully through physiotherapy (Skylv 1992:47).

Summary:
As with most methods of torture forced positions may not leave any skeletal injuries specific or unique to torture. However, spinal injuries may occur as a result of the immense stress on the back, including fractured vertebrae resulting from positions such as the *German chair*. There may also be some fractures or dislocated joints associated with some positions, in which case complications following the healing processes may be present.

Hand and feet torture (other than phalanga)

Background, description and variations:
Hands and feet may be subjected to a variety of specific abuses during torture, but these practices have not been well documented. Known techniques include: amputations, of fingers and thumbs as documented in El Salvador (Thomsen *et al.* 1989:1378) and, as known to have been practised by nationalistic Serb forces and paramilitaries in the former Yugoslavia, the deliberate amputation of the right hand ring- and little-fingers, leaving Muslim victims in eternal Chetnik salutes (Allen 1996:79), threats to carry out amputations have frequently been made during interrogation with torture. In the contemporary conflict in Sierra Leone it has been common practice to mutilate victims by amputating their hands and / or feet, with many thousands of victims having been subjected to such amputations. Other methods include: to place objects, such as sticks (Amnesty International 1984:133), pencils (Amnesty International 1984:137) or bullets (Amnesty International 1984:199), between the fingers which are then crushed or squeezed together (Rasmussen 1990:9); the deliberate crushing of hands and feet which has been documented i Ethiopia (Amnesty International 1984:111); the crushing of toes with chairs or bricks, as documented in South Africa (Dowdall 1992:458); forcing the victim to walk barefoot on something painful, such as dried glue (Humanitarian Law Center 1995:105), broken glass and sharp pebbles or gravel (Skylv 1992:45), or to walk barefoot in snow (Rasmussen 1990:10), or on something hot such as burning coals; forcing the victim to perform physical exercises with the shoes filled with sand (Foster & Davis 1987:103); and the *al mangana,* which consists of vice-like grips of the toes (Rasmussen 1990:10).

Immediate physical reactions and short-term sequelae:
Deliberate amputations may result in severe infections if the cuts are not treated, especially in the unhealthy conditions of detention in which victims are often held. The crushing of hands and feet leading to fractures may result in severe complications when the spontaneous healing process starts. This is particularly the case with victims who are denied medical attention. When a victim has been forced to walk on sharp objects there is a risk that some foreign bodies may have penetrated the skin and later became encapsulated in connective tissues (Skylv 1992:45). There are cases where victims have had objects removed before exile, in which case the only evidence will be the medical intervention. If these object have not been removed they may cause great discomfort for the victim, of both physical and psychological nature (from knowing that the objects are there), resulting in the need for a later surgical intervention (Skylv 1992:46).

Long-term sequelae:
The long-term sequelae of hand and feet torture include: complications following amputations, which may also be of psychological character caused by the loss of a part of the body; severe fractures may have resulted in shortening of the bones, stiffness, and avascular necrosis which may necessitate surgical intervention (Adams 1983:53); and complications resulting from foreign objects which have penetrated soft tissue or bone, as mentioned above.

Summary:
Skeletal evidence may include missing hands, feet or fingers, which can be difficult to distinguish from taphonomic and diagenetic processes (Cox & Bell 1999:945-50), severely fractured (crushed) phalanges, metatarsals and metacarpals (with possible complications following healing), and cut marks (often detectable on the remaining bone after amputation). Contextual evidence may reveal the presence of foreign bodies, some which may have penetrated or dented bone.

Sexual abuse and torture

Background, description and variations:
Sexual torture is reported with great frequency, ranging from verbal humiliation and forced nakedness, to rapes in various forms and violence directed at the genital areas of the victims. Lunde & Ortmann describe sexual torture as any *involuntary* sexual act, all of which are very painful to the victim because of the involuntary nature of the event (1992:312). This method is practised worldwide and may, as seems to have been the case in the former Yugoslavia, be part of a deliberate military strategy, designed for maximum humiliation and degradation. The aim may also be to destroy the victim's own sexuality. From the available studies, heterosexual rape appear to be more common than homosexual rape, with a large percentage of the female victims having suffered single or multiple rapes by male torturers, interrogators, police personnel, military or para-military troops, whereas male victims frequently have been subjected to violence directed at their genitals (Fornazzari & Freire 1990:258-9, Genefke & Nielsen 1985:354, Goldfeld *et al.* 1988:2726, Rasmussen 1990:10). Sexual torture includes many distinct practices, such as: rape of men, women (also those who were pregnant at the time), and children (Genefke & Nielsen 1985:354, Goldfeld *et al.* 1988:2726); group rapes of women (see also chapter two mass rape), as reported for example in Uganda, where women were shot or stabbed if they resisted (Goldfeld *et al.* 1988:2726); abuse directed at pregnant women, sometimes with the intent of procuring

abortion, for example by subjecting the genital area and the stomach to severe violence, including electric shocks (Genefke & Nielsen 1985:354, Goldfeld *et al.* 1988:2726); the use of objects, such as inserting bottles, sticks or similar in the vagina of female victims, or in the anus of male victims (Rasmussen 1990:10); forced to commit sexual acts with other victims (Genefke & Nielsen 1985:354, Rasmussen 1990:12); violence to the sexual organs (Lunde & Ortmann 1992:312), such as burning, as reported in Uganda, which resulted in the death of several victims (Amnesty International 1984:131), the crushing of testicles, with the aid of a cattle gelding instrument, also reported in Uganda (Goldfeld et al. 1988:2727); castration, as reported in Guatemala (Amnesty International 1984:159); humiliation associated with menstruation, such as refusing sanitary appliances, forced to stand naked with discharge smouldering the legs whilst being subjected to verbal humiliation, and often in combination with unhygienic conditions of detention (Genefke & Nielsen 1985:354); the use of animals, such as in Chile, where evidence suggest that women were raped by specially trained dogs, or by placing rats, spiders and insects on the genital areas (Cienfuegos & Monelli 1983:48, Rasmussen 1990:11); forcing victims to sit on bottle necks (Amnesty International 1984:243); witnessing other victims being sexually tortured (Lunde & Ortmann 1992:312); and threats of rape (Genefke & Nielsen 1985:355).

Immediate physical reactions and short-term sequelae:
In association with sexual torture female victims are at risk of: becoming pregnant as a result of rape; a pregnancy that ends in a spontaneous abortion as a result of the torture (or when the torture is aimed at procuring an abortion); suffering acute vaginal bleeding; the victim may contract veneral diseases, including AIDS; suffering genital mutilation; the insertion of objects into vagina or rectum may cause injury to these organs; and she may become infertile as a result of veneral diseases, genital trauma or mutilation (Genefke & Nielsen 1985:354, Goldfeld *et al.* 1988:2726, Lunde & Ortmann 1992:314, Rasmussen 1990:34-5). Furthermore, a pregnant women may suffer psychologically, as she worries about the consequences of the torture on the foetus, and giving birth while in detention is often a very traumatic experience (Genefke & Nielsen 1985:354). For example,, one victim describes how she had her hands and feet tied while in labour (Rasmussen 1990:81). Additional torture may be added by taking the baby away from the mother straight after birth (Genefke & Nielsen 1985:355). Furthermore, women are at risk of developing genital and gynaecological problems in response to sexual torture, unhygienic conditions of detention, and various psychological traumas (Rasmussen 1990:33-5). Due to biological differences, male victims of sexual torture display other symptoms, including: extensive swelling of the genital area, particularly the scrotum, immediately after torture to that part of the body; various urological and genital problems due to torture and / or unhygienic conditions of detention; and consequences following genital mutilation, castration, injuries caused by inserting objects into the urethra or rectum, and other genital trauma (Jadresic 1980:125, Lunde & Ortmann 1992:313, Rasmussen 1990:33). Electric torture and blows to the genital area may, in both sexes, result in haematuria, caused by trauma to the urethra and bladder (Lunde & Ortmann 1992:313).

Long-term sequelae:
Violence directed at the genital areas, heterosexual and homosexual rape often result in long-term sequelae of physical and psychological character. Physical findings may include: injuries and functional disturbances of the musculoskeletal system, such as lumbar pain, dysfunction of pelvic

joints (scaro-iliac, sacro-coccygeal and pubic symphysis), and disturbances to the pelvic musculature; scars, internally in vagina / anus, or externally in the genital regions (also on breasts and nipples); in male victims, unilateral or bilateral atrophy of the testis and problems associated with the spermatic cord, the prostate, and infertility have been documented (Lunde & Ortmann 1992:314, Petersen *et al.* 1988:91, Rasmussen 1990:33, Skylv 1992:50-1). It is of major importance to restore normal pelvic functions as the pelvis is an integral part of a body's shock absorbing mechanisms, and this can be achieved through physiotherapy (Skylv 1992:51). In victims who have been subjected to phalanga torture, there may be additional problems in the lower limbs, in which case most of the shock absorbing mechanisms are interrupted. Sexual torture often results in sexual dysfunctions of various sorts in the short- and long-term sequelae of both sexes (especially in young victims), but are also found with less frequency in victims who have not been sexually tortured (Lunde & Ortmann 1990:290). Sexual torture may also have social consequences for the victim, such as being ostracized from family and / or community.

Summary:
In female skeletons there may be evidence of trauma which could indicate repeated sexual assaults and a subsequent pregnancy and / or parturition changes of the pelvic area. In forensic cases, this is an area of major potential importance (see chapter two - mass rape), which should be the subject of further studies. Foetal skeletal material may be present in the abdominal region of a female victim who died while pregnant. Furthermore, the contextual information from a grave is of major importance as objects used for sexual torture, such as sticks forced inside vagina / rectum, may be present (Skinner 1987:271). There may also be some skeletal injuries of defensive nature associated with sexual assaults.

An overview of some other methods in practice

Shaken Adult Syndrome
Occasionally "new" methods of torture are revealed, such as violent shaking which may induce unconsciousness and possibly death of the victim. It was previously believed that only young children were susceptible to death by shaking (*shaken infant syndrome*), but evidence now suggest that a possible *shaken adult syndrome* also exist. The following summary is based on the first documented case of a fatal s*haken adult syndrome* (Pounder 1997:321-24).

In April 1995, a 30-year-old Palestinian male, who had been arrested for suspected involvement with the Hamas (the Islamic resistance movement), collapsed during interrogation. The detainee was taken to hospital where he was declared brain dead after three days, without ever regaining consciousness. Due to the suspicious circumstances surrounding this death the deceased's family obtained a court order demanding that an independent pathologist should participate in the subsequent autopsy. Three pathologists, including the requested independent representative, carried out the autopsy and concluded the following (Pounder 1997:322):

> "1) natural disease played no part in the death, 2) death was the result of trauma to the brain, 3) the mechanism of brain trauma was forceful jerking movements of the head and not direct impact to the head, 4) bruises to the shoulder regions were consistent with forceful gripping or repeated blows, and 5) the pattern of injuries as a whole suggested that the method of injury was violent shaking."

Pathological findings were similar to those found in fatal *shaken infant syndrome*, and included: blunt force trauma to the upper chest and shoulders; acute subdural haemorrhage; diffuse axonal injury; and retinal haemorrhages (Pounder 1997:323). Faced with the medical evidence it was admitted that the deceased had, indeed, been violently shaken twelve times during interrogation; ten times grabbed by his clothes, and two times grabbed by the shoulders. In the last shaking session the victim collapsed, with mucous fluid coming out of the nostrils and fluid bubbling out of the mouth (Pounder 1997:322).

Violent shaking during interrogation appear to have been a common method of torture in Israel, with thousands of victims testifying on its practice. The available testimonies suggest that the procedure is carried out with the detainee either standing up or sitting down and often kept restrained, such as with the hands handcuffed behind the back and, if seated, legs tied to the chair (Pounder 1997:323). At present, very little is known about the short- and long-term sequelae of non-fatal *shaken adult syndrome*.

Forced exercise and forced labour

Many victims of torture describe how they were forced to perform physical exercises until the point of absolute exhaustion and collapse (Petersen & Jacobsen 1985:184). This is a "clean" method of torture, which leave few visible marks on the victim. However, it is a highly unpleasant experience for the victim, who often is threatened and beaten if he or she slow down or fails to perform the suggested tasks. Furthermore, the exercises are often of sexually or otherwise humiliating nature. Some of the documented practices have included: forcing the victim to carry out prolonged military drill (Amnesty International 1984:113); forcing the victim to run whilst carrying a heavy weight (Amnesty International 1984:118); and forced gymnastic exercises, such as walking in an abnormal position (Rasmussen 1990:9-10).

