Legalizing Torture in Terror Interrogations: A Solution to Fight Terrorism or to Create more Terrorism?

Malmö University
School of International Migration and Ethnic Relations (IMER)
Faculty of Culture and Society
Department of Global Political Studies
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Supervisor: Lily Gunnhildur Magnusdottir

Written by: Omar Mohammed Faraj
Personal Number: 750405-8798
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Abstract

The aim of this master thesis is to discuss the argument that in the favor of legalizing torture in the case of terror suspects and detainees. My research question here is: if we will put torture against terror suspects in a legal framework will that help us to fight terrorism or it will create more instability in the world and result in more terror acts? I will view the history of torture and the development towards torture prevention. I used the moral theory and also the writings of Dr. Norman Finkelstein to argue against legalizing torture. I will use the Abu Ghraib prison case in Iraq as a study case. The thesis will be in three chapters. In the conclusions I will demonstrate and prove that the use of torture under any circumstances is against morality and against international human rights law. The use of torture as a tool to fight terrorism is not the solution but it will lead to more chaos and hate in the world, innocent torture victims can be easily used after their release by terror and radical groups, authorizing a law that allows torture will make normal citizens afraid all the time because any person can accused of being a terrorist until the government proves he is not.
Chapter One

Introduction

Torture is a very old method used to obtain hidden information from certain persons usually opponents to their regimes. I think writing about torture is very important today because there is a tendency in many countries and especially totalitarian regimes to use torture against political opponents or against normal citizens. These countries use torture some times in hidden places and sometimes in normal government prisons to terrorize the citizens and prevent them from any demands to change the regime even if it is corrupted. I am discussing in this thesis the new argument that appeared in countries like United states and in Israel, that are trying to put torture in some certain terror cases in a legal frame. This argument is new in international law and the Bush administration succeeded after the attacks of the 11th of September 2001 in using this argument to justify the use of force and torture against any terror detainee. One of the famous writers in that field is Alan Dershowitz and he is famous American civil rights lawyer, who in his writings about the warrant state has suggested and promoted the possibility to give authorization to American security interrogators to use any method to obtain the necessary information that can lead to fight or stop more terror acts. We can see that the results for these claims led later to the Abu Ghraib prison scandal and also the brutal torture against detainees in Guantanamo Bay prison.

It is very important to analyze the reasons that led to the use of torture; there is in some cases a strong similarity between torture and other degrading and humiliating treatment. Most of the legislation in many countries in the world try to strengthen the prohibition of torture by joining the United Nations Committee against Torture (CAT). I think writing about torture prevention is an obligation for me as a human rights student because the use of torture
brought pain and suffering for many innocent people around the world. Taking a strong stand towards any government or regime that is encouraging torture will reduce the use of torture in the world; nobody has got the right to harm or to cause pain to a human body. This is a basic human right and should be respected and there is no justification under any circumstances to reduce or to manipulate with this right of body integrity for any human being.

- The purpose of the study

The aim of this study is to show that using torture in cases related to terror acts will not bring the results or the solutions to prevent or to stop terror. On the other side it can give the terrorists or the radical groups the motive they need to strengthen their position and to attract more people to their ideology, it is necessary to cut the road for these groups. The continuous use of torture as a solution to fight terror is very dangerous and can create instability in the world. There were in fact not so many arguments and writings written to discuss the idea of legalizing torture in some certain cases, so I thought it is very important to put the focus on this issue and try to search deeply in this argument itself. I hope I have written and presented something useful and it is only a small contribution to promote the torture prevention legislation worldwide.

- The research question

The research question for this master thesis is whether the use of torture in terror interrogations is a good solution to stop and fight terrorism acts in the world, or it will bring us more terrorism and instability in the world? We need to know how far the use of torture in countries like United States and Israel was successful in preventing terrorism. It is important to use the moral theory to answer this question because I think the prohibition of torture is the basic rule in the human rights law and putting exceptions to this rule is not acceptable under
any circumstances. Torture still is and will remain totally against morality and human rights in all countries.

Defining torture

There are many definitions for torture we see that the jurist from the third-century Ulpian said:

“By quaestio [torture] we are to understand the torment and suffering of the body in order to elicit the truth. Neither interrogation by itself, nor lightly inspired fear correctly pertains to this edict.”¹ According to his definition torture is more about the suffering and the use of violence. There is another famous and I think strong definition to the use of torture as a legal event and it’s the definition of John Heath a legal historian:

“By torture I mean the infliction of physically founded suffering or the threat immediately to inflict it, where such infliction or threat is intended to elicit, or such infliction is incidental to means adopted to elicit, matter of intelligence or forensic proof and the motive is one of military, civil, or ecclesiastical interest.”²

The definition of John Heath is of more recent one to explain the torture phenomena, he showed that torture is the use of force and also the pain caused is for the purpose of obtaining information whether to military or civil purposes. Defining torture is very important in order to specify the amount of force inflicted on the human body which can be considered a torture case. The official definition adopted by the United Nations general assembly is in the convention against torture in 1975 in Article 1:

“For the purposes of this Convention, 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.”

This article was very specific and covered the definition of torture from all perspectives because torture is not the physical harm only but it can be mental harm too. The purpose as we see from the definition is to get information or an important confession. Torture is committed in most of the cases by a person or persons in power or authority. We can see also that the victims of torture are punished for something they committed or have been suspected of committing. I think the definition gave the human rights workers the basic and important elements to define torture when they investigate torture allegations. There is still a different view for the International Humanitarian Law towards the definition of torture, because International Humanitarian Law is not requiring that the person inflicting the pain or the suffering on the victim is an official person or acting as an official person to define the act as a torture act.4

According to Amnesty International “The acts of violence by private individuals constitute torture when they are of the nature and severity envisaged by the concept of torture in international standards and when the state has failed to fulfill its obligation to provide effective protection against such acts of violence.”5 That means in the countries with low state capacity where acts of torture can be committed by some groups or individuals against other persons can also be defined as torture acts according to the international standards if the state could not prevent such allegations.

International tribunals gave an extra explanation to the definitions above and to the differences between them for example hard beatings that can lead to strong pain, or swelling without breaking the bone is considered as classic sort of torture.6 Torture methods are different but the main purpose of the methods is to cause strong physical pain for the victim in order to obtain the wanted information or confession. “Torture thus also includes being forced to stand spread eagled against the wall for hours; being subjected to bright lights or

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4 See the article What is the definition of torture and ill treatment?, available at http://www.icrc.org/web/eng/siteeng0.nsf/html/69MJXC
blindfolding; being subjected to continuous loud noise; being deprived of sleep, food or drink; being subjected to forced constant standing or crouching; or violent shaking.”

