

The cost of coherence:

The case of EU-funding for rehabilitation of torture victims

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Abstract

In 2003, a shift occurred in the European Union (EU) foreign policy moving funding from rehabilitation of torture victims to prevention of torture. The shift was explained with bureaucratic and technical arguments, rather than political priorities. However, the shift followed a large reform to obtain greater “coherence” among EU foreign policy instruments, in which trade, development and human rights policies were adjusted to “work in the same strategic direction”. In spite of official statements that human rights are an “underlying principle”, and thus the core of the identity of the EU, this article claims that human rights have been subordinated by trade and development objectives. These tendencies are not unique for the EU, but are contradictory to the EU’s claim that the supranational position creates an “added value” in comparison to other political actors. This article argues that the EU is not any different from national states in pursuing strategic foreign policy objectives. If rehabilitation of torture victims is to survive where it is most needed, lobby efforts must take the strategic interest of the EU into account.

Introduction

In the EU’s own words, human rights are an “underlying principle” of all policy areas of the EU. Human rights are supposedly at the

very core of the self-understanding of the member states and thus the European Community. In 2003, however, the EU-Commission (hereafter the Commission) restructured the European Initiative for Democracy and Human Rights (EIDHR) in a “more strategic direction”.¹ This resulted in the funding for rehabilitation of torture victims in third countries, after reaching a peak of euro 14 million in 2001, disappearing all together. Against the rhetoric of both Council and Commission stating that the EU sees rehabilitation as an important policy priority, and the emphasis on the “supranational value” in this particular sensitive area of human rights policy, the shift is bewildering. The EU has explicitly stated that the supranational support may have a protective effect for NGOs working in the area.¹

This article explores how the shift was installed, and tries to identify the underlying reasons. The next paragraph will briefly account for the Commission’s special features and characteristics as an object of political analysis; the following section introduces the article’s perception of torture as a political phenomenon.

Supranationality:

above, below and beyond nations

The Commission is the main focus of analysis in this article as executive of the EIDHR.

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It enjoys a unique position on the international policy stage, above, below and beyond the position of nations. How is this? The Commission is both a legislative (political) and executive (administrative) actor at the same time.² It therefore must satisfy a large number of diverse interests. Furthermore, the fact that members of the Commission are appointed, and not elected, places the Commission beyond the national state with no democratic legitimacy, where it depends on international NGOs for legitimacy and support.³

On the basis of the above, one could draw the following picture of the “political space of torture”, in which the Commission must navigate to reconcile different interests in order to be successful:⁴

Figure 1 shows the different dimensions influencing the policy on torture. Each dimension represents different actors. The national dimension represents the national member states, whose primary interest is their own safety and promotion of their own political and strategic interests. The developmental dimension represents receiver states, whose primary objective is to obtain a larger piece of global wealth and advance their own position. The human rights dimension con-

tains human rights activists/NGOs whose interests are the promotion of human rights and the funding of activities. Finally, the supranational dimension is the Commission's own interest: to gain credibility, legitimacy and “added value”. How these dimensions intertwine is the subject of analysis in this paper. However, torture as a phenomenon creates special conditions for policy making. The next section will therefore briefly outline the paper's understanding of torture.

Torture in modern democratic states

Torture has always existed, but contrary to what could be expected, torture persists in modern democratic states. Thus, in 2002 Amnesty International could document incidences of torture in at least 151 countries all over the world⁵.

In popular terms, torture is probably most often associated with authoritarian regimes such as Pinochet in Chile, Pol Pot in Cambodia and the regimes of the former Soviet Union. In these settings, torture was used openly to frighten and suppress political opponents and thus named “state terrorism”.

The use of torture in modern democratic states is different in some important aspects. First of all, according to Crelinsten⁶ the use of torture is an absolute taboo and is not discussed in any form other than complete condemnation. Where torture still occurs, it is often explained as “legacy” from past regimes or the result of “one rotten apple in the bowl”. However, according to Kelman⁷ torture is a “crime of obedience” rather than disobedience. Kelman's thesis is that torture is not used as opposition to the authorities, but rather in an environment where torture is, if not directly ordered, then at least tolerated by higher levels. On the individual level of the torturer, the use of torture is incorporated through a professional network with

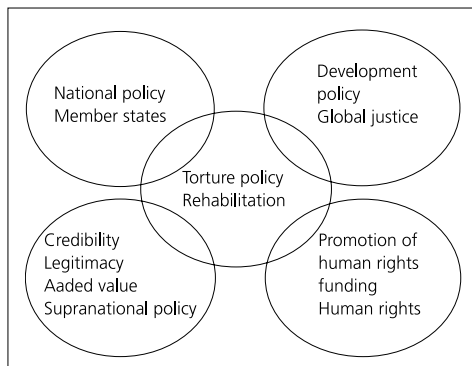


figure 1. The different dimensions influencing the policy on torture.

its own routines, a high level of “esprit de corps” and targeted training. Any moral objection the individual might have is effectively removed through a “dehumanisation” of the victim.

