# The Question of Torture

*Scandinavian States and the Human Rights Issue of Torture, 1967–1984*

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# Summary

This study examines the role played by Scandinavian states in modern anti-torture politics between 1967 and 1984. The thesis addresses three critical junctures in the history of the human rights issue of torture: The so-called “Greek Case” that unfolded within the European Human Rights framework from 1967 to 1970, the introduction of the UN Declaration against Torture in 1975, and the establishment of the UN Convention against Torture in 1984. At all three junctures, one or more Scandinavian states actively participated. By studying the interactions of officials involved, the thesis shed light on polices that expanded the boundaries of international human rights law. The fundamental question addressed in this study is whether Denmark, Norway and Sweden coordinated efforts in the pursuit of the UN Declaration and Convention against Torture. It is argued that there were a high level of interaction, and even cooperation, among these states, most notably through the preexisting framework for Nordic cooperation on foreign policy, during the establishment of both instruments. What started as a Swedish initiative at the UN in 1973, became a pursuit of new international instruments against torture, and, ultimately, affected the human rights policies of all Scandinavian states.

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Special gratitude goes to my friends and loved ones for their support and patience. They have been confronted with thoughts on the finer aspects of human rights history, often without prior solicitation. I thank you for enduring.

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**Abbreviations**

| | |
|---|---|
| AI | Amnesty International |
| CAT | Convention against Torture |
| CIA | Central Intelligence Agency |
| CRC | Convention on the Rights of the Child |
| CSCE | Conference on Security and Co-operation in Europe |
| CSCT | Swiss Committee Against Torture |
| ECHR | European Convention on Human Rights |
| GA | General Assembly of the United Nations |
| HR | Human Rights |
| IAPL | International Association of Penal Law |
| ICCPR | International Covenant on Civil and Political Rights |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICJ | International Commission of Jurists |
| INTERPOL | International Criminal Police Organization |
| NATO | North Atlantic Treaty Organization |
| NGO | Non governmental organization |
| NMF | Norwegian Ministry for Foreign Affairs |
| SMF | Swedish Ministry for Foreign Affairs |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| WEOG | West European and Other Group |

# 1 Introduction

*Thirty years ago the international community, confronted with terrible violations of human rights by military dictatorships, adopted the Convention against Torture, possibly the most comprehensive and powerful existing instrument of international law.*

Zeid Ra´ad Al Hussein, High Commissioner for Human Rights,
4 November 2014.[1]

When Zeid Ra´ad Al Hussein gave this description of one of the United Nations' human rights conventions, he was speaking at the Palais des Nations in Geneva during a celebration marking the 30th anniversary of the adoption of the Convention against Torture. Gathered for the occasion were dignitaries, members of the UN Committee against Torture, and other colleagues of the High Commissioner. At such occasions, it is customary to say something *nice* about the object of the commemoration. Even so, the praise – similarly asserted by scholars – stemmed from more than the celebratory mood of the occasion.[2]

When the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) was adopted by the United Nations' General Assembly on December 10th, 1984, it pushed the boundaries of international human rights law. The Convention gave a definition of torture, reaffirmed its prohibition during peacetime as well as war, obliged states to prosecute torture, introduced the element of non-refoulment to avoid possible torture-violations, and established the UN Committee against Torture as a monitoring body. By all accounts, it was an important moment in the history of human rights. This thesis explores the role played by Scandinavian states in the emergence of the international human rights norm against torture, and the instruments for its enforcement, from the late 1960s to the mid-1980s. It investigates how Scandinavian states came to take on the role of proponents of this particular human rights issue; to what extent they cooperated on the elaboration of anti-torture politics; and how the policy of seeking international legalization was conducted.

[1] Opening address by Zeid Ra´ad Al Hussein at the celebration of the 30th anniversary of the Convention against Torture, Palais des Nations, Geneva, 4 November 2014, see *Office of the High Commissioner for Human Rights* at ohchr.org:
http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15255&LangID=E (31 January 2017).

[2] In 2009, Beth Simmons declared the ban contained in the convention to be "…the strongest international legal prohibition contained in any human rights treaty", see: Simmons, Beth A., *Mobilizing for Human Rights: International Law in Domestic Politics,* (New York: Cambridge University Press, 2009), 304.

In the international literature, the origins of CAT is traced to Amnesty International's highly successful Campaign for the Abolition of Torture, which culminated in lobbying efforts for a convention against torture in late 1973. The period this thesis covers, i.e. 1967–1984, predates these origins by five years. That it has been necessary to begin a thesis discussing Scandinavian cooperation against torture in the late 1960s is, perhaps, a small testament to these states' active involvement on the issue. It is simply impossible to make sense of Scandinavian involvement with modern anti-torture politics without taking into account the interstate complaint against Greece that unfolded within the European human rights framework between 1967 and 1970. The so-called "Greek Case" started on September 20th 1967, when Denmark, Norway and Sweden filed identical complaints to the Council of Europe, charging junta ruled Greece with multiple violations of the European Convention on Human Rights (ECHR). The Case marks the beginning of both Scandinavian involvement against torture and the period this thesis covers. This period, which also includes the adoption of the Declaration against Torture in 1975, ends with the adoption of CAT in 1984. While an interstate complaint in Europe primarily unfolding at the end of the 1960s has, seemingly, little to do with a UN process starting in 1973, the argument presented here is that the Greek Case had an impact on Scandinavian (foreign) human rights politics and, possibly, even the NGO Amnesty International. Before defining some of the problems and questions this thesis deals with, we need a firmer grasp on how they relate to the history of modern human rights.

"This is the Generation of that great LEVIATHAN…" declared Thomas Hobbes in his famous book, published three years after the Peace of Westphalia.[3] He was describing a commonwealth where sovereignty rested on "one Man, or upon one Assembly of men", ruling by the consent of the governed, to preserve the civil liberties of all – he was writing about the state.[4] If it seemed to Hobbes that his was the generation of such leviathans, what are we to say about the contemporary world, more than three and a half century later? The world has never contained more states than it does today, and never before has the state had more powerful instruments at its disposal to exert its will on those governed. Yet the past 70 years have seen the evolution of an international system, based on international treaties and law, specifically designed to shape or limit state power. At its core, the modern system of human rights seeks to regulate what a state should and should not do to its own citizens at the

[3] Hobbes, Thomas, *Leviathan,* (London: Penguin Books, 1985), (Chapter 17) 227.
[4] Ibid.

most basic level. It is one of the paradoxes of *our* generation that the apparatus of the state, while being confronted and restrained by ever more international human rights law, has never been more powerful.

The modern system of human rights was introduced with the United Nations, following the most destructive conflict in human history. The *UN Charter* established human rights as a purview of the organization in 1945, and the adoption of the *Universal Declaration of Human Rights* in 1948 represented an effort by the community of nations to define some of these rights. Thirty articles contained fundamental rights such as the right to life; never to be held in slavery; equality before the law; freedom of speech; and the right to education. Among them was a prohibition on torture or other cruel, inhuman or degrading treatment and punishment.[5] Nobel principles had been spelled out in short phrases in a non-binding declaration.

The human rights evolution at the UN quickly receded in the growing bipolar, political climate of the post-war era, however. As Mary Ann Glendon noted, for the Great Powers the human rights project was peripheral.[6] The same holds true for many smaller nations, Denmark, Norway and Sweden included. While outspoken supporters of the UN, Scandinavian states remained largely responders to international human rights developments until the latter half of the 1960s.[7] The events written about in this thesis stands apart from this prehistory in a significant way. On the human rights issue of torture, Scandinavian states actively pushed the boundaries of international, human rights law and contributed to the creation of new norms in the period between 1967 and 1984. Yet, these efforts have been given scant attention by historians and have not been looked at together, i.e. as a historical process, spanning some 17 years and involving all three countries. It is important for the history on human rights regionally, but also for the understanding of the origins of the

[5] Article 5 of the *Universal Declaration of Human Rights*, see un.org: http://www.un.org/en/universal-declaration-human-rights/ (20 October 2016).
[6] Glendon, Mary Ann, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights,* (New York: Random House, 2001), xv.
[7] See recent studies on state interactions with human rights predating the late 1960s: Hareide, Anniken, "Norge og Den europeiske menneskerettighetsdomstolen: Veien fra motstand til tilslutning, 1948–1964", (Master thesis, University of Oslo, 2016); Brathagen, Kjersti, "Competition or complement to universal human rights? The Norwegian position on a European Convention on Human Rights, 1949–1951" in *Human Rights in Europe during the Cold War,* ed. Rasmus Mariager, Karl Molin and Kjersti Brathagen, (New York: Routledge, 2014); Søberg, Anette, "Rasediskriminering og hjemlig relevans? Norges rolle i FNs arbeid for avskaffelse av rasediskriminering, 1960–1970", (Master thesis, University of Oslo, 2016).

Declaration against Torture and CAT internationally, to explore the anti-torture policies of the Scandinavian states from the late 1960s and beyond.

In subject matter and approach, this thesis offers a transnational perspective. The distinction between *international* and *transnational* history in the literature is not set or clear.[8] Nor is it, for the purposes of this thesis, important to draw a defining line between the two. Rather, it is sufficient to identify the aspects of this study that lends themselves to a transnational interpretation. First, there is the topic of the human rights issue of torture, an issue championed by the NGO Amnesty International with the expressed goal of achieving a convention prohibiting torture. By lobbying for this goal both internationally, and – through the organization's many national sections – at the national level, Amnesty's efforts transcended not only borders, but also the vertical structures of intergovernmental cooperation. Second, this thesis is concerned not only with how the idea for a convention against torture was picked up by Scandinavian states, but how cooperation between them developed and evolved on this issue. Third, the better part of this thesis studies the interactions of a network of bureaucrats and diplomats, part of the foreign policy apparatus of multiple states, while largely ignoring the dispositions of members of governments in the respective countries. This is partly because government members (even various Foreign Ministers) are nearly nonexistent in the source material, but also to emphasize the network of decision makers that conducted the pursuit of new norms. The collective result of this approach is a transnational perspective on Scandinavian efforts at establishing international norms. When successful, transnational studies can contribute to the international understanding of the critical link between human rights activism and UN initiatives.

## Aim of the Study

The overarching question in this thesis has been: What role did Scandinavain states play in the establishment of the UN Declaration and Convention against Torture, and to what extent did Scandinavian officials cooperate on these issues. From the outset, it was clear that the origins of Scandinavian involvement with the human rights issue of torture predated the establishment of these instruments. Historians have long known that the Greek Case became

[8] See Clavin, Patricia, "Defining Transnationalism" in *Contemporary European History,* 14, 4 (2005), pp. 421–439, (Cambridge University Press, 2005).

a "good case" for Norway in the terms of favorable publicity.[9] In my view, they have failed to place it into the proper context of subsequent human rights developments, however. The Greek Case is generally considered a unique occurrence. Since no Scandinavian state has ever conducted a similar case, or one of quite the same magnitude, this observation holds true. This does not mean that the Case should be relegated to the fringes of history, however, and certainly not in the history that pertains to human rights. This thesis merges findings from recent literature on human rights and Amnesty International with writings on the Case by Norwegian historians. The aim here is to explore the origins of modern anti-torture politics, and how Scandinavian states became involved in it. Central questions are how did three, Scandinavian states come to act in unison against the Greek Junta? Did Amnesty International exert any kind of influence on Scandinavian governments? Did the Case have an impact on subsequent events?

Having explored the origins of Scandinavian involvement at the advent of modern anti-torture politics, we turn to the primary subject matter: The establishment of the UN Declaration against Torture and the subsequent process to establish a binding convention against torture. This is the part of the thesis most deeply rooted in empirical evidence. As Sweden is known to have played an active role during the establishment of both instruments, this thesis investigates the actions and correspondence of the officials involved at the Swedish Foreign Ministry. As such, the narrative that emerges is laden with agency. It is essential to establish the parameters of Swedish involvement before we can address Scandinavian interactions. How did Sweden become involved in the UN process? Are there any signs of direct influence from Amnesty International? When did the plan to introduce a UN declaration against torture take form? The Netherlands also played an important role during work on the Declaration and, later, the Convention, and the extent of cooperation between Dutch and Swedish officials is addressed. This feature of the thesis follows from a rather important sub question that also applies to Scandinavian states: Whom did Swedish officials most closely cooperate with on the introduction of new norms?

In order to explore the decisions that effected the pursuit of the two human rights instruments, and indeed to present as coherent a narrative as possible, the emphasis remain on Sweden as the primary actor – an observation that holds true not only in the Nordic context,

[9] Tamnes, Rolf, *Oljealder 1965–1995,* vol. 6 of *Norsk utenrikspolitikks historie,* (Oslo: Universitetsforlaget, 1997), 358.

but also globally. The following questions accompany the narrative throughout: To what extent did Sweden interact, engage in dialogue, or cooperate with Scandinavian states? As this thesis takes into account a material that paints a comprehensive picture of Swedish communications on this issue, it is reasonable to assume that the following sub questions might be posed and answered with a fair degree of accuracy. How did Scandinavian interactions begin following Sweden's initial engagement with the human rights issue of torture at the UN in 1973? Did Sweden seek the aid of Scandinavian states at a specific juncture, or did interactions slowly increase over time? How did Norway and Denmark respond, overall, to Sweden's policy of expanding the ban on torture? Did the three, states ever take up a unified position (reminiscent of the Greek Case) on the Declaration and Convention against Torture? To the extent that such questions can be answered, and the nature of Scandinavian interactions can be accounted for, a question that should ultimately be addressed, is what factors led the three states to engage the same human rights issue at the UN.

A study of the broader lines of Scandinavian involvement with the human rights issue of torture is also an opportunity to place these events in the larger framework of both international human rights and Scandinavian foreign policy. In recent years, there has been an extensive discussion (that at times have seen sharp divisions) on when human rights made their breakthrough globally.[10] Early works emphasized the late 1940s due to the establishment of the United Nations and the 1948 Universal Declaration on Human Rights. Samuel Moyn challenged this view and argued for the 1970s as the moment when human rights became an aspiration shared by multiple, mass movements; others emphasize Jimmy Carter's Presidency and newfound American enthusiasm for human rights in foreign policy as the influencing factor on developments.[11] Recently Steven Jensen has argued that newly independent states at the UN in the 1960s set off processes that was the precursor to the

[10] The discussion on timing was revitalized in the wake of Paul Gordon Lauren's book on the evolution of human rights, where early "visions" of rights were traced back to the establishment of modern religions. Not surprisingly, this view was quickly challenged by multiple authors; Lauren, Paul Gordon, *The Evolution of International Human Rights: Vision Seen,* 3rd Ed., (Philadelphia: University Pennsylvania Press, 2011), Chapter 1; Cmiel, Kenneth, "The Recent History of Human Rights" in *The Human Rights Revolution: An International History,* ed. Iriye, Akira, Petra Goedde and William I Hitchcock, (New York, Oxford University Press, 2012), 32–33; see also Moyn, Samuel, "Personalism, Community, and the Origins of Human Rights" in *Human Rights in the Twentieth Century,* ed. by Hoffmann, Stefan-Ludwig, (New York: Cambridge University Press, 2011).
[11] Moyn, Samuel, *The Last Utopia: Human Rights in History,* (Cambridge/London: Belknap, 2012).

modern human rights regime that burst onto the scene in the 1970s.[12] Uniting the scholarship of the latter two categories – and indeed most scholars – is an emphasis on the 1970s as a period of seminal developments for international human rights. Interestingly, the UN resolution that initiated the work on the convention against torture was launched in 1977, the year that Carter declared an absolute commitment to human rights in his inauguration speech.[13] How does the Scandinavian pursuit of new norms against torture fit in this larger story of the emergence of human rights in international politics? As neither anti-colonialism nor Carter seems to have had much impact on Scandinavian policies, the answer, for now, is: Not easily. We will return to this question at appropriate junctures and most notably in the subchapter entitled "1977".

Scholars of various disciplines have attempted to characterize some of the more altruistic aspects of foreign policy in the Nordic region. David Arter summarized and addressed some of the political science literature that has tackled the question of whether or not Nordic states deserve the moniker of "moral superpowers". He concluded that while these states have been active players on the international stage, the application of such a term would "involve a generous measure of poetic license".[14] Historians, for their part, have long struggled to characterize certain aspects of Scandinavian foreign policy. Terms like "ethical foreign policy", "politics of virtue" and, to quote one Norwegian historian, "the missionary impulse" have been used to conceptualize preoccupations with foreign aid, mediation, human rights and other aspects of foreign policy that seem driven by altruistic motives.[15] Such labels, while at times useful to characterize larger trends, all have one thing in common: They evoke connotations of idealism, as opposed to realism, and all too often a picture of unobtainable goals are painted in connection with such aspects of foreign policy. How Sweden conducted its policies to secure human rights instruments at the UN, tells us quite a bit about the nature of the endeavor. The question is returned to at various stages in this thesis.

[12] Jensen, Steven L. B., *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values,* (New York: Cambridge University Press, 2016).
[13] Moyn, *The Last Utopia*, 239.
[14] Arter, David, *Scandinavian politics today,* 2nd ed., (Manchester/New York, Manchester University Press, 2008), 337.
[15] Riste, Olav, *Norway's Foreign Relations – A History,* (Oslo: Universitetsforlaget, 2005), 256.

## Research Status

The subject matter addressed in this thesis is somewhat precariously placed between a vast body of international literature on the human rights issue of torture, which mentions Scandinavian states only in passing, if at all, and a rich regional literature on the foreign policy of Scandinavian states in general, seldom addressing the human rights issue of torture. With a few exceptions, this thesis has been based on the broader human rights literature. The global anti-torture agenda that emerged in the early 1970s can be traced to the NGO Amnesty International. The literature on AI is ever growing, and a list of books proved useful. Background was provided by Egon Larsen's book *A flame in barbed wire: The story of Amnesty International* from 1978; William Korey's *NGOs and The Universal Declaration of Human Rights* from 1998; and Jonathan Power's *Like water on stone: The story of Amnesty International* from 2001.[16] Ann Marie Clark's book *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* from 2001 was most helpful. She examines the various strategies applied by Amnesty in pursuit of new norms. In her chapter on torture she argues that there was a link between AI's report on torture in Greece and the Scandinavian decision to add violations of torture to their complaints against the Junta regime. Her account of AI's Campaign for the Abolition of Torture also provided valuable details. Clark holds that AI exerted effective influence but could not be as directly involved in actual norm construction at the UN, a domain for state actors.[17]

Barbara Keys has noted that the repercussions of repression in Greece for the development of post-1970 human rights movements have been given scant attention in the international literature.[18] This is also the case in Scandinavia. Her text "Anti-Torture Politics: Amnesty International, the Greek Junta, and the Origins of the Human Rights "Boom" in the United States", has been an inspiration during work on this thesis.[19] Keys investigate the discourse between liberals and conservatives in the United States following the Coup d'état in Greece

[16] Further texts consulted on the subject have been Neier, Aryeh, *The International Human Rights Movement: A History,* (Philadelphia: Pennsylvania University Press, 2012); Kelly, Tobias, *This Side of Silence: Human Rights, Torture, and the Recognition of Cruelty,* (Philadelphia: Pennsylvania University Press, 2012); and on the more general role of NGOs gobally, see Akira, Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World,* (Berkely/Los Angeles/London, University of California Press, 2004).
[17] Clark, Ann Maire, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms,* (Princeton/Oxford: Princeton University Press, 2001), 69.
[18] Keys, Barbara "Anti-Torture Politics: Amnesty International, the Greek Junta, and the Origins of the Human Rights "Boom" in the United States" in Iriye, Akira, Goedde and Hitchcock ed., *The Human Rights Revolution: An International History,* (New York: Oxford University Press, 2012), 201.
[19] Ibid., 201–221.

and argue that anti-junta activism contributed to the "human rights boom" of the 1970s. She returned to the topic in her book *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* from 2014. If Keys could find a connection between anti-junta movements and human rights developments in the United States, then surely there has to be one in Scandinavia. Chapter 1 outlines one such connection in the Nordic region.

In Norway, Svein Gjerdåker wrote about the Greek Case in his master thesis[20] and later returned to the subject in the anthology *Norges Utenrikspolitikk* in 1997. Gjerdåker approaches the Case in the guise of a political problem for the Norwegian government. He emphasized Foreign Minister John Lyng's hesitation leading up to the filing of the joint complaints on the 20th of September 1967. In Gjerdåker's view, Sweden was the primary driving force.[21] I have found both his thesis and publication of great help. Large parts of the chapter dealing with the Greek Case in this thesis have been based on his writings. The emphasis in this thesis, however, is on the possible influence of AI, Nordic pressure groups, and the dynamic between Scandinavian governments. I have also found books written by the actors involved helpful. Of particular interest was the published report from Nordic politicians visiting Greece.[22] This book is, in itself, a testament to some of the transnational groups that joined in anti-junta movements in the late 1960s. It should be noted that this text was written with no small measure of enthusiasm and, as a historical source, was treated as such – in other words, carefully. Some of John Lyng's published works, especially *Mellom øst og vest: Erindringer 1965–1968* (1976), have also informed this thesis.

Efforts at finding literature that could compliment the primary source material relating to the Declaration against Torture, or vice versa, proved frustrating. In the end, one book provided needed context. Nigel Rodley, a scholar of international law and a member of Amnesty International, have written about the human rights issue of torture on multiple occasions. He also attended the crucial Congress in Geneva – where Sweden and the Netherlands submitted the draft declaration in 1975 – as an observer for Amnesty International. He wrote about the subject years later, and only sub-sections of his book *The Treatment of Prisoners Under International Law* (1999) deal with related events. Even so, the book is impressive in detail. Rodley gives an account of events at the UN level and follows the various resolutions on the

[20] Gjerdåker, Svein, *Menneskerettar og utanrikspolitikk – Hellas-saka som politisk problem og utfordring for norske styresmakter 1967-1970,* (First degree thesis: University of Bergen, 1992).
[21] Ibid., 87.
[22] Gustavsen, Finn et al, *Rapport fra Athen: Nordiske politikere i Helles,* (Oslo: Pax Forlag, 1967).

torture issue from 1973 and onwards. He also speculated on AI's influence on these events.[23] Although the topic was approached from an overarching perspective, i.e. with little or no context offered on the dispositions of state actors involved, his chronology and account of the establishment of the Declaration against Torture proved valuable.

The authoritative work on the Convention against Torture is J. Herman Burgers and Hans Danelius' *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* which was published in 1988. J. Herman Burgers was the Dutch delegate that became chairman-rapporteur of the Working Group in 1982 and oversaw the adoption of CAT in 1984. Hans Danelius was the Swedish official – during the drafting process of CAT, Under-Secretary for Legal and Consular Affairs at the Swedish Ministry of Foreign Affairs – who produced drafts for both the Declaration and the Convention against Torture. Their book provides a detailed account of the drafting process on the convention at the UN between 1977 and 1978. The book is, in my estimate, the work most frequently referenced in the literature on the human rights issue of torture. In this respect, this thesis (which relied heavily on Burgers and Danelius' chronology) is no different. Burgers and Danelius' account, not unlike Rodley's, addresses the UN process and little context is provided on the actions of the states involved. This thesis has been based, primarily, on Swedish sources, which included nearly ten years of communications on the subject by Hans Danelius himself. What is offered here is an account of the drafting process from a national perspective – largely Sweden's – that delve below the UN level.

There is a comprehensive literature on the various legal aspects of CAT, such as the definition of torture, the work and effectiveness of the Committee against Torture, and evaluation of optional protocols to name a few examples. Literature consulted, but not necessarily referenced, during work on this thesis has been Manfred Nowak and Elizabeth McArthur's extensive study of legal provisions and their implications: *The United Nations Convention against torture: A commentary* from 2008. An analysis of the role played by the Committee is offered by Chris Ingelse in *The UN Committee against Torture* from 2001. I have also found introductory works on international human rights law for undergraduate or postgraduate courses informative. Two examples include Javaid Rehman's *International*

[23] See, for instance, Rodley, Nigel S., *The Treatment of Prisoners Under International Law,* 2nd Ed., (Oxford University Press, 2001)*,* 23–24.

*Human Rights Law* from 2010, and Rhona K. M. Smith's *Textbook on International Human Rights* from 2014. While such works have increased my understanding of CAT as a legal instrument, which was helpful in the subsections of this thesis that discusses the drafting history, they deal (understandably) with the implementation of the convention after it was established. Their value in reconstructing a historical chronology that ends when CAT was adopted has been limited. I have also found some of the more accessible introductory works on human rights and the United Nations helpful in providing context on periods where my knowledge is limited.[24]

## Method and Sources

One of the first problems that confront a historian pondering the intricacies of international human rights is the sheer volume of available sources. The intergovernmental organization that is the United Nations, for instance, has produced such a vast quantity of documents that deciding where to focus your research can be challenging, even on specific subjects. Starting this project with the hypothesis that there had been some sort of interactions between Scandinavian governments on the establishment of UN instruments against torture, made the path through such obstacles easier. While dealing with an international process, the most significant events of which needed to be chronologically established by conferring to both literature and UN sources, it was clear enough were the most significant source material for this thesis were likely to be found. The sensible place to begin was the archives of the Foreign Ministries involved. In these archives, it was especially documents from the Permanent Missions to the UN and the departments dealing with international law that were likely to shed light on the developments in question. A secondary, but important, issue was how to deal with the potential influence of Amnesty International, which has such a prominent place in the international literature on the human rights issue of torture. An important aim of this thesis has been to evaluate whether or not Scandinavian Foreign Ministries were directly influenced by AI when pursuing their anti-torture policies internationally. Any relevant communication from the NGO that was still preserved in government archives in Scandinavia would, of course, be immensely valuable, but finding such documents could hardly be relied upon (nor were many found).

[24] See, for instance, Clapham, Andrew, *Human Rights: A Very Short Introduction,* (New York: Oxford University Press, 2007); Hanhimäki, Jussi M., *The United Nations: A Very Short Introduction,* ((New York: Oxford University Press, 2015).

The sources used in this thesis have been gathered, primarily, from three archives: Amnesty International's online archives and the archives of the Foreign Ministries in Sweden and Norway. The sources from the two latter constitute, by far, the bulk of the material used. Documents from AI, some of which have recently become available online on amnesty.org, informed the first part of this thesis and particularly the chapter dealing with the NGO's emerging anti-torture agenda and the Greek Case, as well as the first chapter dealing with the Declaration against Torture. While this material proved valuable in tracing AI's perception of anti-torture politics during the Greek Case and work on the Declaration, it comes with some significant drawbacks. Amnesty International is, among other things, a highly efficient publicity machine. Writing the history of the human rights issue of torture based on the organization's annual reports and newsletters can all to easily produce an unbalanced and celebratory account. This is, in my view, a reoccurring problem in the international literature on the subject.[25] Furthermore, the source material available on amnesty.org is exclusively from the organization's international branch. In the context of this thesis, it would have been valuable to take into account sources from AI's national sections in Scandinavia. An effort was made to do so, but requests to the sections in Sweden and Norway, as well as the National archives of both countries, proved disappointing. The account of the influence exerted by national AI Sections during the Greek Case is pieced together based on alternative and limited sources. While the influence of Scandinavian AI sections is hinted at, the picture is incomplete.

The part of this thesis that deals with the establishment of the Declaration and the Convention against Torture is based on material from the archives of the Swedish and Norwegian Foreign Ministries. The approach here has been research into corresponding material from both ministries. In these archives, all material pertaining to the human rights issue of torture between circa 1975 and 1985 have been looked at (and further back in the Norwegian archive). While the material is accessible as separate file series, sources had not been systematically filed or sorted on the basis of content, except being filed in more or less chronological order. The files consist of material such as telegrams, letters or other correspondence, internal reports, government papers, UN-documents, meeting records,

[25] The predominant litterature on Amnesty International is frequently based on such material. Problems arise when writers fail to take into account that the organization consistantly sought to cast AI in the best possible light. For one example of a critical study discussing the myths surrounding the origins of AI, see Buchanan, Tom, "'The Truth Will Set You Free': The Making of Amnesty International", in *Journal of Contemporary History,* Vol. 37, No. 4 (Oct., 2002), pp. 575–597.

newspaper-clippings, and some information on human rights violations in other countries. The material was copied and systematically pieced together for the purposes of this thesis (all sources are on file with the author).[26]

In the end, it was instructions to Swedish and Norwegian UN delegations and correspondence between Scandinavian ministries that proved instrumental in piecing together a coherent chronology. Having access to the corresponding archives in both Sweden and Norway proved essential. Gaps in the material of one archive could be supplemented with sources from the other. Initially, I had hoped to do corresponding research in the archives of the Danish Foreign Ministry. The volume of material from Sweden and Norway, which constitutes more than a decade of foreign policy sources from two countries, made research into an equivalent, third archive impractical within the confines of this project, however. Even so, the archives in Sweden and Norway contain a large number of sources from Denmark, which were originally part of correspondence from the Danish Foreign Ministry. A decision was made to keep the "Scandinavian" perspective, and use the term when appropriate, rather than exclude Denmark from a process that clearly involved all, three countries.

## Delimitations

Scandinavia is a region within a region. Denmark, Norway and Sweden are three, autonomous states that share common history and relatively close ties. Together with Finland in the east and Iceland in the north/west the states make up the Nordic region. These countries, despite enjoying semi-annual talks on matters of foreign policy since 1945, do not constitute a coherent unit.[27] They did, however, share an interest in the UN and held regular meetings to discuss political initiatives and strategy in this and other international fora. Finland, and to a much smaller extent Iceland, contributed in the effort to establish international norms against torture at the UN from the mid-1970s to the mid-1980s, as indeed did other state actors. Their efforts have largely been ignored or mention only briefly in this

[26] It should be noted that the requested material from the Swedish Foreign Ministry was sent in various installments to the author directly. My request was given the designation "Diarienr UD2015/424/RS" by the Swedish Foreign Ministry. Anyone interested in the material used in connection with this thesis, should be able to reference this designation at the Ministry's archival division. Alternatively, the material can be found in the archive directly in the series designated at the end of this thesis. In all footnotes pertaining to these sources, as much information as possible (name of official or office sending or writing the document, any title, and the given date) have been included.

[27] Eriksen, Knut Einar and Helge Øystein Pharo, *Kald krig og internasjonalisering 1949–1965,* vol. 5 of *Norsk utenrikspolitikks historie,* (Oslo: Universitetsforlaget, 1997), 148.

thesis. The overall scope has been limited to the policies and interactions of Scandinavian states.

Even when limiting the scope to a Scandinavian perspective, it is necessary to provide some caveats. Denmark, Norway and Sweden's contributions were by no means equal at the junctures discussed in this thesis – these states' most coordinated effort was probably the Greek Case between 1967 and 1970, while Sweden was the primary driving force behind both the Declaration and the Convention against Torture. The emphasis has been put on discussing the contributions of one or more Scandinavian states at times when new norms were established, not to give Denmark, Norway and Sweden equal coverage in each chapter. In other words, these states figure to the extent they were involved in the international process to establish new norms. It follows that this thesis can only contribute to an international perspective on such events to the extent that Scandinavian states were involved, and then from their point of view. Similarly, the Scandinavian perspective here offered only contributes to an understanding of each individual country's history to the extent that they interacted on the human rights issue of torture.

The scope was further limited to the activities of the Foreign Ministries involved. This puts limitations on the history that is presented in notable ways. First and foremost, few sources indicate how cabinets or other domestic actors reacted to the processes under discussion, and this thesis offers little or no context on the governments involved. One potential problem with this limitation is that possible dissenting voices, in Cabinets or other ministries, have not been studied. As such, the picture is unbalanced. The justification for taking such an approach has been that choices made by officials in, for instance, the Swedish Foreign Ministry are known to have become official policy. This is indicated by, to give just one example, the many resolutions put forth by Swedish officials at the UN. Another limitation was presented by the source material itself, which included little or no communication from various foreign ministers. The emphasis has been put on the officials that were most intimately involved – they were usually at the level of Department Head or Chief of Divisions. Some justification for this approach was provided when it became clear that, in some instances, the same bureaucrats took part in a process that involved work on both human rights instruments and were presided over by different governments.

One difficult decision was to refrain from discussing, in any great detail, the human rights instruments themselves and their articles. Due to the constraints of this project, emphasis had to lie on the policies of securing the adoption of both instruments. An account of the drafting history of CAT has been written by coauthors Burgers and Danelius (see above).[28] The UN drafting process on CAT is outlined in great detail in their book, where the evolution of articles is, in some instances, accounted for on a word–for–word basis. This thesis makes no effort (or pretense) to present a similar level of detail. This thesis offer a *short* account of the drafting process of CAT, but outlines and deal with elements of the draft convention that preoccupied Scandinavian officials. The most notable aspects in this respect are the articles that collectively formed a system for so-called universal jurisdiction and the articles of implementation (see the chapter on the Convention). Some early drafts as well as the Declaration and Convention against Torture have been included in the appendices for readers interested in the various articles. With these delimitations in mind, we can explore Scandinavian policies in the pursuit of international norms against torture between 1967 and 1984.