That means torture signs will not be seen on the body like in normal classic torture methods.

- The history of torture

Torture is a very old method used by many cultures and civilizations; many thousand years ago it was legal to torture someone in many of the penal codes in Europe. We can see that there was no existence of torture in the Jewish or the Babylonian legislations, however it is obvious that the Egyptians and the Assyrians used torture. In the old Greece war prisoners could be killed or taken as slaves, according to the Greek law slaves were considered together with the foreigners unprotected. It was however not allowed to torture free citizens in the Greek civil code, torture was practiced publically.

The Romans tortured the Christians and we saw after the fall of the Roman Empire and the strong rise of Christianity the Christians trying to follow and prosecute other weaker sectarian regimes. Many minorities like the Jews were victims of torture and persecution for thousands of years; the persecution can not only be in a physical form but in a psychological form like we can see in our recent days. It was possible In the Roman law to torture both slaves and foreigners, unlike the Greek law if a slave will tell something against his owner the slave will not be believed. This code was applicable in many cases except in crimes like adultery or treason. Under the reign of Roman emperors who converted to Christianity, charges like practicing magic could also bring to torture.

Torture was a part of the normal penal procedure in the Latin Church and for many countries in Europe during the period between the thirteenth to the eighteenth century. It is remarkable that torture entered the normal legal procedures in laws for states in the twelfth century, because of the continuous practicing by the police. In the Middle Ages torture was restricted by protocols that it should not be so cruel or cause the death of the victim; it must

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9 George Ryley Scott, History of Torture Throughout the Ages, Kessinger publishing, LLC 2003, p 27.
be a normal kind of torture that will not cause long term injuries. There was also a medical 
official to attend the torture operation together with a notary they register the whole 
operation. The confession obtained under torture was not legally valid even with such 
procedures and if the suspect rejected the confession, torture might be start again.12

Tertullian and he is one of the Christian writers in Rome wrote in his Apologeticum (c. AD 193):

“If other criminals plead ‘not guilty’ you torture them to make them confess. The Christians 
alone you torture to make them deny … Yet, if it were something evil, we should deny our guilt – and 
you would then use torture to force us to confess it … You assume that we are criminals from the fact 
that we confess the Name [that of Christ]; and under torture you try to force us to renounce our 
confession, so that in effect we are forced to deny the crimes that you presume we are guilty of in the 
first place …”13 We can see that Tertullian is referring to the torture in general to get 
confession and then to the torture inflicted against the Christians at that time to force them to 
deny Christianity. I can say that this old writing shows how the torture can be repeated again 
and again if there was no satisfactory confession, that what was practiced later in the Middle 
Ages because torture was used to force the victim to change his confession to something 
suitable for the ruler or the system at that time.

The Roman Catholic Church established a court called the inquisition or the holly 
court in order to stop and eliminate heresy. The heresy itself was a crime and hardly punished 
even in the early Christianity, the crime can lead to death punishment or to hard torture. The 
Catholic Church fought heretics with no less mercy and in 1233 in Toulouse city the first 
inquisition court. After many years later the inquisition courts were opened in different 
European countries. There were prisons and dungeons as a part of the main structure for these 
courts, the prisoners there were not allowed to talk or make any voices, the food given to 
them was very bad and they were badly beaten and tortured.14

“Torture was introduced for the express purpose of extracting confession being authorized by 
Pope Innocent in Bull issued in 1252. The inquisitors reduced torture to something approaching a fine 
art, and in the process showed the possession of much psychological knowledge and insight, the

14 George Ryley Scott, History of Torture Throughout the Ages, Kessinger publishing, LLC 2003, p 64-65.
procedure being nicely calculated to wear down the resistance even of the strongest minded and most powerfully built man."15

I can say here that the methods used by the inquisitors at that time constitutes the first modern way of using the mental torture against certain groups of detainees and suspects of various crimes. Torture used in the inquisition in a very clever way that can break down the prisoner psychologically, such methods were used by countries in our present time. Depriving the prisoners from sleeping or threatening them to be exposed to severe pain or torture are methods can damage the prisoners mentally and force them to confess.

If we look to torture from an Islamic perspective we can see that in Islam all humans are considered as one family, according to that torturing others under any reason will be like torturing your own brother in humanity. It is not allowed in Islam to take any confession from any person under torture, but nevertheless we saw that torture used many times by Muslim tyrants to humiliate their enemies in order to spread the religion or to maintain the power of the state. In Islam the aim of torture is to turn people into slaves and that is totally against the Islamic religion which came in the first place to free the slaves from their slavery and to make the slaves and their master’s equal in all rights.16

“The history of Islam shows that the prophet (peace and blessings be upon him) used to tell the criminals who came to him voluntarily, admitting their crimes, to repent and seek forgiveness from Allah.”17 This act of the prophet shows that Islam is urging its followers to forgive each other when they can, because torture is an act of hate and facing the crime with a hard torture or severe pain will increase the hate. I still think that this argument is a religious one but in reality many Islamic countries today practice torture on a wide scale. The practice of torture in present in Muslim States is related to the political Islam.

In the reign of the Ottoman Empire it was allowed to use torture, but there was one condition and that if the person practicing torture killed the tortured person during the operation then he must pay a compensation to the family of the torture victim. In the Islamic law in general any confessions obtained through the use of pain and suffering methods is not acceptable, it will not be used as an evidence to convict the defendant. Many European

15 George Ryley Scott, History of Torture Throughout the Ages, Kessinger publishing, LLC 2003, p 66.
16 George Hunsinger, Torture is a Moral Issue: Christians, Jews, Muslims, and people of conscience speak out, William B. Eerdmans publishing company, United States 2008, p 174-175.
17 George Hunsinger, Torture is a Moral Issue: Christians, Jews, Muslims, and people of conscience speak out, William B. Eerdmans publishing company, United States 2008, p 176.
countries started in the middle of the seventeenth century reforms against practicing torture, such reforms led later to consider torture unacceptable.\textsuperscript{18}

Torture in modern history practiced in countries like Germany during the Second World War, the brutality of the Nazi German regime tortured and killed Jewish citizens. One of the most savage and barbaric methods of torture were used against the Jews, starting with discriminating them and then the organized practice of torture ended by eliminating thousands of innocent Jews. France as European country is accused until this day of practicing brutal torture against the Algerian rebels seeking liberation from the French occupation during the war in Algeria (1954-1962). The French army captured many Algerian rebels and tortured them in many ways; one of the famous incidents is the case of FLN leader Ben M’Hidi which committed suicide in his cell. It was obvious that Ben M’Hidi was tortured severely and he decided to put an end to his life in order to escape the brutality of his interrogators. Torture in France is prohibited since 1789, but there was a famous report submitted in the year 1955 by one of the government officials it’s called the Wuillaume Report. In this report there was a recommendation to legalize torture used by the French police in France. This report was refused but it is a fact that means of torture like electric shock continued and practiced in Algeria.\textsuperscript{19}

Jean-Paul Sartre the famous French philosopher wrote in 1958: “Torture is neither civilian nor military … it is a plague infecting our whole era.”\textsuperscript{20} This shows how it is ugly and inhuman the use of torture is, it is a crime against the human body and the human honor. If the modern and high developed countries in Europe can not erase and prohibit the practice of torture so we cannot then go forward in order to fight torture in other countries.