Associated with this is *forced labour*. This may not constitute a method of torture as such, but its practice is a severe violation of human rights, and is likely to encompass cruel, inhuman and possibly degrading treatment of the labourers concerned. Forced labour is also carried out as a form of punishment within many judicial systems around the world, where victims commonly receive combined labour / prison sentences. A recent fact-finding mission to Thailand, where Burmese (Myanmarese) victims of human rights abuses were examined, will be used to illustrate the practice of forced labour in a non-judicial context (Hougen *et al.* 1998:45-7).

Many Burmese victims of human rights violations have crossed the border to Thailand, either as refugees living in designated camps along the border, or as illegal immigrants, often living and working on construction sites. The available information suggests that, among other abuses, systematic torture is practised in Burma. Furthermore, there are numerous accidents with landmines, which kill or disable victims. Additionally, the use of forced labour appears to be both systematic and widespread. The most common form of forced labour seems to be the employment of victims as carriers for the military, but work on railways, roads and construction sites also exist. The selection of new "recruits" have been carried out by giving families an ultimatum of paying a sum of money or send a person as a carrier, or simply by ordering victims, under threats, to become labourers (Hougen *et al.* 1998:45-6).

The carriers are forced to carry packages of 20 to 30 kilograms through dense rainforest where footpaths normally are unavailable. Victims describe how they were forced to work between eight and 16 hours a day, sometimes even walking at night. In order to prevent attempted escapes, military personnel regularly locked the carriers up or tied them together at night, or placed them under supervision by armed guards. Beating, kicking and other forms of violence directed against the carriers were frequently carried out. It is known that carriers have been shot to death while trying to escape, others were beaten to death or died after collapsing in the jungle (Hougen *et al.* 1998:46).

During examination of victims who had been forcibly employed as carriers, common findings were deep lacerations and scars, often with a notable loss of tissue thickness, particularly located to the shoulder and back area (Hougen *et al.* 1998:46). The work as a carrier for the military in Burma is neither voluntary, nor paid. Instead it is a severe violation of human rights and fundamental freedoms and, as in the case of the Burmese carriers, it may contain acts classified under torture.

Starvation and water deprivation

Total food and water deprivation, for several days at the time, appears to be common during incarceration also in cases of lawful detention (Amnesty International 1984:105-246, Hougen 1988:7, Petersen *et al.* 1985:90). In Chad the deliberate starvation of prisoners, which often resulted in their deaths, was referred to under the euphemism *the black diet,* or *diéte noire* (Jempson 1996:75). Dehydration and starvation have been recognized as causing the death of many prisoners (Hillman 1993:745). The deprivation may be carried out as part of deliberate torture, leaving the victim exhausted and delirious, or as a punishment for having committed an unaccepted act. Prisoners may be provided with water which have been polluted with filth, soap or salt - making it impossible to drink (Goldfeld *et al.* 1988:2726). Similarly, if food is served it may contain urine and / or faeces, or be contaminated in other ways.

Procedures involving bodily hair

There are some torture practices which involve bodily hair, one of which has already been discussed (suspension by long hair). Hair torture may be carried out on any area of hair on the body, and practices include: having the hair pulled violently (Amnesty International 1984:137); the pulling out of hair in large quantities (Amnesty International 1984:184, Rasmussen 1990:8); and to remove hair by burning (Foster & Davis 1987:103). Apart from suspension by hair, or very violent pulling of the hair, which may result in traction alopecia, this method of torture is unlikely to result in any severe physical consequences apart from the hair loss or possibly burns. However, hair (from the head) is frequently present in burial contexts and should, therefore, not be ignored here.

Procedures involving water

There are some torture practices which involve water, apart from those already mentioned in association with asphyxiation methods. These include: having water dripping on the forehead of a victim (Rasmussen 1990:10); giving victims ice-cold baths (Amnesty International 1984:144); drenching victims with cold water during interrogation (Amnesty International 1984:171); having water forced through the nostrils while hanging up-side down (Amnesty International 1984:193);

forcing carbonated water into the nostrils (Amnesty International 1984:166); forcing prisoners to drink large quantities of salty water (Amnesty International 1984:209); and expose victims to jets of icy water (Amnesty International 1984:209). These practices do not generally result in any physical injuries which can be detected afterwards but, depending on the procedure chosen, hyperthermia, choking and vomiting may occur during the torture.

Climatic stress

Prisoners are reported to have been kept in conditions which are too wet, dry, hot, dark, or light throughout their incarceration, or for shorter periods of times as punishment or deliberate torture. The effects can be further enhanced by keeping the victim naked, possibly with the cell floor flooded with water (Amnesty International 1984:116), and by exposure to cold air ventilators and fans (Amnesty International 1984:234, Foster & Davis 1987:103). In Pakistan, victims have reportedly been forced to lie naked on blocks of ice and / or submerged in ice cold water (Mehdi 1992:475), which is likely to induce hyperthermia. The effects of the environment may be further enhanced by leaving the victim without clothes, blanket or mattress to sleep naked on the floor (Rasmussen 1990:10).

Bullets and other foreign objects

Some of these practices have already been discussed, such as the *picada,* which is most often associated with the insertion of sticks, needles and pins under the nails of the victim. However, similar implements are inserted to other areas of the body as well (Bendfeldt-Zachrisson 1985:342, Foster & Davis 1987:103), where they may be left and subsequently become encapsulated in tissue. The most common type of foreign bodies found in torture victims are bullets, but also broken glass and sharp stones may be present, all of which may necessitate a later removal by surgical intervention (Skylv 1992:45-6). However, in some cases of victims in exile, any foreign objects were removed by the abusive authorities to prevent the detection of torture.

Using "natural ingredients" and animals

Some torture practices involve "natural ingredients", for example eggs, as discussed in a previous section. One common procedure is the insertion of chilies or pepper into sensitive areas of the body, such as the genitals, anus and existing wounds (Amnesty International 1984:201). Chilies and pepper, when used on the body, increase the inflammatory reaction, and may result in keloid formation (pers. comm.). Salt and curry powder have also been poured into deliberately inflicted wounds (Jempson 1996:48,55), and victims have been forced to eat chilies (Rasmussen 1990:10). Other victims have been forced to drink oil or vinegar (Rasmussen 1990:10).

Documented practices using insects and arthropods include: placing a beetle under an inverted cup on the victim's stomach (Amnesty International 1984:237); placing spiders on the genital area of victims (Rasmussen 1990:11); smearing the victim with honey to attract ants (Forrest 1996:109); and leaving a victim immobile in the desert with the face covered in jam to attract a variety of insects (Rasmussen 1990:10).

The two animals which appear to be most common for use in torture are dogs and rats, but also snakes have reportedly been used (Foster & Davis 1987:106). Victims of torture in Argentina have described how they were surrounded by aggressive and threatening dogs, trained to stop

short of attacking (Kordon *et al.* 1992:439). Another account describes a victim being confined in a cell together with a growling dog (Rasmussen 1990:12). Rats or mice have been placed on genitals of victims, and victims have been kept in cells with rats (Rasmussen 1990:9-10). One very disturbing report describes the corpse of a young female victim in Argentina which was dumped in her parents garden. The body showed no external signs of torture, but it was later revealed that her vagina had been sewn up, and a rat was discovered inside (as cited in Donnelly 1993:42).

The use of excrement (abuse and deliberate prevention of urination and defaecation)
Excrement abuse is frequently reported by torture victims. This may consist of acts such as the throwing of urine or faeces on the victim (Goldfeld *et al.* 1988:2726, Hougen 1988:7), and the deliberate polluting of prisoners food, such as forcing the victim to eat from the plates on which the torturers have urinated (Amnesty International 1984:146). Victims have also described how they were forced to eat faeces or drink their own urine (Amnesty International 1984:133, Rasmussen 1990:11). Another variation is to prevent the victim from urinating or defaecating (Goldfeld *et al.* 1988:2726). These practices generally leave no physical marks on the victims.

Pharmacological abuse
Although parts of pharmacological torture was described in the previous chapter, in association with psychiatric abuse within the former Soviet Union, a short summary of this method will be presented here. Pharmacological abuse is the nontherapeutic administration of drugs (Amnesty International & Marange 1991:64, Goldfeld *et al.* 1988:2726, Rasmussen 1990:11), and similar peculiarities such as the infiltration of local anaesthetics into the eyelids of the victim (Gellhorn 1978:358). The drugs used in this torture method are various. First, short-acting anaesthetic drugs such as thiopentone (Pentothal, Intravel) and methohexitone (Brietal), which produces effects similar to those of being drunk, are administered (Amnesty International 1973:51). The victim becomes relaxed and drowsy and may start to talk freely. Secondly, hallucinogens (such as LSD) are used, as all normal perceptual and conceptual processes are interrupted in response to such drugs (Amnesty International 1973:52, Amnesty International & Marange 1991:64). The victim becomes confused, distressed and weakened, with distorted memories of what has taken place. Thirdly, heroin and other dependency-producing drugs are used, with testimonies describing that this is being practised in the Ukraine *at present* (Amnesty International 1973:53, Hodlevsky 1999:7). When addictive drugs are withdrawn, the dependent victim experiences severe mental and physical distress. Fourthly, a variety of tranquillisers are being used, including phendhiazine (chlorpromazine, perphenazine) and butyrophenones (haloperidol) (Amnesty International 1973:52). Fifthly, drugs such as curare, or suxamethonium, are used to induce paralysis in the victim (Amnesty International 1973:53, Amnesty International & Marange 1991:64). The last category of drugs to be mentioned in this context is apomorphine, which is used to induce vomiting (Amnesty International 1973:53).

Tracing of drugs can often be successfully carried out during autopsies of recently deceased victims (Kirschner 1984:313-6). Hair is known to absorb drugs, and once absorbed it takes a long time for the hair to break down the drug (Tedeschi 1984:301-3). Hair is commonly found in burials, in which case there may be possibilities of tracing drugs if there are firm suspicions of torture with drugs. Furthermore, advances in pharmacology and toxicology will hopefully provide methods and techniques suitable for the tracing of drugs from skeletonized remains.

Physical Evidence of Torture

Method of Torture	Immediate Effects	Short-Term Effects	Long-Term Effects	Skeletal Evidence	Evidence in Graves
Beatings	Yes	Yes	Yes	Yes	Unlikely
Phalanga	Yes	Yes	Yes	Yes	Unlikely
Suspension	Yes	Yes	Yes	Yes	Unlikely
Electricity	Yes	Yes	Not Likely	Undetermined Secondary	Unlikely
Burns	Yes	Yes	Yes	Possible	Unlikely
Asphyxiation Procedures	Yes	Yes	Rare	Rare	Yes
Nail Torture	Yes	Yes	Yes	Yes	Yes
Dental Torture	Yes	Primary and Secodary	Primary and Secondary	Primary and Secondary	Primary and Secondary
Pressure	Yes	Yes	Very Likely	Very Likely	Unlikely
Strapping	Yes	Yes	Yes	Unlikely	Yes
Forced Positions	Yes	Yes	Yes	Possible	Unlikely
Hand & Feet Torture	Yes	Yes	Yes	Yes	Yes
Sexual Torture	Yes	Yes	Yes	More Likely in Females	Yes
Bullets & Other Objects	Yes	Yes	Yes	Yes	Yes
Pharma-cological	Yes	Yes	Possible	Possible	No

NOTE: The pattern of evidence varies within each method of torture in accordance with the "specialities" and distinct procedures in practice, the frequency and duration of the torture, together with the conditions of detention.

Table IV: A General Overview of Physical Evidence of Torture.