## Structure

This thesis is divided into six chapters. The Introduction in Chapter 1 outlines the aim of the thesis, relevant literature and the sources used, and discusses some of the challenges and parameters of the study. Chapter 2 serves the dual purpose of providing background on Amnesty International and the emerging anti-torture agenda of the 1960s, as well as tracing the role of Scandinavian states in it. The bulk of this chapter deals with the Greek Case. Chapter 3 deals, briefly, with AI's Campaign for the Abolition of Torture, before turning to Sweden's role in the establishment of the Declaration against Torture in 1975. The Declaration was jointly put forth by Sweden and the Netherlands, and the chapter traces the development and execution of the plan to introduce this human rights instrument. The extent of Danish and Norwegian involvement is also addressed. Chapter 4 deals with the Swedish decision to initiate work on a convention against torture at the UN in 1977. Here, the processes discussed in this thesis are placed in the larger story of the emergence of human rights in the 1970s. Chapter 5 deals with the drafting history of CAT, a process that spanned seven years. Light is shed on Swedish policies to secure the adoption of the instrument, as well as the extent and implication of Nordic cooperation at this juncture. The findings and

[28] Rodley, *The Treatment of Prisoners Under International Law*; Burgers and Danelius, *The United Nations Convention against Torture.*

arguments of this thesis are summarized in the conclusion in Chapter 6. Five appendices have been included at the end of the thesis. Appendix 1 is probably the earliest draft of the Declaration ever published; Appendix 2 is the Declaration against Torture; Appendix 3 is Sweden's initial draft of the Convention from 1978; and Appendix 4 is the Convention against Torture. Readers interested in the articles of these instruments are referred to the appendices. Illustrations are included in appendix 5.

# 2 Rediscovering Torture

By the mid–1960s, international law had prohibited torture in multiple instruments.[29] Even so, there were few reports addressing torture as a global concern, no expressed need for a convention on torture alone, and no campaign to abolish it. All that came in the 1970s. Amnesty International had slowly begun addressing torture from the early 1960s. The first part of this chapter describes how the NGO came to target torture as a global concern. While AI was still formulating its anti-torture agenda, a military Junta seized power in Greece. The coup d'état in April 1967 was followed by martial law, suspension of civil liberties, and prosecution.[30] In Scandinavia strong anti-junta sentiments merged with the Cold War politics of the late 1960s. On the 20th of September 1967, Denmark, Norway and Sweden filed identical, inter-state complaints at the Council of Europe charging the Greek government with multiple violations of the European Convention on Human Rights (ECHR). The Netherlands filed its complaint against Greece one week later. The proceedings that followed are known as The Greek Case. The bulk of this chapter deals with events leading up to March 1968, when Scandinavian governments added violations of Article 3 (torture) of ECHR to their complaints. It would later be the applicant states in the Greek Case, most notably Sweden and the Netherlands, that drove the effort to establish new, human rights instruments against torture at the UN. The aim of the present chapter is to examine how Scandinavian states came to add the human rights issue of torture to their foreign policy repertoire. No effort has been made to provide a full account of the Case. Rather, this chapter discusses processes leading up to 1968, as well as Amnesty's involvement with the case in an effort to shed light on the early, Scandinavian involvement with the human rights issue of torture. Did Scandinavian governments really have, as one scholar suggested in 1970, something to loose (economic sanctions) and nothing to gain by filing the complaints other than upholding the values of human rights in Europe?[31] While the reason behind the initial complaints remain elusive, an effort has been made to put the decision into perspective.

## The Emerging Problem of Torture

[29] Torture is prohibited in Article 5 of the *Universal Declaration of Human Rights* (1948), Article 3 of the *European Convention on Human Rights* (1950), Article 7 in the *International Covenant on Civil and Political Rights* (1966), and Article 5 of the *American Convention on Human Rights* (1969). Other treaties followed.
[30] Keys, "Anti-Torture Politics", 203–204.
[31] Becket, James, "The Greek Case Before the European Human Rights Commission" in *Human Rights* Vol. 1, No. 1 (August 1970), pp. 91-117, (American Bar Association), 95.

The origins of modern anti-torture politics can be traced to Amnesty International. Despite its rapid growth and impact in the 1960s and 1970s, the organization came from humble beginnings, and the pursuit of new human rights instruments was not part of the initial agenda. Amnesty was launched in a newspaper article written by Peter Benenson, which appeared in *The Observer* on the 28th of May 1961. "Open your newspaper any day of the week..." the article famously began, "…and you will find a report from somewhere in the world of someone being imprisoned, tortured or executed..."[32] The article coined the phrase "prisoners of conscience", defining these as anyone physically restrained, imprisoned or otherwise precluded from expressing any non-violent opinions they may hold. The article announced that a campaign called "Appeal for Amnesty, 1961" would open. The primary objective of this campaign was to work impartially for the release of, or at least a fair trial for, those imprisoned for their opinions. The article ended by informing that an office had been set up in London, and that all offers of help and information could be sent to that address.[33]

Amnesty organized responders in member groups – so called Three Groups – for the purpose of writing letters and appeals on behalf of prisoners.[34] After one year of activity, affiliated groups had sprung up in a long list of countries. In Amnesty's first annual report (1961-62), under a heading called "The International Movement", the Secretariat noted that individual supporters were growing in number all over the world, and that it was "…not possible to list all the countries where they live".[35] Not every country had enough supporters to form national sections, or even groups, but the list of countries with interested parties was still impressive. France, Belgium, West Germany, Ireland, Switzerland, Greece, Holland, Norway, Sweden, USA and Australia were all singled out as places where Amnesty had taken hold. The London office had also established preliminary contact in a wide array of other countries. Argentina, Canada, Congo, India, Israel, Mexico, Nigeria and New Zealand were countries belonging to the second category.[36] It should be noted that most national

[32] Benenson, Peter, "The forgotten prisoners", see *Amnesty USA*: http://www.amnestyusa.org/about-us/amnesty-50-years/peter-benenson-remembered/the-forgotten-prisoners-by-peter-benenson, (2 September 2016).
[33] Ibid.
[34] See Ennals, Martin, "Amnesty International and Human Rights" in *Pressure Groups in the Global System: The Transnational Relations of Issue-Oriented Non-Governmental Organizations,* ed. Willetts, Peter, (New York: St. Martin's Press, 1982), 65.
[35] AI, *Annual Report 1961–1962,* (London: Amnesty International Publications, 1962), 12–13.
[36] Ibid.

initiatives outside of Great Britain, at this time, constituted little more than fledgling groups at early stages of organization. Even so, a far-reaching international network was forming.

An early, significant feature was the number of reports on prisoners sent to the London office from different parts of the world. Scholars have noted that the collection, organization, and presentation of information are, collectively, one of Amnesty's strengths and have indeed been critical to the organization.[37] The way in which information was collected and stored would also have a profound impact on how the Amnesty leadership perceived and understood the issue of torture. Closely linked to AI's notion of "prisoners of conscience", i.e. persons imprisoned for their political or religious beliefs, is the issue of how such prisoners are treated. As the London office started collecting reports on prisoners in various countries, their library increasingly contained accounts of ill treatment, abuse and torture.

The issue of torture was raised by members of the Secretariat at the organization's international assembly held in Canterbury in 1964.[38] No immediate strategy on how to deal with the issue presented itself. Despite the increase in members during the first three years, Amnesty International was very much a fledgling organization trying to get its bearings. The machinery and network that was brought to bear in the Campaign for the Abolition of Torture in 1973, were still years away. Amnesty's core mandate revolved around securing the release of prisoners of conscience, and the torture issue was unknown territory. Critics have noted that by channeling efforts on behalf of prisoners of conscience in the 1960s, Amnesty neglected other important human rights issues, among them ethnic and racial discrimination.[39] The emphasis put on the term "prisoners of conscience" was illustrated at Canterbury when the assembly had to deal with the difficult question of whether or not support could be given to Nelson Mandela who had left the principle of non-violence behind. The assembly decided that the status of prisoner of conscience could not be extended to Mandela, or anyone else associated with or advocating violence.[40]

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[37] Korey, William, *NGOs and The Universal Declaration of Human Rights,* (New York: St. Martin's press, 1998), 166.
[38] Larsen, Egon, *A Flame in Barbed Wire: The Story of Amnesty International,* (London: Frederick Muller, 1978), 25–26.
[39] Korey, *NGOs and The Universal Declaration,* 166.
[40] AI, *Annual Report 1964–1965,* (London: Amnesty International Publications, 1965), 3; Korey, *NGOs and The Universal Declaration of Human Rights,* 161.

Although work for those imprisoned for their beliefs, and information gathered on their behalf, would be instrumental in shaping Amnesty's growing realization that torture was a global problem, it may also have hampered the organization's ability to tackle the torture issue in such a context. It is difficult to engage torture as a global concern while working for what amounted to non-violent and wrongfully imprisoned persons. To engage torture globally, Amnesty needed a new mandate and a broader perspective. An initial and important step was taken at Canterbury, however. While reaffirming a strict definition of "prisoners of conscience", thus safeguarding what was seen as Amnesty's core mandate, the 1964 Assembly also decided to give greater emphasis on "improving the conditions of all political prisoners". To achieve this, the Assembly passed a resolution instructing the Secretariat to prepare annual reports on prison conditions in countries where the number of political prisoners were large.[41] The reports, published annually from 1965, would address prison conditions and torture practices on a country-by-country basis. These reports would prove instrumental in shaping Amnesty's anti-torture agenda in the years to come. Another key development happened around the same time. In their review of the period 1964–65, the Secretariat could proudly note that both the United Nations and the Council of Europe had now given consultative status to Amnesty International.[42] Following the initial years of experimentation, the organization was finding its form. In the same report, and on topic of the international Amnesty-movement, the Secretariat also noted:

> It is the vitality of the Sections and Groups in North West Europe which give the movement its dynamism. The growth of AMNESTY in Scandinavia has been a particularly significant feature during the last year.[43]

With consultative status came larger ambitions. The organization's increasing concern about torture was noticeable during its Fifth International Assembly, held in Copenhagen in September 1966. The Assembly called upon all national sections to give the problem of torture "special attention". It was further resolved that the United Nations, and other international organizations, should be asked to include the elimination of torture in their programs for 1968 – the year marked the twentieth anniversary of the adoption of the Universal Declaration of Human Rights and had been declared human rights year by the

[41] AI, *Annual Report 1964–1965,* 7.
[42] Ibid., 4.
[43] Ibid., 5.

UN.[44] Amnesty had begun asserting torture as a global, human rights concern. While little headway was made on this issue at the UN until the early 1970s, a breakthrough of sorts occurred in Europe in 1968. It came in the form of a highly coordinated, Scandinavian reaction to the newly established military regime in Greece, following the coup there in April 1967.

## How a Greek Coup Nearly Toppled the Norwegian Government

Scholars have noted that West Europeans took special umbrage at the barbarity unfolding in their backyard.[45] Norwegian reaction to the coup in Greece was, similar to those of other European countries, one of condemnation. In a televised interview on the 24th of April, Norwegian Foreign Minister John Lyng (Conservatives) expressed his concerns and called the coup a military intervention in the democratic processes governing Greece.[46] Prime Minister Per Borten (Centre Party) made similar statements in the Storting, three days later. The non-socialist, coalition government consisted of members from the Center Party, the Conservatives, the Christian Democrats, and the Liberal Party. In parliament, on May 3rd, the Foreign Minister was questioned on the possibility of an international reaction against Greece. The question came from a member of a governing party. Representative Halfdan Hegtun (Liberals) wanted to know what action could be taken, through international organizations, "to contribute to the Greek people regaining its freedom".[47] Perhaps not surprisingly, Lyng would not commit to such prospects. He responded by reiterating his concerns about Greece and expressed his hopes that the situation would return to normal as soon as possible. Hegtun's follow-up question is interesting.

> If the new regime in Greece, even after some time has passed, shows no signs of becoming more liberal, would a stronger Norwegian reaction then be considered, for example through an initiative within the Council of Europe, within the European Commission of Human Rights or, alternatively, within NATO by halting shipments of military equipment to Greece?[48]

Lyng declined to answer such hypothetical questions. He did confirm, however, that the possibility of utilizing the framework provided by ECHR and the European Commission,

[44] AI, *Annual Report 1966–1967,* (London: Amnesty International, 1965), 5 (unnumbered page).
[45] Keys, Barbara, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s,* (Cambridge/Massachusetts/London: Harvard University Press, 2014), 85.
[46] Lyng, John, *Mellom øst og vest: Erindringer 1965–1968,* (Oslo: Cappelens Forlag, 1976), 235.
[47] Stortingstidende 111, Question Hour, 3 May 1967 (author's translation), 3170.
[48] Ibid. (author's translation), 3171.

"…had been considered, and would be considered in the future".[49] Before long, Hegtun's question would seem to ring with near prophetic qualities. Within a year, Norway conducted proceedings before the European Commission that later would precipitate a Greek withdrawal from the Council of Europe, but not before the sale of military equipment to Greece caused a motion for a vote of no-confidence in the Norwegian government. From an exceedingly early date, the Norwegian government was under pressure to act against the undemocratic processes unfolding in Greece. What had surfaced in the Storting was not simply a question of human rights violations in another country, but an issue that concerned – and would later challenge – the established security policy of the nation in the late 1960s.

The situation in Greece quickly became a feature in foreign policy discussions at the Nordic level.[50] In his first degree thesis Norwegian historian Svein Gjerdåker traced the initiative behind the joint, Scandinavian action at the Council of Europe to Danish Prime Minister Jens Otto Krag, who first suggested such course of action in a letter to his Scandinavian counterparts sometime prior to a meeting of deputies in Oslo on May 10th 1967. The question had been raised, and was debated, but the deputies agreed to hold off on further action for the time being. Gjerdåker concludes that the main reason the three governments opted to wait was the perceived difficulty of proving human rights violations before the European Commission.[51] In early May, the situation in Greece was still chaotic and information was scarce. Some, perhaps, still entertained hopes that the coup would run out of momentum or even fail if confronted by a popular uprising. Lyng dispelled such notions two weeks later during a debate in the Storting, stating that the new regime in Greece now seemed "stuck in the saddle" and had an "absolute control" on the situation.[52]

Oppositional politicians and activists in Scandinavia showed little or no understanding for the daunting task of an inter-state complaint at the Council of Europe. By Mid-May, activist from grass root movements had joined forces with concerned politicians in Committees for Democracy in Greece in various Nordic countries. The Swedish Committee, led by the

[49] Stortingstidende 111, Question Hour, 3 May 1967 (author's translation), 3171; see also Gjerdåker, *Menneskerettar og utanrikspolitikk,* 39.
[50] On 29 April 1967, in an interview in the Norwegian Broadcasting Corporation (NRK), John Lyng, returning from a trip abroad, stated that the issue of Greece had been broadly discussed at a Meeting of Nordic Foreign Ministers in Reykjavik. See the interview "Aktuelt Utenriksmin. John Lyng om Norges holdning til kuppet i Hellas" at Nasjonalbiblioteket: http://www.nb.no/nbsok/nb/d9db450005ff5452cf5c6213bb14cb79?index=6, (1 September 2016).
[51] Gjerdåker, *Menneskerettar og utenrikspolitikk,* 39–40.
[52] Stortingstidende 111, Question Hour, 3 May 1967 (author's translation), 3403.

Chairman of Amnesty International's Swedish Section, probably made the biggest impact domestically. Anti-junta movements often had strong ties with the political left. One activist and member of the Norwegian parliament, Finn Gustavsen (Socialist People's Party), saw similarities between protests against the Greek Junta in 1967 and the anti-fascist movements that had been formed in opposition to events in Spain, thirty years previously.[53] In the political climate of the late 1960s, NATO became a contentious link to the regime in Greece – also a NATO member – for governments in Denmark and Norway.

On May 26th, the Norwegian government had to answer for the sale of gunboats to Greece. The controversy concerned the sale of six torpedo boats of the so-called Nasty Class. The license for the sale had been issued on January 10th, 1966, more than a year prior to the coup. Most of the boats had already been shipped to Greece; two or three were still in or around Norwegian waters, though under Greek flag and with Greek crew members, and one still remained on Norwegian soil. It was Labor, the largest oppositional party, that initially put pressure on the government by bringing the issue before the Storting, but it was Finn Gustavsen from the Socialist People's Party that made it a question of the government's existence. In the Storting, Gustavsen alluded to CIA and NATO involvement in the Greek coup. He also criticized the Norwegian Foreign Ministry's handling of the case, in particular legal expert Jens Evensen's evaluation, by describing it as both "poor politics and poor law". Labor had proposed a resolution stating that the government *should have* stopped the sale of the final boat. Gustavsen proposed an amendment to this proposition, seemingly of a grammatical nature. Since one boat was still on Norwegian soil, Gustavsen proposed a resolution stating that the Government *should* stop the shipment of the last boat, thus overruling the government policy on this issue. His proposal effectively amounted to a vote of no confidence in the government.[54]

For the Norwegian government there seemed to be no good options. In the end, international law proved the decisive factor in charting a course.[55] A binding contract had been made and the sale was legal. That nobody liked the buyer – i.e. the Greek government – anymore, was less relevant. The Liberals were put in the difficult position of choosing between principles or saving a coalition government they themselves were part of. Opposition against the

[53] Gustavsen, et al., *Rapport fra Athen,* 2 and 60–61.
[54] Stortingstidende 111, Question Hour, 3 May 1967, 3421–3427.
[55] Gjerdåker, *Menneskerettar og utenrikspolitikk,* 64.

established security policy had historically been rooted in the Socialist People's Party, sections of the Labor Party, and in the Liberal Party now in government. Historian Rolf Tamnes has noted that the Nasty Case became a struggle for the very "soul" of the Liberal Party.[56] After harrowing deliberations, the Liberals decided that loosing power over one torpedo boat was simply not worth it.

For the Labor Party, by a substantial margin the largest party in the Storting, the Nasty Case was a convenient way of putting pressure on a coalition government with diverging views on Cold War alliances and what these entailed. For the Socialist People's Party events in Greece were linked to the larger issue of Norway's role in the Cold War. Even though the government survived the Nasty Case, the oppositional forces both from across the aisle at the Storting and from within the government itself is worth keeping in mind when discussing the Norwegian complaint against Greece. It might be suggested that Prime Minister Per Borten (Centre Party), and especially Foreign Minister John Lyng (Conservatives), leader of the largest government party, later had no choice but to commit to a joint effort if other Scandinavian countries decided to act against Greece. To do otherwise could invite a rematch about principles in the Liberal Party and risk the coalition, not to mention an unfavorable outcome in the next election. On one level, the Nasty Case is evidence that the Norwegian government *could,* in fact, survive while taking a passive approach to events in Greece, although just barely. What no Scandinavian government could easily afford, however, was inaction if their neighboring states moved against Greece at the international level. This was especially true for NATO members Denmark and Norway in the late 1960s and early 1970s.

## Nordic Mission to Athens

Throughout 1967, a range of Nordic actors became actively involved in fighting for democracy and freedom in Greece. Among concerned actors were people with left affiliations, journalists, politicians – from both sides of the political spectrum – and activist from the Nordic Sections of Amnesty International. Prior to the filing of the Scandinavian complaint to the Council of Europe, Committees for Democracy in Greece, with ties to various political parties or respective parliaments, had sprung up in Denmark, Finland, Norway and Sweden.[57] The Committee in Oslo reflected some of the prevailing, bipartisan

[56] Tamnes, *Oljealder 1965–1995,* 92 and 358.
[57] For a short list of appointments and contacts for the various committees, see Gustavsen et al, *Rapport fra Athen,* 160.

interest in Greece by appointing Aase Lionæs (Labor) as Chairwoman and Otto Lyng (Conservative) as Deputy Chairman.[58] Arne Treholt, then a journalist, served as cashier.[59] The Swedish Committee, which had been formed shortly after the coup, was particularly active. The Committee organized a petition in favor of democracy in Greece, which had gathered some 4000 signatures by October. Around the same time, the Swedish Committee reported that it had received support from some 45 organizations, and that support had been strongest from labor organizations and youth movements.[60] Chairman of the Swedish Committee for Democracy in Greece was Hans Göran Franck, also Chairman of the Swedish Section of Amnesty International (1964–1970). Franck would later take a seat on AI's Executive Committee.[61]

To what extent national AI sections in Scandinavia communicated with the International Secretariat in London on the issue of Greece, is uncertain. In a newsletter in June, the International Secretariat informed all AI members that General Secretary Erick Baker had written to the Greek Prime Minister, Constantine Kollias, and asked for an impartial investigation into conditions for the many detainees arrested following the coup. The AI newsletter further stated:

> In co-operation with National Sections the International Secretariat has also written to the Council of Europe and the British Foreign Secretary about the situation in Greece and the breaches by Greece of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[62]

No reference was made to any particular section. It is clear, however, that Amnesty International was using its consultative status at the Council of Europe, obtained some three years prior, to lobby that body for a reaction against human rights violations in Greece. National sections seem to have played a part. Governments in Scandinavia had been under pressure to facilitate similar action from early May. On June 23rd, the Council of Europe

[58] Otto Lyng was a party colleague and a distant relative of Foreign Minister John Lyng.
[59] Arne Treholt became a household name in Norway when he was convicted of espionage and sentenced to 20 years in prison in 1985. He had a long-standing affiliation with the Norwegian Labor Party. At the time of the Greek Case he was a journalist in *Arbeiderbladet*. He was one of the founders of The Norwegian Committee for Democracy in Greece, visited Greece on a fact-finding mission in 1967, and later published a book in 1969 in which Andreas Papandreou (son of Prime Minster Georgios Papandreou who was dismissed from office) wrote the afterword, see Treholt, Arne, *Marketakis og Juntaen,* (Oslo: Cappelen, 1969).
[60] Gustavsen et al., *Rapport fra Athen,* 157.
[61] AI Annual Report 1968–69, (London: Amnesty International, 1965), 22.
[62] AI Newsletter for Groups, No. 17, June 1967. See Amnesty.org (Index number: NWS 21/014/1967) Newsletter dated 1 June 1967: https://www.amnesty.org/en/documents/nws21/014/1967/en/, (17 August 2016), 2.

encouraged all member states to file single or joint complaints against Greece. This recommendation later gave Scandinavian governments the justification they needed to launch their complaints.

Throughout the last half of 1967, Amnesty's Secretariat in London was seeking the approval of the Greek authorities to send an AI delegation, in an official capacity, to investigate the situation in Greece.[63] Approval was finally granted for a trip in late December. Amnesty Sections in Scandinavia found a way to circumvent the Greek Junta's skepticism towards the organization, months prior. In close cooperation with Nordic politicians, Scandinavian Sections were able to reach and report on at least some of the Junta's activities. Sometime in August 1967, a Delegation consisting of members from Nordic parliaments visited Athens. Aase Lionæs was Chairwoman of the Delegation. The team included, amongst others, Hans Jørgen Lembourn (Conservative People's Party), a member of the Danish Folketing; Pekka J. Korvenheimo, secretary of the Social-Democratic Party Bureau in Finland; and Ola Ullsten (Liberals/Folkepartiet), who would later become Prime Minister of Sweden. One of the members from the Norwegian Storting was Finn Gustavsen, the representative who had nearly brought down the government during the Nasty Case, a mere three months prior. The secretary for the initial team was Bent Knudsen, a member of the Danish Section of Amnesty International. Otto Lyng and Arne Treholt, both fellow members of Lionæs in the Norwegian Committee for Democracy in Greece, also joined the team.[64]

Initially, high-ranking, Greek officials largely ignored the Nordic mission. By their own account, Nordic representatives concluded that "usual diplomatic methods had no effect", and that they were forced to apply a different approach. This included, among other initiatives, a refusal to move from the vestibule at the offices of the Minister of Public Order, Pavlos Totomis.[65] Some leeway was made and the delegation was allowed to visit several prisons and meet with key detainees, including deposited Prime Minister George Papandreou and his son Andreas. Although efforts were made to ascertain whether or not torture had been used, no conclusive evidence was found.[66] The Delegation also met with the Greek Foreign

[63] Amnesty International had already sent private individuals to gather information in Athens.
[64] Gustavsen et al, *Rapport fra Athen*; Lyng, Otto, *Episoder fra et liv,* (Trondheim: Snøfuglt, 1997), 166–172; see also *Amnesty International 35 år i Norge,* (Amnesty International Norge, 1999), available at Nasjonalbiblioteket: http://www.nb.no/nbsok/nb/592c0c37250274b8b447244e68b0bb10?index=5 - 0 (3 September 2016), 6.
[65] Gustavsen et al, *Rapport fra Athen,* 28–29.
[66] Ibid., 40.

Minister, Pavlos Economou-Gouras, who seemingly used the opportunity to vent his frustration with Scandinavian politics. Finn Gustavsen reported him stating:

> The Scandinavian governments fight us in NATO and the Common Market. You let workers demonstrate against us, allow communists to halt tourism, and you let your newspapers write whatever they want about us.[67]

This and other colorful exchanges are typical to the Nordic report from Athens, published as a 160–page–long anthology upon the groups return. The trip had been the sincere attempt of spontaneous amateurs to shed some light on what happened in Greece. It is not surprising that there were no experts on human rights, trained at gathering information on torture violations, among the Nordic Mission; such experts did not exist in the late 1960s. The only actors with some experience at documenting these types of violations were the agents of Amnesty International, and even they, as we shall see, ran into problems in Greece.

An interesting feature of the Mission to Athens is the distinctly transnational effort that lay behind it. Among those travelling were politicians, journalists and at least one AI member from the Danish Section. The effort had been organized, across borders, by national AI sections cooperating with the Committees for Democracy in Greece in the various Nordic countries with the exception of Iceland.[68] One of the most active participants in this network was, undoubtedly, Hans Göran Franck, leader of both the Swedish Amnesty Section and the Swedish Committee for Democracy in Greece. In connection with a meeting of Nordic foreign ministers on the 15th of August, the Swedish Committee lobbied towards a noteworthy goal: "The Greek Military Regime has to be held accountable for its extensive violations of human rights by the immediate action of the European Commission on Human Rights."[69] By this initiative, as well as the Nordic Mission to Athens and other efforts, activists joined in anti-junta sentiments and effectively tried to lobby governments in all Nordic countries for a reaction against Greece.

Taking into account both the Nasty Case, which threatened the Norwegian government in May, and the continuous pressure from various interest groups up to and beyond September

[67] Economou-Gouras quoted in Gustavsen et al., *Rapport fra Athen* [author's translation], 75; On this occasion, the Minister's notion of "communists" probably extended to any member of the Swedish Committee for Democracy in Greece, which had spearheaded a boycott on tourism from Sweden, see Gustavsen et al., *Rapport fra Athen,* 148.
[68] Gustavsen et al, *Rapport fra Athen,* 160.
[69] Ibid., 152.

20th, we can dispel any notion that Scandinavian governments had nothing to gain by submitting complaints against Greece.[70] The three governments were, at least in part, responding to a convoluted string of domestic pressures. National Sections of AI managed to merge their concern for the treatment of political prisoners with the agenda of Nordic politicians during the Missions to Athens and in joint publications afterwards. It is also interesting to note that Scandinavian governments managed to remain one step ahead of anti-junta initiatives domestically. Pressure from interest groups and oppositional politicians, however strong, cannot alone explain three, identical, inter-state complaints filed on the same day.

## The Decision to File

Despite any initial hesitation towards the prospect of an inter-state complaint at the Council of Europe, Scandinavian governments had, in fact, never ruled out the possibility of following such a course. As early as May 3rd, Foreign Minister John Lyng had openly stated that a complaint was being considered. During the Nasty Case, the Norwegian opposition seemed to imply that the Centre-Right, coalitional government, and perhaps the Conservative Party in particular, was reluctant to move against a NATO ally, even one ruled by a military Junta. In reality, there was little Denmark or Norway could achieve within the confines of the Alliance. Lyng himself later reflected on the domestic pressure to get "Greece excluded from NATO":

> Regardless of anyone's feelings on this subject, it was rather unrealistic. What Norway and potentially Denmark could have done was to threaten to leave the Alliance. But there was nobody who in all seriousness suggested that we should begin a game of this sort with our own security interests.[71]

The Norwegian government was not inclined to jeopardize its own security policy over Greece. In my view, historians have tended to overemphasize NATO as a cause for initial, Norwegian hesitation towards a European complaint. When Scandinavian states filed the complaints on September 20th, nothing had changed with respect to Denmark and Norway's position within the Alliance. Taking domestic pressure into account, it is more accurate to state that Norway's membership in NATO *necessitated* some sort of reaction at the Council

[70] This was suggested by James Becket in 1970, see Becket, James, "The Greek Case Before the European Human Rights Commission", in *Human Rights,* Vol. 1, No. 1, August 1970, pp. 91–117, American Bar Association.
[71] Lyng, *Mellom øst og vest,* (author's translation), 237.

of Europe, certainly after neutral Sweden decided to act – in this respect, the most immediate gain was taking a clear and opposing stand towards Greece. Why then did Lyng initially seem hesitant, and what changed his mind? The answer to the first question seems to be the state of European human rights law; the second answer is more complicated and involves the dynamic between the Scandinavian governments.

An action before the European Commission of Human Rights, of the type envisioned in Scandinavia, had never been tried before and there were numerous ways in which a complaint could go wrong. None of the Scandinavian governments could claim any direct grievance – such as the prosecution of Scandinavian citizens – as a justification for filing complaints. The Greek government would undoubtedly claim that the situation now unfolding in Greece was a strictly domestic matter. Even if the Commission ruled the complaints admissible, proving human rights violations was difficult. If the investigation was left to the Commission alone – a technical option that the Netherlands later opted for – the outcome was highly uncertain. If the Scandinavian states took it upon themselves to submit evidence, it would entail the use of considerable resources over a long period. In any event, a successful conclusion would depend on the panel presiding over the Case. The Norwegian Foreign Minister voiced his concerns to the Committee on Foreign Affairs on May 9th, stating that a complaint before the European Commission could, sadly, mean "expending a great deal of energy on an empty blow".[72] John Lyng was a lawyer with some experience in high profile cases. Early in his career he had prosecuted the infamous Nazi collaborators known as the Rinnan Gang in the Norwegian War Crime trials following the Second World War – torture had been among the numerous charges and, upon the trial's resolution, 10 death sentences were handed out.[73] In 1967, Lyng's pessimistic assessment, shared by some experts in the Norwegian Foreign Ministry, seemed to revolve around the uncertain prospect of reaching a successful outcome at the European Commission. It is possible that Lyng, as many lawyers, was more concerned about *loosing* a case than the ramifications of launching one.

Svein Gjerdåker dates the Swedish decision to file a complaint, largely based on interviews, to the summer of 1967. Gjerdåker suggests that a noticeable Greek minority in Sweden, with ties to both the Swedish Labor Party and the Swedish Committee for Democracy in Greece,

[72] Gjerdåker, *Menneskerettar og utenrikspolitikk* (author's translation), 39.
[73] Langslet, Lars Roar, *John Lyng: Samarbeidets arkitekt,* (Oslo: Cappelen, 1989), 56–61; for Lyng's account of the trial, see Lyng, John, *Forræderiets epoke,* (Oslo: Steensballes boghandels eftg., 1948).

was a factor when the Swedish Foreign Minister, Torsten Nilsson, began making preparations for a complaint.[74] In the present thesis, I have suggested that the Swedish Section of Amnesty International played an important part, certainly in the Swedish Committee for Democracy in Greece where Hans Göran Franck was chairman. By August, the Swedish government was pushing for a joint *Nordic* effort against Greece. During the Nordic consultations that ensued, it quickly became apparent that this would not happen. Iceland was not interested, and the Finnish excluded themselves on the somewhat relevant ground that Finland was not a member of the Council of Europe.[75] During the Greek Case the countries on the outer edges of the Nordic region remained peripheral. Any joint action would have to come from Scandinavian states.

The Danish and Norwegian governments seemed hesitant until the end of August. On the 25th, the Swedish Foreign Ministry informed its Scandinavian counterparts that Sweden would move ahead with the complaint, alone if need be. Shortly thereafter, Lyng turned to Jens Evensen, Director General of the Legal Department at the Norwegian Foreign Ministry, for a new appraisal of the situation.[76] From this point on events unfolded quickly. A new assessment of the legal prospects was undertaken in Norway, a joint Scandinavian strategy was developed – consisting primarily of putting continuous pressure on the Greek government by having Scandinavian officials submit evidence of multiple human rights violations – and the complaints were written. All this was achieved in a mere three weeks. On the 20th of September, the three governments filed identical complaints against Greece at the Council of Europe. What had brought on the sudden desire for multilateral action? Gjerdåker has argued that active and "positive" Norwegian participation in the joint effort only took place after Jens Evensen was assigned to the case.[77] It is true that legal experts like Evensen, and others, played a large part in the successful handling of the Greek Case. That able bureaucrats were given a fair degree of autonomy in the pursuit of a particular human rights goal, was also an important feature in the successful pursuit of human rights instruments against torture at the UN from 1973 to 1984. Yet, during the Greek Case the role of bureaucrats cannot easily explain the initial commitment of three governments. In September 1967, any planned course of action, however brilliant, would still have lead towards an unknown outcome at the European Commission of Human Rights. In other words, the actors

[74] Gjerdåker, *Menneskerettar og utenrikspolitikk,* 40.
[75] Ibid., 40–41; Lyng, John, *Mellom øst og vest,* 241–242.
[76] Gjerdåker, *Menneskerettar og utenrikspolitikk,* 42.
[77] Ibid.

involved were venturing into unknown territory. Nor can any explanation based on some sort of moral duty to act – which more or less constitutes the official reason to file – fully explain the initial hesitation.