Ex-Soviet Union regimes practiced torture in an organized form in order to terrorize the population and to bring down any suspected political opponents. The Soviet security interrogators used psychological torture during the time of the president Stalin, using sleep and food deprivation methods against political prisoners were very effective ways to get information. The detainees can stay many days with no food and no sleep and the use of brain wash or disorientation during the 1930s was a very famous method. In the United States as well methods of mental torture were used for many years and developed in the present time, the torture methods used in Abu Ghraib prison in Iraq are a good example. The American

police used psychological torture in the 1930s period in certain cases and interrogations. For example putting the suspect in a very dark room and then focusing a strong light towards his face, while the interrogator sites behind the strong light and asking questions to the prisoner or the suspect. The use of mental torture today is practiced by some countries in a way that it will not leave evidence or marks on the victim’s body so that he cannot presume further claims and accusations of torture allegations against his interrogators.\(^{21}\)

Chapter Two

❖ Theory and analysis

Torture as we explained is a phenomenon which is considered immoral and an assault against the human body and dignity. No justification can be given to authorize torture or to legalize it and in order to argue against the idea of putting torture in a legal form I think it is important to view how moral theories describe or analyses the physical harm or the degrading practiced against humans. We can after that takes a look at the thoughts and claims of Alan Dershowitz to justify the use of torture and the idea of a Warrant State. One of the arguments that I find it interesting is the writings of Norman Finkelstein against torture which I will demonstrate later.

❖ The moral argument

Many moral theories defined and considered pain as the ultimate evil; Jeremy Bentham Utilitarian view considers actions as right if it will produce more pleasure and achieve happiness. For Bentham Utilitarianism is a method to make the political and the private decisions, no doubt that the measuring between pleasure and pain in fact is very hard and can give us strange and unwanted results.\(^{22}\) An example of the strange results for measuring happiness according to the Utilitarian method:


\(^{22}\) Richard D. Ryder, Putting Morality back into Politics, Societas imprint Academic, UK 2006, p 68-70.
Imagine a gang of ten sadists who torture a prisoner severely causing the victim 100 units of pain. Even if the sadists only experience an average 20 units of pleasure each, according to most versions of Utilitarianism their outrageous action is still morally right because it causes a total of 200 units of pleasure (i.e. 10x20)-thereby outweighing very considerably the victim’s pain (100 units).”

In this example we see that the attempt to measure the amount of pain inflicted on the tortured person is ethically wrong because you cannot measure pain and pleasure by calculating units of pain. This I think is mistake in the Utilitarian theory; nevertheless it is good to use this theory when arguing against the use of torture in general because torture will cause pain and pain is against the right of the persons to be happy.

The use of painism theory is important when we argue that torturing people under any circumstances or under any reasons are wrong and immoral. “Pain means any form of suffering: sensory, cognitive, or emotional (Ryder 2001) and so converse such experiences as fear, boredom and sadness.” From this definition we reach the conclusion that any act not only physical but it can be psychological it constitutes pain and as a result will affect the happiness of individuals. In that case the use of torture and any attempt to authorize it will be an attempt to reduce or harm the happiness which is the aim of any moral or ethical argument. The main principles of justice are a law or a code of conduct and a sanction or punishment in order to apply the conduct. If people will violate the rule then they get the punishment, this punishment in itself will violate the right of this person guaranteed to him by the law or the conduct. The use of punishment then must be to the level that it will not violate the rights of individuals, the right to be free and the right for body integrity.

The foundations of painism are that:

1. Pain (i.e. suffering) is the only evil.
2. Causing pain to others is, prima facie, wrong.
3. In calculating right and wrong it is meaningless to aggregate the pains (or pleasures) of several individuals because pains are only pains when they are actually experienced, and no individual directly experiences any pains other than his own.
4. It is legitimate to trade off the pains and pleasures of one individual against those of another; this is allowable because both are actual experiences.

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23 Richard D. Ryder, Putting Morality back into Politics, Societas imprint Academic, UK 2006, p 70.
24 Richard D. Ryder, Putting Morality back into Politics, Societas imprint Academic, UK 2006, p 73.
26 Richard D. Ryder, Putting Morality back into Politics, Societas imprint Academic, p 73.
These elements show what is pain and pain is something very bad, any argument to measure the pain is not possible because people are different in the way they endure pain. I think the use of argument to allow the use of torture or as they call it the little pain torture, is totally wrong because according to the foundations of painism people are different and it is obvious that if one thing will cause pain to me it can cause pleasure to another person. People take pain and pleasure according to their feelings and the situation they are going through.

As a basic rule it is unjust to deprive a person from his right to be free for example and this right given to him by law, so it is important to define and distinguish between what is just and unjust in violating the legal rights of any person. Bad laws can give legal rights to some individuals which in principle don’t belong to them; in that case the deprivation itself will be legal in the eyes of the law. If the law is considered unjust then the application of the law is also unjust, but the violation of rights given to individuals in such laws will not be violations against their legal rights but it will be a moral violation or a violation against their moral rights. If the individuals will undergo or suffer something evil they don’t deserve legally and morally so this code or legislation is unjust.27 I want to say here that according to this argument putting laws that deprive the persons from their liberty or will touch or harm their bodies is unjust and these laws are bad laws and violate both the legal and the moral rights for the individuals.

“The inevitable outcome is that the trade of torture has attracted only the most sadistic of human beings, and that the use of torture has moved away from any practical need to obtain information, or impose a legal penalty for wrongdoing, to allow the more powerful to enjoy the pleasure of inflicting random pain upon the less fortunate.”28 The person practices torture is mentally ill and he lost his morality in order to satisfy his sadistic needs. I think that if we will allow torture then people will not trust the laws anymore, because it will be a matter of using excessive force of unjust law against weak people.