PART TWO - PSYCHOLOGICAL METHODS

An overview of some psychological methods of torture

It has been stated repeatedly throughout this thesis that *all* methods of torture have psychological impacts on the victims - that is one of the major aims of torture. The combination of physical and psychological violence and threats is very effective in the process of breaking down the torture victim. In a study on South African victims of detention and torture, four categories of psychological stressors have been suggested. In order to divide and distinguish some issues within the context of torture, this classification is presented here (Foster & Davies 1987:165):

> "(a) *Physical stressors*: severe bodily pain; deprivation or excesses of life supports (food, water, air, light, sleep).
> (b) *Psychological stressors:* sensory (deprivation, monotony, unpatterned, overload); emotional arousal (terror, fear, anxiety, threats); learning mechanisms (behaviour control); cognitive (communication and linguistic techniques, degradation, ambiguity, contradictions, general appraisal of situation); motivational (dependency, helplessness).
> (c) *Social-psychological stressors:* isolation and confinement; compliance and dependency; self-threats such as humiliations; threats to significant others or ingroup; threats to beliefs, values and worldview; communication techniques (distortions, contradictions, false information); captive-captor relationship.
> (d) *'Institutionalised' stressors:* a regime of total control and manipulation; factors of physical and geographical location, time-space and ecological manipulation including physical conditions of confinement; manipulation of symbolic devices and rituals."

Most of the physical stressors have already been discussed in this chapter. What follows here are short descriptions of psychological, socio-psychological and "institutionalized" stressors as defined above. However, this is only a brief summary of the most common known practices, as a complete list would be difficult to create and is beyond the scope of this thesis.

Threats (of death, to family etc.)

From the available studies on torture survivors it is apparent that threats are very common as a form of psychological torture. Generally, at least 70% to 90% of the victims report that they have been subjected to this practice (Foster & Davis 1987:105, Goldfeld *et al.* 1988:2726, Hougen 1988:7-8, Hougen *et al.* 1988:156, Petersen *et al.* 1985:90, Rasmussen 1990:11). Threats are either focused on the victim directly, such as threats of being killed, further or increased violence against the victim, rape and mutilation, or at the family, friends or associates of the victim, such as threatening to detain, torture or kill members of the family or friends, or threatening to rape a spouse (or a child). Death threats may become particularly stressful if the victim has been taken to a detention centre notorious for the practice of torture, or in facilities within which many individuals are known to have died (Basoglu & Mineka 1992:202). Threats against loved ones are highly distressing for the victim as he or she is under total control by the torturers. For example, the victim cannot do anything to prevent an attack on family or friends, and is also unable to warn the person/s concerned about their prospective danger. In these circumstances the decision to comply with the torturers may seem like the only option if the victim wants to survive the ordeal, or in order to protect loved ones from violence.

Forced to watch or listen to others being tortured

Evidence demonstrates that victims are frequently forced to watch, listen, or in other ways gain the knowledge of others being subjected to torture (Foster & Davis 1987:105, Goldfeld *et al.* 1988:2726, Hougen *et al.* 1988:156, Rasmussen 1990:12). The person being tortured may be a member of the family, such as a documented case of a male victim who was forced to watch the torture of his pregnant wife (Rasmussen 1990:12), or a friend, which is illustrated in a case where the victim had to watch a friend die by being pushed out from a third-floor window (Berger 1980:216), or an unknown fellow prisoner. Many survivors testify that it was more distressing to watch or listen to others being tortured, than to be subjected to torture in person (Basoglu & Mineka 1992:205).

Sham executions

Mock or sham execution is a common method of psychological torture, with approximately up to a third of the studied survivors reportedly having been subjected to some form of simulated execution (Foster & Davis 1987:105, Goldfeld *et al.* 1988:2726, Hougen *et al.* 1988:156, Petersen *et al.* 1985:90, Rasmussen 1990:11). Sham executions can be carried out in a variety of different ways, examples include: having a revolver pressed against the head, when the trigger was pressed it became apparent that it was not loaded, others were taken to an alleged execution site, or lined up together with other prisoners, and fired at by guards without being hit (Rasmussen 1990:11). In association with this the numerous victims who have survived actual executions should be mentioned. For example, two Chilean victims survived their executions in two separate incidents after being lined up with other prisoners (including the spouse of one of the survivors, who was shot dead), and subjected to a firing-squad. Both victims pretended to be dead, and were subsequently thrown into a river, from which they could escape (Cienfuegos & Monelli 1983:47).

False accusations and deliberate behaviours by the torturers

To falsely accuse a victim of a crime, or of various illegal acts, is common during torture (Foster & Davis 1987:106). This may also include the misrepresentation of facts, such as only telling the victim contradictory information. Lies may be fabricated to suggest that a family member, friend or colleague has collaborated with the authorities and confessed (broken down during torture), and is ready to testify against the victim. Conversely, the victim may be offered an award (cigarettes, coffee, food), milder punishment, or a promise that the torture will stop, if he or she collaborates with the torturers (Foster & Davis 1987:105, Rasmussen 1990:12). The torturers may behave in deliberately inconsistent or contradictory manners, such as in "the good and the bad" interrogator (subtle vs. aggressive), an approach which is common also in police interviews under ordinary circumstances (Gudjonsson & MacKeith 1988:191). All these practices are designed to produce confusion, misbelief and degradation, entrapping the victim into making a confession.

Timing of sessions and breaks

The timing of torture sessions and breaks are often an integral part of the torture itself. For example, victims have reported that the periods of time that they had to wait between their own torture sessions were more distressing than being physically tortured (Basoglu & Mineka 1992:206). The sessions are deliberately kept irregular in order to have greater impact on the victim. Another aspect is the length of torture / interrogation sessions, which may be prolonged to have greater impact on the victim. Constant interrogation has by Rasmussen been defined as a

minimum of eight hours of interrogation without breaks during any one 24-hour period (1990:12). Constant interrogations were common in South Africa under the apartheid regimes, with nearly a quarter of all the detained victims verifying such practices (Foster & Davis 1987:105). For example, in one documented case a female victim lasted an interrogation and torture session of 62 hours - much to her interrogators' surprise (Foster & Davis 1987:134).

Isolation - prolonged solitary confinement

As a form of deliberate torture, or an additional punishment, a victim may be placed in isolation or prolonged solitary confinement. The definition of what may be considered isolation vary in the available studies, ranging from over 48 hours confinement (Goldfeld *et al.* 1988:2726), to a minimum of one week (Hougen 1988:7) and two weeks (Petersen *et al.* 1985:90). In the Rasmussen study, 150 of the victims (75%) had been subjected to solitary confinement ranging from one to 274 days, with a median length of 14 days (1990:12). The place of isolation is often a small and confined space, such as a box (adding a forced position), or cells where movements are impossible, in dark, damp, or otherwise distressing and unhygienic conditions. In addition, the victim may be denied food, water and toilet facilities. Complete isolation is an intentional way of reinforcing the roles between the powerful authorities and the defenceless victim, and it also increases the victim's sense of helplessness as all contact with other human beings is terminated (Basoglu & Mineka 1992:202). Although discussed in the previous chapter the blindfold should also be mentioned in this context, as it constitutes a deliberate way of isolating the victim.

Sleep deprivation

To prevent a victim from sleeping is frequently used as a method of torture, with up to 30% of the studied victims reporting that they were subjected to sleep deprivation, generally for periods of more than 48 hours (Foster & Davis 1987:105, Goldfeld *et al.* 1988:2726, Petersen *et al.* 1985:90, Rasmussen 1990:12, Rasmussen & Lunde 1980:243). The sleep deprivation may be partial, as defined by Rasmussen as less than two hours of sleep in any 24-hour period (1990:12), or total, with no sleep at all being permitted. Additionally, victims may be forced to take sleep-inducing drugs, after which they are prevented from sleeping.

Sensory overload (light and noise) and deprivation (darkness and silence)

Some torture methods can result in sensory overload, such as being subjected to bright light or loud noise. A small percentage of torture victims report that they have been subjected to light torture, during which they were forced to stare into a bright light for long periods of time (Rasmussen 1990:10). Cases from Lebanon describe how victims were forced to stare into a candlelight for periods around fifteen minutes, whilst being suspended up-side-down (Hougen 1988:8). Alternatively, victims may be kept in cells which are illuminated at all times. Constant loud noise from loudspeakers, banging of doors, jangling of keys and shouted instructions may classify as noise torture (Petersen & Jacobsen 1985:184). In Bolivia victims have been subjected to devastating noise and vibrations after having their heads forced into metal containers which are struck repeatedly, in a method referred to as *la campana,* or *the bell* (Jempson 1996:74). On the contrary, victims may also be kept in constant darkness or in a soundproof cell, and thereby be totally deprived of sensory perception. Permanently light or dark cells may result in a variety of eye complaints in the victims (Amnesty International 1984:127).

Religious humiliation

In some parts of the world deliberate religious humiliation is associated with imprisonment and torture. This is particularly the case with victims of the Islamic faith, who are forced into situations which greatly contradict their religious beliefs, such as confinement with people of the opposite sex, and they may also be deliberately prevented from carrying out their prayers (Amnesty International 1984:190). Additionally, victims may be forced to denounce their religious beliefs, or to abuse, destroy or condemn symbols associated with their faith.

Place of detention - prison conditions etc.

The conditions in which prisoners are held may contribute to the torture. Perverted relationships between the prisoners, such as in overcrowded cells, through forced communication or detention with psychotic persons may all be part of calculated torture (Amnesty International & Marange 1991:64, Rasmussen 1990:12). The cells are often small, dirty, illuminated, cold and without furniture, and with inadequate toilet and bathroom facilities (Hougen *et al.* 1988:155, Petersen & Jacobsen 1985:184). The health of the prisoners may degrade through lack of medical attention, which often accompany torture and unlawful detentions (Rasmussen 1990:12). The only medical care available may come from fellow inmates. Furthermore, notorious detention and torture centres, together with the detaining authority, may have psychological effects on the victims, especially if their reputations are of distressing nature. Victims may also, during their period of incarceration, witness other prisoners dying from their torture, extrajudicial execution or medical neglect, which undoubtedly has a great psychological impact on the surviving victims as they become aware that the detaining authority is able to carry out its threats.

After torture - *Post-Traumatic Stress Disorder* (PTSD)

Studies on torture survivors have been carried out over the past twenty years. These studies have identified physical and psychological sequelae which appear to be consistent with alleged forms of torture. The psychological sequelae have by some scholars been suggested as to constitute a possible *torture syndrome* (see for example Allodi & Cowgill 1982:102, Berger 1980:215, Rasmussen & Lunde 1980:241-3). However, more recent medical studies of torture survivors have challenged the theory of a *torture syndrome,* and today psychological and psychosomatic symptoms found in victims of torture are generally referred to under the broader category of *post-traumatic stress disorder*, PTSD (Mollica & Caspi-Yavin 1992:262).

On the subject of *post-traumatic stress disorder*, Basoglu and Mineka (1992:182-225) have identified and described four distinct phases of uncontrollable and unpredictable stress responses which have been found in survivors of torture. The following is a brief summary of their findings:

- Phase one - Pre-arrest and detention. Politically active persons may be aware of the likeliness of their detention and subsequent torture. Repression may be part of these person's everyday lives. Some groups also provide training in resistance under torture. These factors contribute to some levels of "immunization" towards the threat of torture, as the unpredictable elements of such threats have been eliminated. Conversely, victims who have had little or no involvement with politically organized groups may experience much higher levels of anxiety and distress during arrest and detention, as a result of the unexpected and unpredictable nature of the event.

• Phase two - Detention and interrogation. This is the period of time when torture is most likely to be carried out, especially if the victim is held incommunicado. Stress factors include: being taken to a detention centre notorious for it's practices and where many individuals are known to have died; the methods of torture a victim is subjected to; the duration and frequency of the torture sessions; and the prolonged exposure to threats, pain, anxiety and fear. Victims may chose to commit suicide during this period, as a response to the feelings of helplessness produced by intense terror and panic. There are two highly distressing aspects in this phase. First, is to be forced to witness others being tortured, and second, are the periods of time a victim has to wait between his or her torture sessions. Coping mechanisms may include: inventing self-defensive body movements to use during physical torture; refusing to express pain during torture sessions; and by using gestures to provoke the torturers. By actually doing something the victim may achieve some sense of control by reducing the helplessness, whether by reducing the pain by certain counter movements, or by causing the torturer's frustration.