Since the Second World War, the fight against torture has strengthened its position on the international human rights agenda. Since the UN Declaration of Human Rights in 1948, the fight against torture has gained an entire web of legislation, starting with the UN Convention Against Torture⁸ and later followed by a number of regional and national instruments, such as the European Convention for the prevention of torture and the optional protocol to the US Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The juridical perception of the term uses the UN definition, in which torture is always intentionally inflicted, and the perpetrator is a state agent. These features are important for the understanding of torture as a political subject, and will be elaborated further below. The following paragraph will briefly outline the role of rehabilitation in the fight against torture.

Rehabilitation

– a precondition for prevention?

The victims’ right to rehabilitation is stated as article 14 in UNCAT, which in principle places the responsibility for providing medical, social, juridical and economic rehabilitation on the national (perpetrator) state. The juridical argument behind the right to rehabilitation seems thus to be of a pragmatic nature, as the actual use of torture is recognised, in spite of the intention of the Convention. Article 14 is thus the international society’s recognition of the obligation to make up for its shortages.

The argument for rehabilitating victims originates with health professions and is

based on the medical vow of alleviating human suffering,⁹ but juridical redress is advancing on political agendas worldwide. Thus rehabilitation comprises health, economic, social and juridical aspects. In practice, rehabilitation is provided by a large number of rehabilitation centres around the world, which have in common that they are not run by the state. On the contrary, they perceive themselves as opposition to state authority. In a number of countries, the staff members of these centres endure harassment from paramilitaries, police forces or the government itself¹⁰. This means that the EU and UN (through the voluntary fund for victims of torture) de facto are the only donors, besides private funds, of rehabilitation in developing countries.

Practitioners of rehabilitation have widened their mandate in recent years. The argument is that a medical diagnosis of torture can be used as proof before the courts and thus effectively contribute to the fight against impunity. Furthermore, it is argued that accumulated and systematic knowledge of the symptoms of torture is a precondition for designing efficient prevention strategies. However, the EU policy shift seems to indicate that this argument has not gained much adherence on the political level. The concrete circumstances of the policy shift in EIDHR will be analysed below.

Analysis

Rehabilitation and coherence

The responsibility for achieving greater coherence among the EU’s foreign policies is placed with the Commission of the Maastricht Treaty of 1996, which speaks of the need for “better coordination”.⁴ The EU’s understanding of the term thus seems to neglect any conflict potential, as the creation of coherence is portrayed as a “managerial fix”.

An administrative accident?

Overall, EU funding of rehabilitation peaked in 2001, with a total of euro 14 million.¹¹ At first glance it seems as if rehabilitation stood stronger than ever before as a political priority. However, the creation of budget line B5-813 was a result of a massive lobby campaign after rehabilitation was excluded from the budget as an activity all together in 2000, which was explained by the Commission as a mere “administrative failure”.⁹

Where rehabilitation and prevention had previously been funded separately, the two branches of the fight against torture were to fight for the same funds in 2002. A single call for proposals targeted both rehabilitation and prevention projects with 25 million for the period 2002-2003. Of these funds, euro 5 million were spent inside the EU, and 12 million outside in 2002, leaving a total of euro 8 million for 2003. These funds were reserved for rehabilitation and prevention activities in the EU and candidate countries,¹² leaving no remaining funds for rehabilitation outside the EU in 2003. It is thus clear that the target group of the policy shift is rehabilitation in third countries only, but not rehabilitation as an activity per se, as funding for rehabilitation inside the EU even increased over the period. Rehabilitation and prevention have now become competing activities, rather than complementary, as 67% of the funds spent externally in 2002 were spent on prevention. Generally, the fight against torture is still high on the European political agenda, and the exclusion of rehabilitation in third countries appears as the result of a mere administrative “accident”.

Rehabilitation disqualified on “objective” criteria

The Commission’s administrative performance has been criticised heavily by the EU-parliament, the EU court of auditors and the Council. As the Commission often “imple-

ments” through funding of NGOs, the demand for greater efficiency, accountability and transparency “spills over” to the receiving organisations. The Commission therefore has an interest in narrowing the scope of projects and partner organisations in order to reduce complexity.¹³

The restructuring of EIDHR into a more strategic direction was done through the formulation of four thematic priorities:

1. Support to democratisation, good governance and strengthening of the rule of law.
2. Support for the abolition of the death penalty.
3. Support to the fight against torture and impunity, including international criminal courts and war crime tribunals.
4. The fight against racism, xenophobia and discrimination against minorities and indigenous people.