Coming back to the argument of legalizing torture in cases related to terror activities, people in the favor of this argument like Alan Dershowitz say that using torture will bring benefits in the future towards fighting terror, those benefits are uncertain. How can we be sure that the use of such actions will bring the certain results or benefits? The Bush administration started a war against Iraq in 2003 and this war caused pain and killings among

many civilians in Iraq and also a lot of casualties between the American soldiers. The Bush administration didn’t consider the results accrued from this war but their justification was that there will be uncertain advantages and benefits for the people in the future. In the painism theory what is important is the certain and real thing or advantage, bad events happened in the past will be sad memories. So it is very important to view the certainty of an action or legislation in the present and the effect of it on individuals, but waiting for uncertain results that can obtained in the future is not reasonable and logical in the painism theory.\(^{29}\) Using torture to get benefits will stop or fight terror in the future is according to this argument unacceptable and looks like a fantasy thing, in other words there is no certainty of such results.

\section*{Dershowitz’s thought}

The argument and the claims to authorize torture in order to fight terrorism created many discussions and legal arguments, some of them were with the legalizing of torture and others took a stand against it. Alan Dershowitz wasn’t the only person to argue that torture is needed some times and in order to stop terrorists so we have to torture them, in Israel for example there were such claims too in order to stop the Palestinian resistance movements. Dershowitz is calling in his famous and critical book \textit{why terrorism works?} To give the American security interrogators more powers and capability to use in certain situations torture if it is necessary. He created a very strange argument and said that if the American government and society are facing a serious ticking time bomb threat or what he calls it (TTB) threat, and there is a suspect of terror in the hands of the security officials so it is ok to torture this suspected detained person in order to get fast information to stop the bomb. He argues that the very hard circumstance that makes the life of the majority of people in danger can reduce the moral demands and allow the use of prohibited methods or practices if these methods will save the lives of the threatened majority.\(^{30}\)

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\begin{itemize}
\item[29] Richard D. Ryder, Putting Morality back into Politics, Societas imprint Academic, UK 2006, p 77.
\end{itemize}
Dershowitz argued about the necessity of torture but still the issue of whether torture will be practiced publicly or will be done in secret and his analyses are:

“The first is to allow the security services to continue to fight terrorism in `a twilight zone which is outside the realm of law.` The second is `the way of the hypocrites: they declare that they abide by the rule of law, but turn a blind eye to what goes on beneath the surface.` And the third, `the truthful road of the rule of law,` is that the `law itself must insure [sic] a proper framework for the activity` of the security services in seeking to prevent terrorist acts.”31

I think his argument is not applicable because if the security forces will fight terrorism in secret then a day will come and those acts of torture will be discovered like what happened in Guantanamo Bay and Abu Ghraib prison in Iraq and then it is a big scandal. Using the hypocrite’s way will create a conflict between the security system dealing with terror issues and the legal system, human rights agencies and legal workers beside the media can stop the torture allegations. The third way of using the law or legalizing torture acts will create strong public opinion against putting a legal frame for torture in both domestic and international level.

Dershowitz is in favor of the second option although he is not totally satisfied with this argument of hypocrisy because in high developed democracies you cannot act and work secretly, you cannot deceive the individuals living in such countries. The first way for Dershowitz is not acceptable because it will not bring the satisfactory results and hard to apply it in democratic states.32 Dershowitz wants to put torture in legal frame because he shows clearly that if the use of torture isn’t allowed then any state official will use it he is using illegal way that is against the law. He claims that if the decision of torture should be made then it must be from high levels in the state, because that will give the ordinary security person or police the trust and the needed power to use it. The state should take it’s responsibility and give the power to use torture and to tell the people about it in other way Dershowitz constitutes to the torture warrant regime, a state that can give and issue authorized warrants of torture. The warrant will give the security state officials what they

31 George Kassimeris , Warrior’s dishonour: Barbarity, Morality and Torture in Modern Warfare, Ashgate publishing limited, UK 2006, p 207.
need to act freely and capture terrorists and torture them, the use of the warrant is very important as Dershowitz claimed in the case of the ticking time bomb.33

In a state that doesn’t have the suitable accountability as Dershowitz calls it, the use of torture will be against the law and the security officials will be punished if they used it. If a security official used torture because he was afraid of sudden or eminent threat, he should not be held accountable in a state with the warrant system. The FBI agent for example can easily defend himself and not to be held responsible for torture if he didn’t have the enough time to get the torture warrant. One thing very important about this idea of accountability and warrant state is that the police and the security officials can use torture and then they can get away with it and not to be held responsible, only by saying they applied for the warrant and they were waiting for it. This means the free hand for the security workers to use torture in organized and legal way.34

Dershowitz gives to strengthen his legal argument the benefits obtained from applying the torture warrant system:

“The simple cost-benefit analysis for employing such non-lethal torture seems overwhelming: it is surely better to inflict non-lethal pain on one guilty terrorist who is illegally withholding information needed to prevent an act of terrorism than to permit a large number of innocent victims to die. Pain is a lesser and more remediable harm than death; and the lives of a thousand innocent people should be valued more highly than the bodily integrity of one guilty person.”35

I think Dershowitz is trying to underestimate or neglect the importance of morality, by arguing that it is ok to use some pain. For him to convince the others about his argument he is trying to play with the moral standards, thousands of lives are threatened by one guilty terrorist who set the timing bomb. How can he decide that this detained man is a real terrorist? It’s not enough to suspect somebody of terror activities, there must be some evidence. I can say that in spite of his strange and immoral argument he succeeded in away in putting the use of torture in a legal frame by arguing that torture will happen anyway and nobody can deny that. One of the military intelligence officers responsible for interrogation in

34 George Kassimeris, Warrior’s dishonour: Barbarity, Morality and Torture in Modern Warfare, Ashgate publishing limited, UK 2006, p 209.
35 George Kassimeris, Warrior’s dishonour: Barbarity, Morality and Torture in Modern Warfare, Ashgate publishing limited, UK 2006, p 214.
Abu Ghraib said that torture is a policy used by American interrogators after the 11th of September 2001.36

Dershowitz refers to the rights and liberties in Israel and how the rights are guaranteed not only for the Jewish citizens but for the Arabs too. He is comparing the situation in Israel to other countries of tyranny in the Middle East; he claims that the human rights organizations exaggerate about human rights allegations in Israel. According to him the restrictions imposed on the Palestinians are a normal thing, discrimination procedures are necessary to keep Israel’s national security. He compares between the procedures in Israel in present and the one practiced in America during the McCarthy time in order to fight American communism.37 The Palestinian terrorism can be stopped by such restrictions inflicted on normal Palestinian civilians. Dershowitz argues that Israel succeeded in containing terrorism attacks and he talked about the experience of Israel in dealing with micro terrorism as he calls it. The techniques used like putting spies in the terrorists groups or use high intelligence to dismantle those radical Islamic groups, Israel’s high methods although not using torture succeeded in preventing the terrorists from achieving their goals.38