• Phase three - Imprisonment. Once a detainee has been officially recognized under the law and the incommunicado detention has ended, the detainee is transferred to a prison to serve a sentence (possibly for a crime confessed to under torture), or to await a subsequent trial. Although prisoners may be taken away once in a while to undergo further interrogation and torture sessions, the structured and predictable way of life inside the prison, and contacts with the outside world, contribute to a sense of relief for the victim. However, the conditions of imprisonment are often very harsh with overcrowded cells, poor nutrition, major sanitary problems and limited or no medical care. This is the phase where PTSD's may become apparent, with victims suffering from a variety of symptoms including nightmares and panic attacks. The recovery process after the torture experience appears to be faster if the victim has access to emotional support, for example from the other inmates, and can talk spontaneously about their traumatic experience (Cienfuegos & Monelli 1983:50). For the individuals who are released straight after detention and interrogation with torture, the process of recovery from the ordeal is probably more traumatic as they generally do not have access to the type of supportive network that other inmates may provide.

• Phase four - Post-imprisonment (also refer to those released straight after detention). Victims who have served lengthy prison sentences may have been through parts of this phase before release. On release, there may be several environmental stress factors which produces serious feelings of helplessness. These include having to make radical and stressful changes to their lives, such as living in hiding, internal exile or being forced to leave the country. Stress factors for victims who could return home include: changes in social status, such as the loss of job or place in education; loss of friends and family; financial difficulties; and further harassment from the authorities who may take the victim away regularly for additional interrogation, torture and imprisonment. With social support available, and the possibilities of taking up previous activities, the victim may find some comfort. There may be a series of negative responses from the surrounding community, including: being ostracized from a group after breaking down under torture and thereby revealed information; unsympathetic attitudes from people around the victim; the public in general, who may consider the victim responsible for what happened to him or her; and being seen as a criminal or a troublemaker by the society as well as the authorities.

> Negative experiences may be even greater, if the victim is unable to make sense of what has happened as the cause for which he or she fought has been lost while the victim was imprisoned, and the organization to which the victim once belonged has been crushed. Torture and prison sentence may seem like a meaningless experience, resulting in feelings of hopelessness. A variety of different symptoms associated with PTSD are common in this phase, including; nightmares, irritability, aggressiveness, psychotic reactions, as well as several somatic symptoms.

Presence of PTSD has proved to be very common in victims of torture, both in short and long term sequelae. Especially psychological violence leads to immediate and long-term mental sequelae in victims (Rasmussen 1990:33). Many victims have very vivid memories of their torture, which may include all senses, such as taste and smell (Mollica & Caspi-Yavin 1992:259). One study of torture survivors has suggested that there may be a deterioration of a victim's psychological condition occurring around three to four years after the torture, as well as long-lasting effects of both physical and psychological nature which may still be present more than ten years after the event (Petersen *et al.* 1985:92).

Controlled studies have been conducted, in which the victims have been examined for physical and psychological symptoms of their alleged torture. These studies have confirmed that most torture victims suffer from psychological and somatic symptoms which could be consistent with PTSD (examples: Spanish torture victims examined in their own country, Petersen & Jacobsen 1985:179-89; Greek victims in their own country, Petersen et al. 1985:89-93; South African victims in their own country, Foster & Davis 1987:86-118; Turkish victims living in exile, Hougen *et al.* 1988:153-60; Lebanese victims living in exile, Hougen 1988:5-11; Turkish victims in a Turkish prison, Paker *et al.* 1992:72-82).

The nature of modern day torture is obvious in the above mentioned studies, where very few physical marks have been found which could be attributed to the alleged violation. The sophisticated methods used further demonstrate the torturers' awareness to leave no physical evidence on their victims. It has been suggested that victims who suffer physical sequelae, such as scars and disabilities, may experience more intensive psychological symptoms, and PTSD, as they are constantly reminded of the traumatic experience (Paker *et al.* 1992:80). Furthermore, from these studies it can be suggested that victims of torture living in exile may experience higher levels of psychological sequelae and PTSD symptoms, especially where asylum has not yet been granted.

PART THREE - CHAPTER SUMMARY

Concluding remarks on physical torture

It has become apparent throughout this chapter that there are at least three separate categories of evidence of physical torture, all of which will be described further. These are:

- Skeletal evidence, including direct trauma and secondary complications
- Implements, to inflict pain, restrain a victim or as killing devices
- Contextual evidence, primarily the position of victims and associated objects

Skeletal evidence

Many methods of torture can result in fractures of bone and teeth, such as severe beatings. When torture has been carried out systematically and repeatedly on a victim over a long period of time there may be fractures at different stages of healing, often placed in unusual locations. The natural healing process starts as soon as the bone has become fractured. Complications following fractures may include: infections, especially from open fractures; delayed union; non-union; avascular necrosis, namely the death of a bone, or part of a bone, which subsequently collapses, shrinks and crumbles; mal-union; and shortening of a bone, particularly the longbones (Adams 1983:53). Teeth may also be fractured as a result of torture, but spontaneous healing do not occur in teeth.

Some methods of torture, particularly suspension, can result in the dislocation of joints. Complications may follow dislocations, these include: infections, especially after open dislocation; injury to important soft-tissue structure (artery, nerve); avascular necrosis of one or both of the articulating bone ends caused by damage to the vessels supplying them; persistent instability leading to recurrent dislocations with an increasing risk that spontaneous healing will subside; stiffness of joints from intra-articular and peri-articular adhesions, sudeck's atrophy, or post-traumatic ossification of the joint; and osteoarthritis (Adams 1983:83).

Severe infections following fractures, dislocations and wounds may have an impact on the skeleton in form of septic bone erosion, osteitis and periostitis. These infections are often due to the lack of medical care available in torture situations. Similarly, lack of dental care and neglected oral hygiene often result in serious dental decay and other secondary conditions caused by prolonged incarceration in deleterious conditions. When there is no medical attention provided to victims with musculoskeletal injuries such as fractures, degenerative conditions such as osteoarthritis may be triggered.

There are limitations to the interpretation of secondary complications (including those mentioned above), and degenerative conditions, as being consistent with skeletal evidence of torture or maltreatment, because these may also occur due to a variety of reasons such as medical negligence and / or lack of health care in general. The availability of dental and medical care may vary greatly between, for example, rural and urban areas. It is, therefore, important that the overall health care provided on a local, regional or national basis, at the time of human rights violations such as extrajudicial executions and "disappearances", is taken into consideration when skeletal materials from suspected human rights crimes contexts are examined. Secondary complications and degenerative conditions should not be used as individual indicators of torture or maltreatment. Instead these should be interpreted in conjunction with other trauma consistent with the alleged or suspected abuse of a victim, in which case they may contribute to a more profound understanding of the incarceration and torture itself.

An example which highlights the importance of examining the broader context of health care are the numerous exhumations of the "disappeared" in Argentina, which show that the majority of these victims have serious dental decay and high levels of periodontal diseases not expected with the kind of dental care available to those people before their incarceration, torture and subsequent murder (pers. comm.).

One method of torture which causes specific injury to the skeleton is deliberate amputations, where clear and regular cut marks often are present on the exposed bone ends. However, it is common that bones from the hands and feet are missing due to taphonomic and diagenetic processes. It is, therefore, of vital importance that the remaining bones are carefully examined, microscopically and macroscopically, in order to document cutmarks which could be consistent the alleged or suspected violation.

Implements and contextual evidence

Victims of fatal torture or extrajudicial executions that are exhumed from clandestine graves may still be blindfolded or hooded. In addition there may be evidence that the victim was restrained, as hands and / or feet are still tied up, possibly in an abnormal position. Killing devices may still be attached to a victim, for example in form of a plastic bag over the deceased's head (dry *submarino*), or a noose around the neck (strangulation). Foreign bodies are often present in graves - the most common being bullets, but pieces of broken glass, sticks, pins, needles and other objects which had penetrated soft and possibly hard tissue may also be found.

All materials found together with human remains are of importance for the investigation, such as clothing and other personal items which may aid the identification of the victim. Additionally, bullets and cartridges often have a logotype and a date of manufacture on them, which may help identify the perpetrators and date the burial.

When the contextual evidence is analysed, taken into consideration the skeleton, its position, associated objects and their positions, it may be possible to reconstruct events, such as an extrajudicial execution. Furthermore, contextual evidence may help to determine where foreign bodies were located in a victim, such as bullets through the chest which did not cause skeletal injuries. Also within the contextual evidence is all the general archaeological information which can be obtained from a grave, including: how the it was dug (what implements were used); how well the grave was prepared (spontaneous or premeditated murder); and whether or not the backfill contains any foreign parts or items.

Summary

The recovery and documentation of skeletal, material and contextual evidence are of crucial importance when victims of suspected human rights crimes are exhumed from clandestine graves. A primary analysis of human remains while *in situ* is important in order to maximize the potential of recovering evidence of human rights violations. Attention should also be given to the immediate surroundings of a clandestine burial / dump site, as this is an area where further evidence may still be present.

All the information gathered on-site will also be of importance to various laboratory analyses, including that of the human remains. There are two main aims for the skeletal analyses of victims of suspected human rights crimes: the identification of individual victims and scientifically valid documentation of evidence of an alleged or suspected human rights violation.

Chapter five - Conclusion

In chapter two, *Human Rights and Legal Issues,* it was established that there are several legal reasons and justifications for investigations into human rights violations and war crimes. Many of the crimes of concern, such as torture and genocide, are punishable under international law with universal jurisdiction (any country which finds on its territory a person suspected of having committed such crime has the legal rights and obligation to arrest and try that offender). International tribunals investigating war crimes in the former Yugoslavia and Rwanda are already in place, and important steps have been taken to create a permanent international criminal court which will have jurisdictions over the crimes defined in this chapter, but also a multitude of other offences. However, in recent years the major atrocities that were unfolded in the former Yugoslavia and Rwanda, and the subsequent launching of large scale war crimes investigations, have to some extent overshadowed the "low-profile" human rights violations which are still carried out worldwide - and the need to investigate those. At present more investigations are carried out in relation to war crimes than to "pure" human rights crimes - nevertheless, the majority of war crimes will never be investigated nor subject to trials. This is well captured in the following statement by Simpson (1997:8):

> "The price of peace must often be a promise not to begin war crimes proceedings. So each war crimes trial is an exercise in partial justice to the extent that it reminds us that the majority of war crimes remain unpunished. If Yugoslavia, why not Somalia; if Rwanda, why not Guatemala?"

There is a potential danger with the bias towards investigations of war crimes. Human rights are violated in any war, international or national in character, and such violations are often an integral part of the conflict itself. However, it must be borne in mind that human rights violations also exist, sometimes on very large scale, in countries where no war or other conflicts have been declared. Focusing solely on investigations of human rights violations carried out during war, then labelled war crimes, and largely ignoring human rights crimes which have occurred outside the context of war may leave a false impression. There is a risk that human rights violations will be seen as international crimes *only* when these have happened during war, whereas the concern with non-war related violations, which are rarely subjected to impartial investigations at present, will decline both internationally and judicially.

Chapter three, *Torture in Context,* described the ways in which torture is incorporated into contemporary societies. As torturers are often acing under the auspices of the State, with or without direct consent in the name of national defence and security, the perpetrators often have the power to conceal the evidence of abusive incidents, and may prevent investigations from being carried out. The secrecy and denial from the responsible authorities, which accompany the practice of torture, further emphazise the need for *impartial* investigations. Torture may be carried out in a variety of ways, such as through psychiatric abuse (a highlighted phenomenon in the 1980s), and a variety of other enforced incarcerations in detention centres involved in physical, psychological and pharmacological torture. Mollica & Caspi-Yavin suggest that there is cultural diversity associated with torture, which presents certain problems for the investigation and recording of abuses (1992:270). There is not one universal definition or even understanding of torture available and, therefore, the specific cultural context must be taken into consideration.

The perception of torture will be very different, as what is considered torture in one country may be an accepted practice in another - the same is true for judicial executions and corporal punishments. At present torture is carried out, as my argument showed, in the form of death penalties. No legal system is perfect, and there will always be a risk of executing innocent individuals - the only way to prevent future abuse of the death penalty is through complete abolition. Similarly, the infliction of corporal punishments constitute torture as well as cruel, inhuman and degrading punishments, and these must also be made illegal universally.