It is necessary to take a regional perspective. On the topic of "engagement politics" in general, Rolf Tamnes have already noted that Nordic states not only cooperated in many international arenas, but also competed against each other.[78] This also applies to human rights. Let us call the dynamic a human rights race. During the Greek Case this was not a race to be first to the finish line. It was more equivalent to an arms race. While the comparison may seem somewhat inappropriate when applied to human rights, the dynamics were deceptively similar. Contenders in an arms race do not necessarily *want* to participate; they feel that they *have* to. While participation might be expensive or risky, it is done to avoid an imagined outcome that seems worse than the alternative. If one of the parties involved raises the stakes, the others must follow or fall behind. By the late 1960s, Scandinavian states were already taking a similar approach to the signing and ratification of human rights treaties.[79] The close ties between nations, the advent of a modern and investigative mass media, and the political climate of the late 1960s and early 1970s made it prudent to follow similar policies on human rights. If a growing disparity arose between countries on important human rights issues, questions would likely be raised in the press or in parliaments. In this analogy it does not really matter why John Lyng hesitated. Sweden raised the stakes by notifying Denmark and Norway that it would file a complaint against Greece, alone if need be. Denmark and Norway were faced with an uncertain outcome before the European Commission of Human Rights or face domestic opposition and questions as to why governments had failed to act. Bearing in mind the vote of no confidence in Norway and strong anti-junta sentiments, one might ask what choice Foreign Minister Lyng really had. Both Denmark and Norway committed to a joint complaint shortly after Sweden had made its decision to file.

[78] Tamnes, *Oljealder,* 345.
[79] The signatory and ratification records of Denmark, Norway and Sweden on the *Convention on the Elimination of All forms of Racial Discrimination* and the two Covenants in the late 1960s and early 1970s is, with minor modifications, near identical. Between 1966 and 1972 all states had signed and ratified the three Human Rights instruments, see "Status of Ratification Interactive Dashboard" at the Office of the High Commissioner, ochchr.org: http://indicators.ohchr.org, (29 October 216).

## Reports of Torture

Three months after Denmark, Norway, Sweden and the Netherlands had submitted their complaints, the AI Secretariat in London was finally able to send an official delegation to Greece on the 30th of December 1967. The small team consisted of two, volunteer lawyers: Antony Marreco and James Becket, members of the English and American Bar respectively. They were mandated to report on the extent of an amnesty for political prisoners, announced by the junta just before Christmas, and the situation of those still in prison. Having arrived in Athens, Marreco and Becket made a formal request to the Greek Ministry of Foreign Affairs. They asked for a list of political prisoners; permission to observe the hearings of Judicial Committees; permission to accompany representatives from the International Red Cross to prison camps on the islands of Leros and Gyaros; and, finally, meetings with officials from the Ministries of Foreign Affairs and Public Order. After four meetings at the Ministry of Foreign Affairs, none of the requests had been granted. Instead, Marreco and Becket applied a technique well tested in connection with Amnesty's annual Prison Reports; they spent four weeks taking statements from released prisoners and the relatives of prisoners still in detention.[80]

Based on statements from 16 released prisoners and second-hand accounts pertaining to 32 detainees, Marreco and Becket were able to describe various acts of physical and non-physical torture perpetrated by the authorities. The acts were linked to both the Security and the Military police. Techniques included, amongst other things, threats, cigarette burns, beatings, electric shock, the pulling out of toenails and fingernails, and the so-called falanga, which consisted of beating or whipping the bare feet of tied down prisoners. Labeling all these acts as "techniques" helped Marreco and Becket conclude that the use of torture was systemic. The report stated:

> On the basis of first hand evidence and oral testimony, on the basis of scars on the bodies of those tortured, and on the basis of testimony of professional people and relatives, the Delegation can objectively state that torture is deliberately and officially used and was convinced that the use of torture is a widespread practice against Greek citizens suspected of active opposition to the Government.[81]

[80] AI Report, "Situation in Greece", January 1968, see Amnesty.org: https://www.amnesty.org/en/documents/eur25/001/1968/en/, (18 August 2016), 1; see also Clark, *Diplomacy of Conscience,* 40.
[81] AI Report, "Situation in Greece", 2.

The identification of named officials involved in the torture, such as Inspector Lambrou, Director of Security Police Headquarters in Athens, gave credence to the accusations.[82] As did Greek officials' refusal to grant Amnesty access to prison camps. Amnesty published the report on January 27th, 1968. Amnesty International later admitted that the report was open to criticism from Greek officials at Strasbourg since the organization refused to share most of the witnesses' names.[83] In any event, the largely circumstantial evidence was hardly conclusive. The report seems to have had an impact on Scandinavian governments, however. They added charges of torture and retroactive criminalization to their list of complaints against Greece on the 25th of March; two months after Amnesty's report had been published.

Little is known about what evidence Scandinavian officials had in their possession at this early stage or what they were expecting to find when they reserved the right, in September 1967, to add further violations to the complaints at a future date. Amnesty International carefully avoided using the word "torture" in all official communications throughout 1967. The organization, well aware of the seriousness of such charges, never applied this label until they felt justified in doing so. Still, officials in Scandinavia would have been aware of the Junta's dubious record on the treatment of prisoners. Various reports had circulated in European publications – Stern magazine published Fred Ihrt's pictures of the prison camp on the Island of Gyaros in issue 32 in 1967. In Norway, particularly, members of parliament and the government would have been aware of the infamous prison. As early as the 29th of May 1967, Finn Gustavsen mentioned Gyaros, calling it the "Devil Island", in a speech before the Storting during the deliberations on the Nasty Case.[84] Gyaros also came up during the Nordic mission to Athens in August. Nordic politicians, concerned by rumors that prisoners had been transferred from Gyaros to another island, Leros, where a NATO base supposedly was located, questioned Greek Foreign Minister Gouras on this issue. He denied any NATO presence on Leros.[85] Valid information was hard to come by in 1967. Some of the concerns raised by Nordic journalists, AI-members, and even members of parliaments, were rooted in rumors; some accounts were bordering on Cold War conspiracy theories. Collectively, however, they reflect a deep concern for the situation in Greece and its citizens, especially those arrested by the Junta. Amnesty International, of course, shared such concerns, and the Nordic agenda overlapped with that of the NGO to a remarkable degree. Some six months

[82] AI Report, "Situation in Greece", 2–4.
[83] AI Report, "Torture of Political Prisoners in Greece", April 1968.
[84] Stortingstidende 111, Question Hour 3 May 1967, (author's translation), 3423.
[85] Gustavsen et al, *Rapport fra Athen,* 80.

after the Nordic mission, Antony Marreco and James Becket (as noted above) requested access to both the Island of Leros and Gyaros, but were denied by Greek officials. They were able to return to Greece to investigate further in late March of 1968. The trip resulted in a second report on torture. Their reports were submitted to the European Commission of Human Rights.

The most direct link between Amnesty's efforts and the Scandinavian decision to charge Greece with violations of Article 3 (torture) comes from the international literature. Ann Maria Clark discovered that an official Scandinavian memo in the Case noted that the countries had acquired new information on torture in Greece. Amnesty's report, *Situation in Greece,* headed the list of documentation accompanying the memo.[86] Furthermore, Amnesty representatives became participants during the Greek Case when Anthony Marreco, James Becket and Denis Geoghegan, were called to give evidence before the Commission in late 1968.[87] During the Greek Case, Amnesty International's anti-torture agenda merged with the foreign policy goals of the Scandinavian states. It would do so again during the pursuit for human rights instruments against torture at the UN in the 1970s and 1980s.

The Greek Case seems to have had an impact on the actors involved, NGO and states alike. As shown above, Amnesty's international assembly in Copenhagen had, in 1966, decided to ask the UN to include the elimination of torture in its program. In Amnesty's Quarterly Review from August 1968, Eric Baker of AI's International Secretariat refined this message. With reference to Greece, Baker stated that torture in a country bound by ECHR, a country that also, presumably, acknowledges the Universal Declaration of Human Rights, makes it clear that the "one sentence" dealing with torture in both these instruments was not enough – he was referring to ban on torture contained in Article 5 of UDHR and Article 3 of ECHR. For it to be effective, this short sentence needed to "be set out in much fuller detail".[88] In a section entitled "Need for a New Convention", he defined a new goal.

> What Amnesty should aim at, therefore, is an effective Convention (parallel to the Geneva Convention of 1949) to cover just this category of civilian detainee/prisoner.

[86] Clark, *Diplomacy of Conscience*, 40; See also , *Yearbook of the European Convention 1968,* (The Hague: Martinus Nijhoff, 1970), 748.
[87] AI, "Quarterly Review", number 26, February 1969, 2; AI, "Annual Report 1968-9", 14.
[88] AI, *Amnesty International Review,* (AIR) Number 24 August 1968, (London: Amnesty International, 1968).

> To begin by trying to eliminate torture may no be the best starting point, but it is at least, one starting point.[89]

With a direct reference to the situation in Greece, Amnesty International had thus expressed the need for a new convention based on Article 5 of the Universal Declaration in 1968. A month after the Quarterly Review was published, AI's international assembly gathered in Stockholm. The assembly decided to expand the organization's statues to include Article 5 (torture) and Article 9 (arbitrary arrest) of the Universal Declaration. The annual report later specified that AI's vigilance on subjects such as torture was "not necessarily limited to prisoners of conscience alone".[90] While it would take the NGO a further four years to mobilize the Campaign for the Abolition of Torture, all the important elements of the anti-torture politics to come had fallen into place by the end of 1968, most of them that very year. In the span of twelve months, Amnesty International had published two reports on torture perpetrated by the Junta, Scandinavian states had (in part based on the aforementioned reports) added charges of torture against Greece, AI had formulated the need for a convention against torture, expanded its mandate to include the human rights issue of torture, and members of the organization had testified during the Greek Case. To put it simply, 1968 is the year that modern anti-torture politics truly began.

## The Case

While the present chapter was primarily written to deal with events that led up to March 1968, a brief summary of some important features of the Greek Case is in order. The joint complaints were filed on the 20th September 1967. One week later, the Netherlands filed its complaint. Scandinavian officials held that by suspending a set of provisions in the Greek Constitution during a state of emergency, and providing no acceptable justification for doing so, the Greek government had violated no less than eight articles of the European Convention on Human Rights. The Scandinavians reserved the right to add further charges if the situation warranted it.[91] Two months after Amnesty had published its report on the situation in Greece, the Scandinavian states filed a new application to the European Commission, adding violations of Article 3 (torture) and 7 (retroactive criminalization) to their list of complaints. The Netherlands did not add such charges. From a Scandinavian perspective, the Case was brought to its successful conclusion when the Council of Ministers, on the 15th of April

[89] AI, *Amnesty International Review,* (AIR) Number 24 August 1968.
[90] AI, *Annual Report 1968–9,* 2.
[91] "The Greek Case: Report of the Sub-Commission Volume 1 Part 1", 1–2.

1970, decided that Greece was in violation of the numerous articles.[92] Greece withdrew from the Council of Europe shortly before a separate motion for its expulsion came up for a vote.

The Scandinavian states spent considerable time and resources on the proceedings. Significantly, the three states coordinated efforts and emphasized a united approach towards the Commission.[93] Norwegian historians have emphasized hesitation at the Cabinet level, usually explained by concerns about the ramifications of dragging a NATO ally before the European Commission in a case such as this.[94] There may have been uncertainty at key junctures of the case, e.g. when violations of torture were added to the list of complaints, but it had little effect on the handling of the Case itself. This presents a problem. If there was uncertainty present at the highest level of the Foreign Ministry, why did a team led by Norwegian officials exert themselves to document the use of torture in hundreds of individual cases? One possibility, of course, is that the historians are wrong. An alternative explanation presents itself if events are viewed in light of the dynamics of a human rights race, as was briefly outlined above. To deviate from the plan in any substantial way required the consent of three governments. Hesitation by one party made little difference. Even if hesitation increased to a point where one government was inclined to withdraw from the Case (of which there are no signs), the party in question may have found it very difficult to do so. Domestic reactions would certainly have been unfavorable. If Scandinavian involvement in the Greek Case is viewed in such a way, it might be argued that Cabinets, and Foreign Ministers even, were along for the ride. Once the decision to commit had been taken, it was more or less up to Scandinavian bureaucrats to reach the predetermined goal, in this case a successful outcome for the Greek Case.

Scandinavian bureaucrats went to work with a fair degree of enthusiasm. Director General Jens Evensen – who had advised against halting shipment of a torpedo boat to Greece during the Nasty Case – and Principle Officer Ulf Underland, both of them Norwegian officials, led the Scandinavian team.[95] That Sweden preferred to have neighboring states as fellow applicants, and that Norwegian officials were allowed to take a leading role, may indicate

[92] Resolution DII (70) 1, "The Greek Case", Committee of Ministers, 15 April 1970, see Council of Europe: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=953890&SecMode=1&DocId=638342&Usage=2, (1 August 2016).
[93] Gjerdåker, *Menneskerettar og utenrikspolitikk,* 45.
[94] Knutsen, Torbjørn L., Sørbø & Gjerdåker ed., *Norges Utenrikspolitikk,* (Oslo: Cappelen akademisk forlag, 1997), 229–230; Gjerdåker, *Menneskerettar og utenrikspolitikk*; Tamnes, *Oljealder,* 358–359.
[95] Tamnes, *Oljealder,* 358–359.

that the Swedish government also harbored some doubts about the prospects of an inter-state complaint of this magnitude. If the Case is viewed as a whole, the Scandinavian approach was aggressive. The plan involved submitting as much evidence as possible for violations of some 10 articles of ECHR. John Lyng's concerns prior to the filing of the Complaints had been that a case could drag on for years and still end in an unfavorable outcome. To some extent, the Scandinavians followed a course that alleviated such concerns. As long as evidence could be found and submitted, the spotlight would remain on Greece. If the Case dragged out, it would benefit the accuser, not the accused. By following such a course and adding the stigma of torture to the list of charges, Scandinavian officials put the Junta on trial.

An abridged version of the report on the Case was published in a volume of the *Yearbook of the European Convention on Human Rights* (spanning some 800 pages) in 1972. Its Annex V contains a list of 213 cases of alleged torture or ill treatment submitted by Denmark, Norway and Sweden.[96] For various reasons, some cases had not been listed – the Greek government had successfully challenged some of these cases, often by claiming that allegations were communist propaganda. The allegations that *were* listed varied in severity from mistreatment and beatings, to the so-called *falanga*[97] and, in some instances, persons that had died in connection with their arrest.[98] The accusation of such violations, directed as they were against a military regime, proved a powerful combination. It mattered less that it was near impossible to prove that the government itself had ordered such acts. The moment Greece denied these accusations, or simply failed to act upon them, the regime became culpable, more so since it was its own security forces that stood accused following a coup. For the Scandinavians it was enough to show that such acts had indeed taken place, which was largely achieved by calling witnesses to give testimony.[99] Outside of the proceedings, Amnesty International's continuous efforts at keeping the situation in Greece under review also helped, of course. During the Greece Case the agenda of the NGO and that of the three Scandinavian states did more than coincide, they nearly merged. All actors were seeking a successful outcome of the

[96] *Yearbook of the European Convention on Human Rights 1969: The Greek Case*, (The Hague: Martinus Nijhoff, 1972), 519.
[97] *Falanga* seems to have been a commonly used technique when torture was applied in Greece during the Junta Regime. It typically consisted of tying down persons in a lying position and beating the bare soles of their feet with an instrument like a stick or wire.
[98] The European Commission and European Court of Human Rights, *Yearbook of the European Convention on Human Rights: The Greek Case 1969,* (Hague: Martinus Nijhoff, 1972), 519.
[99] *Yearbook of the European Convention 1968,* (The Hague: Martinus Nijhoff, 1970).

Case and repercussions for the Greek regime. Accusations of torture became the primary tool to achieve this. One of the hallmark strategies of Amnesty International has been to shame state offenders into submission. During the Case, the Scandinavian goal was very similar. In this, the NGO and the applicant states never fully succeeded. Greece withdrew from the Council of Europe in 1969 and the torture continued.

Taking a stand against human rights violations in another country, regardless of the effect on the abuses in question, had its own rewards. Although the Junta's persecutions continued, Scandinavian officials had managed to make an outcast of Greece. When the news broke that Greece had withdrawn from the Council of Europe, John Lyng's immediate reaction, as stated in an interview, was "we have achieved the wanted result".[100] The successful resolution of the complaints in 1970 secured the governments involved a foreign policy victory. The outcome helped to cement the image – in the minds of many Scandinavians at the very least – of Denmark, Norway and Sweden as proponents of human rights. Neither was the historical significance of the Case lost on those involved. Looking back, some six years after the Case was concluded, John Lyng wrote:

> …the Greek Case was very interesting. It was what I would call the first typical, interstate case in conjunction with the Convention on Human Rights, and the first case where the Conventions' collective system of guaranties were put to a real test. In some respects, one could claim that it represents a milestone in international law.[101]

The Case became a milestone, first and foremost, because Scandinavian states had challenged the contemporary notion of human rights as a domestic purview. Although it only became apparent afterwards, and was certainly not intended as such from the start, the Case would also be significant in the history of the human rights issue of torture. The four states that filed complaints against Greece in Europe, i.e. Denmark, Norway, Sweden and the Netherlands, would all contribute, to various degrees, to the adoption of new norms against torture at the United Nations.

[100] See interview with John Lyng, "Aktuelt. Hellas trukket seg ut av Europarådet. Intervju med utenriksminister John Lyng", from the Norwegian Broadcasting Corporation, dated 12 Decemeber 1969, (author's translation) at the National Archives: http://www.nb.no/nbsok/nb/dc4cd6669166412362af0f5a68434d6f?index=10, (20 October 2016); Quote in Norwegian: "vi har oppnådd det resultated vi satt oss".
[101] Lyng, *Mellom øst og vest,* (author's translation), 242.

## Conclusion

Denmark, Norway and Sweden responded to, in part, a convoluted set of domestic pressures when they filed their identical complaints against Greece in 1967. The notion that Scandinavian states had nothing to gain by filing the Complaints should be discarded. The NATO affiliation with Greece, a country that over-night had turned into a right wing, military regime, was used to challenge the existing security policy in Norway. Domestic politics in the late 1960s was a crucial component to what became one of the most coordinated – and later celebrated – human rights interventions in Scandinavian history. That some of the Norwegian government's most prominent critics – Finn Gustavsen in particular, but also Aase Lionæs – cooperated with anti-junta activists across Nordic borders, primarily through national Committees for Democracy in Greece with crucial ties to the Swedish Amnesty Section, is, of course, significant. While the existence of such networks can be highlighted, it is impossible to measure their influence on Scandinavian governments based on the present source material.

A point worth emphasizing in the context of this thesis is that the Greek Case was not intended as a reaction against torture. Violations of article 3 of ECHR (torture) were not included in the original list of complaints of 20th September. Accusations of torture were, instead, filed in March 1968, *after* Amnesty International had published its report on the situation in Greece. By expanding the joint Complaints to include torture, and by adding the AI report to their list of evidence for such violations, Scandinavian states adopted the NGO's anti-torture agenda to put further pressure on Greece. By doing so and by obtaining a favorable ruling from the European Commission, Scandinavian foreign ministries had set a president for an active involvement with the human rights issue of torture. While strong, anti-junta sentiments and activism were present in many countries at the time, a significant feature sets the three, Scandinavian states apart. In Denmark, Norway and Sweden it was the foreign ministries that led the most important anti-junta protest. It took the form of a joint, inter-state complaint before the European Commission of Human Rights.

The dynamic between the Nordic states is as interesting as it is relevant. The possibility of multilateral action had first been discussed within the Nordic framework. Iceland and Finland recused themselves and remained peripheral throughout the Greek Case. Sweden had effectively given Denmark and Norway an ultimatum when the Swedish Foreign Ministry

informed its counterparts that it would precede with a complaint, alone if necessary. Denmark and Norway committed soon after. Among Nordic nations, participation in the Council of Europe and proximity to Sweden were decisive factors. Even though Sweden had been the first state that decided to file, Norwegian officials ended up leading the effort before the European Commission. The Norwegian Foreign Ministry enjoyed a high profile throughout, and the affair became a good case for both Norway and Foreign Minister John Lyng.[102] When it came to further cooperation on the human rights issue of torture, Sweden would never let itself be surpassed again.

[102] That the Norwegian government received a substantial share of the reward for its part in the interstate complaints and, effectively, managed to reverse the negative impression from the Nasty Case have already been noted by historians, see Tamnes, *Oljealder,* 358.

# 3 The Declaration

The adoption of a declaration has been the traditional first step towards human rights conventions at the UN. The primary difference between the two is that the former is not considered legally binding. Today, the evolution of international law has made the distinction less clear. In 1973 Amnesty International started lobbying for a convention against torture. The organization's Campaign for the Abolition of Torture, which should be counted as one of the major human rights campaigns launched in 20th Century, had lasted less than a year when Sweden initiated UN resolution 3059 (XXVIII), which rejected torture and resolving to return to the issue at a later date. Two years later, the General Assembly adopted the United Nations Declaration Against Torture (1975). The initial part of this chapter discusses a possible link between Amnesty International and Sweden prior to the adoption of resolution 3059. The remaining bulk of the chapter is an account of how officials of the Swedish Foreign Ministry, in cooperation with counterparts in the Netherlands, developed a plan, throughout 1975, to introduce a new human rights instrument against torture. The aim is to identify key actors involved, shed light on Swedish policies on the Declaration, and examine the extent of Sweden's interaction with neighboring states.

## The Campaign for the Abolition of Torture

The initiative for a convention against torture came from Amnesty International. On human rights day, December 10th, 1972, AI launched its hugely ambitious campaign against torture. The goal was, in the words of the international chairman Seán MacBride, to make "torture as unthinkable as slavery". Parts of the more publicized efforts of the initial campaign included: the publication of a comprehensive report, *Report on Torture,* which chronicled torture and ill-treatment in sixty-one countries; the gathering of more than one million signatures on a petition to the UN General Assembly, imploring that body to outlaw the torture of prisoners throughout the world; and an international conference, held to discuss and give its recommendations on how to combat torture, which gathered more than 300 delegates from different countries, NGOs and the UN.[103]

[103] Clark, *Diplomacy of Conscience,* 45–46; Korey, *NGOs and the Declaration of Human Rights,* 171–172.

These dramatic efforts, all parts of the crowning achievements of the Campaign and occurring in late 1973, have been given much attention by scholars. They were certainly taken into account when William Korey characterized Amnesty's campaign for the abolition of torture as "one of the most successful initiatives ever undertaken by an NGO".[104] In the literature the link between AI's Campaign and the actions of the states that would drive the effort for new instruments against torture at UN has been tentative, at best. In writings on Amnesty International, the link has been inferred rather than documented. This inference is based on largely two factors. First, the chronology, in itself, is convincing; three years after AI began lobbying for new norms, the UN adopted the Declaration against Torture. Second, Hans Danelius and J. Herman Burgers – two experts intimately involved in the drafting of CAT – noted in their authoritative work on the process that: "Stimulated by this non-governmental [AI's] campaign some governments decided in the autumn of 1973 to bring the question of torture before the UN General Assembly."[105] The statement is as correct as it is vague.

Referring to Danelius and Burgers, Ann Maria Clark noted: "Observers widely acknowledged that AI's campaign served as the stimulus for the decision of the sponsoring governments to bring torture before the General Assembly at that time."[106] Questions remain, however. How did this happen? Why was Sweden suddenly "stimulated"? Did Swedish officials follow Amnesty's plan, or their own? And how did the two most important state actors in the pursuit of new norms, Sweden and the Netherlands, interact with one another, not to mention the UN? While the earliest interactions cannot be fully explained based on the present source material, the following account seeks to shed some light on the questions above.

When AI's Campaign for the Abolition of Torture was approaching its zenith, Sweden introduced the draft that would be adopted as GA resolution 3059 (XXVIII) on November 2nd, 1973. The resolution rejected torture and, more importantly, resolved to return to this issue at a future session.[107] It did not say anything about a human rights instrument or the

[104] Korey, *NGOs and the Declaration of Human Rights,* 171; Samuel Moyn later echoed this sentiment when he stated: "All in all, it was one of the most successful exercises in moral consciousness-raising ever.", see Moyn, Samuel, *Human Rights and the Uses of History,* (London/New York: Verso, 2014), 103.
[105] Burgers and Danelius, *The United Nations Convention against Torture,* 13.
[106] Clark, *Diplomacy of Conscience,* 53; See also Rodley's summary of events in 1973, in Rodley, *The Treatment of Prisoners,* 43–44.
[107] Rodley, *The Treatment of Prisoners,* 20–23.

establishment of new norms. Nor could the resolution have been a response to the crowning achievements of AI's Campaign, mentioned above – they all unfolded around the time, or after, the resolution was being planned. Of the many initiatives Amnesty launched in 1973, it is a letter sent as an appeal to all states attending the General Assembly that provides us with the most direct – albeit tentative – link between the NGO and the state that would take the lead in formulating new norms against torture.

In connection with the gathering of the General Assembly in 1973, Amnesty International sent a letter to attending governments. It was dated September 26th, 1973, and was signed by the organization's Secretary General, Martin Ennals. In connection with work on this thesis, only the letter sent to the Norwegian Government has been found. It is a standardized letter, however, and it is clear that identical letters were sent to a great number of nations, including Sweden. The letter that reached Norway on October 1st was addressed to Prime Minister Trygve Bratteli. It explained that Amnesty had substantiated cases of "officially sanctioned torture in every part of the world", and that the "suffering caused by such cruelty" had now led the organization to launch a far-reaching International Campaign for the Abolition of Torture. The letter continued:

> The enclosed 'Proposed Draft for a U.N. Resolution on a Convention on Torture and the Treatment of Prisoners', which was drawn up by the special Committee of International Non-Governmental Organizations on Human Rights, forms an integral part of the Campaign […] Also attached is a further Draft Resolution, the 'Proposed Draft for a U.N. Resolution on Respect for International Humanitarian Law', for which we are also seeking support.
>
> It is our hope that your government will be prepared to table and sponsor either or both of the enclosed Draft Resolutions at the forthcoming meeting of the United Nations General Assembly.
>
> I plan to visit New York from September 29 to October 10 to discuss with government delegations […] the above Draft Resolutions, with particular reference to the Draft Resolution on Torture, and would very much appreciate an opportunity to meet with your government's representatives at the United Nations.[108]

In AI's annual report from 1973–74, the NGO stated that 140 governments had been asked to back their Draft resolution for a convention against torture, and that Secretary General Martin Ennals had discussed this matter with representatives from 15 countries.[109] One of the 15 countries that sent representatives to meet Ennals in New York, was Sweden. Although the meeting is briefly referred to in a few Scandinavian sources, no record of what transpired has

[108] Letter from Martin Ennals to Tryggve Bratteli, dated 26 September 1973, NMF.
[109] AI, *Annual Report 1973–74,* 15.

been found.[110] It is still worth noting that roughly a month prior to the adoption of the 1973 resolution, Swedish officials met with the Secretary General of Amnesty International in New York. Amnesty had requested the meeting to discuss the introduction of a convention against torture.

Resolution 3059 was never intended to introduce a new instrument, and a Swedish/Dutch plan to establish a declaration against torture did not materialize until early 1975. Why then did Swedish officials meet with AI in the fall of 1973, and why was resolution 3059 initiated? The letter from Martin Ennals reached Scandinavian states roughly three weeks after the Coup in Chile, which unfolded from the 11th of September that year. While the Coup and the death of Allende were immediately condemned in Scandinavian states (as in many other nations), the subsequent handling of refugees from Chile became, perhaps in Norway in particular, a sensitive issue.[111] Once more, a right wing military dictatorship was having an impact on domestic affairs in Scandinavian states. While the handling of refugees would be a feature in domestic politics in the months and years ahead, it is possible that Sweden's rejection of torture at the General Assembly in 1973 – and indeed the meeting with AI in, or around, early October – was an initial, spontaneous response to yet another Junta.

When recently asked about the origins of the Swedish involvement, Hans Danelius – the primary architect behind the Declaration and the Convention against Torture – briefly explained the events of the early years thus:

> In the early 1970s, military regimes in Chile, Argentina, Uruguay and other countries in Latin America had perpetrated serious violations against the civilian population, and refugees from these countries arrived in Sweden. There was pressure on the Swedish Government to act against these human rights violations. One such measure was to seek, at the international level, the strengthening and further development of the ban on torture that already existed in various international conventions and declarations. Organizations such as Amnesty International and the International Commission of Jurists also sought to influence Sweden in such a direction.[112]

While it may be argued that seeking to expand existing, human rights norms is an agonizingly slow response to an acute problem, this would be to miss the point. Faced with

[110] See letter from Y. Möller with attached report, sent to K. Eliassen of the Norwegian Foreign Ministry, 21 December 1973, NMF.
[111] See Tamnes, *Oljealder,* 361–362; Buggeland, Torstein Gilje, *Et ukonvensjonaelt flyktningarbeid: Norge og statskuppet i Chile i 1973,* (Master thesis: University of Oslo, 2010).
[112] Written communication from H. Danelius, to author, 15 March 2017 (author's translation).

growing domestic concern about violations of human rights in military dictatorships, and in Chile in particular, the Swedish Foreign Ministry took up a human rights issue with which they had previously had success. By putting the issue of torture before the General Assembly in 1973, Sweden had signaled its willingness to engage the issue and, by extension, the military dictatorships that perpetrated such violations. It was signal politics, conducted before an international audience, with the public at home in mind.

Sweden did not act in a vacuum. The Swedish draft resolution was submitted together with delegations from Austria, Costa Rica, the Netherlands, Trinidad and Tobago.[113] Among the small circle of nations were already several of the states that would later be active participants in the pursuit of a binding convention. Even so, no state actor was advocating the introduction of a new human rights instrument at this early stage. Swedish officials, well aware that Amnesty International was aiming for a convention, seemed unsure how to proceed. Having achieved a resolution that resolved to return to the issue of torture at a future session of the General Assembly, Swedish officials were tentatively committed, however. The Swedish Delegation in New York explained the situation to Stockholm:

> The adoption of the Resolution seems to entail that we [Sweden] have an obligation to finish the work. How this best can be accomplished is, perhaps, too early to determine. Amnesty's Conference on torture in December, as well as Nordic discussions will probably provide some suggestions.[114]

Resolution 3059 (XXVIII) would start the ball rolling, as it were, in process that would see annual activity on the issue of torture at the UN until CAT was adopted in 1984, and indeed beyond (although, 1976 proved a bit of a slow year).

In 1974, the Netherlands initiated the next step at the UN by introducing GA resolution 3218 (XXIX).[115] The resolution called for the submission of reports on domestic, legislative, administrative and judicial measures against torture from all UN member states. State Reports were to be filed with both the General Assembly and the upcoming *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, scheduled to convene in Toronto in 1975. Furthermore, paragraph 4 of resolution 3218 requested the upcoming Crime Congress to include rules against the use of torture in their "elaboration" of

[113] Burgers and Danelius, *The United Nations Convention against Torture,* 13.
[114] Ibid.
[115] See Rodley, *The Treatment of Prisoners,* 23–28.

the *Standard Minimum Rules for Treatment of Prisoners*, and to report thereon to the General Assembly at its thirtieth session. These Minimum Rules were non-binding guidelines that had been elaborated and adopted by a similar Congress in 1955. The Netherlands, quite possibly responding to Amnesty International's plan for the Congress (see below), had created a mandate, on behalf of the Crime Congress, for reporting to the General Assembly, seemingly on non-binding guidelines. By early 1975, Swedish and Dutch officials had developed a plan that involved using this mandate to introduce a new human rights instrument.

## Enter the Diplomats

The plan to create a declaration against torture was gradually formulated by, primarily, three officials from two countries: Hans Danelius, Nils Rune Larsson and Theo van Boven. In Sweden, the principal official was Hans Danelius. He had a background from the Swedish Legal System and had worked at *Svea Hovrätt* (the Court of Appeals). He had also been with the Ministry of Justice for a few years. He was stationed at the European Commission on Human Rights between 1964 and 1967. Danelius took up a position at the Foreign Ministry in 1971 and became Chief of its Legal Department a few years later. His official title was Under Secretary for Legal and Consular Affairs, a position Danelius would hold until 1984, the year CAT was adopted. During the establishment of the Declaration against Torture, Danelius worked closely with Nils R. Larsson, a Director (initially Deputy Director) of one of the divisions dealing with international law and human rights within the Department. Larsson left the Legal Department of the Foreign Ministry in 1978, as the drafting process on CAT was starting.[116] Theo van Boven was Danelius and Larsson's preferred contact in the Dutch Foreign Ministry. Van Boven was an expert in international law who also a held a personal engagement with human rights that would last a lifetime. He would become United Nations Director of Human Rights in 1977 and would later hold various posts at the UN, including as Special Rapporteur on Torture.

On the 14th of January 1975, a little over two months after the adoption of resolution 3218, Nils R. Larsson travelled to Hague to discuss strategy on how best to utilize the mandate provided by paragraph 4 with his Dutch counterparts. Present at the meeting was Theo van Boven and representatives from the Dutch Ministry of Justice. It was agreed that the Minimum Rules did not provide the best framework for further initiatives. While not

[116] Written communication from H. Danelius, to author, 15 March 2017.

excluding the possibility of achieving new norms against torture with a supplementation to the Minimum Rules, Dutch officials argued for an alternative approach. It consisted of using the Fifth UN Congress to introduce a non-binding declaration against torture. The question was whether or not paragraph 4, which essentially mandated the Fifth UN Crime Congress to discuss the issue of torture and report back to the General Assembly, could be used to introduce a new instrument. One day after the meeting, Larsson instructed the Swedish Delegation in New York to contact the UN Secretariat and find out how officials there interpreted the fourth protocol. The question, according to Larsson, was whether the Crime Congress' sole mandate was to supplement the Standard Minimum Rules, or if the Congress "had the freedom to develop a separate document on the subject [torture]."[117] A few days later, the Swedish Delegation reported that they had reached Professor Mueller of the Crime Prevention Section. In Mueller's view, the Conference had "complete freedom" to developed a separate document.[118] There are strong indications that Swedish officials never explained what a separate document here entailed. During the first half of 1975, the Swedish Ministry withheld information from most actors including the UN (see below). The clear exception to this rule was other Nordic states.