I think his claim that Israel is not practicing torture is absolutely unacceptable because Israel tortured and still practicing allegations against human rights since the announcement of the state of Israel in 1948. Israel is accused of committing genocide against the Palestinian refugees in Lebanon in the famous massacre of Sabra and Shatila during the Israeli occupation to southern Lebanon in 1982.39 An Israeli eye witness described the situation and the treatment in the Israeli prisons:

“Most of the suspects live in Kiryat Arba, a settlement near Hebron that is a hotbed of Jewish fanaticism. Seven have been released on bail. Still in custody are two brothers, both soldiers, said to have been arrested just as they were about to shoot a Palestinian; another soldier, Lieutenant Oren Edri, charged with stealing army weapons and explosives for the group; and a rabbi, described as the group’s spiritual mentor. The men were not allowed to see their lawyers or families for days, in some cases weeks. Mr Edri claims he was deprived of sleep, denied decent food and religious requirements,

left for long periods with a sack over his head, cursed and kicked, had his head banged against a wall and a finger broken; and his cell teemed with rats. Hundreds of Palestinians, in cases documented over the years by human-rights bodies, have said much the same. For many, the result was permanent injury; for a few, death. A handful of those complaints led to prosecutions against Shin Bet agents and policemen. Most led nowhere. But Mr Edri is Jewish, and his charges brought an outcry, in which left and right joined voice. Any confessions extracted from the men, say supporters, would be worthless. Some protesters still distinguish between torturing Jews and torturing Arabs.”40

It is obvious that Israel is practising torture in organized way and using mental torture at the same time. Clear discremenation in treatment between the palestinian detainees and the Jewish prisoners. This shows the exaggerations of Alan Dershowitz about the equality between the Muslims and the Jews, and his claim that Israel is not practicing torture.

The use of high techniques as Dershowitz calls it to control and contain terrorism and his argument that the use of torture can stop terrorism is not based to the reality of the situation. Every time Israel practiced torture and killings against the Palestinians we witnessed more attacks and more terrorism against the innocent Israeli civilians and there is a long list of attacks between the years (2001-2008), I will mention some of the terrorist attacks here:

- **November 29, 2001:** A suicide bombing of a bus on its way from Nazareth to Hadera killed three people. Fatah and Islamic Jihad claimed responsibility for the attack.
- **November 27, 2001:** Two Palestinian gunmen opened fire on a crowd of people near the central bus station in the city of Afula, killing two people. Fatah and Islamic Jihad claimed responsibility for the attack.
- **October 28, 2001:** Two Palestinian gunmen killed four Israeli women at a crowded bus stop in the city of Hadera. Although Islamic Jihad claimed responsibility for the attack, the two gunmen who carried out the attack were members of the Palestinian police force.
- **July 22, 2008:** Sixteen people were wounded when a man drove a bulldozer into a bus and four other vehicles in central Jerusalem. The attack was an attempted copycat of an earlier attack on Jerusalem’s Jaffa Road on July 2, 2008. The terrorist was shot dead by police.
- **July 2, 2008:** An Arab resident of Jerusalem deliberately drove a bulldozer into pedestrians and vehicles in central Jerusalem, overturning and flattening a number of buses and cars. Three people were killed and 66 injured.

in the attack.

☐ April 9, 2008: Two Israeli civilians were killed and two wounded when Palestinian terrorists attacked an Israeli-controlled border crossing where fuel is piped into Gaza. The attack at the Nahal Oz depot was carried out by members of various terrorist movements, including the Popular Resistance Committees.

☐ March 6, 2008: Eight men, seven of them teenagers, were killed when a Palestinian gunman entered the Merkaz HaRav Yeshiva in Jerusalem and opened fire. The terrorist also wounded nine in the attack before he was killed at the scene. 

All these attacks are the results of the use of force and torture and killings committed by the Israeli government. Torture will bring more hate and violence in Israel and will not solve the conflict between the Palestinians; torture will help to increase the spirit of revenge between both the Israelis and the Palestinians people. I think the continuous use of torture is one of the main elements that create instability in the security situation not only in Israel but in the world.

In order to strengthen his argument Dershowitz gives us an old argument created by the Utilitarian Jeremy Bentham and that if someone is guilty of a crime and there is a fear that his action will affect other individuals in his society if he didn’t confess. Then torturing this guilty person will be justified to save the others from the violence of law. As Dershowitz think that it is logical to use this argument and compare it to his idea of legalizing torture. He argued that when Zacarias Moussaoui was arrested by the immigration service, if there was a warrant to search his personal computer may be that would helped the interrogators to know that he was part of the plan for the 11th of September attacks. In that case the interrogators could torture him to prevent the attacks and the bombs. 

There are no guaranties if Moussaoui was tortured that could prevent the attacks, besides any detained person could be innocent and can say anything against himself to escape the pain of torture.

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41 See Anti-Defamation League, major terrorist attacks in Israel, available at http://www.adl.org/israel/israel_attacks.asp

Finkelstein’s argument against torture

Dr. Norman Finkelstein wrote in his book *Beyond Chutzpah* about the false claims of Alan Dershowitz that Israel is using its right to fight terrorism by all means. The new argument in Israel to authorize torture is based to the strong necessity to fight the Palestinian terrorism. Alan Dershowitz said in his book *Why terrorism works?* That the united nations general assembly encouraged the Palestinian terrorism through the ratification of the Convention Against The Taking of Hostage in 1979. Dershowitz misused the explanation of article 12:

“In so far as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts men-tioned in article 1, paragraph 4, of Additional Proto-col I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self- determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”43

According to this article the prohibition of hostage taking put into conccederatation the case of armed conflicts were a group of people fighting against what the article calls is it self-determenation. With the tottal ban of of hostage taking, the right to fight racist regimes and occupation already exists in the Geneva Convention. The Convention Finkelstein thinks go further in prohibiting hostage taking and besides both the United States and Israel voted and accepted the agreement in the General Assembly

voting. In that case if we take Dershowitz argument then the both countries are encouraging terrorism against their own civilians.44

When Dershowitz constitutes the argument against terrorism in order to give the legal right to use all methods including his favor method of using the torture warrant system, he neglected to distinguish between what is terrorism acts and what is considered arm struggle against occupied force or state. Many revolutionary movements in the world used armed struggle to fight for liberation like the French resistance against the German Nazi occupation to France.