It was demonstrated throughout chapter four, *Physical Torture - Methods and Their Sequelae,* that evidence of torture may be present in form of skeletal trauma, contextual evidence from burials, and sometimes even the implements used to cause pain or death. There is always a demand for more information about torture, such as scientifically proper recovery and documentation of evidence relating to torture from both living and deceased victims, further scientific studies which could contribute to the effective treatment of torture survivors, the collection of evidence for prosecutions of perpetrators, and above all, the *prevention* of torture. It would be appropriate, in the context of torture, to make the following recommendations:

First, medical examinations of torture survivors should be carried out as soon as possible after the alleged event, and preferably with the participation of an independent medical examiner. Many physical injuries caused by torture are on soft tissue, and may fade and disappear with time. Furthermore, it should not be expected that torture survivors remember all aspects and details of their torture, and it must be taken into consideration that much of the torture is designed to cause major confusion to the victim (Petersen & Vedel 1994:113). Many treatment and rehabilitation centres for torture survivors have been established around the world. The work with torture survivors contributes to an increasing understanding of torture, including local trends, torture-specific injuries, and other information which could be highly relevant to exhumations and skeletal analyses of deceased victims.

Secondly, autopsies of deceased victims should be carried out as soon as possible, and preferably with the participation of an independent forensic pathologist. It is of importance that the autopsy is performed before post-mortem changes remove possible evidence. Deaths under suspicious circumstances should be properly investigated, and the relatives of a deceased victim should have the rights to require an independent pathologist. In most countries standards for investigations of deaths in custody are already in practice (Knight 1991:277). Similarly, there have been repeated calls for the establishment of guidelines to apply in cases of suspicious deaths abroad, such as when a victim has died under suspect circumstances while on holiday or working abroad, and the body subsequently has to be repatriated (Green 1982:71-5). The United Nations has adopted international guidelines for the investigation of extrajudicial executions, which are used by many independent forensic pathologists (see for example Pounder 1997:321-24). These guidelines specifically apply to cases of: political assassinations; deaths resulting from torture or ill-treatment in prison or detention; death resulting from enforced "disappearances"; deaths resulting from the excessive use of force by law-enforcement personnel; executions without due process; and acts of genocide (United Nations 1991:3). As these autopsies are concerned with fatal incidents of abuses such as torture, it is very likely that they reveal information which could be extremely useful for future exhumations and skeletal analyses of deceased victims.

Thirdly, exhumations of victims from mass or single graves can be very useful for the recovery of forensic evidence relating to human rights crimes with fatal outcomes. However, these may be of limited value unless scientifically and judicially approved methods and techniques are used throughout the investigation. Chapter four has demonstrated that there may be evidence present in graves which could indicate that a victim was tortured, including contextual and material evidence. It is, therefore, essential that the grave itself and any exposed human remains are treated in a manner which would maximize the archaeological documentation, particularly *in situ*, and recovery of forensic evidence. In some countries, such as Sweden (AFFA 1996), the United Kingdom (Hunter *et al.* 1995) and the United States (Morse *et al.* 1983), forensic archaeology is applied in homicide cases, primarily when victims have been buried. Due to the judicial nature of such homicide investigations, and the fact that the majority of these cases will be the subject of court proceedings, major emphasis is on extensive documentation of evidence. Mass and single graves containing victims of fatal human rights crimes should be subjected to similar extensive documentation procedures to collect and record information, with the aid of methods and techniques admissible in a court of law. Properly documented forensic evidence could prove essential in future prosecutions of identified perpetrators.

Fourthly, skeletal analysis of human remains recovered from graves where human rights crimes are suspected, should be carried out individually for each victim. This should include the general documentation of estimated age and sex, ancestry, stature and handedness. Furthermore, there should be an emphasis on documenting peri-mortem information such as: cause and manner of death, which is particularly important in the context of human rights violations; the health of a deceased victim at the time of death, as this may indicate the conditions and length of detention; skeletal trauma, injuries and abnormalities which could indicate torture or other maltreatment; and estimations on the time of death and time of the burial, which may prove crucial for the investigation (graves may have been deliberately tampered with, or even moved, to conceal evidence). Skeletal trauma is rarely torture-specific, but it may prove extremely important in corroboration with other evidence, such as testimonies from witnesses. If sufficient ante-mortem data is available it may be possible to identify individual victims, in which case the remains should be handed over to the relatives as soon as the complete assessment has been carried out (or if required, after court proceedings).

Fifthly, the value of interdisciplinary collaboration in the context of human rights violations cannot be overemphasized. The above mentioned suggestions clearly indicate that forensic investigations of alleged or suspected crimes involving buried victims and / or skeletal remains could be carried out more efficiently through multidisciplinary contributions, preferably with the direct involvement of forensic scientists from several specialist areas, notably forensic medicine, physical anthropology and archaeology, together with police personnel familiar with homicide investigations. There are already some non-governmental organizations which apply forensic sciences to investigations of human rights abuses, most of these have a slight bias towards medical involvement (fact-finding missions, medical examinations and autopsies), rather than the archaeological and anthropological recovery and documentation of evidence from graves. The more prominent of these NGO's are: Amnesty International (Thomsen *et al.* 1984:305-11); Committee of Concerned Forensic Scientists and Physicians for the Documentation of Human Rights Abuse, CCFS (Thomsen & Voigt 1988:147-51); and Physicians for Human Rights, PHR.

Sixthly, investigations of alleged human rights crimes should not be neglected because it is not safe for national forensic professionals to proceed with such investigations. This is where the international community has an important obligation. International and independent forensic professionals will play a crucial role in assisting such investigations and providing the necessary forensic evidence in countries with such safety problems. In these cases the demands for total impartiality and objectivity of all the forensic professionals involved cannot be ignored. As stated by Thomsen & Voigt (1988:150):

> "We must never allow ourselves to be biased in order to serve a good cause. If we lose the objectivity, we will also lose credibility. A 'vague' statement may sometimes have a stronger effect, because the receiver will tend to add his [sic] own interpretation."

International and professional involvement in problematic areas of the world also contributes to the highlighting of certain issues, such as the problems faced by national professionals in terms of their personal security, and the fact that torture and / or other human rights crimes are being committed in that country. Furthermore, such international collaboration may present major advantages in form of information exchange between the suppressed professionals and their independent counterparts, educational opportunities and, above all, possibilities to contribute to the creation of a safer working environment for the national professionals by bringing attention to their disadvantaged situation.

My last statements are all related to Article 1 of the *Universal Declaration of Human Rights:*

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards each other in a spirit of brotherhood."

Behind every human rights crime there are perpetrators, and as fellow human beings they are born with reason, conscience and free choices. If their choices, not giving consideration to any individual extenuating circumstances (if such can even exist in the context of human rights crimes), were to carry out illegal acts, such perpetrators must be held responsible for their actions, be tried in a court of law, face up to their punishments and the possibilities of being deprived of their liberties as human beings - through prison sentences. Behind every human rights crime with fatal outcome there are victims who have the rights to their identities, acknowledgement in death, and respectful burials - these are fundamental birthrights of all human beings. Behind every victim there are relatives who have the right to know the truth about their loved ones, and to request investigations into the whereabouts of a victim, and to clarify the circumstances around the victim's death, execution or "disappearance" , both of which are fundamental rights.

Above all, we must never forget that behind every human rights crime there are *people* - the victims, their relatives, the perpetrators, and the rest of humanity. The promotion of human rights, the acknowledgement of human wrongs and the prevention of future violations are responsibilities which we, as free human beings, should all share. Those of us who are active within the forensic profession also have an important obligation, as professionals and human beings, to ensure that the fundamental rights of deceased victims and their relatives are acknowledged, implemented and protected at all times.

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APPENDICES

APPENDIX I:
A background to the emergence of human rights and humanitarian law

APPENDIX II:
The Universal Declaration of Human Rights

APPENDIX III:
1996 ILC Draft Code on Crimes Against the Peace and Security of Mankind

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Torture prevention

Appendix one:
A background to the emergence of human rights and humanitarian law

Nuremberg and Tokyo - The War Crimes Trials

Following the culmination of World War II, representatives of the Allied forces, including delegates from the United States, Great Britain, the Soviet Union and France, met in London to draft the *London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis*. Signed on August 8, 1945, the London Agreement established an *International Military Tribunal* with jurisdiction over German war criminals, and in an annex also provided a charter for such tribunal (the Nuremberg Charter). Although the signing of the London Agreement can be seen as the beginning of a new era for international law, the events on this particular day were overshadowed by an act performed by the United States elsewhere, namely the second nuclear bombing on Japan, which destroyed the city of Nagasaki and immediately killed at least 70,000 people, mainly civilians. The autonomous events of August 8, 1945, have been summarised by Simpson (1997:4):

> "The history of war crimes is a history suffused with irony but the conjunction between these two acts - one, a manifesto declaring the subordination of force to law, the other, an unprecedented act of violence contrary to a basic requirement of the laws of war - is perhaps the most tragically ironic of all. For some observers, Nagasaki is viewed as the symbol of the death of an idea at its birth: the idea of universal application of international criminal law to all offenders regardless of affiliation, status or nationality."

Despite the unfortunate association with the US bombing of Japan, the International Military Tribunal was created, and prosecutions of German war criminals began under the Nuremberg Charter later in 1945. Originally some twenty-four defendants were charged at Nuremberg, of which twenty-two completed the trials (one defendant had committed suicide and another was by the Tribunal declared unfit for trial); twelve were sentenced to death (one *in absentia*), three to life-time imprisonment, four to prison terms, and three were acquitted (Clark 1997:172). A similar International Military Tribunal was set up in Tokyo 1946, which aimed at prosecuting the major war criminals of the Far East, under a charter which drew largely on that of Nuremberg. Initially some twenty-eight defendants were charged, and twenty-five were subsequently sentenced with no acquittals (two defendants had died during the course of the trials and the case against another was never completed due to the mental condition of the defendant); seven were sentenced to death, sixteen to life-time imprisonment, and two received prison terms (Clark 1997:181-2).

As proclaimed in their respective Charters, the Tribunals at Nuremberg and Tokyo had jurisdiction over crimes against peace, war crimes, and crimes against humanity. In Article 6 of the Nuremberg Charter, these crimes were defined as follows:

> "(a) Crimes Against Peace: namely, planning, preparation, initiation or waging a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the following:

(b) War Crimes: shall include violations of the laws or customs of war, but not be limited to, namely, murder; ill-treatment or deportation to civilian population of or in occupied territory, to slave labor or for any other purpose; ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal whether or not in violation of the domestic law of the country where perpetrated."

The Tokyo Charter copied the definitions of crimes against peace and crimes against humanity from the Nuremberg Charter, but offered its own interpretation of war crimes. The whole body of the definition of war crimes from the Nuremberg Charter was excluded, and Article 5(b) of the Tokyo Charter simply reads:

"Conventional War Crimes: Namely, violations of the laws or customs of war"

It is stated in both Charters that individual criminal responsibility is associated with these crimes, and not even Heads of States or other Governmental Officials were expected to be freed from culpability or to receive any mitigation of punishment. However, mitigating circumstances could be considered by the Tribunals, under Article 7 of the Nuremberg Charter, and under Article 6 of the Tokyo Charter, if the defendant had been acting on an order from the ruling Government or a superior.

The original trials at Nuremberg and Tokyo focused on the major war criminals, where the accused were selected to be put on trial before the International Tribunals due to the gravity of their alleged offences. Several of the Allies continued with war crimes prosecutions, and over the following years many more trials were held with "minor" war criminals in the four occupied zones, as well as in other parts of Europe, Asia and the Soviet Union. From the end of the 1940s Germany has prosecuted a number of war criminals through domestic law, and these prosecutions have been particularly concerned with what the Nuremberg Charter defined as crimes against humanity (Clark 1997:184). Due to the many prosecutions following the original trials at Nuremberg and Tokyo, it is impossible to know the exact number of persons who have been on trial and subsequently received sentences for war crimes committed during World War II (Clark 1997:183).