One week after the meeting in Hague, Larsson shared the Swedish/Dutch plan for the upcoming Crime Congress with other Foreign Ministries in the Nordic region.[119] In his correspondence, Larsson gave an account of his meeting with van Boven and made an inquiry to ascertain each country's view on Nordic cooperation on this matter. The Norwegian response declared that the Dutch and Swedish initiatives [the resolutions of 1973 and 1974] had been noted with "great satisfaction". While Norway was not planning to send a large delegation to the Crime Congress, the Norwegian Foreign Ministry would like to participate in further efforts on this issue.[120] The Danish replied in similar fashion, stating that they would be happy to participate in any of the preparatory work, or attend any related meeting, leading up to the Congress.[121] The Finish Foreign Ministry welcomed, in principle, Nordic cooperation on this new initiative, but requested more time to consult some of the

[117] Telex from N. Larsson, dated 15 January 1975, SMF; Note from Zette Qvist (with Theo van Boven's account of the meeting attached), dated 15 January 1975, SMF.
[118] At the time, Gerhard O. W. Mueller was the Assistant Director-in-Charge of the Crime Prevention and Criminal Justice Section. He also served as Executive Secretary for the Fifth UN Congress, see UN doc. A/CONF.56/10, "Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders", 62; Telex from the Swedish Delegation in New York, dated 20 January 1975, SMF.
[119] See letters from N. Larsson, dated 16, 17 and 20 January 1975, SMF.
[120] Letter from Kjell Eliassson, dated 31 January 1975, SMF.
[121] Letter from Thomas Rechnagel, dated 20 February 1975, SMF.

delegates they presumed would attend the Conference.[122] Icelandic officials indicated that their attendance at the Crime Congress was uncertain due to a shortage of personnel and resources. They failed to specify their position on the pursuit of a new human rights instrument. Swedish officials interpreted the Icelandic response as a lack of interest, on their part, in Nordic cooperation on the issue of torture, at least for the time being.[123] Geopolitical factors and the comparative small size of its bureaucracy contributed to Iceland's, at times, peripheral position in Nordic cooperation on human rights. Swedish officials would, on occasions, exclude Iceland from important communications on the question of torture.

What had prompted the Swedish request to Nordic states? There had already been Nordic communication on the "question of torture" – most notably in connection with the resolutions of 1973 and 1974 – but in January 1975 Sweden informed its neighbors that it was planning an initiative with the Netherlands that might result in the introduction of a new human rights instrument. The preferential treatment given to the Netherlands had probably started out of necessity, as it was the Netherlands that had secured the mandate to act at the Crime Congress with their resolution in 1974. As Larsson noted in his letter to Nordic ministries:

> Resolution nr 3218 (XXIX) constituted great and unexpected progress. With progress comes a certain responsibility for those states that have, so far, actively pursued the question of torture.[124]

The inference here being: Sweden and the Netherlands (as opposed to the remaining Nordic states). Not in any way was Sweden proposing coordinated action of a similar nature as during the Greek Case. Instead, Swedish officials were politely informing their Nordic counterparts – per the custom of Nordic cooperation on human rights – of what they planned to do next. Taking into account that this particular plan entailed the possible introduction of a human rights instrument, it was the very least they could do. Still, the Nordic framework ensured that Denmark, Finland, Norway and Iceland were informed of the plan some six months prior to other states, and in a much greater detail.

In late February 1975, Larsson asked the Swedish Delegation in New York to gather information on any plans being made at the UN on the issue of torture in connection with the

[122] Letter from Göran Bundy, dated 5 February 1975, SMF.
[123] Telex from the Swedish Embassy in Reykjavik, dated 29 January 1975, SMF; Note from N. Larsson, to Ambassador Kajser, dated 31 January 1975, SMF.
[124] Letter entitled "Förtrolig", from N. Larsson, dated 16 January 1975 (author's translation), NMF.

upcoming Congress. Larsson's instruction was to obtain such information, preferably, "without disclosing our plans for the potential development of a draft".[125] Sweden was not above using a certain amount of stealth in the pursuit of human rights. The Swedish Delegation, which did a good job of supporting Stockholm in the preparatory work leading up to the Congress, quickly ascertained that UN officials harbored no ambitions to launch a new instrument. On March 7th, the Delegation reported that the Secretariat was preparing a draft text (for possible adoption) aimed at making the Minimum Rules applicable to *all* categories of prisoners, regardless of the reason for their detainment.[126] Interestingly, this conformed to one of Amnesty International's many proposals for the upcoming Congress.[127] It would later become apparent that the United States favored an initiative along such lines. While Sweden was also in favor of strengthening the Minimum Rules, making these guidelines applicable to all categories of detainees was considered a minimum response to the mandate provided by resolution 3218. Sweden and the Netherlands were already aiming for more.

The assessment made by the Swedish Delegation in New York was seemingly confirmed in April when Stockholm received an early draft of the UN document being prepared for the Congress. Swedish officials were asked to keep the text confidential. The Crime Congress was still months away and the Secretariat's preparatory draft did not presuppose that any particular decisions would be taken at the Congress. It was clear enough, however, that the general aim of the conference, as envisioned by the UN, was to review, discuss and consider the Minimum Rules and to secure their widest possible dissemination.[128] The text did not mention any specific measures against torture. If this were to be the only response to resolution 3218 (XXIX), an opportunity would have been lost. Around this time – in early 1975 and no later than May 5th – Hans Danelius began preparing two draft resolutions. The first was an amendment to the Minimum Rules that specifically targeted torture, the other a draft resolution introducing a declaration. The drafts were sent to Theo van Boven on the 26th of May, in time for the Dutch official's scheduled visit to Stockholm at the end of the month.[129]

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[125] Letter from N. Larsson, dated 27 February 1975 (author's translation), SMF.
[126] Letter from O. Rydbeck, dated 7 March 1975, SMF.
[127] AI, *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,* (London: Amnesty International, 1975).
[128] Letter from J. Hagard (with attached UN Document), dated 10 April 1975, SMF.
[129] See letter from H. Danelius, to the Foreign Ministries in Denmark, Finland and Norway, with attached draft declaration entitled "Toronto Congress Draft Resolution", 2 June 1975, SMF.

Danelius sent an account of the meeting with van Boven to Nordic ministries on the 2nd of June, explaining that he had written two draft resolutions in preparation for van Boven's visit, one introducing a declaration, the other aimed at strengthening the Minimum Rules. Sweden was prepared to implement both. Given van Boven's "strong preference" for a declaration, it had been decided to consider the resolution with amendments to the Minimum Rules a "fall back position". Although the Dutch and the Swedes were now more or less in agreement on the specifics of the draft attached to the letter, Danelius had informed van Boven that he would consult, and ask for comments on the draft, from the Nordic states. In turn, van Boven had stated that he would present the draft to the Dutch Ministry of Justice.[130]

## Revealing the Initiative

The next step was informing selected states to solicit support for the Swedish/Dutch initiative at the upcoming Crime Congress. Between them, the Swedish and Dutch Foreign Ministries reached a wide array of countries. While the division of labor between key figures like Larsson, Danelius and van Boven seemed to be working efficiently, instructions sent to the diplomatic services came so abrupt that some Embassies had to contact their home Ministries to ask for information on what was going on. When the Dutch Embassy in New Delhi contacted the Swedish Embassy on site to inform that a letter, with an attached draft on a human rights instrument, had been given to the Indian Foreign Ministry stating that "[i]t is the intention of the Government of Sweden and the Netherlands to introduce this draft Declaration on the protection of all persons from being subjected to torture…" it came as a surprise to the Swedish diplomats. When Sweden's Ambassador to India, Lennart Finnmark, reported the event to Stockholm a few days later, he gave a detailed account of his communication with the Dutch and ended his message by stating that "This Embassy is, incidentally, lacking information from the Department on this matter."[131] Some mishaps in communication are, of course, to be expected when multiple embassies in numerous countries are asked to coordinate efforts. Also to blame was the strategy of selective information sharing favored by Larsson, Danelius and van Boven. At this early stage, actors not necessary to the deliberations on the torture issue were informed when needed, if at all.

[130] See letter from H. Danelius, to the Foreign Ministries in Denmark, Finland and Norway, with attached draft declaration entitled "Toronto Congress Draft Resolution", 2 June 1975, SMF.
[131] Letter from Lennart Finnmark, dated 15 July 1975, SMF.

The Dutch Delegation in New York circulated the proposed draft for a declaration to all member states of the so-called Western European and Others Group (WEOG) sometime in July 1975.[132] This unofficial voting block included most of Europe, as well as Canada, Australia and New Zealand, with the United States participating as an observer. Shortly after Sweden and the Netherlands had started circulating their proposed draft to other governments, various interested parties reached out to the Swedish Foreign Ministry. John P. Owens, a political officer at the American Embassy in Stockholm, contacted Danelius to inform the Swedish Ministry that the Americans were planning to introduce two resolutions aimed at providing better protection against torture by strengthening the Minimum Rules. Owens wanted to know how Sweden would view such a proposal. Danelius, while still in favor of strengthening the Minimum Rules, warned that since not much time had been allocated to discuss the issue of torture at the up-coming Congress, it would not be wise to introduce too many initiatives. He made it clear that Sweden would, per their agreement with the Dutch, concentrate on their separate resolution and the introduction of a declaration.[133] As a curtsey, Owens sent the texts of the American draft resolutions to Danelius in late August.

While the American overtures seemed honest enough, there are indications that Danelius' somewhat guarded reply was warranted. The first American draft resolution proposed to amend Rule 4 (1) and 84 (1) of the Minimum Rules to make these provisions applicable to all categories of prisoners. The second American draft resolution took aim at linking the mandate given by resolution 3218 (XXIX) with the draft Principles on Freedom from Arbitrary Arrest and Detention, already prepared for the Commission on Human Rights. The Americans proposed that a group of experts should examine these principles for possible inclusion to the Minimum Rules, that the recommendations of the experts be brought before the General Assembly, and that the Human Rights Commission and the *Sub Commission on the Prevention of Discrimination and protection of Minorities* should assist and comment on the task of the working group.[134] Such an approach could have bogged down the deliberations, which in any event could lead to nothing more than an expansion of the Minimum Rules, for years. In short, the Americans proposed an alternative to the Swedish plan that would not have ended in a declaration, and certainly not a convention. No Swedish

[132] Telex from the Swedish Delegation in New York, dated 22 July 1975 (author's translation), SMF.
[133] Note from H. Danelius, dated 8 August 1975, SMF.
[134] Letter from John P. Owens, dated 18 August 1975, SMF.

reply to Owens second letter has been found. Swedish officials would later deem American involvement on the issue of torture in the latter half of 1975 disruptive.

More positive, yet problematic, was an Australian proposal that reached Danelius around the same time as his contact with Owens. On the 11th of August, the Australian Embassy in Stockholm informed Danelius that their government was planning to propose a resolution to the Fifth Congress, which recommended that a group of experts be given the task of writing a draft *convention* against torture. Such a course would have been near identical to what Amnesty International had proposed. As a statement against torture, a convention clearly trumped a declaration. Danelius responded in much the same way as he had done with the Americans; he informed the Australians of the Swedish/Dutch plan for the Congress and sent the proposed resolution to the Australian Embassy.[135] Not much is known about the Swedish/Australian exchange, but it is hardly difficult to surmise why Swedish officials attempted to discourage the Australians from initiating work on a convention. Australia's proposal, like that of the United States, could nullify the Swedish/Dutch plan for the Crime Congress. Both Larsson and van Boven had, early on, expressed their doubts about Amnesty's proposal to immediately begin work on a convention. The Swedish Foreign Ministry did not deem the Congress or the UN General Assembly ready for such an undertaking. Even if the Australian proposal was accepted, there was always the risk that the efforts of any working group, and the later interstate deliberations, could drag on for years. The momentum on the issue of torture could have been lost or, at the very least, out of Swedish hands.

Both the American and the Australian outreach had come with a sense of urgency. In both instances, Danelius was contacted just days before delegates from WEOG-states were set to discuss the proposed declaration in a meeting in New York, scheduled for the 13th of August 1975. After the meeting had been held, the Swedish Delegation could report to Stockholm that the Swedish/Dutch proposal had received support from "near all countries" in WEOG. Australia, it was noted, was now "prepared to support our proposal". Washington was still considering the issue.[136] Pertinent questions at this point might be why a country like Australia, were officials seemed just as enthusiastic towards the prospect of a convention

[135] Telex from H. Danelius to the Swedish Delegation in New York, 11 August 1975, SMF; Letter from N. Danelius to Australian Ambassador John D. Petherbridge, 11 August 1975, SMF.
[136] Telegram from the Swedish Delegation in New York, 14 August 1975, SMF.

against torture as their Swedish counterparts, voluntarily withdrew their initiative? And how was the United States put, for the lack of a better term, on the defensive on this issue? The answer, most readily available, is that Swedish and Dutch officials were better prepared. The Americans offered little new on the issue of torture, the Australians nothing concrete. Sweden and the Netherlands, on the other hand, were proposing an already written instrument with a reasonable chance of becoming adopted. Nor had the Swedish/Dutch plan been developed completely in a vacuum. With support given from Denmark, Norway, and Finland, months before the decision to commit had even been taken, most of Northern Europe was already on board. While this might not have had as great an impact in the General Assembly, it was certainly noticeable in WEOG. Sweden and the Netherlands also counted on support from states that had previously been active on the issue, such as cosponsor on the crucial anti-torture resolutions of 1973 and 1974. Throughout the summer of 1975, Sweden and the Netherlands had actively been seeking support from selected countries in Africa, America and Asia in an attempt to cross the regional divide that sometimes hampered efforts at the UN. By August, there were no initiatives on the torture issue that could rival the momentum Sweden and the Netherlands had obtained for their draft declaration. The next step would be decided at a Congress with representatives from roughly one hundred nations.

## The Turning Point in Geneva

The Fifth UN Congress on the Prevention of Crime and Treatment of Offenders began in Geneva on September 1st, 1975. The Congress, originally scheduled in Toronto, had been moved when the UN refused the host nation a one-year extension. According to Amnesty International, the Canadian government sought the extension under pressure to refuse entry to observers from the Palestine Liberation Organization. AI had been one of the actors strongly opposed to granting the extension. In July, Martin Ennals informed the UN Secretary General, Kurt Waldheim, that any postponement would mean a "serious delay for the implementation of vital proposals regarding the prevention of torture".[137] Whether Ennals was referring to AI's own proposals, or had in mind the Swedish/Dutch draft that had been circulated to nations in July, is unknown. Regardless, the UN could hardly, in good conscience, delay a Congress with near one thousand registered participants, which had been held every fifth year since 1955, due to problems with one delegation of observers. No extension was granted and the event was instead moved. Thus, the amended version of a draft

[137] AI Newsletter, August 1975, Vol. V No. 8, see amnesty.org (reference: NWS 21/008/1975), 4; UN doc. A/CONF.56/10, *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,* 59.

Hans Danelius had originally entitled "Toronto Congress Draft Resolution" never made it to Toronto, and was introduced in Geneva.[138] The Congress started at the scheduled date, however, and the change of venue seems to have had little impact on what followed.

More than 900 registered participants from 101 countries gathered in Geneva. The majority of attendants were sent by national governments, but an impressive range of intergovernmental and nongovernmental organizations were also represented. Among these were the International Labor Organization, the World Health Organization, the Council of Europe, the League of Arab States, INTERPOL and thirty-two NGOs. In the latter category, attending with consultative status, was Amnesty International. The organization had sent a delegation of eight members from various countries. From the London Office came AI Secretary General Martin Ennals, coordinator on the Campaign for the Abolition of Torture, Dick Oosting, and Nigel S. Rodley as a legal adviser.[139]

Denmark and Norway, as Sweden had previously been informed, only attended with three representatives each. Sweden sent eleven representatives. Head of the delegation was the Swedish Minister of Justice, Lennart Geijer.[140] Prior to the Congress, there had been some deliberation in the Swedish Foreign Ministry as to whether or not Nils R. Larsson should attend the Conference. The uncertainty ended on the 13th of August, however, when Larsson's presence at the Congress was requested from the Cabinet.[141] The decision reflects the high emphasis the Swedish government put on the human rights issue of torture. Also on the Swedish team was Jan Ståhl, First Secretary at the Permanent Mission in New York. Ståhl had played a key role in the preparatory work leading up to the Congress. Larsson was there to oversee the efforts on the torture issue and, if possible, contribute to the adoption of the declaration. The Netherlands was also represented with a fairly large delegation, consisting of some sixteen members. The Dutch had sent their Minister of Justice, Andreas A. M. van Agt, as the head of the delegation. Also present was First Secretary of the Embassy in New York – and Ståhl's counterpart at the UN – Antonius H. J. M. Speekenbrink. Another Dutch representative, who played a role on the issue of torture, was Albert Mulder, the Secretary

[138] The numerous references to the Toronto draft, congress or conference in Nordic communications throughout 1975 all pertain to the Conference in Geneva.
[139] UN doc. A/CONF.56/10, *Fifth United Nations Congress,* 60 and 74.
[140] Ibid., 66–67 and 70–71.
[141] Telex from H. Danelius, dated 13 August 1975, SMF.

General of the Dutch Ministry of Justice.[142] When Larsson later gave his report on the Swedish/Dutch cooperation during the Congress, he described Mulder's involvement as "very active". Larsson further noted that even the Dutch Minister of Justice had expressed a keen interest in the issue while he was in Geneva.[143]

For a Congress with roughly one hundred national delegations present, the Nordic states enjoyed somewhat disproportionate success on the opening day. Most noticeable was the election of the Finish Minister of Justice, Inkeri Anttila, as President of the Congress. On the issue of torture, designated as agenda item 8 (d), Sweden and the Netherlands were also making headway. The Congress' Steering Committee decided to begin deliberations on the issue on the first day. It was further resolved that the Swedish/Dutch draft resolution would form the basis for discussions on the mandate given by GA resolution 3218 (XXIX). In a later, confidential report, the Swedish Foreign Ministry attributed this success to their preparatory work and contact with the UN Secretariat, prior to the Congress. This had facilitated the circulation of the Swedish/Dutch draft on the first day, a contributing factor also noted by Rodley.[144] Nor could it have hurt Sweden's chances that a Minister from Finland, one of the countries informed of the Swedish plan for the Crime Congress since at least January 1975, now presided over the conference. When Inkeri Anttila became president of the Congress, she also became ex officio member, and was then elected chairman, of the Steering Committee that had favored the Swedish/Dutch proposal.[145]

Nigel Rodley has noticed that the Congress report on the discussions of torture is "so sketchy that the reasoning behind changes to the draft remains obscure".[146] The report condenses two discussions into one and relates only superficial observations. Details of the discussions, and indeed information on which states contributed to the various topics, is not provided. An indication of the complexities of this topic is, perhaps, that Rodley, who himself attended the Congress, holds that "it is hardly possible to reconstruct the full development of this text [Swedish/Dutch draft]". Instead, Rodley presents an analysis of the changes between the original Swedish/Dutch draft submitted on the first day, and the final draft adopted by the

[142] UN doc. A/CONF.56/10, *Fifth United Nations Congress,* 70.
[143] Ibid., 70–71; Letter from N. Larsson, entitled "Tortyrfrågan", dated 18 September 1975, SMF.
[144] Note from J. Østern, dated 30 September 1975, (with attached Swedish report entitled "Förtrolig"), Dossier 26.8/9, Volume VII, NMF, 3.; Rodley, *The Treatment of Prisoners,* 28–29.
[145] UN doc. A/CONF.56/10, *Fifth United Nations Congress,* 63.
[146] Rodley, *The Treatment of Prisoners,* 29.

Crime Congress as a recommendation to the General Assembly.[147] While numerous, minor changes to the text were done after deliberations, they need not be mentioned here. A major change, according to Rodley, was made in the definition that describes the purposes for which severe pain or suffering are inflicted. The Swedish/Dutch draft envisioned two purposes: that of obtaining "information or confessions" and that of "punishing" a person for acts committed or suspected. It was a narrow definition and Rodley speculates that this "was doubtless made clear in the working group's discussion", for in the final text the purposes now include the motive of intimidation.[148]

While the change described above increased the scope of the definition, other changes narrowed it. A significant example is the change inserted by the working group that specified that an act of torture or ill treatment, as defined by the instrument, must be committed "by or at the instigation of a public official".[149] Similar acts committed by private individuals would have to be dealt with by domestic, penal law. While the scope and implications of the instrument was changed, the declaration that emerged was based on the Swedish/Dutch draft. Sadly, the state of UN sources provide scant information on what transpired and which states contributed. Even the Swedish source material offers little information on the crucial 12 days in September. One reason for this is, perhaps, that Larsson attended the Congress himself and much of the Swedish strategy was discussed on site, not sent in telegrams back and fourth from Stockholm.

Some further information on the process is contained in a confidential, Swedish report sent to the Norwegians. That the Scandinavians shared their most intimate reports is, of course, indicative of the close ties between the respective ministries. In addition to the intersessional working group, or as a sub-committee of it, a so-called editorial committee was set up to aid in the efforts. The Swedish assessed that this committee handled "most of the work load". It was made up of delegates from Australia, Austria, Great Britain, Greece, the Netherlands, Sweden, the United States, Yugoslavia, Zambia, and the NGO Amnesty International. The draft reviewed by this committee was then approved by the working group and presented to one of the main committees (referred to as "Section IV"). Discussions in the main committee led to numerous proposals for changes to the draft, and it was necessary to put down a new

[147] Rodley, *The Treatment of Prisoners,* 28–35.
[148] Ibid., 30.
[149] Ibid.

editorial committee for a second review. Such developments, of course, could not have been predicted in advance, and the Swedish report seems to indicate that, by happy coincidence, "Yugoslavia, the Netherlands, Great Britain, Sweden and Zambia were represented" in the second review committee. Presumably, the greatest gain was that delegates from Sweden and the Netherlands attended both sub-committees most intimately involved with effecting changes to the Swedish/Dutch draft.[150]

What role Amnesty International played in the committees is largely unknown. The organization had submitted a 16-page document asking the Congress to recommend that the General Assembly begin work on a convention against torture. This was just one of several agenda items that AI proposed for the Crime Congress, however. Other suggestions included an endorsement of the draft Principles on Freedom from Arbitrary Arrest and Detention[151]; the establishment of codes of ethics for police, military and medical personnel; a new interpretation of the Minimum Rules confirming that the rules apply to all prisoners; the creation of a new committee on the treatment of prisoners with annual meetings; and a proposal to give the UN Secretary-General the authority to investigate reliably, attested allegations of violations of the Minimum Rules.[152] Officials in Scandinavian states had deemed most of the proposals unrealistic in early 1975.[153] Interestingly, the two American draft resolutions discussed by Owens and Danelius one month prior to the Congress, which emphasized the need to make the Minimum Rules applicable to all categories of detainees, may have been the United States' attempt at putting at least some of Amnesty's proposals on the Congress' agenda. In any event, the momentum against torture at the UN was, increasingly, being driven by Sweden and the Netherlands. Most of the proposals AI had submitted received little or no attention during the Conference. None of this, however, dampened Amnesty's enthusiasm for what was happening in Geneva.

[150] Report entitled "Förtrolig", prepared by the Legal Department of the Swedish Ministry of Foreign Affairs, dated 15 September 1975, Dossier 26.8/9, Volume VII, NMF, 4; See also Burgers and Danelius, *The United Nations Convention against Torture,* 15–16.
[151] See Resolution 7 (XXVII) of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.
[152] AI, "Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders", (London: Amnesty International Secretariat, 1975), 3.
[153] See letter entitled "Förtrolig", from N. Larsson, 16 January 1975, SMF; "Oppfølging av FN's generalforsamlings resolusjon 3218 (XXIX)…, 31 January 1975, NMF."

In September, possibly while the Congress was still in progress, Amnesty International issued its monthly newsletter to members. It began with a fairly conspicuous headline in capital letters:

> *GENEVA MEETING 'CAN BE TURNING POINT'*
> *AI* URGES UN BODY TO RECOMMEND MACHINERY FOR STOPPING TORTURE AND PROTECTING PRISONERS AGAINST ILL-TREATMENT.[154]

The phrase "turning point" originated with Martin Ennals who was extensively quoted in the newsletter. Ennals made it clear that Amnesty had consistently stressed the need for better national and international safeguards against torture. He then reminded readers of what had happened in Greece, stating: "The Greek trials have shown once again that torture, denied at the time, does take place and must be stopped." The "trials" he was referring to were the proceedings against former members of the Junta and the military police, which had begun in Greece following the reinstitution of democracy there in 1974. That torture had been "denied at the time" was most likely a reference to the Greek Case and the Juntas' ferment denial of accusations put forth by AI and Scandinavian officials. Ennals continued:

> The Fifth UN Congress on the Prevention on Crime and the Treatment of Offenders can be a turning point in these efforts by moving the question of torture from the realm on non-committal denunciation into the stage of specific and concrete action by the UN and its agencies.[155]

To Martin Ennals, both the leader of Amnesty International and a contemporary observer attending the Congress, there was a link between events in Greece and the breakthrough unfolding in Geneva. The larger "efforts" on the question of torture he spoke of, which for AI had included the establishment of a convention since the goal was formulated in 1968, now seemed to be bearing fruits. Ennals' instincts proved correct. In the pursuit of new human rights instruments against torture, the Fifth UN Congress on the Prevention of Crime proved a turning point.

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[154] AI Newsletter, Vol. V No. 9, September 1975. See Amnesty.org: Index number: NWS 21/008/1975, 6 October 2016; The Newsletter provides no other date than "September 1975". A careful read of the document, however, reveals that parts of the text have been written after the Congress opened on 1 September, while other sections refers to Amnesty's upcoming Eight International Council in St Gallen, Switzerland, which began on 12 September 1975. While the date of publication is in doubt, the newsletter was, at the very least, written while the Fifth UN Crime Congress was in progress between 1 and 12 September.

[155] M. Ennals quoted in AI Newsletter, Vol. V No. 9, September 1975. See Amnesty.org: Index number: NWS 21/008/1975, 6 October 2016.

Rodley notes that by the end of the Congress the draft declaration was being acclaimed as the major achievement of the Congress, comparable in significance to the establishment of the Standard Minimum Rules in 1955.[156] While they had achieved their goal for the Congress, Swedish officials managed to restrain their optimism. On the day the declaration was approved, Swedish officials on site sent a telegram to Hans Danelius in Stockholm, which simply informed that the draft declaration had passed, and that based on the deliberations during the Congress, further discussion in the General Assembly had to be expected.[157]

## The 30th Session of the UN General Assembly

By the 30th Session of the UN General Assembly, the human rights issue of torture had taken on a momentum of its own. Amnesty International's long lasting and far reaching efforts at creating awareness, combined with a new instrument on the General Assembly's agenda, made various states more inclined to engage the topic. The declaration never became the point of contention that some Scandinavian officials had feared. In fact, the draft declaration from the Geneva Congress only underwent one amendment and was quickly adopted by acclamation in the Third Committee.[158] During the plenary meeting of the General Assembly at the time of adoption, there was little discussion on the Declaration. Time was instead spent debating the situation in Chile and the possible introduction of a High Commissioner for Human Rights.[159] *The UN Declaration on the Protection on All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Declaration against Torture) was adopted on December 9th, 1975. To Swedish officials, intent on managing the details, the process was less simple. During the 30th Session of the General Assembly, much of the communications between the Swedish Delegation in New York and the Foreign Ministry in Stockholm revolved around the perceived interference of one of the superpowers. While the Soviet Union would later put up a formidable opposition to certain aspects of Swedish plans for the Convention against Torture, it was the United States that caused Swedish officials most concern in connection with the Declaration in 1975.

Both superpowers utilized torture in human rights discourse during the 30th Session. The Soviets strongly criticized the military regime in Chile for its use of torture, while the

[156] Rodley, *The Treatment of Prisoners,* 34.
[157] Telegram from Lagerfelt, dated 12 September 1975, SMF.
[158] Rodley, *The Treatment of Prisoners,* 36–37.
[159] For an example of Soviet criticism against Chile, see UN doc. A/10404, Report of the Third Committee, Agenda Item 73 & 74.

Americans gave their outspoken support for the declaration.[160] In his speech before the General Assembly, US Secretary of State Henry Kissinger declared:

> One of the most persistent and serious problems is torture, a practice which all nations should abhor. It is an absolute debasement of the function of government when its overwhelming power is used … The United States urges this assembly to adopt the Declaration of the recent World Congress on this issue in Geneva.[161]

While Kissinger was declaring his seemingly unambiguous support, Swedish diplomats were increasingly concerned about American dispositions made behind the scenes. On the 29th of September, Jan Ståhl reported from New York that the "American ideas", which "we in Geneva succeeded in keeping out of the Preamble", was now being circulated at the General Assembly. What had caused alarm at the Swedish delegation was a draft of the Secretary General's report, which was set to introduce the declaration to the General Assembly. According to Ståhl, it had been suggested that the Congress had merely adopted the declaration "in principle". Furthermore, the draft in question had ended by listing all amendments proposed during the Congress, not merely those adopted. Ståhl informed Stockholm that he would meet with Speekenbrink at the Dutch Delegation to discuss a joint intervention.[162]

Nils R. Larsson was not overly concerned about the list of amendments or suggestions that the declaration had merely been recommended in principle – an assertion he felt could not possibly be justified. He wanted to keep an eye on the situation, however, and expressed his desire to attend the deliberations in the Third Committee in person, especially if the "obstruction policy" continued.[163] US' engagement with the human rights issue of torture during the 30th Session was not deemed a problem until the Swedish Foreign Ministry learned that American officials were seeking support for a US proposal set to be launched in connection with the declaration. The Americans were trying to revive a cartain part of their proposal for the Crime Congress, which had received little attention in Geneva. It substantially amounted to putting down a group of experts to issue a report on the use of torture worldwide.[164] While Sweden could, in principle, support such an initiative, neither Larsson, Danelius or Ståhl wanted the item discussed anytime prior to the adoption of the

[160] UN doc. A/10404, Report of the Third Committee, Agenda Item 73 & 74.
[161] H. Kissinger speaking at the UN GA, 1975, quoted in telegram from O. Rydbeck, dated 23 September 1975, SMF.
[162] Letter from J. Ståhl, to N. Larsson, dated 25 September 1975 (author's translation), SMF.
[163] Message from N. Larsson, to J. Ståhl, 29 September 1975 (author's translation), SMF.
[164] Letter from N. Larsson, to the Swedish Embassy in Hague, dated 10 October 1975, SMF.

declaration. In fact, Larsson preferred that the Americans would table their proposal until the following year.[165] The Dutch substantially agreed, and an effort was launch to persuade the Americans from interfering with the adoption of the declaration.

Swedish and Dutch officials understandably feared that a proposal to study all UN member states' records on torture, could lead to some controversy. If raised in connection with the declaration, both items could be delayed. The most likely way for an opposing state to achieve this was to suggest that further deliberations were needed and that one or both items should be referred to the Commission on Human Rights. To Swedish officials, in late 1975, the only thing worse would have been a rejection of the declaration by the General Assembly. The situation was considered serious enough to warrant direct intervention in Washington. Swedish and Dutch Embassies informed the US State Department of their misgivings, on multiple occasions, from 9th October and onwards. In his visit to Washington at the end of the month, the Dutch State Secretary for Foreign Affairs, Peter Kooijmans, also raised the issue.[166] The situation was further complicated by inconsistencies in the American response.

On the 14th October, the State Department reassured Swedish officials that the United States would vote in favor of the declaration. The US had deemed the atmosphere in New York sufficiently positive to achieve both the adoption of the declaration and the establishment of a working group of experts. The respective UN delegations could be left to work out the timing of the two initiatives. The American Delegation to the UN, it was assured, "was prepared to work with the Dutch, Swedes and others in this matter".[167] Larsson, clearly not convinced, gave instructions that the Americans should receive no Swedish reply for the time being.[168] At the time, a rumor circulated among the Netherlands and Nordic states that Kissinger had issued a "firm instruction" that the American proposal should be put before the *current* General Assembly. Such an instruction would be in contravention to the assurances the Americans had given the Swedish Foreign Ministry. It was also rumored that Congressman Fraser had taken a keen interest in this issue.[169] Barbara Keys has written an interesting account of the efforts of Congressman Fraser, and others, at giving the human rights issue of

[165] Letter from N. Larsson, to J. Ståhl, dated 10 October 1975, SMF.
[166] Telegram from the Swedish Embassy in Washington, dated 29 October 1975, SMF; Telegram from the Swedish Delegation in New York, dated 15 October 1975, SMF.
[167] American statement summarized in telegram from the Swedish Embassy in New York, dated 15 October 1975 (author's translation), SMF.
[168] Note from N. Larsson, to J. Ståhl, dated 15 October 1975, SMF.
[169] Telegram from the Swedish Delegation in New York, dated 30 October 1975, SMF.

torture a place in American foreign policy. By 1975, the US Congress was focusing on reducing foreign (or at very least military) aid to states with a record of gross human rights violations.[170] Henry Kissinger resisted such changes to US foreign policy.