The record of Israel in treating Palestinians in the occupied territories is very bad; there are thousands of reports from human rights organizations working there. Dershowitz talked about the rights and the high amount of freedom giving to the Palestinians. Finkelstein wrote about the torture and the situation of detainees in Israel:

“In the case of Israel’s human rights record, one can speak today not just of a broad consensus. All these organizations agreed, for example that Palestinian detainees have been systematically ill-treated and tortured, the total number now probably reaching the tens of thousands.”45

I think every time Israel continues to torture and mistreats Palestinian civilians and detainees the more this behavior will encourage radical Islamic groups to act freely and give them the excuse to attack Israeli civilians. Using torture as Dershowitz in the favor of will give the back up for the terrorists to hit back and will strengthen their religious argument which they use to attract young and angry youth Palestinians. I think there is no reasonable justification for the attacks committed by people men or women blowing themselves to kill other innocent people except that they feel the need for revenge. They are full of hate caused by the policies of torture and humiliation and discrimination practiced against them.

One of the famous cases of torture in Israel is the case of Ameer Makhoul which arrested by the security forces and accused of being a spy. According to his lawyer and witnesses from his legal team who met him in his cell they said there were obvious signs of torture on him and he was suffering from strong

pain and was visited by a doctor in his prison. This case opened the door that if Makhoul was really tortured then this means that Israel violated all the international treaties to band torture.46

“Amnesty International said Makhoul's arrest appeared to be in retaliation for his human rights activism.” His arrest and continued detention smacks of pure harassment, designed to hinder his human rights work. If this is the case, we would regard him as a prisoner of conscience call for his immediate and unconditional release,” said Philip Luther, Deputy Director of Amnesty International's Middle East and North Africa Programme.47

All these evidence proves that Israel is practicing torture and many violations are registered by human rights organizations networks. The claims of Dershowitz seem to be an advertisement to make the image of Israel looks good and to give through his book why terrorism works? The legitimacy in the future to practice torture in both Israel and America. He talked about terrorism in general without giving the explanation for the roots and elements that can feed terrorism. Arguing only about the religious differences between the countries and that the terrorists are motivated by religious propaganda only that urges the people to kill the non-Muslims. Many terrorists groups have no religious ideology and they have instead in their agenda national thoughts, like for example the PKK the Kurdish party in Turkey. This party with national and communist thought committed many terror attacks against civilians in Turkey and they have a radical communist agenda.48

I want to say here that the attacks of the 11th of September in 2001 created a security chaos in the world in general and more restrictions and hard procedures in America. Facing terrorism with accepting arguments to legalize torture is a big mistake and will lead the world to more bad consequences. The people in America for example they trust their democracy system and by allowing these attempts to amend the democratic system under any reason or situation, this will lead to a big hole in the American democratic system. People will lose trust in the system like what happened during the McCarthy period in the fifties.49 Because they can be vulnerable at any time to be questioned and may be tortured in the name of fighting terrorism. This will lead to the creation of new tyranny in the name of the democracy,

48 See A Case Study of the PKK in Turkey, Foundation for Middle East and Balkan Studies, available at http://www.fas.org/irp/world/para/docs/mfa-t-pkk2.htm
people will live in fair and that is exactly what the terrorists want in order to achieve their goals. I think we must work hard in order not to give the terrorists what they want and to encourage their agenda, because the use of torture and the massive use of force will destroy any efforts to create a dialogue between other nations to explain how terrorism and fundamentalism are bad. Dershowitz want us to face the terror threat by using force and torture any terror suspect which in reality could be innocent. Israel I think is supporting terrorism by continuing its policy to degrade and humiliate and torture Palestinians, because for every action there is a reaction. The world today needs wise and stabilized thinkers, Dershowitz thought is wrong and is pushing the security situation in the world towards more violence and pain.

Chapter Three

The study case of Abu Ghraib prison

The big sandal of Abu Ghraib and the brutal torture methods and the allegations against human rights shocked the world and the society in America itself. Abu Ghraib was a very famous prison since the time of the former Iraqi president Saddam Hussein; it’s located near the Iraqi capital Baghdad. After the American invasion to Iraq this prison was used to detain and keep different levels of prisoners like insurgents and ordinary thieves, the prison became very famous again after the discovery of the organized torture practices. Major General Antonio M. Taguba wrote his report about the allegations committed in the prison and the methods used:

“Breaking chemical lights and pouring the phosphoric liquid on detainees; pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick, and
using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee.”

The methods used especially against detainees suspected of terror and insurgency acts were brutal to an extent it gives us the image of torture in the Middle Ages. Many questions rose about why the allegations happened and who will take the responsibility for the violations. In the General Taguba report he referred to the acts as practiced by soldiers in the 372nd Military Police, and members in of the American intelligence. Six soldiers being accused of practicing allegations in Abu Ghraib, the name of General Karpinski was mentioned in the Taguba report and she was suspended.

There is strong evidence that the torture and the humiliation in Abu Ghraib was committed according to instructions from high levels in the United States, for example the American Defense Secretary Donald Rumsfeld faced strong critics and he was about to face charges as a war criminal. Rumsfeld resigned in order to get out of the responsibility, the American constitution prohibits torture and America one of the countries that voted and accepted the United Nations Convention Against Torture. It is important to know who is held accountable or responsible for this scandal because it happened not only in Iraq but in Afghanistan and Guantanamo prison too. Taguba wrote in his report:

“...In fact, many of the abuses suffered by detainees occurred during, or near to, the time of that assessment.” The report continued, “Contrary to the findings of MG Ryder’s report, I find that personnel assigned to the 372nd MP Company, 800th MP Brigade were directed to change facility procedures to ‘set the conditions’ for MI interrogations.” Army intelligence officers, C.I.A. agents, and private contractors “actively requested that MP guards set physical and mental conditions for favorable interrogation of witnesses”

The use of torture was practised in organized way and i think this encouragement from the CIA agents to use torture is based in the beginning to this argument created by Alan Dershowitz, because after the September 11th attacks the CIA agents and the Federal Investigators have been given the free hand to fight terrorism at any price. The use of torture was for the security workers in America the best and easy and fast way to get the information they need, whether the information was wrong or right. I clearly say

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50 See the article Torture at Abu Ghraib, The New Yorker 2004, available at http://www.newyorker.com/archive/2004/05/10/040510fa_fact?currentPage=1
51 See the article Torture at Abu Ghraib, The New Yorker 2004, available at http://www.newyorker.com/archive/2004/05/10/040510fa_fact?currentPage=1
52 See the article Charges Sought against Rumsfeld over prison Abuse, Time 2006, available at http://www.time.com/time/nation/article/0,8599,1557842,00.html
that many of the tortured detainees in Iraq were innocent men, that is one of the biggest mistakes in using torture is that you can get the wrong man in many cases. If we will take a look at what the supreme court in America said:

“The president alone who is constitutionally invested with the entire charge of hostile operations”

So in the time of military activities or military operations done by the United States the American president is the one who takes the responsibility to control these acts. In that case if there were allegations or the American soldiers violated the military law or they didn’t respect the international law in the time of wars, the American president should be held responsible in front of the American Congress for these acts. In the case of Abu Ghraib prison the president Bush didn’t held responsible or even asked, although he should be informed about the situation during the war time.