There were a number of circumstances that accompanied the culmination of World War II, which made the developments of two International Military Tribunals possible, and contributed to the numerous prosecutions of war criminals. These circumstances included: the surrender of a major belligerent, the availability of extensive evidence of severe war crimes, and the custody of suspected war criminals (Draper 1996:160). Persons representing all levels of the war criminality system of the aggressors were accessible for prosecution, from the simple mechanics serving the Gestapo units right up to the governmental officials and political leaders. As Draper argues:

> "The sole category of individuals not brought to trial were the Heads of the three States concerned, Germany, Japan and Italy. One resolved his destiny by suicide, one fell into the hands of partisans who killed him, and the third was considered to be doubtfully complicit, but certainly necessary for the rehabilitation of the State over which he ruled as god and emperor" (1996:160).

Although the original trials of war criminals from World War II can be seen as a partial success, in that persons responsible for war crimes were brought to justice and subsequently sentenced for their crimes, criticism has been raised against the system under which these prosecutions took place. The term "victor's justice" has been applied to many war crimes trials following World War II, as those charged for war crimes have belonged to the surrendered or defeated side of the conflict (Simpson 1997:5). The Tribunals at Nuremberg and Tokyo were, indeed, created by the victorious Allies, and even though war crimes were committed by persons belonging to the Allied Forces (for example the nuclear bombing of Nagasaki), no prosecutions have been undertaken in association with these acts. One explanation for this phenomenon is that there has been a lack of laws which could be applied generally, uniformly and internationally to armed conflicts (Simpson 1997:5,11). This has worked to the advantage of victorious parties as, after the culmination of a conflict, they have been able to dictate the terms under which prosecutions were to take place and, therefore, also exclude their own war criminals from the possibilities of being put on trial.

Today there are new possibilities for investigations of atrocities carried out during World War II, such as documentary evidence which became available after the breaking down of the Soviet Union and East Germany. Another development has been the application of forensic sciences to these types of criminal investigations, especially the exhumation of victims from clandestine graves. In the beginning of the 1990s, the *Australian War Prosecution Team*, including Richard Wright, professor in archaeology, undertook exhumations at two World War II mass grave sites in Ukraine, at Serniki and Ustinovka (Blewitt 1997:286-7, Wright 1995:39-44). Although there were available documentation and testimonies describing the crimes under investigation, the exhumations still resulted in new forensic evidence being brought forward and used in the subsequent court case. As Wright later argued (1995:44):

> "material evidence is harder to contradict than memories."

As investigations and prosecutions of crimes committed during World War II are still carried out around the world more than half a century after the crimes were committed (examples include: various European approaches to war crimes, Marschik 1997:65-101; Australian war crimes trials, Triggs 1997:123-49; Israeli approaches to crimes related to the Holocaust, Mann 1996:35-77, Wenig 1997:103-22; and prosecution of war criminals in Canada, Williams 1997:151-70), some credit must be given to the original trials at Nuremberg and Tokyo. There are at least two major developments that have derived from these early trials. First is the notion that some crimes are of international concern and should be covered by international laws, and this has since been ensured through the creation of a variety of conventions, covenants, and treaties (Clark 1997:185). The second is that these types of crimes carry individual culpability without exceptions (McCormack 1997:1997:55), and with no difference given to the time that has elapsed since the crime itself was carried out.

The Universal Declaration of Human Rights (1948)

The recent events of World War II had contributed to the realization that international human rights norms were needed, and the first steps in this direction were taken at the war crimes trials at Nuremberg and Tokyo, where defendants were prosecuted not only for war crimes, but also for crimes against humanity. Many scholars describe the Holocaust, the systematic extermination of millions of civilians, as the catalyst that introduced human rights in world politics and international law (Donnelly 1993:6). The extermination of civilians on this massive scale, through institutionalized practice, was a new phenomenon in armed conflicts and was largely ignored by the Allies until the very last stages of World War II. When the war came to an end it was these major atrocities that symbolised the urgent need for legal, political and moral protection of human rights and fundamental freedoms.

The development of international human rights standards was made possible by actions taken by the United Nations. Although the 1945 *Charter of the United Nations*, in its preamble and in a couple of the Articles, refers to human rights and fundamental freedoms, the Charter presents no definitions or explanations of these major concepts. In 1948 efforts were made to produce universal and comprehensive standards for human rights, which resulted in the *Universal Declaration of Human Rights*, adopted unanimously by the General Assembly on December 10, 1948 (Appendix II). This historic Declaration contains the very essence of human rights and fundamental freedoms, and some of the original thirty articles have now been elaborated further into separate Conventions and Declarations. The spirit of the Declaration itself is well captured in Article 1, which reads:

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

The Declaration contains articles on a variety of human rights issues, and most of these will not be discussed here as their scope is beyond the aim of this particular research. However, the relevant articles will be presented and briefly analysed, starting with Article 3, which contains the following:

> "Everyone has the right to life, liberty and security of person."

This Article applies to most cases where human life is being threatened, independently of the existing circumstances, for example war or peace. Nevertheless, it does present one major area of confusion, namely that of capital punishment. Some sectors of the international community have campaigned for the abolishment of the death penalty, and strict regulations have been set out in later documents on how to deal with this delicate issue. The current controversies around death penalty were discussed in chapter three, together with my own argument that the death penalty contains acts of psychological and physical torture. Continuing with the Declaration, Article 5 states:

> "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Although this Article is straight forward in that it protects persons with no reference as to the circumstances under which the mentioned acts are carried out, there has been one major problem with its interpretation, namely the definition of, in particular, torture. The definitions of these acts and further elaborations on this Article have been made repeatedly since the 1970s (Burgers & Danelius 1988). Related to these issues is Article 9, which provides:

> "No one shall be subjected to arbitrary arrest, detention or exile."

To arbitrarily deprive a person of liberty and freedom is usually a crime under national law, as was discussed in chapter three in relation to *habeas corpus*. When a State is carrying out arbitrary arrests of its own population it has entered a danger zone where fundamental human rights are being seriously violated. The seriousness lies, primarily, in the links between arbitrary arrests, forced disappearances, torture and extrajudicial executions.

Although the *Universal Declaration of Human Rights* is not legally binding, some argue that it provides an essential part of customary international law (Kamminga 1992:133), and it remains closely connected to the aims and objectives of the United Nations.

The Geneva Conventions of 1949

Some months after the creation of the *Universal Declaration of Human Rights* other important legal norms were developed, this time concerned with conduct during war. The major atrocities of World War II were also here the main influence behind the new developments (Askin 1997:244). The Swiss Government hosted a diplomatic conference in Geneva from April to August 1949, with an aim to establish a convention for the protection of victims of war. This conference resulted in the four Geneva Conventions of August 12, 1949. These are:

- *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I)*

- *Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II)*

- *Convention Relative to the Treatment of Prisoners of War (Geneva Convention III)*

- *Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV)*

Geneva Conventions I, II and III are all concerned with persons who take active part in a war, such as the combatants. Conventions I and III are revised versions of earlier conventions, where experiences from World War II have been incorporated. Convention II is a preexisting convention applied to a new territory, namely that of the sea. Convention IV is unique as the first convention specifically dealing with the protection of civilians in times of war. Although civilians had been covered to some extent in previous Hague Conventions, this was a major legal development.

A few of the articles are similar in all four Geneva Conventions, and these are referred to as the *common articles*. For example Common Article 2 states the context where these Conventions are applicable. Although Common Article 2 has a broad definition, it is the nature of the armed conflict in question, and the circumstances under which certain areas are under occupation, that will be the deciding factors for whether or not the Geneva Conventions can be applied. Another important article in all four Geneva Conventions of 1949 is Common Article 3(1), which states:

> "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:
>
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> (b) taking of hostages;
>
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

This Article ensures that the above mentioned persons shall be protected by at least basic levels of international humanitarian law in cases of non-international armed conflicts (Eide 1988:30). However, the same guarantees for the protection of civilians during international armed conflicts were not created until later, when the need to analyse the laws of war had again become apparent.

With advances in technology methods of warfare had changed from conventional clashes between enemy forces, where the casualties generally were combatants, to the use of weapons of mass-destruction (Kwakwa 1992). The majority of victims of this new form of non-confrontational warfare were civilians. It was in the light of these new sophisticated weapons of mass-destruction that the laws on the conduct of warfare and the protection of civilians in armed conflicts had to be revised. The elaborations came in 1977, when two additional protocols were added to the Geneva Conventions. These are:

- *Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*

- *Protocol Additional to the Geneva Conventions of August 12, 1945, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*

Protocol I has been widely accepted by the States Parties to the Geneva Conventions, whereas there are fewer constituents to Protocol II, as some Third World governments have refused to ratify the latter Protocol due to ongoing civil wars or other internal armed hostilities. Protocol II has been suggested to interfere, on a political basis, with a State's sovereignty, in some cases of internal conflicts (Kwakwa 1992:22).

Under Protocol I civilians are protected during an international armed conflict, and some fundamental guarantees are identified. In this case, civilians mean persons who do not take part in, or have ceased to participate in, the hostilities. These persons shall, according to Article 4(1), be treated humanely and with respect for their persons, honours and convictions, and religious practices. Article 4(2) provides:

> "Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:
>
> (a) violence to the life, health and physical or mental wellbeing of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal;
>
> (b) collective punishments;
>
> (c) taking of hostages;
>
> (d) acts of terrorism;
>
> (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
>
> (f) slavery and the slave trade in all their forms;
>
> (g) pillage;
>
> (h) threats to commit any of the foregoing acts."

The Geneva Conventions together, with Protocol I and II, have provided a legal framework under which civilians are protected during armed conflicts of both international and internal characters. The protection of civilians under the Geneva Conventions includes many of the fundamental human rights and freedoms introduced in the *Universal Declaration of Human Rights*. These two major documents, the first focusing on the respect for fundamental human rights and freedoms, and the second on the conduct of war and the protection of civilians in armed conflicts, have contributed tremendously to the emergence of international humanitarian law.

The United Nations International Bill of Human Rights

Created as a resolution of the General Assembly, the 1948 *Universal Declaration of Human Rights* is one of the most authoritative statements of international human rights norms. However, as a resolution it carries no legal obligations and the Member States are not legally bound by the Declaration. The intention of the Declaration was to introduce concepts of human rights, which would be followed by an appropriate treaty. The General Assembly's illustration of the Declaration can be seen in its preamble, which includes the following remark:

> "this Universal Declaration of Human Rights is a *common standard of achievement* for all peoples and all nations" (emphasis added)

The drafting of a treaty to accompany this "standard of achievement" started immediately, with an aim to ensure that human rights were recognised in international law. Although the drafting of this treaty was nearly completed in 1953, the Cold War prevented an agreement on its content to be reached. Ideological hostilities between, primarily, the US and the Soviet bloc contributed to a continuous flow of criticism between the two powers (Donnelly 1993:7-10). For example, the US highlighted the right to freedom of information, an area of rights which was violated in the Soviet bloc on a regular basis. On the contrary, the Soviet bloc focused its criticism on racial discrimination (primarily in the US) and the high levels of unemployment in the capitalized Western countries. The ideological disputes which surrounded the treaty were focused on the definition and status of economic and social rights, and further work on the treaty was dismissed for a decade.

In December 1966 the drafting of the treaty was finally completed, but instead of the one single document aimed at earlier, the treaty was split into two separate conventions, these were:

- *The International Covenant on Economic, Social and Cultural Rights*

- *The International Covenant on Civil and Political Rights*

Although the two Covenants were adopted by the General Assembly in 1966 they did not enter into force until March 1976. Their complementary association to the *Universal Declaration of Human Rights* is very obvious, and can, for example, be seen in the preamble of the *Covenant on Civil and Political Rights*, which includes the following statement:

> "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights"

A similar expression is found in the preamble to the *Covenant on Economic, Social and Cultural Rights*. The *Covenant on Civil and Political Rights* aims at the protection of individuals against the State, such as granting a person the right to due process, or *habeas corpus*, and the freedom of speech. It also contains provisions on the rights to political opportunities and activities, such as the right to vote and to form peaceful associations and assemblies. The *Covenant on Economic, Social and Cultural Rights* declares that people should be provided with a minimum of goods and services (largely by the State), such as food and clothing, but also social services and insurances, health care, education, and favourable working conditions. Furthermore, it provides some protection against the State, particularly concerned with family matters.

The *Covenant on Civil and Political Rights* also includes two optional protocols. The first protocol, which dates back to 1966, is concerned with the *Human Rights Commission* which is set up under part IV of the Covenant. It enables the Commission to receive and consider complaints from individuals in cases where the rights set forth in the Covenant have been violated, but this is only applicable to the member states of this Optional Protocol.

