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A Study of the Effects and Uses of Solitary Confinement in a Human Rights Perspective

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Study of the effects and uses of solitary confinement in a human rights perspective

I. Definition

Many terms are used to name this type of detention: solitary confinement, segregation, isolation, close confinement, cellular confinement, close management, disciplinary confinement. For the purpose of this study I will use the term "solitary confinement".

The definition of solitary confinement is: "single cell confinement of an inmate apart from the general population" of prisoners ¹. In other words, a person is confined alone in a cell.

Different forms of solitary confinement vary in the degree of solitude that is imposed on the detainee (psychological factor and in the degree of material discomfort that the detainee is subjected to (physical factor). Elements such as being able to receive visitors, see a lawyer, have access to books, T.V. and newspapers, have limited contact with other detainees, all count in the analysis of the type of solitary confinement in question, and whether this solitary confinement constitutes a form of torture. The material conditions such as the size of the cell, the sanitation, the light, the darkness, the circulation of air, the furniture, the access to showers and to outdoor exercise, are equally important factors in this analysis.

II. Conditions of Confinement

The following description of the conditions in solitary confinement in some prisons in the United States and Switzerland, will illustrate the main components of this form of detention.

U.S.A.:

In the Disciplinary Segregation Section of the Oregon State Penitentiary, prisoners are put in small cells 6 feet x 8 feet 4 inches. Some of these cells, the "quiet cells" are completely closed on all four sides, with a solid steel door rather than metal bars on one side. These cells are lit 24 hours a day. "Strip status" (no clothes, no bedding, no personal possessions), leg irons and belly chains are permitted by the regulations, and prisoners are subjected to these practices.

At the Marion Federal Prison in Illinois, prisoners in solitary confinement are sometimes tied "spread-eagle" on their beds,

¹ According to prison regulations in the State of Florida, U.S.A. "Operation of Institutions", chapter 33-3, December 1990, p.30.

often for hours at a stretch.

In the Florida State Prison at Stark, prisoners in solitary confinement may have three showers and two hours of outdoor exercise a week. They are allowed to buy certain goods at the canteen and can borrow one book a week from the library.

A stricter form of solitary confinement in the same prison, is to eliminate the reading material (except for legal materials), to forbid the prisoner from purchasing anything from the canteen, and to eliminate the two hours of outdoor exercise a week during the first thirty days of confinement. Visits are only allowed in extraordinary circumstances.

The third degree of severity in the application of solitary confinement in this prison, is to transfer the prisoners to the wing where executions take place (even though they have not been sentenced to death). Here they are placed in small cement cells 6 feet 11 inches x 8 feet 7 inches, where there is no window or furniture, the ventilation is bad and it is dark. They are not allowed out and never get any exercise.

Prisoners sentenced to death and awaiting execution are systematically placed in solitary confinement, and sometimes remain there for several years.

In the Florida State Prison, there were 315 prisoners on death row (awaiting execution) in April 1991. All of them living in solitary confinement, in cells 6 feet five inches x 9 feet 11 inches, some without a window. They were allowed a T.V. and a radio, but no fan. They could practice certain hobby crafts. They were entitled to three showers a week and two hours of outdoor exercise twice a week which was the only time they had direct contact with their fellow inmates.

In Tennessee living conditions for persons on death row were similar, but improved following a lawsuit challenging these conditions as unconstitutional (the Eighth Amendment to the U.S. Constitution prohibits cruel and unusual punishment by government officials). Prisoners are now in larger cells (80 square feet) which have windows. They may have a shower every day, 14 hours of exercise a week, crafts and a limited number of books, T.V. and radio².

At the Bedford Hills Correctional Facility for women in New York, prisoners in the solitary confinement unit were locked in small separate cells along the same corridor for twenty-three hours a day. Inmates were subjected to noxious odors, noise, and danger as some of the women suffering from severe mental illness, routinely engaged in acts of self-mutilation, arson, and assaultive, unhygienic behavior. Such conditions were declared

² "Prison Conditions in the United States", A Human Rights Watch Report, New York 1991, pp.44-47, 56-57, 75-76.

unconstitutional by the federal court before which a lawsuit was brought ³.