It is possible that the realist Henry Kissinger may have been trying to divert pressure at home by making an initiative on the international stage – something that Scandinavian governments had done, in part, when filing complaints against Greece seven years prior. It is equally possible that Swedish officials were right in deeming the initiative an obstruction policy. By 1975, the figure of Henry Kissinger was part of the problem. Interestingly, a notable similarity between the two parties was that Swedish officials were just as mistrusting of any major initiative on the torture issue that could interfere with *their* plans. Officials in Stockholm, who remained unsure of American intentions throughout the 30th Session, maintained their opposition to the US proposal until the declaration was adopted. The only thing the Swedish officials wanted from the Americans on this issue, was their vote in favor of the Declaration.

The Americans never managed to gain popular support for their initiative during the 30th Session. The US State Department, which had put fourth an initiative with little chance of success, eventually backed down. In late November, Olof Rydbeck of the Swedish delegation noted that the *New York Times,* anticipating the adoption of the declaration, had printed an article that emphasized Kissinger's endorsement of the declaration during his earlier address to the UN. The American proposal for an expert group had been withdrawn, the article explained, following consultations with friendly governments.[171] On substance, if nothing else, the American proposal was out of touch with the momentum created by Amnesty International and the Swedish/Dutch efforts for the establishment of a new human rights instrument. The US proposal for an expert group on torture received support from Chile, however – an indication, surely, that it was time to abandon the initiative.[172]

American dispositions never made a significant impact on the adoption of the Declaration. Even so, the way in which Swedish officials responded to what was seen as interference with their initiative tells us something about the human rights policy that Sweden was conducting.

[170] Keys, *Reclaiming American Virtue,* 162–177.
[171] Telegram from O. Rydbeck, dated 25 November 1975, SMF; It has not been possible to identify the article in question.
[172] Note from the Swedish delegation in New York, dated 24 November 1975, SMF.

In the pursuit of new norms against torture, Sweden was never simply a facilitator, or capable initiator, that put forth resolutions for the consideration of the community of nations. Throughout 1975, the Swedish Foreign Ministry had attempted to persuade other countries from putting forth initiatives on the issue of torture – the United States and Canada are two notable examples. It had also shepherded the draft declaration through the Crime Congress and protested directly to Washington when it was feared that American initiatives might complicate the adoption of the Declaration at the General Assembly. Furthermore, by utilizing the mandate provided by resolution 3218 to introduce a draft declaration, Sweden and the Netherlands had circumvented the UN Commission on Human Rights. Swedish officials not only initiated the UN process, they also did their utmost to safeguard the initiative.

In the period between the larger community of nations got a chance to discuss the draft declaration in Geneva in early September, and the day the Declaration was adopted by the General Assembly in early December, three months had gone by. It had been, for the lack of a better term, human rights by blitz. Even Scandinavian states, which had received prior warning, were struggling to keep up. Neither Denmark nor Norway had sent large delegations to the Crime Congress. Prior to September, the outcome had been uncertain. When Sweden and the Netherlands suddenly succeeded in putting a new human rights instrument before the General Assembly, the Norwegian Foreign Ministry reacted quickly.[173] A mere twelve days after the Crime Congress was concluded on September 12th, Norwegian Foreign Minister Knut Frydenlund gave his speech during the General Debate in New York. He praised Amnesty International, lamented the invocation of the principle of non-interference by Chile, and asked the General Assembly to adopt the declaration against torture. In doing so, he gave his support for the instrument even more explicitly than his Swedish counterpart.[174] The Nordic framework for cooperation on foreign policy had given Scandinavian states prior warning, a chance to evaluate the draft declaration months before other states, and, ultimately, declare open support at an early stage. Diplomatic courtesy dictated, however, that Sweden should take the lead on any agenda item it had initiated. As far as Nordic foreign

[173] It had partly been Henry Kissinger's speech and endorsement of the draft declaration that prompted the Norwegian Delegation in New York to recommend that the Norwegian Foreign Minister should do the same, see Telegram from the Norwegian Delegation in New York, to the Foreign Ministry in Oslo, 23 September 1975, NMF; Telegram from the Norwegian Delegation in New York, to the Foreign Ministry in Oslo, 24 September 1975, NMF.

[174] See transcript of K. Frydenlund's speech from 26 September 1975 in UN document A/PV.2364; and transcript of S. Andersson's speech from 23 September 1975 in UN document A/PV.2358.

ministries were concerned, the next step in the pursuit of human rights instruments against torture at the UN would be up to Sweden.

## Conclusion

Even though anything as ambitious as the establishment of a new human rights instrument would have been sanctioned at the highest level of governments, a surprisingly small circle of bureaucrats were spearheading the effort for the UN Declaration against Torture. In Sweden, Hans Danelius and Nils R. Larson, both from the Legal Department at the Foreign Ministry, were the primary driving force. Jan Ståhl and to some extent Olof Rydbeck of Sweden's Permanent Mission to New York conducted the Swedish affairs at the UN. On the Dutch side, Theo van Boven played a crucial role, and Speekenbrink was active in New York. While numerous other officials and staff members were involved, the trio Danelius, Larsson and Van Boven had formulated the larger strategy. Together, Swedish and Dutch officials produced a draft declaration, had it introduced on the first day of the Fifth UN Crime Congress, managed to have delegates present in crucial groups working on the draft, and did their best to secure its adoption by the General Assembly. In doing so, they circumvented the UN Commission on Human Rights. As during the Greek Case, the successful pursuit of the human rights issue of torture rested, primarily, on creative officials exercising a considerable degree of freedom in obtaining a specific goal.

The introduction and adoption of the Declaration against Torture happened relatively quickly. Even like-minded Nordic states, informed every step of the way, were scrambling to keep up. While the Scandinavian engagement with the human rights issue of torture had begun in unison during the Greek Case, the pursuit of new human rights instruments against torture at the UN was now beginning to look like a distinctly Swedish affair. Prior to the Crime Congress, where Denmark and Norway's contribution had not been needed (or by Sweden particularly wanted), the outcome had been highly uncertain. When it became clear that the draft declaration would be put before the General Assembly, Denmark and Norway took steps to declare their support as openly as possible. In the Nordic context, further momentum on the human rights issue of torture at the UN now rested with Sweden, the country that had initiated a new human rights instrument.

# 4 Initiating a Convention

This chapter deals with the relative short period between the adoption of the Declaration against Torture and the Swedish decision to initiate work on a convention at the UN in 1977. As previously noted, the introduction of a declaration has been the customary first step towards human rights conventions at the UN. Even so, Sweden had made no formal commitments to undertake such a course. A convention was a possibility, neither promised nor ruled out. This chapter offers a discussion on factors that led the Swedish Foreign Ministry to initiate the UN process that would ultimately end with the adoption of CAT. It also explores Swedish relations with the Netherlands and, briefly, Nordic states in this period. The central question is what caused Sweden to act, and whether or not foreign actors, states or NGOs, put pressure on Sweden. The timing of the launch coincided with a seminal year in human rights developments. In 1977, Jimmy Carter became president and emphasized a commitment to human rights as a feature in American foreign policy. Carter's influence on human rights developments in general has been a recurring theme in the literature. Having established the primary factors contributing to the Swedish decision, the place of the Scandinavian engagement with the human rights issue of torture in the theoretical framework on larger human rights developments will, briefly, be discussed.

## A Shift in Relations

In early January 1976, Nils R. Larsson travelled to the Hague to meet with Theo van Boven to discuss past and future events. Both officials agreed that their cooperation had so far been fruitful. Larsson informed van Boven that the Swedes were now considering initiating work on a convention against torture that should include mechanisms of enforcement. The two officials proceeded to outline a plan for what this would entail. Both agreed that the convention should be based on the Declaration against Torture and that a series of new principles were not needed. How to enforce the convention was another matter. The mechanisms established with the ICCPR – which would enter into force two months after Nilsson and van Boven's meeting – were seen as less than ideal. The main problem was that so few states seemed prepared to accept such machinery. Yet introducing completely new (and thus unknown) mechanisms could, it was presumed, lead to skepticism and resistance towards the convention from multiple state actors. Van Boven suggested using the *International Convention on the Suppression and Punishment of the Crime of Apartheid*

(1973) as inspiration. He also suggested that making the convention against torture automatically applicable in "trust and Non–Self–Governing Territories", as in article 15, section 2, of the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), might be worth a try.[175] Several of these initial ideas were later discarded. Even so, both bureaucrats were willing to envision a legally binding instrument against torture with mechanisms of enforcement and wide jurisdiction.

While the basis for further cooperation between the two countries thus seemed present, there were indications that van Boven was not necessarily speaking for the Dutch government on this issue. Alluding to the problem during the meeting, van Boven expressed his hopes that "the resistance he had previously met from the Netherlands Ministry of Justice regarding a convention had now been surpassed given the results on the declaration".[176] To Swedish officials, this was just one of a series of discouraging signs from the Dutch. Throughout 1976 and 1977, it became clear that the Netherlands were preparing to press another initiative they had separately put forth during the 30th Session of the General Assembly, i.e. resolution 3453 (XXX). This resolution had requested, among other items, the formulation of new, international principles based on the draft principles on freedom from arbitrary arrest and detention; a draft code of conduct for law enforcement officials; and that further elaboration should be given to principles of medical ethics with regards to the protection against torture.[177] The list included (and were probably based on) several items that AI had previously suggested in connection with the Fifth UN Congress on the Prevention of Crime and Treatment of Offenders. The Dutch resolution took no steps to expand the legal ban on torture, however. Referring to the resolution, Larsson later stated "I have never understood the purpose of this initiative, but I had nearly the entire sponsor group against me when I proposed it should be dropped." For Sweden, the initiative was a distraction that could upset the momentum for a convention. In an internal, Swedish memo, Larsson indicated that Speekenbrink had been behind Dutch policy on this issue, in parentheses he added: "(against van Boven's whishes)".[178]

[175] Report from N. Larsson, entitled "Mänskliga rättighetsfrågor", dated 26 January 1976, SMF, 1–2.
[176] Statement by T. van Boven, summarized by N. Larsson in report entitled "Mänskliga rättighetsfrågor", dated 26 January 1976, (author's translation) SMF, 1.
[177] GA resolution 3453 (XXX), see un.org: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/001/66/IMG/NR000166.pdf?OpenElement, (18 October 2016).
[178] Note from N. Larsson, dated 27 May 1977 (author's translation), SMF.

It was equally clear to Swedish officials that no short cuts would be possible with the establishment of a legally binding convention. Any UN member state could initiate the process by putting forth a resolution to that effect, but the wording of each single article would have to be negotiated under the auspices of the UN Commission on Human Rights. Swedish assessments from mid-1976 indicated bleak prospects of reaching any kind of consensus on a convention. Analysis of voting patterns from the Commission on Human Rights led Swedish official to believe that there were high resistance towards new, human rights mechanisms of enforcement among non-aligned states. It was feared that launching an "ambitious" enterprise like a human rights convention might prove contra productive.[179] The enterprise could end up with a diluted convention, a mere symbolic treaty void of meaning, or fail outright and thus reduce the chances of seeing the adoption of a convention against torture in the future. Another significant drawback in 1976 was that Sweden did not have a seat at the Commission on Human Rights, nor for that matter did the Netherlands or any of the Nordic states.[180] That would change in 1977.

While the Swedish Foreign Ministry was deliberating on how to begin efforts for a convention, Theo van Boven was appointed director of the UN Division for Human Rights. His replacement in at the Dutch Foreign Ministry, J. Herman Burgers, would later play a prominent role in securing the adoption of CAT (his most notable contribution was as chairman-rapporteur of the Working Group[181] between 1982 and 1984). In 1977, however, Swedish relations with the new official did not begin well. Following initial correspondence and a meeting, Larsson noted that Burgers' preliminary attitude towards cooperation on several human rights issues, and crucially towards a convention against torture, had been negative.[182] After Theo van Boven left the Dutch Foreign Ministry, it took years before Swedish/Dutch co-operation on the human rights issue of torture fully recovered.

The combined effect of Dutch opposition towards a convention, Sweden's lack of direct influence at the Commission on Human Rights, and the perceived, poor prospects of reaching a consensus on new human rights machinery discouraged the Swedish Foreign Ministry from

[179] Telegram from N. Larsson, dated 29 July 1976, SMF.
[180] See link entitled "Members from 1947–2005" at the Office of the High Commissioner for Human Rights: http://www.ohchr.org/EN/HRBodies/CHR/Pages/Membership.aspx, (2 March 2017), 5.
[181] The Working Group was a group, or rather multiple groups, established by the UN Commission on Human Rights to formulate a draft convention against torture from 1978 to 1984, see Burgers and Danelius, *The United Nations Convention against Torture,* 31–32.
[182] Telegram from N. Larsson, to Ståhl, dated 23 June 1977, SMF.

further action. Perhaps to their credit, Swedish officials never entertained the option of launching a convention without notable mechanisms of enforcement, the adoption of which would undoubtedly have been easier to secure. Such a convention would not advance international human rights and would be open for criticism by NGOs and, possibly, oppositional parties at home. Having already achieved the Declaration, the Swedish Foreign Ministry was inclined to wait for better prospects.

## Pressure to Act

Almost immediately after the adoption of the Declaration against Torture, the leadership in the Swedish Legal Department had considered using the momentum already created to launch a convention. Due to perceived opposition towards binding mechanisms of enforcement in the Commission on Human Rights, and the discouraging signs from the Netherlands, Swedish officials opted to wait. The Foreign Ministry continued to monitor any movement on the human rights issue of torture at the UN, however. A series of events in the period from May to September 1977 caused any complacency that may have prevailed in the Swedish Foreign Ministry to be replaced by a sense of urgency.

Recently asked about the decision to initiate work on CAT, Hans Danelius reminisced that there had been a certain amount of expectation that Sweden would start the UN process.[183] Given Sweden's previous record on the human rights issue of torture, it is likely that hopeful NGOs, even sympathetic bureaucrats or experts working within effected fields, would have looked to Sweden as a promising candidate for sponsoring a convention against torture. In fact, with a minor caveat, the present source material substantiates this claim, at least as far as NGOs are concerned (see below). With the Netherlands out of the picture, it is harder to see which *state* actors might have encouraged Sweden to embark upon such an endeavor, however. Scandinavian states, of course, exhibited the right mix of interest in this particular issue and the general, positive attitude towards binding, human rights treaties that would have been needed for approaching Sweden on the subject of initiating a convention. The only problem is that no signs of prompting from any state actor can be found in the archives of the Swedish Foreign Ministry. A study of the present sources reveal that the Swedish Legal Department was, indeed, under some pressure to act. The earliest pressure that can be documented came from within own ranks, however.

[183] Communication from H. Danelius, to author, 15 March 2017.

In May of 1977, Larsson received a memorandum signed by Anders Thunborg, the newly appointed Swedish ambassador to the UN.[184] Trying to ascertain the extent of preparations needed for the upcoming General Assembly in 1977, the Swedish Delegation had started preliminary inquiries on various issues important to Sweden. In connection with the "question of torture", Thunborg had "taken the liberty" of reaching out to other delegations to learn how certain states viewed the possible initiation of a convention against torture.[185] The Swedish Permanent Mission had learned that other states not in favor of a convention – the United States and the Netherlands were specifically named – were now contemplating various other initiatives on the torture issue. Taking this into account, Thunborg continued by arguing for why a convention against torture should be initiated, by Sweden, as soon as possible. He presented two main arguments. The first was that it would be preferable for Sweden if work on the convention began before initiatives from other states preoccupied the UN. To achieve this, the Swedish delegation advocated maintaining a line of consensus among states interested in the human rights issue of torture, such as the United States and the Netherlands. The final argument went to the heart of the matter:

> "I consider another argument to be that we should make sure that a draft convention is prepared in the Commission on Human Rights – any other body is hardly conceivable – while we have a seat there and can influence the work."[186]

Sweden had rotated into a position on the Commission on Human Rights in 1977; the position was scheduled to end in 1979.[187] Thunborg concluded by outlining a major commitment on Sweden's part: "If we take such an initiative, I presume that we should have a draft declaration in reserve prior to the next session of the Commission [on Human Rights]".[188]

The Foreign Ministry in Stockholm, well aware of the window offered by the seat at the Commission, seemed in agreement with the larger points of the report. Larsson felt the Delegation at the UN struck a too positive note on the prospect of maintaining consensus

[184] Anders Thunborg took over from Olof Rydbeck as ambassador to the UN in 1977. Thunborg (Social Democrat) went on to become Minister of Defense in 1983.
[185] Memorandum to N. Larsson, signed by A. Thunborg, dated 14 May 1977 (author's translation), SMF.
[186] Ibid., 5; There is some uncertainty connected to whom the "I"-person here represents. It is likely that the memorandum had been prepared by the secretary at the Permanent Mission, Jan Staahl, and later signed by the Ambassador Anders Thunborg. The memo represented the assessment of Swedish officials in New York.
[187] See link entitled "Members from 1947–2005" at the Office of the High Commissioner for Human Rights: http://www.ohchr.org/EN/HRBodies/CHR/Pages/Membership.aspx, (2 March 2017).
[188] Memorandum to N. Larsson, signed by A. Thunborg, dated 14 May 1977 (author's translation), SMF, 6.

among concerned states, however. In his reply to New York, he emphasized that competing initiatives from other states might delay work on a convention. He agreed that the Swedish Delegation should aim at consensus for as long as possible, but *not* if a this meant that a convention was delayed or "pushed to the background" at the UN.[189] The report gives the impression that the Swedish Delegation in New York had taken it upon itself to test the waters, as it were, for the possible introduction of a convention in 1977. There is some uncertainty connected to this prospect and it is possible that the impression given is simply due to the choice in language. Hans Danelius was also responsible for consular affairs and, usually, strategy on the torture issue was formulated in Stockholm. It is certainly possible that a request for some sort of survey on this issue – which no longer is part of the records – was sent from the Legal Department to the Swedish Ambassador or, just as likely, the First Secretary of the Embassy, Jan Ståhl. In any event, the report sent to Stockholm represented the assessment of the Swedish Delegation in New York, and it is now one of the earliest signs of movement on the decision to initiate a convention – the possibility of such a course had, of course, been held open since the adoption of the Declaration in 1975.

Also in May 1977, an early draft for a *Convention concerning the Treatment of Persons Deprived of their Liberty* was produced by a group of experts at the request of the Swiss Committee Against Torture – the NGO had been founded that very year to seek the establishment of a convention aimed at preventing torture and ill-treatment by implementing systematic inspections to places of detention.[190] Another NGO-initiative was also gaining momentum at this particular time. Sometime in early 1977, the International Association of Penal Law (IAPL) and the International Commission of Jurists (ICJ) had decided to sponsor the writing of a draft convention against torture. Throughout the year they consulted with Amnesty International, the Red Cross and multiple other actors. The effort culminated in an international conference in Sicily on 16–18th December 1977, where a *Draft Convention for the Prevention and Suppression of Torture* was agreed upon. The IAPL then submitted the draft to the UN on 15th January 1978.[191] These drafts constituted the most direct efforts of

[189] Telex to J. Staahl from N. Larsson, dated 27 May 1977 (author's translation), SMF.
[190] Jean Jacques Gautier was a Swiss lawyer and banker. He founded the Swiss Committee Against Torture in 1977. He is one of those interesting characters that contribute to international activism at exactly the right time. He has been described in the literature as having been influenced by the Greek Case as well as AI's Campaign for the Abolition of Torture, see Pennegård, Ann-Marie Bolin, "An Optional Protocol, Based on Prevention and Cooperation" in *An End to Torture: Strategies for its Eradication,* ed. Dunér, Bertil, (London/New York: Zed Books, 1998), 40–42; Burgers and Danelius, *The United Nations Convention against Torture,* 26–27.
[191] Burgers and Danelius, *The United Nations Convention against Torture,* 26.

NGOs, so far, at defining legally binding instruments against torture. They would not only play a part during the establishment of CAT, but were, in some sense, competitors to the draft Sweden would later submit.

## The Decision to Commit

Throughout the summer of 1977, it became clear that if Sweden wanted direct influence on the future of the human rights issue of torture at the UN, not to mention maintain its own position as a leading proponent on the issue, inaction was not an option. Too many other actors – states as well as NGOs – were preparing initiatives. Interestingly, of the states planning initiatives in 1977, Sweden was most closely aligned with the agenda of the NGOs. Sweden, Amnesty International, IAPL, ICJ and the Swiss Committee Against Torture were all seeking a legally binding instrument against torture; at the time, few other states were. This put Sweden in a unique position. The country had been a primary driving force behind the Declaration in 1975, it now had a seat at the Commission on Human Rights, and the Swedish Foreign Ministry seemed to enjoy the full support of its own government in the pursuit of new norms. No other nation could make a similar claim. In the last half of 1977 and the early part of 1978, Sweden would take full advantage of this fact.

Exactly when the decision to commit was taken is surprisingly difficult to document. Sweden had been in something resembling a holding pattern on the question of whether or not to introduce a convention since the Declaration against Torture was adopted in 1975. The extent of further, Swedish involvement on the issue now rested on two decisions: The decision to put forth a resolution that initiated work on a convention at the UN, and the decision as to whether or not the Legal Department should produce and submit a draft convention. The Swedish Delegation in New York had advocated that Sweden should commit on both accounts in May 1977. While Stockholm held both options open, and indeed some preliminary efforts at discussing these options with other states were conducted by Swedish officials in New York, the higher echelons of the Legal Department seemed uncommitted throughout the summer of 1977.[192] On the 4th of July, Larsson noted that his discussions on, among other items, Swedish plans for the torture issue with representatives from other states at the Council of Europe in late June had produced "meager results".[193] Danelius still

[192] Telegram from the Swedish Delegation in New York, to H. Danelius, 9 August 1977, SMF.
[193] Telegram from N. Larsson, to J. Staahl, 4 July 1977 (author's translation), SMF.

described the state of affairs as "we are considering … putting forth a resolution to initiate work on a convention" as late as the 19th of August.[194]

On the 11th of July, a letter from the International Commission of Jurists reached the Swedish Foreign Ministry by way of Olle Dahlén, Swedish Ambassador for relations with NGOs. The letter was signed and written by the Secretary-General of ICJ, Niall MacDermot.

> I am writing to enquire whether it would be possible for a grant to made [sic] from your Swedish Government fund towards the cost of organizing a meeting of experts to prepare a Draft Convention declaring torture an international crime. …
>
> Martin Ennals of Amnesty International and I are agreed that if the IAPL can be persuaded to sponsor a Draft Convention on this subject, it would be the best possible launching pad for the proposal.[195]

Not only were the NGOs surging ahead in a concerted effort to produce a draft convention against torture, they were asking the Swedish Foreign Ministry for funds. Niall MacDermot also contacted Hans Danelius "directly" – probably by phone – to further explain the NGO initiative. Afterwards, Danelius noted to the Swedish Delegation in Geneva that the NGOs hope their initiative "can be directly adopted by the General Assembly, or, alternatively, after work has been done [on the draft convention] by a small number of states". Also, MacDermot wanted to know if Sweden would sponsor the NGO initiative at the Commission on Human Rights. Danelius told MacDermot that it was "way too optimistic to believe that the General Assembly would directly, or after minor work, adopt a NGO initiative for a convention of this type".[196] In this, he was undoubtedly correct.

By August 1977, it was clear to the Swedish Foreign Ministry that other actors, most notably NGOs, would produce a draft convention against torture with the aim of putting it before the upcoming General Assembly or, if further work was needed, before the 1978 session of the Commission on Human Rights. At this point, the path of less resistance for Sweden would have been to simply agree to sponsor the initiative of the NGOs. If it failed due to the actions of opposing states, Sweden would still have signaled its willingness to pursue new norms against torture. That the request to sponsor the NGO initiative was turned down is indicative

[194] Memorandum by H. Danelius, sent to Anders Olander, Jan Karlsson and Olle Dahlén, 19 August 1977 (author's translation), SMF.
[195] Letter from N. MacDermot, to O. Dahlén, 11 July 1977, SMF.
[196] Telegram from H. Danelius, to the Swedish Delegation in Geneva, 24 August 1977 (author's translation), SMF.

of a genuine desire, on the part of Swedish official, to see the successful introduction of a convention against torture. It is also indicative of a lack of trust in other actor's abilities to achieve this goal. What happened next was somewhat typical of Swedish interactions with NGOs on the human rights issue of torture. While not committing to the NGO initiative, Danelius made sure that ICJ received a grant in the amount of 5000 US dollars from the Swedish Government.[197] Then, the Swedish Foreign Ministry went ahead with its own plans for the introduction of new norms. Thus, the most active NGOs were indeed looking to Sweden for sponsorship. They had not asked Sweden to launch its *own* initiative, however, but rather to sponsor the joint plan of AI, ICJ and, ultimately, the IAPL. Once again, the Swedish Foreign Ministry found the NGO's plans for the human rights issue of torture unrealistic.

On the 29th of September 1977, a little over a month after Danelius' interactions with the NGOs, Foreign Minister Karin Söder (Centre Party) made Sweden's intentions official in a speech at the UN. Outlining several human rights issues awaiting the attention of the General Assembly that autumn, she began by addressing the issue of torture:

> We must increase our efforts to strengthen safeguards against torture. The 1975 Declaration on this subject was a step forward although its practical consequences have as yet not been very significant. A legally binding Convention must be our goal.[198]

The Swedish policy of pursuing new norms against torture at the UN, which had started under the social democratic government of Olof Palme in 1973, was now reaching its apex during a non-socialist, coalition government. In this respect, the situation in Sweden at the end of the 1970s was not that different from that in Norway during the Greek Case, a decade prior. In both instances, non-socialist governments that had entered office after decades of near unabridged Labor-rule committed their countries to policies with far-reaching consequences for international human rights. It is a reminder that Scandinavian foreign policies aimed at effecting change in the world seldom belonged to a single party or political movement.

Karin Söder was by no means the only dignitary addressing the issue of torture before the General Assembly. With hindsight, the similarities and differences of approaches among

[197] Memorandum by H. Danelius, sent to Anders Olander, Jan Karlsson and Olle Dahlén, 19 August 1977, SMF.
[198] Extract from Foreign Minister Karin Söder's speech at the UN given on 29 September, 1977, communication dated 30 September 1977, SMF.

concerned nations were apparent. In his speech to the General Assembly, Danish Foreign Minister Knut Børge Andersen specifically addressed torture as a major concern and, more generally, concluded, "…the international protection of human rights can best be achieved by legally binding treaties and international control."[199] The Dutch Foreign Minister, van der Stoel, clearly emphasized his country's position on human rights by not only labeling them as "one of the most burning moral issues in today's world", but also by bringing attention to the situation in Chile, calling for the finalization of the *draft convention on the elimination of discrimination against women,* and calling for the creation of the office of a High Commissioner. He did *not* mention a convention against torture, however.[200] Nor, for that matter, did Jimmy Carter in his address to the General Assembly. In fact, Carter only mentioned human rights in passing when describing what the common bond between Israel and the United States was predicated upon ("…a shared respect for human rights").[201]

On the 8th of December 1977, three resolutions pertaining to torture were adopted by the General Assembly. Resolution 32/62, which requested the Commission on Human Rights to draw up a draft convention against torture, had been initiated by Sweden. Resolution 32/63 had been initiated by the Netherlands to strengthen the Declaration against Torture. This resolution requested that a questionnaire be circulated to UN member states to solicit information on domestic steps taken, including legislative and administrative measures, in observance of the Declaration. Resolution 32/64 had been initiated by India and called for unilateral declarations of support for the UN Declaration against Torture from UN member states.[202] This meant that any state could deposit a statement, at the UN, declaring its support for the principles contained in the Declaration. Scholars have speculated that NGO activities, the notorious developments in post-1973 Chile, and the death of Stephen Biko in 1977 all "stimulated the General Assembly to embark upon on a major programme of standard-setting".[203] The state that actually initiated work on a convention against torture, however, needed no further impetus from any of these trends. Just a year prior, the Swedish Ministry had opted to wait, in part, due to perceived opposition towards binding human rights

[199] Foreign Minister Knut Børge Andersen speaking at the 32nd Session of the General Assembly, 27 September 1977, UN document A/32/PV.9, (section 156–158) 122.
[200] Foreign Minister Max van der Stoel speaking at the 32nd Session of the General Assembly, 28 September 1977, UN document A/32/PV.11, 166–170.
[201] Jimmy Carter addressing the 32nd Session of the General Assembly, 4 October 1977, UN document A/32/PV.18, 307–310.
[202] Rodley, *The Treatment of Prisoners Under International Law,* 40–43.
[203] Ibid., 40–43 and 45.

instruments. With respect to this, nothing had changed. New factors in 1977 were the increased activities of NGOs and states actors and, crucially, Sweden's seat at the Commission on Human Rights. By initiating the convention at this particular time, the Swedish Legal Department was responding to a momentum, which it itself had helped create with the Declaration in 1975, in order to maintain influence over the future trajectory of the human rights issue of torture at the UN. Neither Stephen Biko nor Jimmy Carter had figured into the Swedish decision.

## Failure to Communicate

During the last half of 1977, Nordic cooperation on human rights issues at the UN encountered some self-created obstacles, which lead to, periodically, a strain on relations. Nordic states, used to receiving from each other a certain amount of information on significant human rights initiatives in intergovernmental organizations (and in the UN in particular), had trouble communicating. Throughout 1977, the Swedish Foreign Ministry did not seem to need or want help from any Nordic states to initiate a convention against torture. This caused some resentment, in particular in Denmark and Norway. When the discussions on torture began in the Third Committee on the 31st of October, the Norwegian Delegation at the UN informed Oslo that they were planning to signal vocal support for the Swedish resolution that initiated work on the convention and further make an effort at co-sponsoring it "from the floor". This somewhat spontaneous approach was necessary as Sweden, it was explained, had "refrained from requesting Norway's co-sponsorship on the initiative". Denmark, which had also not received a request, was planning similar measures.[204]

Nordic cooperation on human rights was predicated upon, first and foremost, keeping all states informed of major policy initiatives. This allowed Nordic states to maintain a high profile on a range of issues by cosponsoring or signaling support for specific resolutions put forth by their neighbors. By condemning torture in 1973 and initiating the adoption of the Declaration against Torture in 1975, Sweden had taken the unquestionable lead on the issue of torture. In 1977, Norway and Denmark were actively participating in deliberations on the difficult (and prolonged) question of the establishment of a High Commissioner for human rights. A division of labor on different human rights issues was necessary and unproblematic as long as Nordic lines of communication continued to function and all states were given the

[204] Telex from the Norwegian Delegation in New York, 31 October 1977 (author's translation], NMF.

opportunity to signal their support for various issues. This was, perhaps, particularly important to the Danish and Norwegian Foreign Ministries when it came to the issue of torture, where their involvement stretched back as far as Sweden's to the Greek Case of the late 1960s.

When Finland started exhibiting similar signs as Sweden in late 1977 and broke Nordic consensus on the issue of a High Commissioner – by suggesting that a common majority at the UN was not enough to support the establishment of such an office – the Norwegian Delegation in New York wrote the Foreign Ministry in Oslo asking that the matter be taken up bilaterally:

> It should otherwise be considered from Norway's side to strongly emphasize the importance we put on Nordic coordination and information in connection with human rights issues at the UN. From the Norwegian and Danish side we have always kept the Finish and Swedish Delegations [at the UN] informed on the consultations regarding a High Commissioner for HR, while it is now apparent that at the very least the Swedish Delegation has been involved in consultations [on the issue of the High Commissioner] … without informing the Danish and Norwegian Delegations.[205]

Sweden was thus reported to have not only forgotten to include its neighbors at important junctures during the establishment of new norms against torture, but also to transgress on human rights issues where Denmark and Norway were actively involved. While never questioning Sweden's leading role on the issue of torture, neither Denmark nor Norway had any intention of being degraded to the status of common observers. Instead, foreign officials from both countries made every effort to participate or signal support at important junctures.

It is interesting to note that it had been Delegations stationed abroad – in New York and Geneva – that experienced problems and, ultimately, complained. The tensions were also highest were they were least visible. The inability of UN delegations to coordinate efforts, or the secret complaints sent to Ministries in respective capitols, were never apparent to outside actors. In fact, some of the problems originated with, and were restricted to, the diplomatic services stationed abroad. The higher echelons of the foreign ministries, once removed from the processes unfolding on the floor of intergovernmental organizations, were less affected by perceived, Swedish transgressions. Even so, the pursuit of new norms against torture was one of the seminal human rights issues of the 1970s and 1980s, and any lack of Nordic

[205] Telex from the Norwegian Delegation in New York, dated 7 November 1977 (author's translation), NMF.

communication on the issue would make it more difficult to signal each country's support. It should be fair to state that Nordic cooperation on the convention against torture, all but nonexistent at the beginning of the process, did not begin well.

## 1977

At this juncture, enough empirical evidence has been presented to raise our gaze and discuss, briefly, the place of the processes here outlined in the larger trends of current human rights historiography. Scholars have long understood that the 1970s was an important period in the evolution of human rights. Compared with the slow and reluctant developments of previous decades, the 1970s seems like a breakthrough. One Norwegian historian recently described the importance of the decade by stating: "Human rights broke through the international, political sound barrier in the 1970s."[206] A general surge in human rights activism, the Helsinki Accords, and the Carter Presidency are some of the important features of the decade. Theory, and placing the events discussed in thesis in it, becomes more complicated when we consider a branch of literature that emphasizes the importance of the year 1977, specifically, to the rising prominence of human rights.