The second optional protocol, which was added in 1990, is concerned with the abolition of the death penalty. The aim of this protocol is to ensure that the member states are undertaking an international commitment to the abolition of the death penalty, as it thoroughly contradicts Article 6 of the Covenant, the article which provides that everyone has the right to life (see chapter three for further details).

The two Covenants, together with the *Universal Declaration of Human Rights,* contain the minimum standards of human rights and fundamental freedoms which are recognised under international law. These three documents are often referred to collectively as the *International Bill of Human Rights* (Stavenhagen 1988:21-2), and symbolises the beginning of an era where the United Nations has set the standards for international law (Donnelly 1993:10). Box I in chapter two contains a summary of these internationally recognised human rights, based on the three documents of the *International Bill of Human Rights*. With the 1966 Covenants there has also been an emergence of essential monitoring missions and reporting procedures, some of which are discussed in Appendix IV.

Crimes Against the Peace and Security of Mankind - The 1991 and 1996 ILC Draft Codes

In 1946, the *International Law Commission*, under instructions from the General Assembly, started to prepare a draft code to identify acts which constituted crimes against the peace and security of mankind, and which should largely draw on the experiences of the Military Tribunal at Nuremberg. The first draft was submitted in 1951, and a revised version in 1954, but these drafts remained unadopted for several reasons, such as immense dissatisfaction from the Member States, concerned with the definition of the crime of aggression, and the prohibition of intervention in a State's affairs through political or economic means (Greene 1996:29).

Further work on these drafts resulted in the 1991 Draft Code, which was adopted by the *International Law Commission* at its first presentation (Tomuschat 1996:41). Some scholars have described the 1991 Draft Code as expressing much more international political correctness than the earlier drafts (Greene:1996:30). However, when the 1991 Draft Code was presented to the General Assembly for assessment by the Member States in 1993, it received mostly objections and reservations. Major criticism was raised against most of the definitions of acts which constituted crimes against the peace and security of mankind, and further criticised was the wording of the Articles, as these appeared difficult to interpret (McCormack & Simpson 1997:250-1, Sunga 1997:124-72). Moreover, there was a tendency for the Articles to overlap each other throughout the whole crimes section of the 1991 Draft Code.

The *International Law Commission* continued the drafting, and presented a new Draft Code in 1996 (see Appendix III), which had substantially improved the definitions earlier criticised, and some problematic issues have been left out all together. One important change was that crimes against humanity, which was introduced in the Nuremberg Charter but had not been included in the 1991 Draft Code - which left the subject open to abuse of power (Bassiouni 1992:144), had been revised and exceptionally well defined in the new Draft Code. The aim of these Draft Codes has, however, not changed since 1951. As Article 1(2) of the 1996 Draft Code provides:

> "Crimes against the peace and security of mankind are crimes under international law and are punishable as such, whether or not they are punishable under national law."

Part two of the 1996 Draft Code specifies the crimes against the peace and security of mankind which are seen as punishable offences under international law. These are:

- Crime of aggression
- Crime of genocide
- Crimes against humanity
- Crimes against United Nations and associated personnel
- War crimes

These crimes are explained in detail under the definitions in chapter two, with one exception which will be briefly outlined here. *Crimes against United Nations and Associated Personnel* are committed when means are taken to prevent operations, or the mandate, from their fulfilling. This include: murder, kidnapping and attack upon the person or liberty of personnel, as well as attacks on official premises, private accommodations or transports which is likely to endanger the lives and liberties of United Nations and associated personnel. However, this Article (number 19, 1996) is not applicable in cases of United Nations operations authorised by the Security Council as an enforcement action against organised armed forces (Chapter VII of the Charter of the United Nations), as the personnel then are engaged as combatants, and the applicable laws are those of international armed conflict.

It remains to be seen whether or not the 1996 *Draft Code on Crimes Against the Peace and Security of Mankind* will be adopted as a treaty by the General Assembly. It does provide an exceptionally comprehensive account of crimes which should be considered under international law (see Appendix III). However, as Sunga suggests (1997:181) on the topic of political correctness, the word "mankind" should be replaced by "humanity" in preference of a non-discriminatory terminology.

Appendix two:
The Universal Declaration of Human Rights

(as of the 10th of December 1948)

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and beliefs and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,
Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All humans are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one should be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted them by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them.

Article 11

1.) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which they have had all the guarantees necessary for their defence.
2.) No one shall be held guilty of any penal offence on any account of any act or omission which did not constitute a penal offence, under national or international law, at a time when it was committed. Nor shall heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with their privacy, family, home or correspondence, nor to attacks upon their honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1.) Everyone has the right to freedom of movement and residence within the borders of each state.
2.) Everyone has the right to leave any country, including their own, and to return to their country.

Article 14

1.) Everyone has the right to seek and enjoy in other countries asylum from prosecution.
2.) This right may not be invoked in the case of prosecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1.) Everyone has the right to a nationality.
2.) No one shall be arbitrarily deprived of their nationality nor denied to change their nationality.

Article 16

1.) Men and women of full age, without any limitation due to race, nationality or religion, have the rights to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2.) Marriage shall be entered into only with the free and full consent of the intending spouses.
3.) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1.) Everyone has the right to own property alone as well as in association with others.
2.) No one shall be arbitrarily deprived of their property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change their belief, and freedom, either alone or in community with others and in public or in private, to manifest their religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinions and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1.) Everyone has the right to freedom of peaceful assembly and association.
2.) No one may be compelled to belong to an association.

Article 21

1.) Everyone has the right to take part in the government of their country, directly or through freely chosen representatives.
2.) Everyone has the right to equal access to public service in their country.
3.) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for their dignity and the free development of their personality.

Article 23

1.) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2.) Everyone, without any discrimination, has the right to equal pay for equal work.
3.) Everyone who works has the right to just and favourable remuneration ensuring for themselves and their

family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4.) Everyone has the right to form and join trade unions for the protection of their interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1.) Everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.
2.) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1.) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2.) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3.) Parents have prior right to choose the kind of education that shall be given to their children.

Article 27

1.) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2.) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1.) Everyone has duties to the community in which alone the free and full development of their personality is possible.
2.) In the exercise of their rights and freedoms, everyone shall be subjected to such limitations as are determined by law solely for the purpose of securing due recognition and respects for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3.) These right and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix three:
1996 ILC Draft Code on Crimes against the Peace and Security of Mankind
(A/CN.4/L.532 of 8 July 1996)

Titles and texts of articles on the Draft Code of Crimes against the Peace and Security of Mankind adopted by the International Law Commission at its forty-eighth session (1996)

PART I. GENERAL PROVISIONS

Article 1
Scope and application of the present Code

1. The present Code applies to the crimes against the peace and security of mankind set out in Part II.
2. Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.

Article 2
Individual responsibility

1. A crime against the peace and security of mankind entails individual responsibility.
2. An individual shall be responsible for the crime of aggression in accordance with article 16.
3. An individual shall be responsible for a crime set out in article 17, 18, 19 or 20 if that individual:
   - (a) intentionally commits such a crime;
   - (b) orders the commission of such crime which in fact occurs or is attempted;
   - (c) fails to prevent or repress the commission of such a crime in the circumstances set out in article 6;
   - (d) knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission;
   - (e) directly participates in planning or conspiring to commit such a crime which in fact occurs;
   - (f) directly and publicly incites another individual to commit such a crime which in fact occurs;
   - (g) attempts to commit such a crime by taking action commencing the execution of a crime which does not in fact occur because of circumstances independent of his intentions.

Article 3
Punishment

An individual who is responsible for a crime against the peace and security of mankind shall be liable to punishment. The punishment shall be commensurate with the character and gravity of the crime.

Article 4
Responsibility of States

The fact that the present Code provides for the responsibility of individuals for crimes against the peace and security of mankind is without prejudice to any question of the responsibility of States under international law.

Article 5
Order of a Government or a superior

The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility, but may be considered in mitigation of punishment if justice so requires.

Article 6
Responsibility of the superior

The fact that a crime against the peace and security of mankind was committed by a subordinate does not relieve his superiors of criminal responsibility, if they knew or had reason to know, in the circumstances at the time, that the subordinate was committing or was going to commit such a crime if they did not take all necessary measures within their power to prevent or repress the crime.

Article 7
Official position and responsibility
The official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of State or Government, does not relieve him of criminal responsibility or mitigate punishment.

Article 8
Establishment of jurisdiction
Without prejudice to the jurisdiction of an international criminal court, each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in articles 17, 18, 19 and 20, irrespective of where or by whom those crimes were committed. Jurisdiction over the crime set out in article 15 shall rest with an international criminal court. However, a State referred to in article 16 is not precluded from trying its nationals for the crime set out in that article.

Article 9
Obligation to extradite or prosecute
Without the prejudice to the jurisdiction of an international criminal court, the State Party in the territory of which an individual alleged to have committed a crime set out in article 17, 18, 19 or 20 is found shall extradite or prosecute that individual.

Article 10
Extradition of alleged offenders
1. To the extent that the crimes set out in articles 17, 18, 19 and 20 are not extraditable offenses in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Code as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.
3. State Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offenses between themselves subject to the conditions provided in the law of the requested State.
4. Each of those crimes shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which it occurred but also in the territory of any other State Party.

Article 11
Judicial guarantees
1. An individual charged with a crime against the peace and security of mankind shall be presumed innocent until proved guilty and shall be entitled without discrimination to the minimum guarantees due to all human beings with regard to the law and the facts and shall have the rights:

(a) in the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law;

(b) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(c) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) to be tried without undue delay;

(e) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him and without payment by him if he does not have sufficient means to pay for it;

(f) to examine, or have examined, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(g) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(h) not to be compelled to testify against himself or to confess guilt.

2. An individual convicted of a crime shall have the right to his conviction and sentence being reviewed according to law.

Article 12
Non bis in idem

1. No one shall be tried for a crime against the peace and security of mankind of which he has already been finally convicted or acquitted by an international criminal court.
2. An individual may not be tried again for a crime of which he has been finally convicted or acquitted by a national court except in the following cases:
   (a) by an international criminal court, if:
      (i) the act which was the subject of the judgement in the national court was characterized by that court as an ordinary crime and not as a crime against the peace and security of mankind; or
      (ii) the national court proceedings were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted;
   (b) by a national court of another State, if:
      (i) the act which was the subject of the previous judgement took place in the territory of that State; or
      (ii) that State was the main victim of the crime.
3. In the case of a subsequent conviction under the present Code, the court, in passing sentence, shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 13
Non-retroactivity

1. No one shall be convicted under the present Code for acts committed before its entry into force.
2. Nothing in this article precludes the trial of anyone for any act which, at the time when it was committed, was criminal in accordance with international law or national law.

Article 14
Defenses

The competent court shall determine the admissibility of defenses in accordance with the general principles of law, in the lights of the character of each crime.

Article 15
Extenuating circumstances

In passing sentence, the court shall, where appropriate, take into account extenuating circumstances in accordance with the general principles of law.

PART II. CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Article 16
Crime of aggression

An individual, who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State, shall be responsible for a crime of aggression.

Article 17
Crime of Genocide

A crime of genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:
   (a) killing members of the group;
   (b) causing serious bodily or mental harm to members of the group;
   (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) imposing measures intended to prevent births within the group;
(e) forcibly transferring children of the group to another group.

Article 18
Crimes against humanity

A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a government or by any organization or group:

(a) murder;
(b) extermination;
(c) torture;
(d) enslavement;
(e) persecution on political, racial, religious or ethnic grounds;
(f) institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population;
(g) arbitrary deportation or forcible transfer of population;
(h) arbitrary imprisonment;
(i) forced disappearance of persons;
(j) rape, enforced prostitution and other forms of sexual abuse;
(k) other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.

Article 19
Crimes against United Nations and associated personnel

1. The following crimes constitute crimes against the peace and security of mankind when committed intentionally and in systematic manner or on a large scale against United Nations and associated personnel involved in a United Nations operation with a view to preventing or impeding that operation from fulfilling its mandate:

(a) murder, kidnapping or other attack upon the person or liberty of personnel;
(b) violent attack upon the official premises, the private accommodation or the means of transportation of any such personnel likely to endanger his or her person or liberty.