Switzerland:

In the Krocher and Moller v. Switzerland case which was brought before the European Human Rights Commission, the two prisoners had been detained in solitary confinement for a period of eleven months. They were held alone in separate non-contiguous cells, on a level in the prison building where no other prisoners were held. The cells had no windows and the prisoners were subjected to permanent artificial lighting. They were under constant televised supervision, and had no access to newspapers or radio. They were also totally deprived of exercise ⁴.

To summarize the essential components of these conditions of detention one can note: the small size of the cell, the absence of access to an outside view, the lack of fresh air, little or too much light, the lack of personal belongings, the lack of variety of surrounding objects (walls and furniture are often the same color thus creating a situation of reduced stimulus variability), the open sink and toilet (causing a sense of humiliation due to lack of privacy when performing intimate acts), the constant supervision or lack of supervision, in some cases the physical restraint, the absolute silence or constant noise, the total loneliness, total boredom, and lack of communication.

After examining some of the conditions in which persons are detained in solitary confinement, we will now look at the effects which these conditions produce on detainees.

III. The Effects of Solitary Confinement

According to the United Nations Human Rights Committee, solitary confinement often results in permanent mental disorders and feelings of insecurity ⁵. It also noted that if the detainee is

³ Ref. 709 Federal Supplement 482 (S.D.N.Y.)

⁴ Report of the European Human Rights Commission, December 16, 1982, D.R. 34, p.25. in the Case of Krocher and Moller v. Switzerland.

⁵ See 40 CHR (agenda item ,9) at 8, U.N. Doc.E/CN.4/Sub.2/1988/28 (1988).

not intensely observed, medical problems can go undiagnosed ⁶.

Several of the prisoners interviewed by a delegation from Human Rights Watch at the Florida State Prison said "they felt they were losing their minds because of the idleness imposed on them". One inmate wrote: "Boredom is a major enemy. Sensory deprivation is a way of life. There is simply nothing to do. Sit in your bathroom alone with none of your intimate possessions and try to imagine years of it week after week. Slowly it tears you down mentally and physically" ⁷.

Throughout history and in different cultural traditions, persons seeking religious experiences such as hermits or shamans, have used isolation as one of the techniques for producing hallucinatory visions, out-of-body journeys, or communications with divinities. Many accounts have been given also by lonely explorers or shipwrecked sailors describing imaginary companions who appeared to them.

In the nineteenth - and early twentieth century, solitary confinement was very widely used in Europe ⁸ and in the United States ⁹ as a novel and effective form of incarceration. Many prison authorities used it even as the only method of incarceration. However, this method quickly gained criticism as scientists started studying and discovering its negative effects on prisoners. In Germany for instance, as many as 37 articles were published in journals between 1854 and 1909 denouncing the correlation between prison conditions (specifically mentioning solitary confinement in more than half the body of literature) and the hundreds of cases of psychoses which were being discovered with prisoners ¹⁰.

In England, Charles Darwin studied the issue, and noted that the prisoners subjected to solitary confinement were "dead to everything but torturing anxieties and horrible despair... The

⁶ Paul R. Williams, "Treatment of Detainees: Examination of Issues Relevant to Detention by the United Nations Human Rights Committee", Henry Dunant Institute, Geneva, 1990, p.36.

⁷ Human Rights Watch, Opus cited above, p.55.

⁸ P. Nitsche and K. Williams, "The History of Prison Psychoses", Nervous and Mental Disease Monograph Series, number 13, New York, Journal of Nervous and Mental Disease Publishing Company, 1913.

⁹ D. Rothman, "The discovery of the Asylum", Boston, Little, Brown and Co, 1971.