1977 was a good year for human rights both internationally and in Scandinavia. Charter 77 was published in Czechoslovakia; Jimmy Carter became president and openly emphasized human rights as a feature in American foreign policy; the Norwegian Foreign Ministry produced an official white paper on the implication of human rights (professed to be the first of its kind in the world); and Amnesty International received the Nobel Peace Prize.[207] This *annus mirabilis* for human rights holds a special place in the literature on the subject – for some scholars it represents the very breakthrough of human rights internationally.[208] To the list of significant events of that year may be added that the UN General Assembly adopted no less than three resolutions dealing with torture on December 8th, 1977, one of which initiated work on a new human rights convention. A common thread in the literature emphasizing the importance of 1977 is how Jimmy Carter's sudden and vocal support for human rights influenced subsequent events.

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[206] Vik, Hanne Hagtvedt, "Internasjonale menneskerettigheter" in *Krig of fred i det lange 20. århundre,* Waage, Tamnes & Vik ed. (author's translation), (Oslo: Cappelen Damm, 2013), 273.
[207] Norwegian official white paper, *St. meld. nr. 93 (1976–1977): Om Norge og det internasjonale menneskerettsvern,* issued 22 April 1977, see Stortinget at: https://www.stortinget.no/nn/Saker-og-publikasjonar/Stortingsforhandlingar/Lesevisning/?p=1976-77&paid=3&wid=f&psid=DIVL127&pgid=f_0055, (23 February 2017).
[208] See Moyn, *The Last Utopia.*

Two decades ago Norwegian historian Rolf Tamnes pointed out that the interest in human rights, certainly as a feature of foreign policy, surged in the 1970s. He identified the Conference on Security and Co-operation in Europe (CSCE) and impulses from Carter as the external influences causing this development.[209] Taking the findings of this thesis into account, we should, at the very least, add Sweden to the list of external influences on Norwegian human rights policies in the 1970s. Not only that, two of the most significant developments in Norway in 1977, the official white paper on human rights and the Peace Prize awarded to Amnesty International seems to have antecedents long predating the Carter Presidency. Foreign Minister Knut Frydenlund, who was responsible for launching the official white paper, claimed, in 1982, that his initial reason for preparing the initiative had been a question raised in the Storting in 1973 pertaining to the execution of students in Iran.[210]

American scholar Samuel Moyn seemed to infer a link between the Carter Presidency and the 1977 Peace Prize when he wrote:

> The year of human rights, 1977, began with Carter's January 20 inauguration, which put "human rights" in front of the viewing public for the first time in American history. This year of breakthrough would culminate in Amnesty International's receipt of the Nobel Peace Price on December 10.[211]

While the prevailing popularity of human rights in 1977, cannot be ruled out as having influenced the Nobel Peace Price that year, the human rights issue of torture was, surely, a more direct influence. Nor was it the first Peace Price given in connection with human rights work done from the AI platform. The organization's former International Chairman, Seán MacBride, received the Price in 1974 – a year after Sweden had initiated the UN resolution rejecting torture. Three years later – a mere two days after the UN adopted the resolution that initiated work on the convention – the organization itself received the award.

The Chairman of the Norwegian Nobel Committee in 1977 was Aase Lionæs, who ten years prior had Chaired the Norwegian Committee for Democracy in Greece and travelled to Athens in the company of Nordic politicians (and with an AI-member as secretary) to

[209] Tamnes, *Oljealder,* 370.
[210] Frydenlund, *Knut, Lille land – hva nå?,* (Oslo/Bergen/Tromsø, Universitetsforlaget, 1982), 193.
[211] Moyn, *The Last Utopia,* 155.

investigate human rights violations perpetrated by the Greek Junta. In her Price presentation speech, given at the University Festival Hall in Oslo in December 1977, she not only mentioned torture half a dozen times, she concluded by stating:

> In deciding to honor Amnesty International with the Nobel Peace Prize in the year 1977 – the year of "prisoners of conscience" – the Nobel Committee does so in the conviction that the defense of human dignity against torture, violence, and degradation constitutes a very real contribution to the peace of this world.[212]

The 1977 Peace Price was given in recognition of Amnesty International's long-lasting efforts against torture. That Scandinavian governments had taken an active interest in this particular human rights issue for nearly a decade was, in all likelihood, a contributing factor.

The main point here is that human rights as a feature of Scandinavian foreign policy was not suddenly galvanized by international breakthroughs, such as the Helsinki Accord or the Carter Presidency, in the mid or late 1970s. Rather, this aspect of Scandinavian foreign policy had been a growing tendency throughout the entire 1970s. To the extent that we need to date when Scandinavian states went from passive supporters of human rights to becoming state activists, no event better represents this point of departure than the Greek Case of the late 1960s. While the Case remains unique – i.e. Scandinavian states have never conducted a similar case, or one with quite the same fervor – it had an effect on the human rights policies of Scandinavian states in the following years. As has already been argued, it made the foreign ministries of all three states more inclined to engage with the human rights issue of torture. In the 1970s, this was not just any human rights issue; it was one of the defining ones. By adopting Amnesty's anti-torture agenda, Sweden responded to a significant trend and, through the Nordic framework for cooperation on foreign policy, drew with it neighboring countries. Historians, often approaching engagement politics with a somewhat critical view, will just have to come to terms with the fact that Scandinavian governments did not merely respond to the breakthrough of human rights in the 1970s, they helped create it.

## Conclusion

Immediately after the adoption of the Declaration against Torture in 1975, Swedish officials had considered using the momentum they had achieved to initiate work on a convention.

[212] Speech by Aase Lionæs, Chairman of the Norwegian Nobel Committee, Oslo, 10 December 1977, see Official Web Size of the Nobel Prize at: http://www.nobelprize.org/nobel_prizes/peace/laureates/1977/press.html, (22 February 2017).

Several factors contributed to the Foreign Ministry's decision to postpone such action. That the Netherlands, a state proponent of the human rights issue of torture and Sweden's preferred partner during the establishment of the Declaration, was opposed to a binding convention on this issue was clearly a cause for concern. How would states react if even the Netherlands could not muster support for such an undertaking? Perceived opposition towards implementation machinery (i.e. the provisions in a convention that aims at state oversight and/or regulation) in general among states at the Commission on Human Rights was another factor that made Swedish officials err on the side of caution. Ultimately, the decisive factor was Sweden's lack of direct influence at the Commission in 1976.

In early 1977 the Swedish Legal Department seemed undecided on whether or not to initiate a convention. This quickly changed towards the summer, however. Swedish officials stationed at the UN in New York were early advocators of initiating a convention in 1977 and producing a Swedish draft. It is possible, likely even, that domestic activists, organizations or interested politicians put further pressure to act on the Swedish Foreign Ministry. While the most active NGOs on the human rights issue of torture, AI, ICJ and IAPL, did, in fact, ask for support from Sweden to sponsor a convention against torture in the summer of 1977, the request had been to sponsor the NGO's own initiative. It had not been intended as pressure to produce a Swedish draft or, for that matter, that Sweden should take the leading role in further developments. The request had something resembling that effect, however. It should be noted that the Swedish Foreign Ministry was close to a decision to launch the convention at the time. Even so, the heightened activities of numerous actors on the human rights issue of torture throughout 1977, which included the introduction of a draft convention produced by NGOs at the upcoming General Assembly, made further delays impossible. In as far as Swedish officials wanted any control over future developments on the human rights issue of torture, they had to act in 1977. When they did, the initiation of work on a convention against torture represented a continuation and escalation of previous Swedish policy.

# 5 The Convention

The drafting of the UN Convention against Torture took seven years and spanned the period from 1977 to 1984. It would be a process altogether different from the brief and, by comparison, effortless adoption of the Declaration against Torture. The binding human rights instrument that Sweden was proposing would be negotiated and largely decided under the auspices of the Commission on Human Rights, a UN body that was, throughout much of its existence, generally criticized for its inefficiency; one observer once referred to it as "the world's most elaborate waste-paper basket", another dubbed the Commission "a highly political animal".[213] With Amnesty International's continued efforts at raising awareness against torture, as well as the advent of the Carter Presidency in 1977, it might be suggested that Sweden launched its initiative at an auspicious time. Despite such larger trends, it can hardly be said that Swedish officials were riding a wave of unfettered enthusiasm. Sweden sought acceptance for human rights norms with an inherent potential to vilify state offenders. To some extent, this aspect of the torture issue was a double-edged sword. While it made most states inclined to openly support the convention, many opposed the inclusion of far-reaching provisions.

This chapter explores Sweden's policy of securing core elements of the proposed draft and the interactions of Swedish officials with their counterparts in (mainly) Nordic foreign ministries. In this respect, a crucial point is to establish the extent of Scandinavian cooperation on the convention, or lack thereof. Did Sweden's engagement with the human rights issue of torture ultimately affect its neighbors through the interactions of foreign officials? The focus is directed towards the main points of contention during the drafting process: The provisions for universal jurisdiction and implementation. Although these elements of the instrument are briefly outlined below, no effort has been made to follow the evolution of the texts on an article–by–article basis, nor give a full picture of the numerous meetings on CAT, formal and informal in character, held in various and sometimes unfamiliar settings, e.g. the Council of Europe. The most complete account of the drafting process at the UN is offered in the book coauthored by Hans Danelius and J. Herman Burgers

[213] See quote in Rehman, Javaid, *International Human Rights Law,* 2nd ed., (Harlow: Pearson Education Limited, 2010), 49.

and published in 1988.[214] Readers interested in the evolution of various articles are referred to this work. With that in mind, we can explore how Sweden launched CAT and sought its adoption.

## The Swedish Plan for International Law

Sweden's leading role on the human rights issue of torture at the UN had been created by policymakers at the Legal Department of the Foreign Ministry and can largely be attributed to, as one Swedish report later put it, "…Hans Danelius' personal engagement with the issue".[215] The core components of Sweden's success on this issue was its willingness to initiate UN processes combined with the ability of its diplomats to produce the needed drafts. In retrospect, Swedish policies had slowly been building towards the introduction of a legally binding instrument since, roughly, 1973. That is not say that the final outcome had been set or planned from the start. Instead, Sweden had conducted a policy on the human rights issue of torture that continuously raised the bar for further initiatives. The condemnation of torture in 1973 put the issue on the UN agenda. The Declaration against Torture was secured in 1975. By 1978, Sweden had initiated the drafting process on a binding instrument and submitted a draft convention. The kind of instrument Sweden was proposing can tell us quite a bit about the motives that lay behind it.

From the outset, Sweden's general aim was a convention based on the Declaration against Torture with added elements like provisions for universal jurisdiction and implementation. In Sweden's proposed draft, the definition of torture was almost identical to that of the Declaration. While various changes to this article (1) were suggested, and some implemented, the UN Working Group charged with the negotiations (see below) managed to adopt by consensus most of this article as early as 1979.[216] Since the adoption of CAT in 1984, the definition of torture contained in the instrument has been criticized on several issues, one of which has been its vagueness. The definition applies to "acts" of torture inflicted by or with the consent or knowledge of a "public official".[217] A question arose during the negotiations as to whether or not the omission of an act, i.e. inaction such as failure to feed a prisoner, also constitutes torture. It was never resolved. It has since been argued that international law itself

[214] For a detailed account of the changes to the text and the evolution of the various drafts, see Burgers and Danelius, *The United Nations Convention against Torture,* 31–107.
[215] Brief entitled "Samtalspunkter vid besök på FN:s Center for Human Rights", 6 March 1984, SMF, 2.
[216] Burgers and Danelius, *The United Nations Convention against Torture,* 41.
[217] See Article 1, paragraph 1 of CAT.

had already addressed this issue, ten years before the drafting process on CAT began, during, incidentally – but, perhaps, not altogether surprisingly – the Greek Case where the European Commission on Human Rights held that the omission of food and other necessities constitutes an act of torture.[218] Another problem, often and correctly pointed out, is that Article 1 contains no real definition of "other cruel, inhuman or degrading treatment or punishment". Then there is the argument that by making the definition of torture contingent on acts involving "public officials" the treaty unnecessarily narrowed its scope by excluding acts of torture committed by private citizens. While the definition pertains to acts committed or sanctioned by public officials, the draft itself (and later CAT) contains substantive provisions that specify that State Parties shall make sure that acts of torture are punishable under domestic penal law. In summary, the definition largely targets acts of torture sanctioned by the state, while the instrument obliges the state to deal with (in a way that lacks specificity) private citizens that commits such acts.

Perhaps taking its past engagements against military regimes in Greece and Chile into account, Sweden was trying to abolish safe havens for those suspected of acts of torture, at the very least on the territories of state parties to the convention. The extent to which the Swedish draft emphasized a legal regime that targeted such offenders is noteworthy. Substantive provisions with relevance to a proposed system of so-called "universal jurisdiction" were included in original articles 8, 10, 11, 14 and 15. Collectively, these articles laid the foundation for a wide domestic jurisdiction[219] for state parties that were obliged to either initiate proceedings in alleged cases of torture, or, if requested, extradite alleged offenders to another state party that had jurisdiction over the offence.[220] If this system is seen in connection with proposed article 7 (later amended to become article 4 in CAT), which demanded state parties to ensure that acts of torture were criminalized with corresponding "severe penalties" under domestic law, it is clear that Sweden was outlining one of the most comprehensive prosecutorial regimes ever proposed in a human rights treaty. In itself, the proposed system is indicative of a genuine effort, on Sweden's part, to target torture violations internationally. For most states, the proposed system for universal

[218] Rehman, *International Human Rights Law,* 813 (& note nr. 34).
[219] This jurisdiction was envisioned to include any acts of torture committed on state territory or ships or aircrafts registered to it, as well as any act involving an offender or victim that was a national of the state party (see Article 8 of the Swedish Draft of 1978).
[220] See the summary of the proposed system for universal jurisdiction in Burgers and Danelius, *The United Nations Convention against Torture,* 35–36.

jurisdiction went too far. Elements of the system would be chipped away during the negotiations.

The implementation provisions of a treaty, collectively known as the "implementation machinery", are the articles dealing with implementation, follow-up, or enforcement of the substantive articles in the instrument. The "substantive" articles are, simply put, the rules pertaining to the subject matter in question, in this instance torture. The implementation machinery proposed by Sweden was contained in article 16, 17, 18, 19, 20 and 21 of the original draft. These articles outlined, respectively, provisions for state reports; inquiries by the monitoring body[221] into alleged acts of torture; an inter-state complaints procedure (proposed as optional); the establishment of ad hoc conciliation commissions, pursuant to the consent of state parties; a procedure for individual complaints (proposed as optional); and a procedure for the submission of reports, by the monitoring body, to the General Assembly. While the proposed implementation machinery contained interesting features such as inquiries into alleged torture violations and conciliation commissions, it was not overly extensive and had largely been based on previous human rights machinery, most notably from ICCPR. Even so, all aspects of the implementation machinery were challenged. The opposition from various states, and from the Soviet Union in particular, towards mandatory implementation provisions constituted one of the most serious obstacles for Swedish officials during the negotiations.

How Swedish officials planned to secure the adoption of the norms they had outlined, is less clear. The Netherlands had been Sweden's preferred partner during the establishment of the Declaration against Torture. With Dutch officials initially opposing a convention, further cooperation between the two parties seemed impossible in the late 1970s. Sweden continued to keep other Nordic states informed of the most significant initiatives – e.g. by sharing Swedish drafts prior to their submittal at the UN – but no effort was made to organize a joint, Nordic policy on the convention at an early stage. This was partly due to a tendency, on Sweden's part, to take Nordic, or at the very least Scandinavian, support for granted. Also, Sweden's emphasis on securing broad support for its initiative globally – which often

[221] Sweden initially proposed to give the mandate to monitor the convention to the Human Rights Committee set up under the *International Covenant on Civil and Political Rights.* This was largely to avoid setting up a new, costly machinery. The proposal was later dropped in favor of provisions that established the new and independent Committee against Torture as the monitoring body of CAT; see Burgers and Danelius, *The United Nations Convention against Torture,* 36.

entailed creating the appearance of balanced support from voting blocks by limiting the number of North European states that were listed as co-sponsors on UN documents – made an increased, Nordic profile superfluous. With a draft containing strong, substantive articles and a somewhat innovative yet not overly extensive implementation machinery, Sweden set out (seemingly alone) to expand the already existing ban on torture.

## A Slow Start

During the session of the UN Commission on Human Rights in 1978 – unfolding from February to March – a working group was created to undertake general discussions on the Swedish draft. It was decided to put down a working group that should one week prior to the next session of the Commission on Human rights the following year. The pre-sessional working group in 1979 also dealt with other agenda items, however, and could only devote a few meetings to discuss the draft convention against torture. Meetings were extended into a sessional working group and interested delegations also gather for informal meetings. In 1979 it was decided that next year's working group should only deal with the draft convention. From 1980 to 1984, pre-sessional working groups dealing exclusively with the convention against torture were put down. Pre-sessional groups were also, regularly, transformed into sessional working groups. This complicated process at the Commission on Human Rights was briefly outlined in Burgers and Danelius' book on the subject. They chose to refer to these various groups, collectively, as "the Working Group".[222] I will do the same in this thesis. There were, as we shall see, groups and meetings of interested officials in other intergovernmental settings as well. The most significant of these were the annual meetings held for Western Delegations at the Council of Europe to discuss strategy and progress on the UN draft convention.

A point of interest concerning the Working Group is that it was open-ended. This meant that any state member of the Commission on Human Rights could participate, but non-member states could also send delegates to attend the meetings as observers.[223] Norway, which never held a seat at the Commission on Human Rights during the negotiations on the convention, was a particularly active observer state. The Norwegian Delegate following many of these meetings was Morten Ruud, an expert with the Ministry of Justice that sent detailed reports on the unfolding proceedings to the Foreign Ministry. That experts in international law took

[222] Burgers and Danelius, *The United Nations Convention against Torture,* 31–32.
[223] Ibid., 32.

on such dual responsibilities was, probably, not altogether uncommon for states with relative small delegations stationed abroad. Due to his participation at the Commission and his multiple reports on the subject, Ruud became one of Norway's leading experts on the convention and also played a part during the ratification process on CAT. Norway's participation as an observer state, not to mention its more active participation in several informal meetings, was the reason the official Norwegian White Paper on the ratification of CAT could later assert that "Norway has always supported the work on the convention and also participated actively in the [UN] working group from 1978 to 1984".[224] Denmark also participated as an observer, but took, as we shall see, a more active role when the state rotated into a seat at the Commission in 1980. Denmark and Norway's participation as observers at the Commission, prior to more formal, Nordic cooperation on the convention, is a reflection of their long-standing interest in the human rights issue of torture.

Sweden was conducting a policy of safeguarding its own initiative, not unlike what had been done during the establishment of the Declaration. When possible, the Swedish Foreign Ministry attempted to move the negotiations along. An early chance to gain some momentum came almost immediately. On the basis of the discussions in the Working Group in 1978, the Commission on Human Rights decided that documents relevant to the process should be sent to all UN Member States for their comments.[225] It would be the task of the UN Secretariat and the Division of Human Rights to prepare a summary of the state communications on this matter. While this process was somewhat arduous, it was seen as a necessary step to secure broad participation in the making of a binding, human rights treaty. Sweden saw an opportunity to expedite the work on the convention by drawing up a revised draft that took state comments into account. The plan hinged on getting full access to the documents submitted by states to the UN Secretariat, as opposed to simply the brief, UN summary that typically omitted many details. In November 1978, Danelius instructed the Swedish Delegation in Geneva to contact the Division of Human Rights and ask for "photocopies" of the various statements. It would be best, he told the Embassy Secretary, Hans Magnusson,

[224] Official Norwegian White Paper, *St.prp. nr. 69 (1985–86): Om samtykke til at Norge (1) ratifiserer en konvensjon av 10. desember 1984 mot tortur…,* (author's translation) see Stortinget at: https://stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1985-86&paid=2&wid=b&psid=DIVL544&pgid=b_0193, (9 April 2017), 1.
[225] Burgers and Danelius, *The United Nations Convention against Torture,* 39.

"…if you speak with van Boven himself" (who had recently been appointed Director of the Division of Human Rights).[226]

Magnusson never managed to find van Boven, who was travelling to New York at the time. Instead, the Swedish delegation approached the Division of Human Rights through a mid-level official and was turned down. Frustrated, Danelius asked Nordentfelt at the Swedish Delegation in New York to catch up with the Director to personally:

> "…talk with van Boven about this matter and make him understand that it can further the continuous work [on CAT] if we are given the opportunity to prepare ourselves, to the best extent possible, prior to the next session [of the Commission on Human Rights]. I can not understand that there are any principle hindrances precluding us from getting copies of the statements."[227]

Nordenfelt was able to find the Director, but not convince him. Theo van Boven politely turned down the Swedish request on the grounds that the Division of Human Rights had already refused a similar request from Austria. Instead, he promised to expedite the work on the general summary of the state communications. He (intentionally) let slip which countries had so far delivered reports, however.[228]

Sweden, already planning to solve the problem through bilateral interactions, ultimately circumvented the UN Secretariat by requesting copies of comments on the draft convention from various states directly. Danelius, who could not understand van Boven's unwillingness to acquiesce to the Swedish request, was forced to conclude that "it is undeniably a disappointment that the [UN] Secretariat can not give us a better service…"[229] For Swedish officials, cooperation on the human rights issue of torture was most satisfactory when they dealt with principal actors directly, not when they were forced to go through an unwieldy, intergovernmental bureaucracy. Despite having initiated work on the convention and being the principal generator of the drafts it was based on, Sweden received little preferential

[226] Telex from H. Danelius, to H. Magnusson of the Swedish Delegation in Geneva, 6 November 1978 (author's translation), SMF.
[227] Telex from H. Danelius, to the Swedish Delegation in New York, 10 November 1978 (author's translation), SMF; see also Telex from H. Danelius, to Hans Magnusson of the Swedish Delegation in Geneva, 6 November 1978, SMF; Telex from the Swedish Delegation in Geneva, to the Foreign Ministry in Stockholm, 10 November 1978.
[228] Message from the Swedish Delegation in New York, to H. Danelius, 15 November 1978, SMF.
[229] Message from H. Danelius, to the Swedish Delegation in Geneva, 17 November 1978 (author's translation), SMF.

treatment and remained one of several active states at the UN. Few opportunities for taking short cuts presented itself during the negotiations on CAT.

## "Near Total Deadlock"

Sweden and the Netherlands have been considered the two most prominent state proponents during the establishment of new instruments against torture at the UN. While this picture is true enough, policies and interactions becomes more complicated when historians turn from UN sources to the more narrow but detailed level of national sources. This thesis has already highlighted Dutch opposition towards the convention, expressed most clearly in direct communications with Swedish officials prior to work on the convention at the UN. Exactly when the Netherlands changed its position on a convention is difficult to determine. The country seems to have adopted a position of open support almost as soon as the process began. Open support in general did not mean that the Netherlands agreed with Swedish plans for the convention, however. As the negotiations progressed, it became increasingly clear to Swedish officials that the Netherlands supported ideas on universal jurisdiction and implementation that was perceived as incompatible with Swedish goals.

The difference between Swedish and Dutch views on jurisdiction and enforcement provisions materialized when a delegation from the Netherlands visited the Foreign Ministry in Stockholm on the 28th of October 1980.[230] The Dutch assured that the Netherlands was now in favor of a convention. Concerns about the Swedish draft remained, however. In cases where foreign nationals were suspected of acts of torture committed abroad, the Netherlands was only willing to accept rules for universal jurisdiction after a demand for extradition had been refused.[231] This would severely limit the number of times a state party were obliged to prosecute foreign citizens on offences of torture. First, a request for extradition had to be issued, and then if the state party in question hesitated or refused to grant it, it would be obliged to prosecute. While arguing for limiting the provisions of universal jurisdiction, the Dutch delegation expressed their concern that the provisions of enforcement in the Swedish draft did not go far enough. The Netherlands preferred stronger mechanisms – with "more

[230] The Swedish report from the meeting only refers to two Dutch delegates: Schutte from the Ministry of Justice, and Flinterman from the Foreign Ministry. Hans Danelius was one of the Swedish officials attended the meeting, see Letter from Ö. Landelius, entitled "Samtal med nederländsk delegation om utkast till internationell tortyrkonvention", dated 7 November 1980, SMF.
[231] Letter from Ö. Landelius, entitled "Samtal med nederländsk delegation om utkast til internationell tortyrkonvention", dated 7 November 1980, SMF.

teeth" was a phrase later used by a Dutch delegate – even if this meant that fewer states would be able to ratify the convention. During the meeting, Hans Danelius admitted that the proposed provisions for enforcement were not very extensive. Swedish officials, however, had deemed it "unrealistic to go further".[232]

In late 1980, the Netherlands outlined multiple proposals for amendments to the draft convention in a document sent to the Swedish Foreign Ministry. The Netherlands suggested that the articles of implementation in the Swedish draft could "easily" be merged with the optional protocol proposed by Costa Rica, and that, combined, this would constitute a "well balanced and efficient machinery".[233] Presumably, the main intent here was to include some sort of inspections to places of detention in the convention. A significant effect of such an approach would be the strengthening of the mechanisms of enforcement, but then to a point where Swedish officials feared that few states would ratify the convention if it were possible to secure its adoption at all. The Netherlands also proposed to create an independent Committee, although composed by members of the Human Rights Committee established by the International Covenant on Civil and Political Rights. In contrast to the Swedish draft, the inter-state complaints procedure outlined by the Netherlands was made mandatory. The provision pertaining to individual complaints were still optional. The Dutch proposal further described, in some detail, the Committee's mandate to put down a "fact-finding Commission" with authorization to visit places of detention. This was a completely new feature in the main instrument and an attempt at incorporating elements from the optional protocol submitted by Costa Rica.[234] With the clear exception of the provisions pertaining to a fact-finding Commission, most provisions in the Dutch proposal were rather vague. There can be little doubt that the Netherlands was outlining stronger provisions of enforcement than those contained in the Swedish draft, however. In Scandinavian Foreign Ministries the proposals were viewed as unrealistic and with an inherent potential to upset progress on the convention. Taking their lead from Sweden, Scandinavian officials tried to avert the introduction of these proposals to the Working Group.

[232] Letter from Ö. Landelius, entitled "Samtal med nederländsk delegation om utkast til internationell tortyrkonvention", dated 7 November 1980, SMF; Letter from the Swedish delegation in Geneva, dated 21 January 1981, SMF.
[233] The document was dated "August 1980", but seems to have reached Hans Danelius at the Legal Department on 7 November, see: Document entitled "Suggestions by the Netherlands for provisions on implementation of the Draft Convention against torture.", dated August 1980, SMF.
[234] Ibid; Burger and Danelius, *The United Nations Convention against Torture,* 75–76.

When Denmark and Sweden invited to an informal meeting of the so-called "Likeminded-group" (delegates from the Western group) to discuss the Dutch proposals on the 19th of January 1981, divisions were drawn along unfamiliar lines. Attending were delegates from Australia, Canada, the United States, Austria, Belgium, France, Italy, Switzerland, the Netherlands, the United Kingdom, Denmark, Norway and Sweden. Scandinavian delegates expressed their concerns that the Dutch proposals, if put before the working group, might impede progress on the convention. Dutch officials, while signaling willingness to compromise on some sort of universal jurisdiction, stated their intention to introduce their proposed amendments to the working group, on an article-by-article basis as the work progressed. A Swedish delegate warned that if this was done, there were no need for further "coordination" – whether this was in fact a threat to end talks with the Netherlands on the convention, is not entirely clear. Larger nations like Canada and the United States took on the role of mediators and emphasized the importance of a united front in the Western group. Tensions were raised when a telephone call from The Hague, received while the meeting was in progress, signaled common support for the Dutch amendments among delegates in the EC group.[235] If the Swedish account of what transpired is accurate, informal meetings among western nations saw sharp divisions, largely drawn by small nations gathering support from neighboring states, on core elements of the convention. The level of Scandinavian coordination at times when Swedish plans were severely challenged, is noteworthy.

The Netherlands submitted its proposed amendments on the first day of the presessional meetings of the Working Group in 1981. While the Working Group had several proposals pertaining to enforcement provisions before it – including the draft of the IAPL and the optional protocol submitted by Costa Rica – the Swedish draft constituted the basis for further efforts.[236] The most controversial elements of the Dutch proposal were, probably, that the procedure for State complaints was made mandatory and that fact-finding missions – in effect inspections – to places of detention were introduced. It provided little consolation to Swedish officials that the Netherlands had signaled its willingness, as it were, to give with one hand on universal jurisdiction, and take with the other on provisions of enforcement. Sweden was pursuing a convention against torture that could be accepted by the larger community of nations; the Netherlands was seemingly not. The proliferation of a human

[235] Telegram from the Swedish Delegation in Geneva, dated 13 January 1981, SMF; Telegram from the Swedish Delegation in Geneva, dated 21 January 1981, SMF.
[236] Ibid.

rights treaty is, of course, an important concern when the goal is the establishment of new norms. Whether or not it also figured into Swedish calculations that a high number of ratifications on an instrument might cast a favorable light on the state that had initiated it is unknown.

Morten Ruud, the Norwegian delegate following the proceedings, outlined the difficulties that hampered the negotiations in a report to Oslo in late January 1981.[237] Describing both the main difficulty and the solution for further progress on the convention, Ruud concluded:

> First and foremost it is the Netherlands that is blocking a consensus on the Swedish proposal, and that is showing no sign of wavering… Once the problems pertaining to article 7 [universal jurisdiction] is solved – and this can hardly happen in any other way than the Netherlands abandoning its position – the open questions pertaining to article 5 paragraph 2 and article 6 paragraph 4 will be resolved.[238]

In Ruud's assessment the system of universal jurisdiction would fall into place if, or rather *when,* the Netherlands gave in. It is, of course, noteworthy that some Scandinavian officials viewed the Netherlands, one of the most prominent state proponents on the human rights issue of torture, as the main impediment to progress on the convention at this time.

A few months later Hans Danelius express his view on the prospect of achieving further progress in a message to the Swedish delegation in New York. In connection with one of the multiple resolutions pertaining to the convention, the Swedish Delegation had sent the text of a proposed speech to Stockholm for approval. The speech, written with more enthusiasm than usual, summarized Sweden's view on the negotiations taking place in Geneva by stating: "We feel we have good reasons to hope that the Working Group shall be able to complete its task at the next session of the Commission on Human Rights". Danelius told the delegation to rewrite the text. He noted, dryly, that the tone was somewhat optimistic given the "near total deadlock on the question of the rules of implementation".[239]

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[237] Morten Ruud was an expert in international law with the Norwegian Ministry of Justice who acted as a consultant on the issue of the convention against torture. He attended meetings in Strassbourg and Geneva and reported to both the Ministry of Justice and the Foreign Ministry on this issue. He became one of Norway's leading experts on CAT and was later involved in the ratification process.

[238] Norwegian report entitled "RAPPORT fra arbeidsgruppen for utkast til konvensjon om tortur, under FN's menneskerettighetskommisjon, 26–30 januar 1981.", dated 2 October 1981 (author's translation), NMF, 4–5; The paragraphs Ruud was referring to pertained to the rules on universal jurisdiction, but the articles' numbers had been changed and no longer corresponded to the original Swedish draft.

[239] Telegram from the Swedish delegation in New York, dated 29 October 1981, SMF; Telegram from H. Danelius, dated 30 October 1981 (author's translation), SMF.

It is striking how closely Danish and Norwegian officials, at times, aligned themselves with Swedish policies on the convention. In closed, informal meetings that the public never heard about at the time, and that is all but forgotten now, Danish and Norwegian diplomats opposed initiatives that did not conform to Swedish plans but could have led to stronger implementation mechanisms for CAT. The meeting held to avert the introduction of Netherland's proposed amendments to the implementation mechanisms in 1981 had been organized by Denmark and Sweden. In reports to Oslo, Morten Ruud specifically identified obstacles hindering a consensus not simply on a convention against torture, but on "the Swedish proposal". Given the relative high profile Denmark and Norway had maintained on the human rights issue of torture from an early date – achieved, most notably, by their involvement during the Greek Case and by later support for various, key, UN resolutions on the issue – support for CAT was not only likely, but a continuation of earlier foreign policies. No formal agreement precluded Denmark or Norway from taking a more autonomous position on the issue of a convention, however. Both states could easily have signaled their own proponent agenda by, for instance, supporting some of the more far-reaching proposals of NGOs or the Netherlands. There are very few signs that Danish or Norwegian officials ever contemplated formulating a strategy of support for the convention independent of Sweden. The primary cause for this was an already established tendency of Scandinavian cooperation on this issue, but also, in no small part, the confines of Nordic cooperation on human rights, where diplomatic courtesy dictated that Sweden should take the lead on the issue it had initiated.

The account presented in this subchapter differs from previous writings on the subject. This is, perhaps, most notably true with respect to the literature on Amnesty International and the establishment of new norms against torture, which usually approaches the UN process only in the broadest of terms. It should be noted that Danelius and Burgers' joint account, while offering a detailed chronology and documenting the various proposals put fourth, does not emphasize any division between Sweden and the Netherlands. It is often this authoritative work that the former category of literature is based on. Ann Marie Clark was referring to the Netherlands and Sweden when she noted "…during the formal, official portions of the drafting process [on CAT], small, neutral and committed government delegations exercised the greatest leadership". Forced to speculate on why this was so, she stated:

> The political neutrality of Sweden and the Netherlands, like the third-party status of Amnesty, made them effective facilitators of international norm generation at the international level.[240]

What "political neutrality" here entails (applied as it is to one founding member of NATO and Sweden during the 1970s and the mid-1980s) is not entirely clear. Be that as it may, this thesis challenges the notion that neutrality was a decisive component to Sweden's anti-torture politics at the UN. Sweden's successful pursuit of new norms against torture was predicated upon, above all, the tireless and often stubborn efforts of its diplomats, intent on driving the issue to its final conclusion. Furthermore, Sweden and the Netherlands' image as "effective facilitators" should be contextualized in light of the divisions between them. While both states proved highly efficient at *initiating* UN processes that led to new norms, they also competed amongst each other on the formulation of such norms and contributed to bringing the negotiations on CAT to a near standstill around 1981.

