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Panel 2: How Are Laws Applied and Detention Practices Reformed? Advocacy and Campaigning Against Torture

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Panel 2: How Are Laws Applied and Detention Practices Reformed?

Advocacy and Campaigning Against Torture

*Remarks of James Ross**

IN THIS TALK I WILL EXAMINE SOME OF THE FAILINGS OF ADVOCACY AND CAMPAIGNING AGAINST TORTURE SINCE 9/11, SPECIFICALLY THE PROBLEMS FACED BY INTERNATIONAL HUMAN RIGHTS ORGANIZATIONS SUCH AS HUMAN RIGHTS WATCH AND Amnesty International in addressing torture by the United States in the “global war on terror.”

Efforts in Europe in the 18th century to eradicate “judicial torture” – the lawful use of torture by the courts – provides a good starting point for looking at problems in eliminating torture today. As of the 18th century, every country in continental Europe engaged in the practice of judicial torture. But by the end of the 18th century, judicial torture was completely abolished. Historians cite two reasons for that. First, the rules of procedure in criminal courts changed. Previously, unless you had two eyewitnesses to the actual crime, the only way you could convict someone was if they confessed to crime. Confession, the “Queen of Proofs,” encouraged the use of torture. And in fact, every state in continental Europe had detailed manuals on how to lawfully go about torturing suspected criminals. In the 18th century, these rules of procedure changed a bit, and allowed for criminal convictions based on circumstantial evidence, which made it much easier to get a conviction and made confessions, and hence torture, less necessary.

There was a second, equally important reason. In 1764, a 25-year-old Italian marquis named Cesare Beccaria was asked by several of his activist friends to write something about the practice of torture and criminal punishment. His short pamphlet, “On Crimes and Punishment,” almost instantly became one of the most influential documents on criminal justice of all time. It was an eloquent denouncement not just of the system then prevailing in Italy, but throughout Europe. Beccaria’s arguments against the practice of torture had been made many times before, but he did so in a way that captured the public imagination. Leading lights of the Enlightenment, such as Montesquieu and Voltaire, took up the pamphlet, and translated it into multiple languages, and promoted its rapid spread across Europe. Its impact on getting both state officials and the educated public to rethink their views on torture cannot be overstated.

Turning to the present, I’d like to consider the current role of international human rights organizations in battling torture for national security purposes. Monitoring groups like Human Rights Watch are most effective when they uncover new, previ-

ously unreported information on human rights violations and present it in a way that is compelling to policy makers and to the general public. So, on the issue of torture, normally Human Rights Watch will have its researchers, many of whom are now based in countries they are investigating, gather detailed information from torture victims, their families, and eyewitnesses to put together compelling cases of what happened. First hand accounts describing what happened, when we can corroborate them, are usually the most effective. Reporting on torture can be particularly difficult because the victims are still often detained, and far too often they don’t survive their ordeal. If we can’t get into the prisons for confidential meetings with prisoners, we’ll do our best speaking to others with information, such as released prisoners and family members. We may have to go to neighboring countries to speak to refugees. Recently, in the Democratic Republic of the Congo, Human Rights Watch researchers traveled to remote villages to interview survivors of horrific atrocities by rebel groups. And while we are not permitted to interview victims of torture in Ethiopia, we’ll go to neighboring countries and meet with Ethiopian refugees. These compelling testimonies are really essential to our work, leading people to rethink what is going on, to rethink the use of torture for national security reasons.

Human Rights Watch takes this information and we use it in our reports, letters and opinion pieces so that it gets to the attention of decision makers both in the responsible country and abroad. A group like Amnesty International focuses more on campaigning, on reaching a broader public. In fact, Amnesty International’s first major organizational campaign, in 1972, was on torture. It was remarkably successful and directly led to the United Nations Declaration against Torture, and by 1984, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Now I’ll turn to 9/11 and what has sadly been referred to in the United States as “the torture debate.” When I decided to undertake a career in human rights, I expected to be dealing with governments that were going to be committing torture and then lying about it. But I never really expected to be dealing with governments that would admit to committing torture or consider it a proper policy option. And I certainly would never have believed that that government asserting such claims would be the United States – but that’s exactly what happened.

A real problem for Human Rights Watch and other human rights monitoring organizations was that we didn’t have access to the victims. We didn’t have access to Guantánamo, to Abu Ghraib, or to Bagram Air Base. (In fact, we still don’t.) As a result, we couldn’t play the monitoring role we normally do, and

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so our work didn’t have the impact that we would have liked. Valuable work was done – for instance we published accounts of U.S. military officers who were involved and knew about mistreatment of prisoners in Iraq, we worked with members of Congress on legislation and resolutions concerning torture, and we’ve since been able to provide accounts of detainees released from Guantánamo and other detention centers. But in terms of the main story of mistreatment of detainees by the U.S. government, and getting those compelling accounts out to the public’s attentions, the human rights monitoring groups were less than successful. Rather, the U.S.-focused law organizations were more successful in getting the stories out. The Center for Constitutional Rights and people here at the Washington College of Law represented detainees at Guantánamo reported on their ordeals. The ACLU brought compelling information on torture to light through multiple, litigation-filled Freedom of Information Act requests.

These efforts were all very important, but in many respects it is not enough to end torture once and for all, by the U.S. government. This is a new administration in the United States and obviously this administration has done important things in a very short period of time – announced the closing of the detention facility at Guantánamo, issued an executive order requiring that the CIA has to abide by practices of other U.S. government agencies in the treatment of detainees, permitting the International Committee of the Red Cross access to all detainees. At the same time, it is clear it’s not going to be an easy road. The Obama administration, as evidenced by recent court filings, is still using the State Secrets Act to prevent the

adjudication of claims of torture, an unexpected and unfortunate decision. And the administration’s executive order on renditions hopefully will lead to the end of renditions to torture, but it doesn’t specifically do that.

I think it is very important that the international human rights organizations, including Human Rights Watch, do a better job recognizing that it’s not enough to focus on the law, not enough to just point to the Convention against Torture to finally and forever eradicate torture. There is a need to generate real public outrage against the practice, no matter what the circumstances. There won’t be another Beccaria, but maybe there can be a “Beccaria moment” that will put an end to the idea that there is a debate over torture, and to make it clear that torture just can never be used under any circumstances.

Human Rights Watch, and many other organizations are pushing for a non-partisan commission of inquiry to investigate what happened over the past years, with the idea that its findings would lead to appropriate prosecutions of those most responsible for torture by the U.S. government. I think it’s very important that those testifying before such a commission be the various people involved in the policy, people who helped write it and who implemented it. But I believe it would also be essential to bring in the victims of torture and have them speak – to get their words out there. Then Americans will better recognize that torture is a problem not only when your victims are innocent, but also when you torture the bad guys. That idea has not been won yet. For human rights organizations dedicated to ending torture, that needs to get done. And Human Rights Watch is going to be pushing for that in the coming years. **HRB**