¹⁰ P. Nitsche and K. Williams, 'op. cited.

first man... answered... with a strange kind of pause...[He] fell into a strange stare as if he had forgotten something....[Of another] Why does he stare at his hands and pick the flesh open,.... and rise his eyes for an instant... to those bare walls?" ¹¹

In 1890, the United States Supreme Court explicitly condemned solitary confinement because of the psychiatric risks it entailed, stating that "a considerable number of prisoners... fell into a semi-fatuous condition... and others became violently insane ¹².

More recently though, extensive studies have been made on the psychopathological effects of solitary confinement. Some were made by psychiatrists who were asked to interview prisoners held in solitary confinement, in order to testify in a lawsuit regarding this form of treatment in detention. Others were made with persons who volunteered to share their experiences after being subjected to some form of solitary confinement during a situation of kidnapping, terrorism, robbery, rape, or being held as prisoner of war or who journeyed alone in boats, aircrafts, or spacecrafts. And yet other studies have been made in experimental clinical circumstances with volunteers being placed in various situations of solitary confinement.

The findings of these different studies are uniform: solitary confinement creates profound psychotic reactions, such as hallucinations (visual, auditory), body-image distortions, feelings of suffocation, thought disorder, loss of memory, difficulty in concentrating, acute confusional states and subsequent partial amnesia, obsessions, disorientation as to time and space, startle reactions to sudden noises, fear, panic, paranoid states, fear of impending death, depression, hopelessness, apathy, anhedonia, lability (emotional instability) and extreme affect (excessively emotional reactions), feelings of depersonalization and derealization.

Physiological conditions have also arisen due to the anxiety caused by solitary confinement; persons have developed gastro-intestinal, cardiovascular, and genito-urinary symptoms, tremulousness, sleep disturbance with extreme fatigue, and recurrent and acute episodes of tachycardia (excessively fast heart beating) and diaphoresis (sudden and excessive sweating).

In a review of some of these symptoms, I shall explain their causality to solitary confinement, and the way they are perceived by the persons who experience them.

¹¹ P. Liederman, "Man alone: sensory deprivation and behavior change", in *Correctional Psychiatry and Journal of Social Therapy*, 8, pp.64-74, 1962.

¹² In *Re Medley*, 134 US 160, 167-168, 1890.

- Hallucinations (visual, and auditive) :

The first images which appear (sometimes as soon as fifteen minutes after the beginning of isolation) are often flashes of white lights, followed by geometric forms. More complex visual hallucinations of insects, small animals, people and places occur after several hours or days of isolation. The vision of tunnels and the sensation of floating through these tunnels have also been reported, primarily in situations where isolation was accompanied by a threat of death. Siegel ¹³ notes in his study involving 31 persons that "These hallucinations may occur despite conscious efforts to avoid them and they are generally considered cognitive responses to stress and trauma".

Grassian ¹⁴ after interviewing 14 inmates held in solitary confinement at the Massachusetts Correctional Institution at Walpole, quotes some prisoners reporting that "The cell walls start wavering" and that "Melting, everything in the cell starts moving; everything gets darker, you feel you are losing your vision", or "There's a guard in my cell; he's holding a noose".

Prisoners interviewed by Grassian also reported hearing voices and noises which were frightening to them: One said "I hear sounds - guards saying, 'They're going to cut it [his nerve damaged leg] off'. I'm not sure. Did they say it, or is it my imagination?" And another "I overhear the guards talking. Did they say that? Yes? No? It gets confusing. I tried to check it out with - [the prisoner in the adjoining cell]; sometimes he hears something and I don't. I know one of us is crazy, but which one? Am I losing my mind?".

Various explanations have been given regarding the scientific reasons for the occurrence of these hallucinations. Some suggest a common mechanism of action based on entoptic phenomena and CNS excitation and arousal ¹⁵. According to Williams "it may be that the brain needs a certain amount of stimulation in order to function, and in the absence of sufficient external stimuli, generates its own stimuli" ¹⁶.

¹³ Ronald K. Siegel, Ph.D., "Hostage Hallucinations - Visual Imagery Induced by Isolation and Life-Threatening Stress", in *Journal of Mental and Nervous Disease*, v.17(5), 1984, p.264-272.