“Under the fourth Geneva convention, an occupying power can jail civilians who pose an “imperative” security threat, but it must establish a regular procedure for insuring that only civilians who remain a genuine security threat be kept imprisoned. Prisoners have the right to appeal any internment decision and have their cases reviewed. Human Rights Watch complained to Secretary of Defense Donald Rumsfeld that civilians in Iraq remained in custody month after month with no charges brought against them. Abu Ghraib had become, in effect, another Guantánamo.”

We can see that America violated the human rights law and all the conventions to protect the prisoners of wars and this incident created great reaction in the world. It didn’t help the American administration to fight terrorism but instead the hatred to the United States and to the American Soldiers increased especially among the Muslims. The American citizens also begin to feel unsafe if they travel outside the United States. Dershowitz talked about the approval of torture by the United States court of Appeals if the reason is to get information that can lead to find a kidnapped person. He mentioned the case behind this decision and it’s, Leon v. Wainwright in 1984 which the police used torture to force the suspect to tell where is the victim is kept.

“A dissenting state court judge characterized the policemen’s actions as “‘rack and pinion’ techniques,”

but the federal appellate court unanimously held that it was merely “a group of concerned officers acting in a reasonable manner to obtain information they needed in order to protect another individual from bodily harm or death” The truth is that both of the opposing views were correct”57

We can see here that his argument helped in one way or another to encourage American interrogators to use torture because they thought they are doing something good to their country. I think this case of kidnapping is different from cases of terrorism or insurgency like in Iraq because the police acted like that when they surely know that this prisoner committed the kidnapping, while in Iraq most of the detained persons were only suspects picked up randomly and in many cases according to false information. My point is that Dershowitz thought was destructive in one way or another because the CIA agents and the soldiers in Iraq were told that they are doing a great service to their country by torturing those ugly worthless terrorists as they call them.

“It is the duty of that man, and of that tribe, to get revenge on this soldier—to kill that man. Their duty is to attack them, to wash the shame. The shame is a stain, a dirty thing; they have to wash it. No sleep—we cannot sleep until we have revenge. They have to kill soldiers.”58

This quotation of an Iraqi tribal man show how the results of using torture and humiliation treatment can be, most of the detainees released from Abu Ghraib later they either joined insurgency or they have been used by Al Qaeda terror group in Iraq in order to get their revenge from the Americans. As I said before most of the detainees were innocent but after their torture it is easy to use them by any group to maintain the roots of terrorism. The policy used by the American military to contain Iraqis was wrong and the use of sexual mistreatment in Abu Ghraib against male detainees and force them to be naked or have sex with each other caused more resistance to the Americans.

“This of course is a prime goal of the insurgents; they cannot defeat the Americans militarily but they can defeat them politically. For the insurgents, the path to such victory lies in provoking the American occupiers to do their political work for them; the insurgents ambush American convoys with “improvised explosive devices” placed in city neighborhoods so the Americans will respond by wounding and killing civilians, or by imprisoning them in places like Abu Ghraib”59

The use of torture as we can see from Abu Ghraib case is a sign of weakness, and the American military

57 Alan Dershowitz, p 125.
58 See the article Torture and Truth by Mark Danner in 2004, available at http://www.markdanner.com/articles/show/35
used torture because they were not able to stop the continuous attacks of the insurgents. Those soldiers who used the sadistic methods in torturing Iraqi detainees didn’t put in their consideration that it is a wrong thing, when there is a general opinion to allow such acts between their superiors.

The FBI revealed a document showed that the American president George Bush gave the order or the green light to use what he called more effective techniques used by the American interrogators in Abu Ghraib and many other prisons around Iraq. Methods like the sleep deprivation or putting cold water and hoods on the head of the detainees, loud music and forcing the prisoners to be naked were considered high techniques can terrorize the detainees to make them talk. Abu Ghraib case will remain one of the worst torture scandals in the modern history.60

**Torture and other degrading and humiliating treatment**

Many people when they talk about torture they mix between torture and other methods of degrading or humiliating persons or prisoners. I think it is very good to focus on some of the differences between torture and other cruel, inhuman and degrading treatment because this can help the human rights workers to register the allegation and put a framework to help the victims.

“Abuse of prisoners doesn’t have to be torture to be illegal. Cruel, inhuman, and degrading treatment (CID) is also illegal under international and U.S. law. CID includes any harsh or neglectful treatment that could damage a detainee’s physical or mental health or any punishment intended to cause physical or mental pain or suffering, or to humiliate or degrade the person being punished.”61

From this we understand that the main difference is the amount of pain inflicted on the person, in the case of torture there is in general a physical pain on the victim’s body. In the ill and inhuman treatment there is in most of the cases mental or psychological harm to the victims that can cause damage to the detainee’s psychological and mental health. In torture there are the new methods of not causing physical harm by using mental torture, methods like disorientation and terrorizing the prisoners will not leave signs or marks of torture on the victim but it can lead to a long term of damage to the detained health. That is why it is sometimes very hard to separate between the mental torture and the ill and inhuman

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60 See the article President Authorized Abu Ghraib Torture, New Standard in 2004, available at [http://newstandardnews.net/content/index.cfm/items/1348](http://newstandardnews.net/content/index.cfm/items/1348)

treatment but in general the degrading and inhuman treatment is caused by an act of neglect or an it happened by accident. According to the United Nations Convention against Torture in 1975 both of the acts are against the law and illegal.  

“New research findings by Dr Metin Başoğlu, Head of Section of Trauma Studies at King's College London and the Istanbul Centre for Behaviour Research and Therapy, examines the psychological impact of war captivity, 'cruel, inhuman, and degrading treatment' (CIDT) and physical torture. Findings revealed that being held captive in a hostile and life-threatening environment, deprivation of basic needs, sexual torture, psychological manipulations, humiliation, exposure to extreme temperatures, isolation, and forced stress positions appear to cause more psychological damage than physical torture.”