Activities under each headline are furthermore divided between three levels: global, regional and national, according to their scope. A better geographic focus is achieved through the identification of 29 “focus countries”.

The thematic, geographic and instrumental dimensions do not individually exclude rehabilitation from funding. But in combination they do. As mentioned, rehabilitation’s main contribution to the fight against torture consists of fighting impunity on the national level. But fighting impunity is now only a priority on the global level through supporting the international courts, and is not accepted as a project activity on the national level. Furthermore, when a project proposal is received by the Commission, it is assessed according to a series of relevance criteria concerning method, sustainability and efficiency. The relevance cri-

teria are formulated on the basis of the political priorities; visibility, multiplier effects and distribution. Not least, the applicant must be able to document previous experience and technical knowledge of the field in question. This selection criteria meant that only 66 projects out of 530 were accepted in 2002, and 50 out of 580 in 2003.¹⁴

Formally, rehabilitation centres are still encouraged to apply for “core funding”, but in reality, their activities fit badly with the relevance criteria, as the effects of rehabilitation fit badly with demands for visibility and multiplication, gender equality and environmental considerations. Thus, not formally but in fact, rehabilitation seems to have been disqualified on bureaucratic criteria. The important point is, however, that these criteria are political and not scientific in nature, and therefore not necessarily “objective”, although they might be legitimate.

Prevention as the “magic stick”?

In December 2001, there was a sudden change of tone in the Commission’s stance on rehabilitation of torture victims. The main purpose was now to “strengthen the institutional capacity of rehabilitation centres, including their preventive component” albeit “without jeopardizing the core activities of rehabilitation”.¹⁵ Without specifying the shortcomings of the centres, the Commission re-emphasised that long term funding should be directed towards prevention activities, which, the Commission claims, would be to the centres’ own advantage in diminishing their dependence on EU-funding. The Commission justified the shift with a set of guidelines on the fight against torture formulated by the Council in 2001,¹⁶ placing torture within the general human rights policy of the Union. The emphasis on prevention is based on the EU’s desire to appear as an “agent of change”. It thus seems

clear that rehabilitation is no longer being assessed as a human rights priority, focusing on its humanitarian value, but rather according to a developmental logic in which the main argument is an expectation of benefits in the future. This argument is not easily matched by rehabilitation, having as its main justification the relief of human suffering today. Prevention seems to be the magic stick aimed at tomorrow’s victim, rather than yesterday’s. The idea of prevention is also not taken out of the blue. Prevention as supported by the Council of Europe has worked well in a European context.¹⁷ How this argumentation fits with the overall strategic interests of the Commission is analysed further below.

The Commission’s strategic interest: human rights or trade?

The primary aim of EU development policy is poverty alleviation. However, the selection of receivers is not based on indications of wealth/poverty, but on an overall assessment of the country’s “strategic importance” to the EU. The Commission’s strategy to alleviate poverty is by increasing trade, meaning strengthening competitiveness, the ability to participate in the WTO, and home markets in developing countries.¹⁸ Eventually, a restructuring of the EU’s Common Agricultural Policy (CAP) will also have to take place, but this issue is the cause of much disagreement internally between EU member states. It therefore seems plausible that developmental aid is distributed strategically in order to create positive alliances with developing countries on trade issues for as long as their main wish, an end to the CAP is not feasible.

The Commission repeatedly claims to possess comparative advantages due to its supranational position on human rights policy. It distinguishes between “classic” and

“developmental” policy tools. In the classic form, however, the EU’s human rights policy consisting of public criticism and sanctions has had very limited reach.¹⁹ On the other hand, the developmental tools are all framed in a positive way as “training” and “capacity building”, thus avoiding any open criticism or confrontation with the receiving state regime. It is furthermore worth mentioning that the selection of countries under EIDHR¹ follows the same criteria as development aid recipients; rather than targeting the countries with the most severe problems, recipients are chosen according to overall strategic importance to the EU.