2. This article shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 20
War crimes

Any of the following war crimes constitutes a crime against the peace and security of mankind when committed in a systematic manner or on a large scale:

(a) any of the following acts committed in violation of international humanitarian law;
  (i) wilful killing;
  (ii) torture or inhuman treatment, including biological experiments;
  (iii) wilfully causing great suffering or serious injury to body or health;
  (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  (v) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  (vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  (vii) unlawful deportation or transfer or unlawful confinement of protected persons;
  (viii) taking of hostages;
(b) any of the following acts committed wilfully in violation of international humanitarian law and causing death or serious injury to body or health:
  (i) making the civilian population or individual civilians the object of attack;

(ii) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

(iii) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

(iv) making a person the object of attack in the knowledge that he is *hors de combat*;

(v) the perfidious use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other recognized protective signs;

(c) any of the following acts committed wilfully in violation of international humanitarian law:

(i) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies;

(ii) unjustifiable delay in the repatriation of prisoners of war or civilians;

(d) outrages upon personal dignity in violation of international humanitarian law, in particular humiliating and degrading treatment, rape, enforced prostitution and any other form of indecent assault;

(e) any of the following acts committed in violation of the laws or customs of war:

(i) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;

(ii) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(iii) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings or buildings or of demilitarized zones;

(iv) seizure of, destruction of or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(v) plunder of public or private property;

(f) any of the following acts committed in violation of international humanitarian law applicable in armed conflict not of an international character:

(i) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(ii) collective punishment;

(iii) taking of hostages;

(iv) acts of terrorism;

(v) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any other form of indecent assault;

(vi) pillage;

(vii) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are generally recognized as indispensable;

(g) in the case of armed conflict, using methods or means of warfare not justified by military necessity with the intent to cause widespread, long-term and severe damage to the natural environment and thereby gravely prejudice the health or survival of the population and such damage occurs.

Appendix four: Torture Prevention

"The prevention of torture is a political task to which we all have to contribute." (Espersen 1987:197)

The United Nations and torture

The United Nations is playing an exceptionally important role in the promotion of human rights and fundamental freedoms. Under the auspices of the United Nations there is an extensive body of international treaties concerned with human rights, which are legally binding to the members of the respective treaties and conventions. Already discussed in previous chapters is the important *International Bill of Human Rights* and the 1984 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* The treaties are monitored or supervised by committees which have been created, pursuant to specific treaties, to ensure that there are no breaches or violations among the member states. They investigate complaints or communications from the member states in procedures outlined in the treaties. In some cases the information from an inquiry made by a committee is confidential to the other member states (O'Flaherty 1996).

The *Committee against Torture* (CAT) has been created in accordance with the convention against torture, and consists of ten human rights experts elected by the members of the convention. The committee investigates complaints of torture, which may include visits to the country of concern, interviews and examinations of alleged victims - but only with the consent of the relevant state. However, the CAT is unique among the monitoring committees of the United Nations as it has the right to start an investigation of suspected *systematic* torture (not of isolated incidents), without an official complaint (McEntee 1996:10-11). The CAT and the convention against torture also play an important role for the prevention of torture, especially through Article 4 which requests that torture should be an offence under national law in the member states of the convention. Furthermore, torture is today seen as a crime with universal jurisdiction, which subjects it to the following (McEntee 1996:12):

> "When a crime under international law is subject to universal jurisdiction, any state which finds on its territory a person suspected of committing this crime may bring the suspect to trial, no matter where the crime occurred."

Apart from the international treaties and conventions for human rights, the United Nations also has a major involvement in monitoring processes and standard setting work in cases of armed conflicts of both internal and international character, particularly under the Geneva Conventions of 1949, and the 1977 Protocol Additional of the same Conventions. Furthermore, the United Nations plays a significant role in regional approaches to human rights, where its function is complementary to that of the regional authority. The United Nations, and the Committees working in accordance with the international treaties, often relay upon non-governmental organisations (NGO's), such as Amnesty International, for the gathering of information. Due to the private political status of such NGO's (whether national or international), they are free to operate without the control of states, and gain their power from publicity and continuous persuasion. However, states have no legal obligations to comply with their investigations, but the power of bad publicity often puts pressure on the state, at least to acknowledge their campaigns (Donnelly 1993:13-4).

Amnesty International

Since its foundation in 1961 Amnesty International has focused on a variety of human rights issues, but most prominently on the abolition of torture and the death penalty, and the freedom for prisoners of conscience (Donnelly 1993:13, Thomsen *et al.* 1984:305). Amnesty International has launched three important international campaigns against torture, the first one in 1973, the second in 1984, and the latest in 1998 (see Amnesty International 1973 and 1984, Amnesty International & Forrest 1996).

The 1973 campaign, which Amnesty International carried out in coordination with other NGO's, brought the world's attention to the practice of torture. Several important developments followed this campaign, such as the United Nations involvement in the question of torture, the 1975 convention against torture (which eventually led to the creation of the 1984 convention) and other instruments for personnel working in law enforcement and medicine. The second campaign, undertaken in 1984-1985, had an even bigger impact internationally, due to the ever increasing organization. There was a change of emphasis from denunciation of the practice of torture, to demands for its abolition (van Reenen & Jones 1996:198). A major part of this campaign was the creation of the *Amnesty International 12-point Program for the Prevention of Torture* (see below). The most recent campaign followed the previous successes with a variety of programmes for the prevention and denunciation of torture. Proposed programmes have included: documentation of the abuses; rehabilitation of physical and psychological injuries caused by torture; financial redress to the victims; an end of impunity for the perpetrators; undertaking of prosecutions; the right to truth and justice (van Reenen & Jones 1996:200-4).

Amnesty International has, undoubtedly, been an important and influential force in highlighting the practise and problems of torture. Furthermore, it has also been one of the most prominent actors for the abolition of torture worldwide. Within Amnesty International teams of professionals have been established, such as medical groups who undertake fact-finding missions, medical examinations and autopsies of victims of torture (Thomsen *et al.* 1984:305). Groups of lawyers represent Amnesty International in legal cases, mainly under the *International Bill of Human Rights* and various regional treaties under which torture and other human rights violations within the curriculum of Amnesty International are prohibited (McEntee 1996:1-20, van Reenen & Jones 1996:206-7).

Amnesty International 12-point Program for the Prevention of Torture

1. Official condemnation of torture

The highest authorities of every country should demonstrate their total opposition to torture. They should make clear to all law enforcement personnel that torture will not be tolerated under any circumstances.

2. Limits on detention incommunicado

Torture often takes place while the victims are held incommunicado, unable to contact people outside who could help them or find out what is happening to them. Governments should adopt safeguards to ensure that detention incommunicado does not become an opportunity for torture. It is vital that all prisoners be brought before a judicial authority promptly after being taken into custody and that relatives, lawyers and doctors have prompt and regular access to them.

3. No secret detention
In some countries torture takes place in secret centres, often after victims have been made to 'disappear'. Governments should ensure that prisoners are held in publicly recognized places, and that accurate information about their whereabouts is made available to relatives and lawyers.

4. Safeguards during interrogation and custody
Governments should keep procedures for detention and interrogation under regular review. All prisoners should be promptly told of their rights, including their right to lodge complaints about their treatment. There should be regular independent visits of inspection to places of detention. An important safeguard against torture would be the separation of authorities responsible for detention from those in charge of interrogation.

5. Independent investigation of reports of torture
Governments should ensure that all complaints and reports of torture are impartially and effectively investigated. The methods and findings of such investigations should be made public. Complaints and witnesses should be protected from intimidation.

6. No use of statements extracted under torture
Governments should ensure that confessions or other evidence obtained through torture may never be invoked in legal proceedings.

7. Prohibition of torture in law
Governments should ensure that acts of torture are punishable offences under the criminal law. In accordance with international law, the prohibition of torture must not be suspended under any circumstances, including states of war or other public emergency.

8. Prosecution of alleged torturers
Those responsible for torture should be brought to justice. This principle should apply wherever they happen to be, wherever the crime was committed and whatever the nationality of the perpetrators or victims. There should be no 'safe haven' for torturers.

9. Training procedures
It should be made clear during the training of all officials involved in the custody, interrogation or treatment of prisoners that torture is a criminal act. They should be instructed that they are obliged to refuse to obey any ordeer to torture.

10. Compensation and rehabilitation
Victims of torture and their dependants should be entitled to obtain financial compensation. Victims should be provided with appropriate medical care or rehabilitation.

11. International response
Governments should use all available channels to intercede with governments accused of torture. Intergovernmental mechanisms should be established and used to investigate reports of torture urgently and take effective actions against it. Governments should ensure that military, security and transfers or training do not facilitate the practice of torture.

12. Ratification of international instruments
All governments should ratify international instruments containing safeguards and remedies against torture, including the International Covenant on Civil and Political Rights and its Optional Protocol, which provides for individual complaints.

The medical profession
Since the early 1970s, the medical profession has contributed tremendously to the field of torture prevention, the full list of contributions would be impossible to recite here. Therefore, only some major points will be described. Previously mentioned are the doctors who participate in torture, corporal punishments and judicial executions, however, it must be remembered that medical personnel may also be victimized due to their profession.

Although not legally binding, the following documents provide international guidelines for medical doctors in association with torture and other cruel, inhuman or degrading treatment or punishment: the 1973 *Declaration of Tokyo* (*World Medical Association*, WMA); the 1983 *Declaration of Geneva* (WMA); and the 1982 *Principles of Medical Ethics* (United Nations). It is the responsibility of the *national* medical associations to incorporate these guidelines into their rules, and other national authorities to create the appropriate laws.

Regional and national medical authorities and associations have important functions for torture prevention, as these can regulate doctors' participation in acts which contradicts the fundamental aims of the practice of medicine. Through obligatory membership in national medical associations and licence holding for medical doctors, also on a national basis, there are possibilities to penalize those who breach the medical rules, for example by: referring the case to national judicial authorities; withdrawing that person's licence, in which case he or she cannot continue the malpractise; imposing fines and / or expelling members from the association; and exposing abusers to the rest of the association.

As discussed in the conclusion to this thesis, the international community has an important obligation in helping and assisting professionals (not only medical doctors) who are victimized and threatened because of their involvement in human rights, for their unwillingness to cooperate in offensive acts which contradicts medical or other professional ethics, or for their persistent denunciation of their fellow professionals who participate in these acts. This can, fo example, be carried out through visits to the country by independent professionals and / or international highlighting of the abuses and the lack of response that these have got from the authorities.

Sørensen & Vesti (1990:467-9) suggest that education of medical personnel, including aspects of torture such as its aim, the methods used and their consequences, torture sequelae, and the problem with doctors participating in the practise of torture, should be available at undergraduate level, possibly in association with forensic medicine. This, the authors argue, would aid future medical practitioners in identifying victims of torture and to prescribe the necessary treatment and rehabilitation. As torture is still practised worldwide, with millions of victims seeking refuge elsewhere, this is a suggestion which should be applicable to all countries - in particular those that accommodate refugees. Education is certainly one of the strongest weapon available in the fight against torture, not only within the medical profession but for the society as a whole.

Regional approaches to torture and torture prevention in law: A brief summary

Apart from international treaties there is a number of regional conventions concerned with human rights, and most of these have a complementary function to their international counterparts. All regional conventions exist under the auspices of the main regional authority, all of them have supervising commissions and in some cases there is even a special regional court with jurisdiction over human rights crimes. The following documents all contain articles about torture or are solely devoted to the crime of torture.

Council of Europe

1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms*
With the associated *European Commission of Human Rights* and the *European Court of Human Rights*

1987 *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*
Supervised by the *European Committee for the Prevention of Torture*
Cases are referred to the *European Court of Human Rights*

Organization of American States

1969 *American Convention on Human Rights*
1985 *Inter-American Convention to Prevent and Punish Torture*
Both supervised by the *Inter-American Commission on Human Rights*
Cases are referred to the *Inter-American Court of Human Rights*

Organization of African Unity

1981 *African Charter on Human and Peoples' Rights*
Supervised by the *African Commission on Human and Peoples' Rights*
Cases are referred to national authority or the *Organization of African Unity*

Middle East, Asia and the Pacific

Not applicable