The new studies proved that both the mental torture and the inhuman treatment will cause stronger results on the victims more than what are caused by physical harm inflicted on the body. I think acts of discrimination because of the ethnic or national identity is also can be an acts of humiliation, for example if a person apply for a job and he was told that he could not have this job although he is high qualified for doing it because of his religious background or nationality. This will consider as a degrading treatment and an act of humiliation because it will lead to some psychological damage to this person.

According to Amnesty International, the United States violated the Torture Convention against Torture and Cruel, Inhuman and Degrading Treatment many times in the name of fighting terror:

- “The Bush Administration decided the Geneva Conventions would not apply to detainees held in Guantánamo Bay (a decision later overturned by the U.S. Supreme Court) Article III of the Geneva Convention
- The Justice Department’s Office of Legal Counsel produced a series of “torture memos,” which mutilated the law so as to restrict the definition of CID and to make certain torture practices seem legal under U.S. law;
- U.S. interrogations of suspects in the “war on terror” have included such cruel and inhuman techniques as prolonged isolation and sleep deprivation, intimidation by the use of a dog, sexual and other humiliation, stripping, hooing, the use of loud music, white noise, and exposure to extreme temperatures;
- The CIA used waterboarding – illegal as torture under international and U.S. law – to interrogate three “high-value” detainees;

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63 See the article Cruel and Inhuman treatment causes more mental damage than physical torture, Science Daily 2009, available at http://www.sciencedaily.com/releases/2009/06/090602101258.htm
The U.S. began to send detainees for interrogation to countries known to use torture;

President Bush admitted that several high-level officials in his Administration met secretly to authorize specific interrogation methods otherwise prohibited.64

All these allegations were the result of allowing torture and to put torture in a legal frame to fight terrorism. The Bush administration damaged the reputation of the United States as a human rights defender country, although the Inter-American Convention to Prevent and Punish Torture stated in Article 2:

“The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.”65

It seems the war on terror helped to reduce the morality standards in many countries and especially in the United States and the argument of Alan Dershowitz and his warrant state idea was inspiring for many American politicians and particularly in the Bush administration.

Torture and terrorism

Most of the people think that terrorism is something new and in fact It is not and if we will make a comparison between torture and terrorism we can see the similarity between them, terrorizing the enemies in the ancient civilizations was a traditional thing. The modern terrorism and strongly started in the eighties have been the focus of the world, torture in the other hand was practiced brutally by many nations and regimes and returned in our modern times with the same brutal and barbaric methods. Almost third of the world countries practiced torture as a part of their policies; generally speaking torture

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is used in the countries suffering from lack of democracy and weakness in their ability to solve their political problems through the use of dialogue.  

Today the allegations and torture are committed in the name of putting an end to terrorism, but we can argue and say that the use of torture to fight terrorism is a terror act also. We cannot face a threat by imposing another threat or in that case the persons using torture are not different from the terrorists themselves, in other words they are terrorists also. In torture the torturer inflict pain and may kill the victim and in terrorism the terrorist cause pain and injuries through the terror act and kill people too.

Many terror detainees are still detained in secret places and continuously tortured and for example Amnesty International wrote in a report “It is nearly eight years, for example, since Abu Zubaydah was arrested in Pakistan. He was hidden away in secret CIA custody for the first four and a half years, subjected to torture and enforced disappearance, crimes under international law for which no-one has been brought to justice. For the past three years he has been in Guantánamo, still held without charge or access to remedy. The Obama administration continues to resist disclosure of what happened to him and others held in secret CIA custody.”

Kidnapping persons and detain them in secret places with no trial I think is an act of terrorizing people because you are violating their rights. In many cases the persons suspected of committing terror acts were innocent; the new American administration should take serious steps towards the improvement of the detention procedures. The Inter-American Convention to Prevent and Punish Torture must be respected by the state officials and according to Article 3:

“The following shall be held guilty of the crime of torture:

a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.

b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.”

Giving a stronger role to international organizations to act and to monitor torture and all other violations and allegations will give more trust in the state legal system, because the role of international

86 See the article Torture, Terrorism and theology by Max L. Stackhouse, available at http://www.religion-online.org/showarticle.asp?title=117
organizations like Amnesty International and Human Rights Watch is vital and successful in following violations against human rights. In order to promote the prohibition of torture in the world there must be cooperation between the countries to fight terrorism and fight torture at the same time. When the countries puts the agenda of fighting torture on their priority the citizens will feel safe and ready to help their government in order to stop terrorists. Terrorism then will lose any grounds and sympathy among some groups in society, while if torture scandals will continue then terrorists will get what they need to convince people that they are fighting against a corrupted regime or government. One important thing is that the costs for using torture and then give the victims treatment is very expensive, the treatment for mental torture for example can take years of medical observance.

**Conclusions**

Through this study I tried to show the immoral side of torture and the dangerous use of this argument created by Alan Dershowitz. The use of torture will not stop, that is true but the answer is not fighting terrorism by approaching for the use of torture. Allegations can be stopped if there was a strong and trusted political and legal system; many countries have a very good record in not using torture or any other allegations. Countries in Scandinavia for example and especially Sweden are famous of their record in preventing and prohibiting torture. Dershowitz’s argument I think led to the acceptance of torture used again in the United States, the torture case of Abu Ghraib and the case in Guantanamo Bay prison are the results of his argument to encourage American politicians and the Bush administration to take his view after the attacks of the 11th of September 2001. The best way to fight terrorism I think is not to practice torture against any terror suspect in order to show the detainees they were wrong when they joined the terror groups. This will give stronger effect on them than using torture and force. We have seen in Iraq many of the released detainees joined insurgency and Al Qaeda again, because they feel ashamed after their dignities were violated. By encouraging torture we will create instability and more violence in the world and as I think will make people live in continuous fear and hate. The costs of curing torture victims are high and the method used to torture persons are expensive too and there is no need to use them. Dershowitz tried to blame the Palestinian terrorism in his argument while he forgot
that there is an occupation force and occupied territories, political conflicts can lead in many cases to acts of torture between both sides of the conflict. The continuous use of torture will encourage terror groups to continue their acts and we have seen the results in Iraq and Afghanistan after the torture scandals. Not giving terrorism the chance to attract more people can be done by stopping torture and build a bridge of trust between the government and the citizens. The use of torture can lead to false and wrong information, because the detained will say anything to save himself from the severe pain inflicted on him by the interrogators. It is necessary to establish a cultural approach that can give the people the knowledge about how the use of torture is very bad to their community. Dershowitz’s argument is full of hatred and directed to racism against one ethnic group and encouraging the clash between civilizations and religions. The best method to fight torture is through giving the international organizations more authority and strength to monitor countries and regimes that practice torture, and strengthening the international treaties and conventions that punish torture.
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