Finally, one could ask why rehabilitation of torture victims is not funded as a humanitarian policy, now that its self-understanding is based on humanitarian arguments rather than developmental? The answer is that humanitarian policy is exclusively targeted at emergency situations in non-strategic geographical areas where no other policy tool is applicable, thus claiming the traditional values of humanitarian action, impartiality and neutrality.²⁰ There are at least three reasons, why rehabilitation is not funded under the humanitarian policy: 1) The use of torture is not an acute crisis situation, but rather a symptom of a structural or institutional crisis. 2) When speaking of rehabilitation in humanitarian interventions, it is in the physical sense, in the shape of infrastructure, housing and income generating activities. 3) Rehabilitation of torture victims cannot be impartial, when the torturer necessarily is a state agent. 4) Incidences/use of torture is not restricted to non-strategic countries.

Conclusion

There are several explanations to why rehabilitation outside the EU has been excluded from funding. On the surface, the shift is simply a consequence, albeit unpleas-

ant, of a necessary bureaucratic streamlining of activities. Moreover, on a deeper level, as the analysis shows, the shift is no “accident”, but a direct effect of the strategic interests of the Commission as both a political and a bureaucratic actor. Shaming the receiving governments in developing countries, as the support for rehabilitation of torture victims might be perceived as doing, is not feasible, when the same governments are needed as strategic alliances in trade policy. When the argument of an “administrative accident” was no longer satisfactory, the Commission launched the need to strengthen the prevention component in the work of rehabilitation centres, which might be legitimate enough, but definitely turns prevention and rehabilitation into competitive activities rather than complementary human rights priorities. In the end, rehabilitation is no longer valued as a humanitarian priority, but rather is required to have an “all-in-one” function, targeting primarily the victim of tomorrow, rather than today. As the analysis shows, the Commission’s perception of “coherence” as a matter of increased coordination or a managerial fix⁴ whereby no policy priority will lose importance, is not feasible. Creating coherence entails conflict. Some priorities will lose, which in this case was rehabilitation of torture victims in third countries. Whether this is legitimate or not is not within the scope of this article to judge, but the fact that the Commission is no different from any other political actor in pursuing strategic interests on the international policy scene is important. Without assessing the EU’s weight as a foreign policy actor in other ways (the EU might be a significant contributor to human rights policy through other measures), the conclusion here must be that the added value of supranationality in the fight against torture is null. There are no other significant donors of rehabilitation of torture

victims and the Commission has not acted differently than any national state might have done. Perspectives on the rehabilitation of torture victims are briefly discussed below.

Perspectives on the rehabilitation of torture victims: placing responsibility where it belongs

Chandler²¹ argues that the interference of Western/developed countries in complex emergencies and humanitarian crisis all over the world is a sign of “ethical foreign policy” which provides Western political leaders with an opportunity to appear as “knights” in front of their voters without ever having to assume any responsibility towards the people affected by the policy in the “receiving” state. This might be part of the explanation why rehabilitation inside the EU not only has survived the financial shift, but even seems to gain still stronger support: The European rehabilitation centres treat mostly refugees, and once one has been accepted as a political refugee, the regime in the home country has de facto been declared illegitimate and thus deserves no protection. By treating victims of torture from other regimes in Europe, the EU preserves its humanitarian and “knightly” face without upsetting any strategic partner governments.

With regard to torture in general, another explanation might be that with the global shift away from authoritarian regimes to the establishment of democracies world wide, the “shaming” method whereby the crimes of illegitimate regimes are displayed to the world is no longer viable. The EU is also not the only donor to exclude rehabilitation of torture victims. The UN²² as well has had to beg member countries to live up to their own promises of contributions every year and the very existence of the fund is threatened from various sides.

The perspectives on funding of rehabilitation of torture victims seem sombre, generally speaking. The argument for rehabilitation will likely lose further strength, if the victim can also be defined as a “terrorist”. As the case with Guantanamo Bay has shown, even politicians at the core of government readily accept severe violations of basic freedom rights. And in the case of Abu Ghraib, not one of the 22 American reports on the matter has had a mandate to investigate all the way to the top. There seems to be implicit consensus in the West that torture is not a problem for “us”, and without addressing the “splinter in your own eye” it is hardly legitimate to point to some one else’s.

The question is thus what to do about it? The rehabilitation movement will surely not be completely successful in freeing itself from the demands of the developmental logic, but to some extent it must be recognised that rehabilitation per se holds a significant value, simply in relieving human suffering today for the people affected, besides its contribution to prevention, conflict resolution, etc. Rehabilitation professionals are already working hard in developing better measures of goal achievement, which should be maintained and upgraded. The link between rehabilitation and prevention through medical diagnosis of symptoms of torture should not be allowed to stand alone either. One idea could be to work for the inclusion of the responsibility to rehabilitate victims of torture in the human rights clause on EU cooperation agreements, so the state in question would assume its obligations according to UNCAT, article 14. This could be done in a “soft” way, linking the state’s responsibility to EU funding.

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