The following year, the Netherlands withdrew the amendments proposed in 1981.[241] The new course had, undoubtedly, something to do with the fact that Jan Harman Burgers was elected Chairman-rapporteur of the Working Group on the 25th of January 1982. It is somewhat telling that the Netherlands reversed its position once a Dutch delegate was charged with bringing the negotiations on CAT to a successful conclusion. It is an indication, perhaps, that Swedish assessments on what was possible to obtain at the UN as far as implementation was concerned had not been too far off. The two most significant issues dampening Swedish/Dutch relations on the human rights issue of torture had been the Netherlands' initial opposition towards a convention and, after the Dutch had taken up a policy of support for the instrument, the Netherlands' far-reaching proposals pertaining to implementation. By 1982, both issues had been resolved. Burgers proved a highly capable Chairman, and in the period from 1982 to the adoption of CAT in 1984, the Netherlands and Sweden cooperated closely to secure the instrument. The effort was somewhat reminiscent of their joint pursuit of the Declaration in 1975.

## Opposition from the East Block

While multiple states took up opposing positions to that of Sweden on several aspects of the draft, no problem caused more concern at the Swedish Legal Department than the opposition

[240] Clark, *Diplomacy of Conscience,* 62.
[241] Burgers and Danelius, *The United Nations Convention against Torture,* 78.

from the East Block. This voting block was influenced by a superpower that was difficult to approach. Also, Soviet opposition was not restricted to the mere framing of human rights provisions, but seemed to extend to other aspects of the process from an early stage. When Sweden introduced a proposal to the Commission on Human Rights in 1979, aimed at expediting the work on the convention against torture by putting down a presessional working group a week prior to the next, annual meeting of the Commission, it was opposed by states from the East Block. The Swedish Delegation in Geneva perceived a shift in Soviet policy towards the convention and noted in a report to Stockholm that even though Eastern states were "clearly not warm supporters of the convention against torture, they had, so far, been willing to actively participate."[242] What had just unfolded at the Commission seemed to be a new tendency. An attempt to avert that the presessional working group was allowed to meet the following year was, at best, a stalling tactic, or, worse, opposition towards the entire convention. The Swedish report was forced to conclude that it was now time to expect "…that the work on the convention will be long-lasting."[243]

The Soviet Union received little support on overt attempts at slowing down the process. The Swedish resolution of 1979 was adopted with 29 votes in favor and only 5 opposing votes – the Soviet Union, Bulgaria and Poland were among the opposing states.[244] The incidence was still a cause for concern, especially since 1979 marked the end of Sweden's current position at the Commission on Human Rights. In the future another state would have to make sure that the annual resolutions needed to form presessional working groups, was put forth and adopted. At the Nordic meeting of foreign ministers in the fall of 1979, the Swedish Legal Department had, per usual, prepared the talking points pertaining to human rights. On topic of the convention against torture, the Swedish statement read:

> Our work on this subject will, to some extent, be made more difficult when we are no longer a member of the Commission at the end of the year, but we fervently hope that Denmark, which will replace us at the Commission, will be willing to continue the effort in the future.[245]

As the negotiations on the convention against torture dragged out, Sweden turned to the Nordic framework for support. The Danish Foreign Ministry was happy to oblige. In fact, the

[242] Report by the Swedish Delegation in Geneva in preparation for meeting of Nordic foreign ministers, 16 March 1979 (author's translation), SMF, 5.
[243] Ibid.
[244] Ibid.
[245] Brief entitled "Nordiska utrikesministermötet 30–31 augusti 1979: Dagordningspunkt mänsliga rättigheter", 23 August 1979 (author's translation), SMF.

years when Denmark occupied the seat at Commission on Human Rights – 1980 to 1982 – was a period with increased Nordic cooperation on the human rights issue of torture. Not only did Denmark put forth procedural resolutions that requested presessional meetings of the working group, the Danish Foreign Ministry also made a point of inviting other Nordic states as cosponsors on these initiatives.[246] Nordic cooperation also expanded into related fields in this period, most notably on a fund for those subjected to torture.

By 1981, the establishment of a fund for victims of torture had become a Nordic priority at the UN. The initiative was aimed at expanding the scope of an already existing fund for those subjected to torture in Chile to provide relief for survivors everywhere. From a Nordic point of view, it was a strictly altruistic effort. Resistance towards the initiative thus came somewhat unexpected. On the day the Commission on Human Rights was set to adopt the resolution pertaining to the fund in 1981, the initial debate unmasked strong opposition from primarily one actor. When the Commission broke for lunch, the Swedish official reported to Stockholm that there is now "…a great risk that the resolution will fall as the Soviet Union has proposed a battery of amendments…" The Soviet position, the message informed, was that since a definition of torture had not yet been adopted, "nothing could be done before the convention against torture was completed".[247]

Again, Soviet action can hardly be interpreted as anything but a stalling tactic, primarily conducted to delay further momentum on the human rights issue of torture. In Scandinavia, it was seen as a deliberate attempt at obstruction. While the initiative to establish a fund for victims of torture survived, the incident contributed to the growing realization, among some Scandinavian officials, that coordinated action might be needed to offset opposition from the East Block (see below). Interestingly, there are no signs in the present source material that bilateral action was ever considered – through backchannels or otherwise – in order to mediate with the Soviets. The Soviet Union was probably deemed unapproachable on this issue. Instead, increased emphases were put on obtaining consensus among western nations and, crucially, secure broader support from non-aligned states in Asia and Africa. If the Soviet Union could not be approached on the human rights issue of torture, it would have to

[246] Telex from the Norwegian Delegation in Geneva, to the Norwegian Foreign Ministry, 5 March 1981, NMF; Telex from the Norwegian Delegation in Geneva, to the Norwegian Foreign Ministry, 8 March 1982, NMF.
[247] Telegram from the Swedish Delegation in Geneva, to the Swedish Foreign Ministry, 11 March 1981 (author's translation), SMF.

be, to the extent possible isolated in its opposition towards the convention and related initiatives.

On April 1st, 1981, just weeks after the sobering debate at the Commission on Human Rights, Danelius got a telephone call from Boel, Chief of the Legal Department at the Foreign Ministry in Denmark. Expecting further problems with the fund at the upcoming session of the General Assembly, Boel signaled Denmark's willingness to contribute, but emphasized the need for further, Nordic cooperation.[248] Danelius concurred and sent instructions to the Swedish Delegation in New York later that day. In the message, he outlined a new strategy for dealing with the UN process pertaining to the fund.

> As the initiative originated with us, it is in my opinion important to do whatever we can to reach a positive outcome and to counter the attempts at torpedoing the effort that are sure to follow in ECOSOC. Would it be possible to establish an effective Nordic cooperation on this issue in ECOSOC? It seems important to, among other things, secure massive support from the developing countries…[249]

While "massive support" was not forthcoming, Nordic cooperation was. Both Denmark and Finland participated actively on this issue. By 1984, the three, top contributions to the fund were Denmark, Norway and Sweden.[250] Resistance towards the establishment of the fund for victims of torture had precipitated closer coordination among Nordic states. It would be an early sign of an increased Nordic profile that became highly noticeable by the time CAT was adopted.

What caused Soviet opposition towards various elements of Swedish initiatives against torture? One decisive factor in Soviet opposition was the instrument itself. Sweden was trying to establish a human rights convention with significant rules for universal jurisdiction and implementation, including procedures for inquiries into state parties. During the negotiations it was, above all, the implementation machinery (state reports; the procedure for inquiries; interstate and individual complaints) that the Soviets wanted to avoid. The Soviet Union approached the UN process with a certain degree of ambivalence, however. While they were content to draw out the negotiations, Soviet delegates also participated in the

[248] Telegram from H. Danelius, to the Swedish Delegation in New York, 1 April 1984 (author's translation), SMF.
[249] Ibid.
[250] Swedish memorandum, "Bakgrundsmaterial inför samtal med Thomas Hammarberg om MR", 21 March 1984, SMF.

negotiations actively and were, on several occasions, willing to compromise on aspects of the draft, certainly many of the substantive provisions. In the end, they substantially agreed to most of the final draft provided key provisions of implementation were made optional. With hindsight, it seems clear that the Soviets preferred to be able to ratify the treaty, if it was adopted – the Soviet Union ratified CAT in 1987, only three years after the treaty was adopted and, incidentally, seven years before the United States.[251]

Another factor impacting Soviet dispositions was their politics at the Commission on Human Rights. Poland, which joined the Commission in 1978, had proposed the establishment of a convention on the rights of the child (CRC). This convention was adopted in 1989 and would later become the most widely ratified human rights treaty ever. In 1979, however, the year Swedish officials perceived increased resistance from the East Block, deliberations on the convention on the rights of the child was going agonizingly slow. Trying to explain the slow start, the Swedish delegation in Geneva observed: "The majority of Western states exhibits no enthusiasm towards the idea of such a convention. At the very least the effort is not perceived as urgent."[252] Difficulties would continue to hamper the negotiations on CRC for years to come. As late as 1983, a Swedish report noted, "large parts of the convention [CRC] has not yet been discussed."[253] At several junctures during the negotiations, the Swedish Legal Department suspected that Soviet actions to delay CAT was linked to the slow-going negotiations on CRC.[254] While the three Scandinavian states supported the establishment of both CAT and CRC, the Swedish Foreign Ministry opposed the notion that the faith of the two conventions should in any way be linked. Soviet opposition to the formation of presessional working groups for CAT, the delaying tactic on the funds for victims against torture, and even some of the opposing positions taken on various provisions in CAT may have been part of general, Soviet strategy to assure that work on CRC – a convention put forth from the East Block – was proceeding at the UN with something resembling the same speed as CAT.

[251] See interactive dashboard, "Status of Treaty Ratification", Office of the High Commissioner, at: http://indicators.ohchr.org, (11 April 2017).
[252] Report by the Swedish Delegation in Geneva in preparation for meeting of Nordic foreign ministers, 16 March 1979 (author's translation), SMF, 6.
[253] Swedish report entitled "Tortyrkonventionen och konventionen om barnets rättigheter", prepared by Mikael Dahl, 15 March 1983 (author's translation), SMF.
[254] See, for instance, telegram from H. Danelius, to the Swedish Delegation in New York, 22 November 1983 (author's translation), SMF.

It is interesting to note that almost a decade after human rights became a feature of detente in Europe with the Helsinki Accord of 1975, the Soviets were maintaining what amounted to ideological opposition towards civil and political rights at the UN. The collapse of Soviet ideology, not to mention its distinct makeup with *realpolitik* as joint features in foreign policy, came after the generational shift in leadership in the Soviet Union in 1985 and not fast enough to make a significant impact on the negotiations on CAT.[255] Initially, Swedish officials did not know how to respond to Soviet tactics. Overall, the Swedish strategy can be summarized as one of ignoring the Soviets and hope for the best. This was not always a viable strategy, however. The Nordic framework for cooperation on foreign policy proved useful in maintaining direct influence on the process at the Commission on Human Rights, negotiations with Western states, and in efforts to secure broad support from non-aligned states.

## Lobbying for Support

A few factors make the Nordic lobby effort for CAT noteworthy. First, it was a rare occurrence that all Nordic countries coordinated an effort on behalf of a human rights convention that to such a degree had originated within the region itself. Second, the initial, Nordic effort in January 1984 was not a typical initiative launched to gather votes in connection with an upcoming agenda item, something not altogether uncommon at the UN. Rather, it was a regional effort to impress upon states at the Commission on Human Rights the need to complete the ongoing negotiations on CAT before year-end. The second factor is important because the sense of urgency – early advocated by Nordic states – would later be adopted as the consensus view of Western nations and ultimately led to an incomplete convention being put before the General Assembly in 1984. This principle UN body would decide the fate of the articles that had not been agreed upon. It was a gamble that not fully paid off; the UN got a convention against torture that year, but key provisions of the implementation machinery were made optional.

It seems to have been the Danish Foreign Ministry that first proposed a joint, Nordic effort. The initiative was outlined and agreed upon at a meeting on the coordination of human rights

[255] On collapse of ideology, see Zubok, Vladislav M.,"Why Did the Cold War End in 1989? Explanations of 'The Turn'" in *Reviewing the Cold War: Approaches, Interpretations, Theory,* ed. Odd Arne Westad , 357; and for a good starting point for the larger trends of the Cold War, see Lundestad, Geir, *Øst, vest, nord, sør: Hovedlinjer i internasjonal politikk etter 1945,* 6. ed., (Oslo: Universitetsforlaget, 2010).

issues for representatives of Nordic foreign ministries, held at Koeningstedt in Finland, on the 11th of January 1984.[256] The Danish official Michael Bendix became one of the lead organizers. He prepared a draft for the joint Nordic statement and sent it to Hans Danelius for approval.[257] Bendix also met with Danelius and Jan Herman Burgers – in the latter's capacity as Chairman Rapporteur of the Working Group – to coordinate the effort. Final approval had to be retrieved from the various foreign ministries in all Nordic countries; it was given by mid-January.[258] Then came the somewhat complicated matter of coordinating the effort among the ministries, UN-delegations, and embassies of five countries. All in all, this was achieved efficiently by agreeing beforehand upon the specific statements that were to be issued, while it was left to Nordic embassies on site to approach governments in whatever way they deemed appropriate. Iceland, which did not have the same number of embassies as its Nordic counterparts, was asked to approve that Danish, Finnish, Norwegian and/or Swedish diplomats, in some instances, also spoke for the Icelandic Foreign Ministry in this matter.[259]

States approached in the initial Nordic effort were Kenya, Senegal, Tanzania, Zimbabwe, Bangladesh, China, India, Japan, Jordan, Pakistan, the Philippines, Argentina and Mexico.[260] The group constituted states with significant disparities in their record and outlook on human rights. They had two factors in common, however. All states had a seat at the UN Commission on Human Rights in 1984, and none were deemed, by Nordic officials, impossible to reach with an appeal on the present human rights issue – as opposed to, for instance, Uruguay (under a military dictatorship) or the Soviet Union and its affiliates.[261] Several of the contacted states had played little or no part in the negotiations on CAT; some were holding their first seat at the Commission, others had recently returned after years of absence. A point to be made on the importance of regional influences in human rights issues

[256] Telex from M. Bendix, to Nordic Foreign Ministries, 19 January 1984, SMF; Telegram from the Norwegian Foreign Ministry to its effected embassies, 20 January 1984, NMF.
[257] On the formulation of the draft statement, see: Telegram from H. Danelius, to M. Bendix, 12 January 1984, SMF.
[258] Telex from M. Bendix, to Nordic Foreign Ministries, 17 January 1984, SMF; The correspondence needed to organize the Nordic effort was extensive. It involved communication between legal departments, or their equivalents, in Nordic countries, UN delegations in New York and Geneva, not to mention instructions sent from Capitols to embassies around the world. In this instance, Bendix' message was sent to Lasse Seim in Oslo, Hans Bjørk in Stockholm, Frank Edman in Helsinki, and Olafur Eigilsson in Reykjavik.
[259] Communication from the Danish Foreign Ministry, to the Norwegian Foreign Ministry, 17 January 1984, NMF, 4.
[260] Ibid.
[261] See link entitled "Members from 1947–2005" at the Office of the High Commissioner for Human Rights: http://www.ohchr.org/EN/HRBodies/CHR/Pages/Membership.aspx, (2 March 2017).

is, perhaps, that Norway never had a seat at the Commission on Human Rights during the entire drafting process on CAT but still managed to maintain a relative high profile on the human rights issue of torture throughout. This was mainly due to Norwegian officials, continuous interest in the issue and was achieved through the country's active participation in the UN, Council of Europe, and the Nordic framework for cooperation on human rights. Regardless, the Nordic statement to the states in question took into account (not always correctly) that the officials it reached needed an introduction to the issue of torture.

The Nordic statement briefly outlined the entire background on the prohibition of torture at the UN, starting with the introduction of the principle in the Universal Declaration of 1948. It went on accounting for the various resolutions that had driven the issue, the mandate given to the Commission on Human Rights in 1977, and briefly outlined the efforts of the Working Group. After noting that "a few important questions are, however, still outstanding…" the statement presented, unambiguously, the Nordic position on what needed to happen next:

> In order to safeguard the credibility of the UN undertaking in this fundamental human rights field the five Nordic countries considers it of paramount importance that the Draft Convention against Torture etc. be finalized at the forthcoming session of the open-ended working group … so that the draft convention together with the report from the working group may be presented for adoption at the 40th session of the Human Rights Commission… [262]

In 1984, the foreign ministries of all Nordic countries took it upon themselves to "safeguard the credibility" of the UN undertaking to establish a new instrument against torture. Although his name was never mentioned, it would be Jan Herman Burger's job to prepare the "report from the working group" referred to above. The foundation for presenting the convention against torture to the General Assembly would have to be laid out in that document. The reference to the report in the Nordic statement was probably an effort to secure Burgers the mandate he needed to do just that.

It is difficult to assess what affect the Nordic overtures had on its recipients. Most foreign ministries approached by Nordic officials gave an uncommitted but positive response. In Nairobi, for instance, Nordic officials met with Mr. Kioko, who had been station at the Kenyan embassy in Stockholm from 1978 to 1980. He was reported stating that the fundamental view on human rights held in Nordic countries was shared in Kenya, although

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"…at times, it was perhaps difficult to follow the tempo of these [Nordic] countries".[263] The young state Kenya took up its first seat at the Commission on Human Rights that very year.[264] In India, a state well versed in the hidden diplomacy typical to the UN, Nordic officials found themselves bargaining for influence. The Indian Foreign Ministry indicated that they would be active and well represented during the deliberations on the convention against torture. Indian officials then raised the issue of the upcoming vote on representatives in the *Sub-commission on prevention of discrimination and protection of minorities.* A request was made for Nordic support for the Indian candidate, Mr. M. C. Bhandare, "… a well renowned lawyer from Bombay".[265] Nordic, embassy personnel on site were not mandated to give any promises on behalf of five countries, but reported these and similar interactions to their respective Ministries. While the evidence is inconclusive, it is unlikely that Nordic Capitols made such deals for the adoption of CAT. The way in which Nordic states coordinated the rotation of seats at the Commission amongst themselves largely precluded bilateral agreements of this type. In this instances, any deal would have to have gone through Finland, which occupied the Nordic seat at the Commission and thus the power to vote, and no signs of Nordic coordination on this issue have been found in the source material.[266]

More important in the present context is the North European network interacting to bring an end to the negotiations on CAT. The network included the Swedish official that had produced the various drafts constituting the basis of the convention (Danelius), the Dutch Chairman rapporteur of the Working Group at the UN (Burgers), and various ad hoc constellations of foreign officials participating through the Nordic framework for cooperation on human rights – during the lobby effort Michael Bendix can be singled out as a capable facilitator. While the relationship various actors had with Sweden – and in several instances with Hans Danelius himself – constituted the initial link that formed the basis for cooperation on instruments against torture, the dynamics of the cooperation had progressed significantly since Sweden had initiated the pursuit of new norms. In 1975 it had been Sweden and the

[263] Kioko's statement summarized in report from the Danish embassy in Nairobi, circulated to all Nordic ministries, 26 January 1984, NMF.
[264] See link entitled "Members from 1947–2005" at the Office of the High Commissioner for Human Rights: http://www.ohchr.org/EN/HRBodies/CHR/Pages/Membership.aspx, (2 March 2017).
[265] Report from the Danish Foreign Ministry, circulated to Nordic Foreign Ministries, 25 January 1984 (author's translation), NMF.
[266] Kirsten Ohm of the Norwegian Foreign Ministry turned down a similar request from Argentina on the grounds that Norway was not a member of the Commission on Human Rights, see handwritten remarks on Telex from the Norwegian Embassy in Argentina, to the Norwegian Foreign Ministry, 24 January 1984, NMF.

Netherlands that jointly lobbied for the adoption of the Declaration against Torture. Nearly nine years later, a Nordic effort was launched on behalf of CAT. As seats rotated at the Commission on Human Rights and the prolonged negotiations on the convention took on the somewhat familiar aspects of Cold War divisions on rights issues, Nordic cooperation provided a broad approach to difficult issues. The Swedish Foreign Ministry, which had been accused by Norwegian officials of not including its neighbors in 1977, seemed to welcome Nordic support in 1984. With reference to the lobby effort, the Swedish Ministry made a point of thanking its Danish counterpart for "…taking on such a large part of the work".[267]

In the period from 1979 to 1983 only eleven articles in the draft convention had been formally adopted by the Working Group. In 1984 alone, fifteen articles were adopted during the pre-sessional meetings.[268] In the literature the radical change in the Argentine position after the end of military rule, the sudden flexible attitude of the Soviet delegation, and the constructive role of Indian representatives have all been noted as factors contributing to this breakthrough.[269] The Nordic effort at lobbying various states at the Commission, immediately prior to 1984 session, probably contributed to this success. The draft convention was not agreed upon in full, however.[270] It had been impossible to reach a consensus on article 20 and, hereunder, the crucial question of whether or not the monitoring body – i.e. the UN Committee against Torture – should be able to undertake mandatory investigations into state parties of the convention when acts of torture had been alleged. Several Western states were in favor of making this article mandatory for all state parties, the East Block wanted the article optional.[271] Another problem was article 19 where it seemed impossible to reach an agreement on whether or not the Committee against Torture should be able to provide "comments or suggestions" based on state reports, or, as advocated by states in the East Block, only "general comments" to the General Assembly. These nuances in the framing of the text might seem like nothing more than a technical issue, but it had significant implications. If the scope of article 19 were limited to simply "general comments", the Committee would not be able to report to the General Assembly on specific violations of torture in any single country. Widespread skepticism towards the system of universal

[267] Message from the Swedish Foreign Ministry, to the Danish Foreign Ministry, 18 January 1984 (author's translation), SMF.
[268] Burger and Danelius, *The United Nations Convention against Torture,* 91.
[269] Ibid., 92.
[270] For the official and detailed report of the activities of the Working Group in 1984, see UN document E/CN.4/1984/72, "Report of the Working Group on a draft convention against torture…", 9 March 1984.
[271] Swedish report entitled "FN-konvention mot tortyr", 15 June 1984, SMF.

jurisdiction now agreed upon in the draft convention still remained, even among states that had long supported the establishment of a convention against torture – e.g. Australia.[272]

## Adoption

By June 1984 the draft convention that had emerged from the Commission on Human Rights was ready to be sent to the General Assembly for final consideration. With a new human rights instrument on the agenda, the office of the Secretary General sent out a questionnaire to solicit the reaction of all UN member states. The Swedish state communication, signed by Hans Danelius, made no effort to hide that the negotiations had been difficult. Summarizing the state of the draft convention, the Swedish response to the UN noted:

> As a compromise it is of course not entirely satisfactory to any Government. The Swedish Government would also have preferred other solutions to a number of the problems involved but believes at the same time that it would be very difficult, or even impossible, to draft a different text which could gain wider support or be accepted by consensus. … For these reasons, Sweden is prepared to accept the text which has now been transmitted to the General Assembly.[273]

Having initiated the entire project and seeking to maintain a positive note, Sweden could hardly have stated otherwise to the UN. In internal communications, however, Swedish officials were far from certain that they would support the adoption of the convention that year, and certainly not if its provisions were further diluted during negotiations in the Third Committee. Denmark and Norway submitted communications substantially identical to that of Sweden.[274]

The amount of effort exerted to obtain support for the draft convention in 1984 was staggering. Lobby efforts began in early summer and continued, in various forms, up until CAT was adopted on December 10th. The most notable aspect of the initial lobby effort during the summer in 1984 was that numerous Western states contributed. Strategy for dealing with the process on the draft convention at the General Assembly were discussed in meetings at the Council of Europe on the 21st and 22nd of May. Among states attending were Austria, Belgium, Denmark, Great Britain, Greece, France, the Federal Republic of Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden and non-council members

[272] Telegram from the Swedish Delegation in New York, 8 August 1984, SMF.
[273] Copy of the Swedish letter to the UN Assistant Secretary-General for Human Rights, 18 June 1984, SMF.
[274] See telegram from the Swedish Delegation in New York containing UN draft document on state communications entitled "Report of the Secretary-General", 19 September 1984, SMF.

like Canada, Finland, the United States and the Vatican.[275] There existed, of course, a wide range of views on the draft convention, including opposition towards aspects of the draft, but with a new human rights instrument on the horizon, most Western states banded together.[276] Swedish and Dutch officials took the lead in organizing a concerted effort where western states reached out – both at delegation level at the UN and directly to various capitols – to primarily countries in Africa, Asia and South America. The overarching goal was to gather support for an early adoption and influence as many states as possible to submit state comments on the draft convention by the deadline set on September 1st.[277]

It soon became apparent that the initial lobby effort would not be enough. Factors contributing to the difficulties were that the convention against torture was perceived as a Western initiative, a lack of knowledge of the instrument, and that few states were willing to commit to a position on the instrument prior to discussions at the General Assembly. There were also direct signs that the Soviets, as expected, were conducting a lobby effort of their own. In September, Stockholm received information that Soviet diplomats had visited the Spanish Foreign Ministry in order to express their "vivid interest" for the convention against torture, provided, that is, that the instrument was made optional.[278] Presumably, Spain was not the only country Soviet officials reached out to. A wider Soviet effort at influencing states to oppose mandatory implementation machinery might explain why certain states in Africa and Asia were hesitant to support the draft convention without further changes. In late September, after the deadline to issue state comments on the draft had expired, Swedish officials in New York noted that of some 20 state communications sent to the UN Secretariat so far, almost all came from Western states.[279] A fundamental problem, Swedish officials later concluded, "…is that many perceives the convention against torture as a primarily Western concern with potentially unpleasant implications in the form of interference in domestic affairs".[280]

The opposing position of several states in the East Block was increasingly felt throughout the 39th Session of the General Assembly. An early sign was detectable in the state

[275] Telegram from the Swedish Delegation in New York, to H. Danelius, 23 May 1984, SMF.
[276] Telegram from the Swedish Delegation in New York, to H. Danelius, 8 June 1984, SMF.
[277] See also Norwegian memorandum entitled "Felles nordisk hendvendelse om utkast til torturkonvensjonen innen FN", 28 June 1984, NMF; Brief entitled "Nordisk rettssjefsmøte. Torture. (99)", 17 August 1984, NMF.
[278] Telegram from the Swedish Embassy in Madrid, 14 September 1984, SMF.
[279] Telegram from the Swedish Delegation in New York, 19 September 1984, SMF.
[280] Telex from the Swedish Delegation in New York, 16 October 1984 (author's translation), SMF.

communication from Hungary, which informed that the Government "…believes that the time has not come yet for the General Assembly to adopt a convention on the subject [torture]".[281] More significant were the amendments to the draft proposed by the Soviet Union and Belarus. These were circulated in UN documents in November and showed, once more, a deep-rooted skepticism towards mandatory implementation mechanisms. The proposal from the Soviet Union consisted of seemingly minor changes to the framing of articles in the draft convention, such as changing the proposed mandate of the monitoring body (under article 20) to conduct an "inquiry" with the alternative term "study".[282] Nearly all changes opened for a weaker interpretation of the articles in question. Belarus proposed the insertion of an entirely new article (28), which stated that states could, at the time of signature, ratification or accession, declare that it did not recognize the competence of the Committee provided for in article 20 – in short, article 28 made article 20 optional.[283] In the opinion of one Norwegian official, these proposals had been put forth "…to create as much chaos as possible".[284]

Throughout the 39th Session, the Swedish and Dutch delegations had led numerous informal discussions on the draft convention and Nordic delegations had made further joint attempts at lobbying undecided states. Overall, the last half of 1984 saw more coordinated activity by Nordic delegations at the UN than previous years combined. By mid November, and despite such efforts, Swedish officials had to conclude that the "…support for the convention is eroding, especially when it comes to article 20".[285] When the General Assembly opened, the Swedish Foreign Ministry had been adamant that the convention needed mandatory implementation machinery. The Swedish position, maintained in numerous communications, was simplified, and thus made exceedingly clear, in a list of talking points prepared for Foreign Minister Lennart Bodström's visit to New York.

> Sweden is deeply committed to this project, which was a Swedish initiative. We want top priority to be given to this item on the agenda. … The whole point of the Convention will be lost if mandatory and effective implementation cannot be guaranteed. … If the out-look for adoption of the Convention as drafted should turn out to be doubtful, Sweden would, as a last resort, propose that the matter be postponed to

[281] See copy of UN draft document entitled "Report of the Secretary-General" in communication from the Swedish Delegation in New York, 19 September 1984, SMF.
[282] See UN document A/C.3/39/L.63 of 29 November 1984, NMF.
[283] See UN document A/C.3/39/L.66 of 29 November 1984, NMF.
[284] Telex from the Norwegian Delegation in New York, to the Foreign Ministry in Oslo, 30 November 1984, NMF.
[285] Telex from the Swedish Delegation in New York, 14 November, 1984 (author's translation), SMF.

> next year, rather than compromising on the mandatory character of the implementation procedure.[286]

While Sweden had planned to postpone the adoption of the convention if unfavorable changes were made to the implementation machinery, this would turn out to be a difficult strategy to implement. To do so would entail risking all the articles that had been agreed upon so far in order to preserve some of the provisions for enforcement. In the end, this "last resort" was never utilized. Instead, Sweden and the Netherlands relied on negotiations and concessions to reach a consensus.

When the formal debate on the convention was set to begin in the Third Committee, the Swedish Delegation planned an early opening address to introduce the draft convention as well as "…set the tone for the debate and hopefully influence others to speak in a similar manor".[287] In order to make a broad appeal, but probably also to signal each country's support for a new human rights convention, it had been decided that the Swedish Ambassador to the UN, Anders Ferm, should speak for all Nordic countries. The Swedish Foreign Ministry prepared a draft speech, and then sent it to its Nordic counterparts for approval. When Nordic reactions had been received, a Swedish report could note that the Finns had requested an extensive list of amendments in order to "neutralize the language they found polemic" – most of the suggestions from Finland were rejected by the Swedish Ministry – while Denmark proposed some minor adjustments to the language, and Norway approved the text outright. The Icelandic point of view was not mentioned in the Swedish report.[288] The incident could represent a microcosm of Nordic cooperation in the pursuit of human rights instruments against torture.

With Sweden in the lead, and some minor adjustments made, the statement was presented to the Third Committee as the unified Nordic position:

> The draft convention against torture now before us has demanded many years of preparation. It has aroused considerable interest and, indeed, expectations in public opinion all around world. There can be no doubt about the strong public demand for the adoption of this convention. …

[286] Swedish memorandum entitled "Samtalspapper för utrikesministerns New York-besök", 21 September 1984, SMF.
[287] Telex from the Norwegian Delegation in New York, 14 November 1984, NMF.
[288] Telegram from the Swedish Delegation in New York, to the Swedish Foreign Ministry, 19 November 1984 (author's translation), SMF.

> The Nordic Governments fervently hope that this session of the General Assembly will not fail to meet the expectations of people in all parts of the world. Let us rise above our differences and prove the effectiveness of the United Nations in protecting human rights. Let us adopt a strong and effective convention against torture now.[289]

All in all, it was a fine moment in Nordic cooperation on human rights. Taking into account the years of effort that had preceded it – the vast majority of which had been exerted by the Swedish Foreign Ministry – Nordic states were able to deliver a poignant plea, on behalf of "people in all parts of the world", with a certain degree of authority on the issue itself. Ultimately, the message was far more effective in enforcing the image of Nordic states as proponents of human rights, than it was in winning over delegations skeptical of draft article 19 and 20.

On December 3rd 1984, the Dutch Ambassador to the UN introduced the resolution on the draft convention against torture on behalf of his own country and cosponsors Argentina, Belgium, Bolivia, Colombia, Costa Rica, Denmark, Dominican Republic, Finland, Gambia, Greece, Iceland, Norway, Panama, Portugal, Samoa, Singapore, Spain and Sweden.[290] A meeting for the cosponsoring states and a few other interested parties earlier that day reveals the uncertainty connected to the decision to put forth the resolution. Delegates at the meeting widely agreed that it would be impossible to reach a consensus on the draft convention in its current form.[291] If the convention was postponed, the matter could be referred back to the Commission on Human Rights and, in a worse case scenario, the entire draft convention reopened for discussion. If pushed through the General Assembly in 1984, where several proposed amendments had already been circulated, the draft convention faced an uncertain outcome. During the meeting, Dutch delegates proposed a compromise they had previously discussed with Swedish officials. It consisted of accepting Belarus's proposal to insert proposed article 28, which contained provisions that made article 20 (inquiries by the monitoring body into state parties) optional. The conditions set for accepting article 28 was that other amendments were dropped and a consensus reached.[292] While no deal had been made at the time the resolution on the draft convention was introduced at the UN, Sweden

[289] Speech delivered by Swedish Ambassador to the UN, Anders Ferm, on 19 November 1984, see: Telegram with heading "Statement in the Third Committee on 19 November 1984…" from the Swedish Delegation in New York, 19 November 1984, SMF.
[290] Telex from the Norwegian Delegation in New York, 4 December 1984, NMF.
[291] Telex from the Norwegian Delegation in New York with heading "Behandling av utkast til torturkonvensjonen", 3 December 1984, NMF.
[292] Ibid.

and the Netherlands, and indeed most other cosponsors, had more or less agreed to accept such an outcome.

On the morning of December 5th, the cosponsoring states agreed that they had no option but to propose the compromise outlined two days prior. The Swedish Delegation reported to Stockholm that the determining factors had been signs of increasing "confusion" during the negotiations, especially among some of the unaligned states, and a strong interest among those gathered for postponing the adoption. It was feared that if an olive branch were not extended, the adoption of the convention would be postponed. Signaling the acceptance of article 28 proved decisive, and the Soviets immediately approached Dutch delegates to signal their willingness to compromise.[293] There was still the problem of reaching an agreement with states that had other issues, but through what the Swedish delegation called "strong lobbying" a consensus was reached. Swedish officials estimated that if a final agreement had not been made, the consensus prevailing on the 5th of December would probably not have lasted until the following day.[294] The Third Committee was able to adopt the draft convention before time ran out, however, and the formal adoption of CAT by the Plenary Session of the General Assembly was scheduled for Human Rights Day, five days later.

On the 10th of December 1984, twelve years to the day after Amnesty International had launched its Campaign for the Abolition of Torture, the General Assembly adopted CAT by consensus. The successful negotiations in the Third Committee on December 5th was hailed by the UN Secretary-General as an "extremely important milestone", and a press release from the Secretariat noted: "The world community has thus outlawed once and for all the abominable practice of torture".[295] Several actors used the opportunity to express support. Among the states that briefly addressed the General Assembly in connection with the adoption of CAT were the Netherlands, Colombia, Mexico, the United States and the Soviet Union – all emphasized the importance of the instrument in the on-going effort to combat torture.[296]

[293] Telex from the Swedish Delegation in New York, 5 December 1984 (author's translation), SMF.
[294] Ibid.
[295] See UN document SG/SM/3632/IR2674 of 6 December 1984, NMF; Telex from the Norwegian Delegation in New York, 7 December 1984, NMF.
[296] Telex from the Swedish Delegation in New York, 10 December 1984, SMF.

After the consensus had been reached in the Third Committee on December 5th, it suddenly occurred to Nordic delegates that they had forgotten to plan a *joint* statement. The Swedish Delegation, which had already prepared its own speech, was politely asked to make the statement "as Nordic as possible". With all possible speed, the respective Foreign Ministries approved the overall message in the Swedish statement.[297] It is highly unlikely that other Nordic ministries, e.g. Ministries of Justice, were consulted; there simply was no time. With some minor adjustments made to the speech, Anders Ferm went before the General Assembly and made a rather significant promise on behalf of the Nordic region.

> Ever since Sweden, in 1977, took the initiative to elaborate the Convention, the Nordic countries have been closely associated with this work. The road towards the Convention has been long and difficult. It is important now to make the Convention enter into force as early as possible and to make it effective by giving it a truly wide adherence. I have the honor and pleasure to announce, Mr. President, that the Nordic countries will sign the Convention as soon as it is open for signature and take steps towards an early ratification.[298]

What had tentatively begun with a Swedish rejection of torture at the UN in 1973, ended by signaling a policy commitment with possible domestic implications for five states.

Most of the Nordic states managed to live up to this promise. All of them became signatories to the Convention at the earliest possible opportunity on February 4th 1985. Per the provisions contained in the instrument itself, CAT would enter into force following the deposit of the 20th instrument of ratification (article 27) – in other words, when 20 states had ratified the Convention. While this is an artificial finish line, we may use it as a benchmark for early ratification. Sweden became the first country in the world to ratify CAT on the 8th of January 1986. Norway followed six months later and became the 7th state to ratify the instrument. Denmark nearly missed the mark by becoming the twentieth state to ratify the Convention on the 27th of May 1987. All Scandinavian states had thus managed to ratify CAT before it entered into force in June 1987. Finland ratified two years later on the 30th of August 1989, and Iceland waited until 1996. The Netherlands ratified the treaty on the 31st of December 1988.[299] Little of this, of course, was due to the non-binding and somewhat

[297] Telex from the Swedish Delegation in New York, 7 December 1984, SMF; see also Telegram from the Swedish Delegation in New York, 10 December 1984, SMF; Telex from the Norwegian Delegation in New York, to the Foreign Ministry in Oslo, 10 December 1984, NMF.
[298] Telegram from the Swedish Delegation in New York, 10 December 1984, SMF.
[299] See "Ratification status for CAT", Office of the High Commissioner for Human Rights, at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CAT&Lang=en, (23 October 2016).

spontaneous promise made by Anders Ferm at the UN in 1984. The timing of the ratifications above hinged on multiple factors not influenced by foreign ministries, such as the status and implication of international law in the respective legal systems of each state, as well as the actions of respective Ministries of Justice. Still, it is worth observing that when CAT was adopted by the UN, Nordic foreign ministries had no reservations about signaling a further commitment to the treaty that might, potentially, have significant domestic implications. Today, around 160 states have ratified or acceded to CAT.

## Conclusion

During the negotiations on CAT, Denmark and Norway took up close to identical positions as Sweden on crucial elements of Swedish drafts, i.e. on provisions for universal jurisdiction and implementation. Scandinavian Delegates coordinated efforts in various informal meetings. A Nordic profile became more openly visible after Denmark took a seat at the UN Commission on Human Rights in 1980. While the seat was given up to Finland in 1983, Denmark continued to emphasize Nordic cooperation, most notably during the lobby efforts in 1984. That Nordic states, i.e. Sweden, Denmark and Finland, effectively took turns in putting forth various procedural resolutions – e.g. resolutions pertaining to the annual establishment of working groups – that kept the negotiations on CAT moving forward, is of course significant. The Nordic framework proved useful as a broad platform of support for CAT. The most coordinated efforts during the entire process for the establishment of the Declaration and Convention against Torture came towards the very end, when Nordic states joined in lobby efforts to end the negotiations and secure the adoption of CAT. This is further evident from the joint Nordic statements delivered by the Swedish Ambassador to the UN, Anders Ferm, in 1984.

During the deliberations on CAT, Swedish officials opposed the stronger mechanisms of enforcement proposed by the Netherlands, and, indeed, most other major initiatives that did not conform to their plans for the instrument. The Swedish Foreign Ministry was seeking a convention that offered something new, yet could be ratified by most states. The goal was to push the boundaries international law, but not too far. Even so, Swedish plans for a system of universal jurisdiction and certain mandatory implementation provisions met with strong opposition. The opposition from the East Block was most strongly felt. The Soviet Union strongly opposed mandatory implementation mechanisms, and above all the provisions in

Article 20 for inquiries by the monitoring body into state parties. While the Soviet successfully exerted their influence on this issue, Swedish and Dutch officials managed to preserve the provisions for inquiries by agreeing to make Article 20 optional, and in doing so secured the adoption of CAT.

# 6 Conclusion

This thesis has explored the contributions of Scandinavian states to modern anti-torture politics, and, especially, the expansion of the prohibition on torture established with the Declaration and Convention against Torture. Sweden, which took the unquestionable lead in the pursuit of the two human rights instruments, now has a rather unparalleled record on the human rights issue of torture: Sweden initiated the resolution that put torture on the agenda of the General Assembly in 1973; introduced (together with the Netherlands) the Declaration against Torture in 1975; initiated work on the Convention against Torture in 1977; produced various drafts for the Declaration and the Convention; and became the first state in the world to ratify CAT. However, 1973 was not the first time the Swedish Foreign Ministry engaged the human rights issue of torture, nor did Sweden act in a vacuum.

The coup d'état in Greece in April 1967 quickly became a concern in Scandinavia. Strong anti-junta sentiments resonated from both sides of the political spectrum, but most strongly from the left. Denmark and Norway were already NATO allies of Greece, and these preexisting bonds were used to challenge the security policies at home. Neutral Sweden, for its part, had the most active Amnesty Section in the region. Given the pervasive pressure on Scandinavian governments to act against the Junta, it might be argued that the launch of the Greek Case had less to do with human rights violations, than it had with creating a distance to a right wing military regime. As such, Scandinavian states had something to gain, and little to loose, by filing complaints. It should be noted that this observation is diametrically opposed to the assertions of James Becket, a contemporary observer who marveled at Denmark, Norway and Sweden's willingness to suffer economic sanctions to uphold human rights in Europe.[300] It is not the intent here to make light of the sanctions imposed by Greece, but, rather, to point out that Scandinavian Governments had motives to act. It should also be noted that in Norwegian historiography, the Greek Case has, at times, been treated as an odd occurrence, ending in a successful resolution, never to be repeated. While this true, the Case contributed to Denmark, Norway and Sweden's image as proponents of human rights. It also set a precedent for Scandinavian involvement on the human rights issue of torture and likely contributed in raising expectations for further engagements with human rights in the 1970s. Denmark, Norway, Sweden and (separately) the Netherlands were the only state actors that

[300] Becket, "The Greek Case Before the European Human Rights Commission", 95.

filed complaints against the Greek Regime in 1967. These four states would later be among the most ardent supporters of new norms against torture at the UN.

The need for a convention based on Article 5 (torture) of the Universal Declaration was formulated by Amnesty International as early as 1968. It can hardly be considered a mere coincidence that this central goal in modern anti-torture politics was circulated in AI's Quarterly Review the same year that Scandinavian states added charges of torture to their interstate complaints; AI's report on Greece was used as evidence for torture violations; AI expanded its mandate to include the human rights issue of torture; and AI representatives testified before the European Commission. What made 1968 so significant was that violations of torture by a state offender had been met with a reaction, and, for the first time, it seemed possible that some consequences might follow. It took four more years before AI launched its hugely ambitious Campaign for the Abolition of Torture in December 1972. Scholars like William Korey and Samuel Moyn have praised the Campaign as one of the most successful human rights initiatives ever launched by a NGO.[301] Yet the international literature has not provided much context that can explain how events unfolded from the NGO initiative to the actual adoption of human rights instruments. It is noteworthy that representatives from Sweden, the state that would take the lead in establishing new norms, met with Martin Ennals in New York, prior to launching the 1973 resolution that rejected torture and, more significantly, resolved to return to the issue at a later session of the General Assembly. In 1988, Danelius and Burgers linked growing concerns about torture in the 1970s to oppression in "autocratic regimes in Latin America".[302] Danelius recently reiterated this view, and emphasized the increased number of refugees arriving in Sweden from such regimes as a factor when the Swedish Foreign Ministry began addressing the issue of torture.[303] It is likely that the Coup in Chile in September 1973, a month prior to the meeting in New York, added some incentive for launching the 1973 resolution. It should be noted, however, that Swedish officials were unsure on how to proceed at this point, and had made no commitments to introduce a human rights instrument.

The plan to introduce a declaration targeting torture began taking shape following the adoption of GA resolution 3218 (XXIX) in 1974. The resolution, which mandated the

[301] Korey, *NGOs and the Declaration of Human Rights,* 171; Moyn, Samuel, *Human Rights and the Uses of History,* 103.
[302] Burgers and Danelius, *The United Nations Convention against Torture,* 13.
[303] Written communication from H. Danelius, to author, 15 March 2017.

upcoming Fifth UN Crime Congress to report to the General Assembly on the issue of torture, had been initiated by the Netherlands. Three officials emerge as the principal architects of the joint Swedish/Dutch initiative to establish a Declaration against Torture. Hans Danelius and Nils Rune Larsson, both with the Legal Department at the Swedish Foreign Ministry, and Theo van Boven with the Foreign Ministry in the Netherlands. The trio formulated the Swedish/Dutch strategy for the introduction of the draft declaration and discussed the drafts produced in Stockholm. Sweden informed other Nordic states at an early stage, some five months before the decision to commit had been taken. There has been much speculation in the literature as to AI's influence on the events during the Crime Congress in Geneva. William Korey gave AI much of the credit for the draft declaration that emerged from the Congress when he, referring to the declaration, noted that AI could take particular pride "in the manner by which it had accomplished its mission".[304] On this point, Korey's assertions seems misguided, at least as far as Swedish dispositions are concerned. The present source material shows no signs of significant correspondence between AI and the Swedish Foreign Ministry after planning for the declaration began in January 1975. While Swedish officials adopted AI's agenda, at least as far as the need for a convention was concerned, several of the NGO's proposals were rejected as unrealistic – among these were the proposed resolution that resolved to initiate work on a convention in 1973, and most of AI's proposals for the Crime Congress in 1975. While she was primarily referring to the later negotiations on the CAT, the findings of this thesis – on both the Declaration and Convention – closely aligns with Ann Marie Clark's assertion that while Amnesty could play a part in informal meetings in intergovernmental settings, state delegations were the decisive actors during the official portions of the drafting process.[305]

When Sweden succeeded in putting a new human rights instrument before the General Assembly, Denmark and Norway quickly took steps to declare their open support – Norwegian Foreign Minister Knut Frydenlund did so two weeks after the Crime Congress in Geneva recommended the adoption of the Draft Declaration. The Nordic framework for cooperation on foreign policy had given Scandinavian states prior warning, a chance to evaluate the draft declaration months before other states, and, ultimately, declare support at an early stage. Even so, the interactions on the human rights issue of torture at the UN never matched the cooperation that led Scandinavian states to file three identical complaints against

[304] Korey, *NGOs and the Universal Declaration,* 175.
[305] Clark, *Diplomacy of Conscience,* 62.

Greece on the same day in September 1967. Norwegian historians Rolf Tamnes has noted that there existed both cooperation and competition – side–by–side, as it were – between Nordic states in intergovernmental settings.[306] Multiple aspects of the interactions described in this thesis fit well with his observation. Swedish officials' general preference for cooperation with the Netherlands (as opposed to, for instance, Denmark and Norway), their inability to invite Nordic states as cosponsors on crucial initiatives (such as the resolution that initiated work on the convention in 1977), and a general tendency, on their part, to take Scandinavian support for granted, are notable examples in this respect. While tensions existed at certain junctures, evident from complaints sent to Oslo by the Norwegian Delegation in 1977, there were, overall, far more cooperation than competition on the human rights issue of torture at the UN. This was primarily due to the fact that Sweden informed Nordic counterparts of most major developments, and that Denmark and Norway never challenged Sweden's leading role in the pursuit of the two instruments. Here, the parameters were largely established by the confines of Nordic cooperation on foreign policy, which dictated that Sweden should take the lead on issues it had initiated.

Scandinavian attempts at arbitration, peacekeeping, foreign aid or the promotion of human rights have at times been labeled idealistic. Leaving aside a discussion on whether or not terms like "idealistic" induces the proper connotations to pursuits of international human rights, especially in the case of torture, we may use the terminology to draw some interesting conclusions. Swedish officials took a distinctly, realistic approach to their pursuit of an idealistic goal. UN processes was seen as something that had to be managed. Tactics included waiting to inform relevant UN bodies, reaching out to selected nations to secure support across voting blocks, and persuading other actors from getting involved – during work on the Declaration, the United States and Australia are two examples of this. By having the Draft Declaration adopted as a recommendation at the Crime Congress in Geneva, Swedish and Dutch officials also circumvented the UN Committee on Human Rights. Overall, Swedish officials did their best to safeguard their own initiatives. It might not be altogether wrong to conclude that the ultimate goal was never simply the adoption of a Convention against Torture, but a Convention against Torture made by Sweden.

[306] Tamnes, *Oljealder,* 345.

Denmark and Norway expressed open support for both the Declaration and Convention at early stages. By further adopting near identical positions to that of Sweden on such crucial elements of the draft convention as universal jurisdiction and implementation provisions, Danish and Norwegian officials exhibited signs of a genuine desire to see a strong convention adopted, but also an active interest in preserving the profile of their own countries on an important human rights issue. It can not be argued that Denmark and Norway's cosponsorship on critical resolutions were always necessary for the advancement of the UN processes pertaining to the instruments, and Norwegian officials complained only when they were left out at the most critical juncture – i.e. on the resolution that initiate work on the convention in 1977. Similarly, Sweden could have taken a more passive approach after having initiated the drafting process, for instance by not submitting own drafts, or accepting changes to the Swedish draft that in fact would have strengthened the Convention. At such occasions, the goal of the Swedish Foreign Ministry was to facilitate the adoption of CAT and, when this had been achieved, the broad ratification of the instrument. While such actions are justifiable, the successful adoption and wide ratification of CAT also cast a favorable light on Sweden, the state that had initiated the process.

The Swedish Foreign Ministry's pursuit of new norms, sustained for roughly ten years between 1973 and the end of 1984, represents a remarkable contribution to international human rights. Under the leadership of Hans Danelius, Under-Secretary for Legal and Consular Affairs, the Legal Department made the human rights issue of torture a feature of Swedish Foreign Policy. Actors highlighted in this thesis are Nils Rune Larsson, Division Director at the Legal Department, who played a key role during the establishment of the Declaration and various officials at the UN Delegation, most notably, perhaps, the Embassy Secretary Jan Ståhl. It should be noted that the emphasis in this thesis on the importance of officials – often experts in international law – in shaping the human rights policies of the states they represented, mirrors resent research from the University of Oslo into other periods in the evolution of human rights.[307]

A noteworthy contribution made by this thesis is the observation that such officials did not merely act and exert influence in a national context. It should take nothing away from the

[307] See Hareide, *Norge og Den europeiske menneskerettighetsdomstolen,* (Master Thesis), 119–120; and Vik, Hanne Hagtvedt, "A Sympathetic Government: Norway and the Emerging International Indigenous Peoples Movement", Unpublished Article.

achievements of the Swedish Foreign Ministry to note that their officials had a significant level of interactions with their counterparts in Nordic states during the pursuit of the Declaration and Convention against Torture. This unfolded within the confines of already established channels for Nordic cooperation on foreign policy. At all three junctures discussed in this thesis, i.e. the Greek Case, the Declaration against Torture and the negotiations on CAT, communications initially begun in such a context. This holds true even for the Greek Case, where the Swedish Foreign Ministry approached other Nordic states, not merely Denmark and Norway, on the possibility of joint action.

While indebt case studies into specific events and processes are needed to unravel the many questions pertaining to human rights at the national level, human rights history is also a field highly suited for various transnational approaches. By studying the interactions of Scandinavian states on the human rights issue of torture between 1967 and 1984, this thesis has challenged preconceptions of the timing and influences on, at the very least, Norway's human rights policies in the 1970s. Is it reasonable to trace Norwegian human rights activism to influences from the Carter Presidency, or CSCE before it, if we take the pursuit of the human rights issue of torture into account? The answer, in my opinion, is no. To do so, historians would have to ignore the Greek Case, or at the very least confine it to the fringes of history – the same is true for the interactions discussed in this thesis. It is entirely possible that the determining influences on Scandinavian human rights policies, certainly at the UN, from the late 1960s to the 1980s were never transatlantic, or continental for that matter, but regional and rooted in the Nordic framework for cooperation on foreign policy, where human rights discourse and interactions seems to have flourished.

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# Appendices

## Appendix 1. Early Draft Declaration, 1975

**Toronto Congress Draft Resolution**[309]

**Article 1**

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the Charter of the United Nations and as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

**Article 2**

1. Each state shall, in accordance with Articles 3 to 11 of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practiced within its jurisdiction.

2. For the purpose of this Declaration, torture means any act, by which severe pain or suffering, whether physical or mental, is deliberately inflicted on a person, either for the purpose of punishing him for an act he has committed or is suspected of having committed. It includes acts of beating and other violations of a person's corporal integrity, prolonged deprivation of food or water, prolonged isolation, treatment which is grossly humiliating and threats of reprisals against other persons.

**Article 3**

No state may allow or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

**Article 4**

The prohibition against torture and other cruel, inhuman or degrading treatment or punishment shall be given particular attention in the training of public officials who may be responsible for detainees. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of the staff of institutions where detainees are kept.

[309] Early draft of the UN Declaration against Torture. The text was part of a draft resolution produced by Hans Danelius when the Fifth UN Congress on the Prevention of Crime and Treatment of Offenders was still scheduled to be held in Toronto. The venue was later changed to Geneva. The draft is dated to late May 1975. This is probably the earliest draft for the UN Declaration against Torture ever published. See letter from H. Danelius with attached draft, 2 June 1975, SMF.

**Article 5**

Each State shall continuously keep under review interrogation methods and the treatment of detainees in its territory, with a view to preventing any cases of torture and other cruel, inhuman or degrading treatment or punishment.

**Article 6**

Each State shall ensure that an act of torture or other cruel, inhuman or degrading treatment or punishment is a punishable offence under its law, whether the perpetrator is a public official or a private individual. The same shall apply in regard to acts which constitute participation or complicity in, or incitement to, torture or other cruel, inhuman or degrading treatment or punishment.

**Article 7**

Whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed, the competent authorities of the State concerned shall ex officio proceed to an impartial investigation. If the suspicion is considered to be well-founded, criminal proceedings shall be instituted against the offender or offenders.

**Article 8**

Any person who alleges to have been the subject to torture or other cruel, inhuman or degrading treatment or punishment shall have the right to have his case impartially examined by the competent authorities of the State concerned. If the allegation is considered to be well-founded, criminal proceedings shall be instituted against the offender or offenders.

**Article 9**

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed, the victim shall be afforded redress and compensation in accordance with national law.

**Article 10**

Any statement which a person has made as a result of torture or other cruel, inhuman or degrading treatment or punishment being used against him may not be invoked as evidence against him in any proceedings.

**Article 11**

All States shall co-operate in implementing this Declaration. Where appropriate, regional bodies may be set up for the purpose of assisting States in elaborating rules or standards or in investigating cases of alleged violations of the principles of this Declaration.

## Appendix 2. Declaration against Torture, 1975

### Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**Adopted by the United Nations General Assembly on 9 December 1975 (resolution 3452(XXX))**

*The General Assembly,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, 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,

*Considering* that these rights derive from the inherent dignity of the human person,

*Considering also* the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Having regard* to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

*Adopts* the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the text of which is annexed to the present resolution, as a guideline for all States and other entities exercising effective power.

ANNEX

DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

**Article 1**

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

**Article 2**

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

**Article 3**

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

**Article 4**

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

**Article 5**

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

**Article 6**

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

**Article 7**

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

**Article 8**

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

**Article 9**

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

**Article 10**

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

**Article 11**

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

**Article 12**

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

## Appendix 3. Swedish Draft Convention, 1978

### Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted by Sweden on 18 January 1978

*(Document E/CN.4fl285)*

(Preamble to be elaborated)

**Article 1**

1. For the purpose of the present Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

**Article 2**

1. Each State Party undertakes to ensure that torture or other cruel, inhuman or degrading treatment or punishment does not take place within its jurisdiction. Under no circumstances shall any State Party permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

**Article 3**

Each State Party shall, in accordance with the provisions of the present Convention, take legislative, administrative, judicial and other measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

**Article 4**

No State Party may expel or extradite a person to a State where there are reasonable grounds to believe that he may be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

**Article 5**

1. Each State Party shall ensure that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment are fully included in the curricula of the training of law enforcement personnel and of other public officials as well as medical personnel who may be responsible for persons deprived of their liberty.

2. Each State Party shall include this prohibition in the general rules or instructions issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of persons deprived of their liberty.

**Article 6**

Each State Party shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

**Article 7**

1. Each State Party shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

2. Each State Party undertakes to make the offences referred to in paragraph 1 of this article punishable by severe penalties.

**Article 8**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 7 in the following cases:

*(a)* when the offences are committed in the territory of that State or on board a ship or aircraft registered in that State;

*(b)* when the alleged offender is a national of that State;

*(c)* when the victim is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 14 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

**Article 9**

Each State Party shall guarantee to any individual who alleges to have been subjected within its jurisdiction to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of its public officials, the right to complain to and to have his case impartially examined by its competent authorities without threat of further torture or other cruel, inhuman or degrading treatment or punishment.

**Article 10**

Each State Party shall ensure that, even if there has been no formal complaint, its competent authorities proceed to an impartial, speedy and effective investigation, wherever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed within its jurisdiction.

**Article 11**

1. Each State Party shall, except in the cases referred to in article 14, ensure that criminal proceedings are instituted in accordance with its national law against an alleged offender who is present in its territory, if its competent authorities establish that an act of torture as defined in article 1 appears to have been committed and if that State Party has jurisdiction over the offence in accordance with article 8.

2. Each State Party shall ensure that an alleged offender is subject to criminal, disciplinary or other appropriate proceedings, when an allegation of other forms of cruel, inhuman or degrading treatment or punishment within its jurisdiction is considered to be well founded.

**Article 12**

Each State Party shall guarantee an enforceable right to compensation to the victim of an act of torture or other cruel, inhuman or degrading treatment or punishment committed by or at the instigation of its public officials. In the event of the death of the victim, his relatives or other successors shall be entitled to enforce this right to compensation.

**Article 13**

Each State Party shall ensure that any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment shall not be invoked as evidence against the person concerned or against any other person in any proceedings.

**Article 14**

Instead of instituting criminal proceedings in accordance with paragraph 1 of article 11, a State Party may, if requested, extradite the alleged offender to another State Party which has jurisdiction over the offence in accordance with article 8.

**Article 15**

1. States Parties shall afford one another the greatest measure of assistance in connection with proceedings referred to in article 11, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

**Article 16**

States Parties undertake to submit to the Secretary-General of the United Nations, when so requested by the Human Rights Committee established in accordance with article 28 of the International Covenant on Civil and Political Rights (hereafter referred to in the present Convention as the Human Rights Committee), reports or other information on measures taken to suppress and punish torture and other cruel, inhuman or degrading treatment or punishment. Such reports or information shall be considered by the Human Rights Committee in accordance with the procedures set out in the International Covenant on Civil and Political Rights and in the Rules of Procedure of the Human Rights Committee.

**Article 17**

If the Human Rights Committee receives information that torture is being systematically practised in a certain State Party, the Committee may designate one or more of its members to carry out an inquiry and to report to the Committee urgently. The inquiry may include a visit to the State concerned, provided that the Government of that State gives its consent.

**Article 18**

1. A State Party may at any time declare under this article that it recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Human Rights Committee. No communication shall be received by the Human Rights Committee if it concerns a State Party which has not made such a declaration.

2. Communications received under this article shall be dealt with in accordance with the procedure provided for in article 41 of the International Covenant on Civil and Political Rights and in the Rules of Procedure of the Human Rights Committee.

**Article 19**

If a matter referred to the Human Rights Committee in accordance with article 18 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission. The procedures governing this Commission shall be the same as those provided for in article 42 of the International Covenant on Civil and Political Rights and in the Rules of Procedure of the Human Rights Committee.

**Article 20**

1. A State Party may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to have been subjected to torture or other cruel, inhuman or degrading treatment or punishment in contravention of the obligations of that State Party under the present Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Communications received under this article shall be dealt with in accordance with the procedure provided for in the Optional Protocol to the International Covenant on Civil and Political Rights and in the Rules of Procedure of the Human Rights Committee.

**Article 21**

The Human Rights Committee shall include in its annual report t o the General Assembly a summary of its activities under articles 16, 17, 18, 19 and 20 of the present Convention.

(Final clauses to be elaborated)

# Appendix 4. Convention against Torture, 1984

## Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**Adopted by the United Nations General Assembly on 10 December 1984 (resolution 39/46)**

*The States Parties to this Convention,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that those rights derive from the inherent dignity of the human person,

*Considering* the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Having regard* to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

*Having regard also* to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

*Desiring* to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

*Have agreed* as follows:

### PART I

### Article 1

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.

## Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

## Article 3

1. No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

## Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

## Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

*(a)* When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

*(b)* When the alleged offender is a national of that State;

*(c)* When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

**Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

**Article 7**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

**Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences 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 consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

**Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

**Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

**Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

**Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

## Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

## Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

## Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

## Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

# PART II

## Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

**Article 18**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

*(a)* Six members shall constitute a quorum;

*(b)* Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

**Article 19**

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

**Article 20**

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

**Article 21**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

*(a)* If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

*(b)* If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

*(c)* The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

*(d)* The Committee shall hold closed meetings when examining communications under this article;

*(e)* Subject to the provisions of subparagraph *(c),* the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

*(f)* In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph *(b),* to supply any relevant information;

*(g)* The States Parties concerned, referred to in subparagraph *(b)*, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

*(h)* The Committee shall, within twelve months after the date of receipt of notice under subparagraph *(b)*, submit a report:

(i) If a solution within the terms of subparagraph *(e)* is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

**Article 22**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party of this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

*(a)* The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

*(b)* The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

**Article 23**

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1(e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

**Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

## PART III

**Article 25**

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

**Article 29**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

## Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

## Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

## Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

*(a)* Signatures, ratifications and accessions under articles 25 and 26;

*(b)* The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

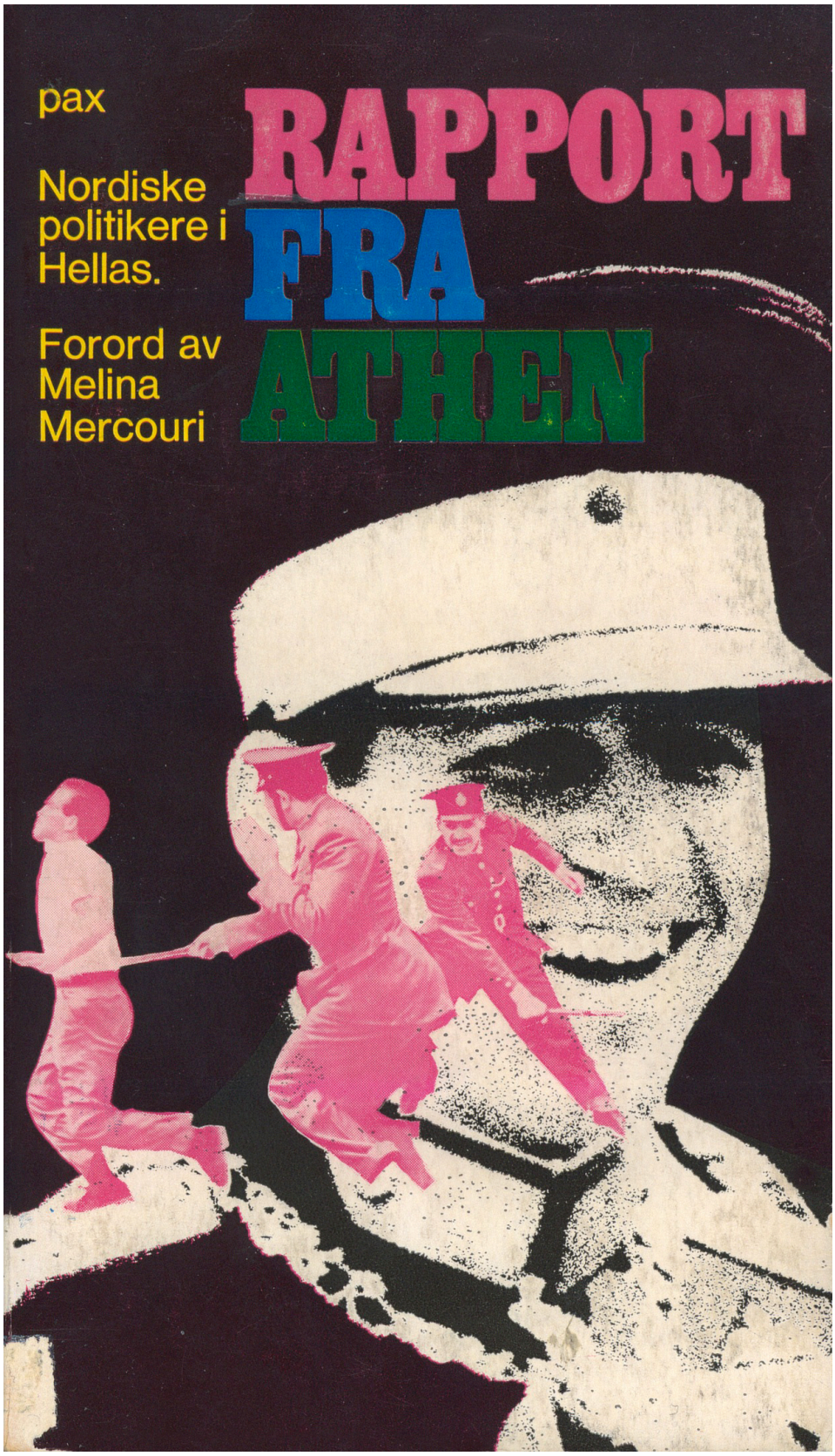
*(c)* Denunciations under article 31.

**Article 33**

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

## Appendix 5. Illustrations




Cover of *Rapport fra Athen: Nordiske politikere i Hellas,* the report written after Nordic politicians returned from Greece in 1967. Published here with the permission of Pax forlag.

Nordic Delegation in Athens. From left: Finn Gustavsen, Georg Backlund, Tor Strand from Norwegian Radio, Pekka J. Korvenheimo, Jacob Aano, Else Merte Ross, Bent Knudsen from the Danish Amnesty Section, and Ola Ullsten. Published with the permission of Pax forlag.


United Nations Congress on Prevention of Crime and Treatment of Offenders, 1 September 1975. Inkeri Anttila (center), Finish Minister of Justice, was elected President of the Congress. United Nations Photo.

United Nations Congress on Prevention of Crime and Treatment of Offenders recommended the adoption of the Declaration against Torture. United Nations Photo.

Theo van Boven, 1983. Wikimedia Commons, CC BY-SA 3.0 nl.


Hans Danelius, 1987. Private photo.

Norwegian Foreign Minister Knut Frydenlund at the UN General Assembly, 1975. Frydenlund asked the General Assembly to adopt the Declaration against Torture. United Nations Photo.


UN Commission on Human Rights, 1982. United Nations Photo.