¹⁴ Stuart Grassian, M.D., "Psychopathological Effects of Solitary Confinement", *American Journal of Psychiatry* 140:11, November 1983, pp.1450-1454.

¹⁵ Ronald Siegel, op. cited, p.26.

¹⁶ Lindsey Williams, "Psychological Aspects of Torture", Newham College, University of Cambridge, August 1990, p.13.

Hallucinations occur in quite a high percentage of cases of solitary confinement, as in one study they were shown to occur in 38.4% of the cases ¹⁷ and in another the percentage was even higher reaching 50% ¹⁸.

- Body-image distortions:

In an experiment by Smith and Lewty in 1959 whereby 20 volunteers were placed individually in a silent room for as long as they could last, one person reported "my head is like a spinning cone going away from my body"¹⁹. An American soldier who had been held as prisoner of war in solitary confinement in Viet Nam, described how he had thought he was suffering from some tropical disease which made his body become inflated. However, when his blindfold was removed he saw no unusual changes in his body ²⁰.

- Generalized hyperresponsivity to external stimuli:

Grassian quotes prisoners as saying: "You get sensitive to noise - the plumbing system. Someone in the tier above me pushes the button on the faucet, the water rushes through the pipes - it's too loud, gets on your nerves. I can't stand it. Meals - I used to eat everything they served. Now I can't stand the smells - the meat - the only thing I can stand is the bread." "Difficult to breath, stale, awful smell from the toilets - the stench starts to feel unbearable."

- Thought disorder, inability to concentrate, loss of memory

A majority of persons who have been held in solitary confinement have described experiencing thought disorders as well as an inability to control their thinking process. In the experiment by Smith and Lewty (1959) mentioned above, all 18 of the volunteers who stayed for more than 10 hours (out of 20 volunteers) suffered from thought disorder. Two of them described a "jumble of thoughts with no rhyme or reason". The phenomenon of thought disorder produced fear and panic in 12 of the subjects, one person stating "I thought this meant I was going

¹⁷ Ronald Siegal, op. cited, p.266.

¹⁸ Stuart Grassian, op. cited, p.1452.

¹⁹ S.Smith and W.Lewty, "Perceptual isolation using a silent room", Lancet, No.2, 1959, pp.342-345.

²⁰ Ronald K. Siegel, op. cited, p.267.

mad"²¹. Eight of the fourteen inmates interviewed by Grassian suffered also from these symptoms. Four of them reported acute confusional states and one of them slashed his wrists during such a state of total disorientation, but was unable to describe what happened during the several days surrounding the event, nor could he remember his thoughts or feelings at the time. Other inmates described problems with concentration and loss of memory. One said: "I can't concentrate, can't read... Your mind's narcotized... sometimes can't grasp words in my mind that I know. Get stuck, have to think of another word. Memory is going. You feel you are losing something you might not get back." Several tried to maintain their mental faculties by using techniques of self-discipline. One stated: "Got to try to concentrate. Remember list of presidents. Memorize the states, capitals, five boroughs, seven continents, nine planets"²².

Uncontrollable thought content of a primitive, violent, and frightening type has also been reported. Ideas of reference and paranoid fears appear in the minds of those subjected to solitary confinement²³.

The importance of a varied and stimulating environment in the development of intellectual capacities such as thinking, concentrating and remembering has been demonstrated in a great many experimental situations and studies on human and animal behaviour²⁴. One can therefore understand how persons placed in solitary confinement where the level of stimulation is significantly reduced, may almost automatically suffer from some form of loss of control over their thought process.

- Affective disturbances

The most common feeling people in solitary confinement have is that of extreme and profound anxiety. An ex-political prisoner from Chile stated that: "Isolated, you are alone with yourself, and problems start to arise in your thoughts, slowly but surely you realize that your feelings are filled with anguish, fear of the present, fear of tomorrow, of what may happen to you, and the most terrible thing is that slowly but surely you are submerged by this terrible feeling of isolation, a feeling of solitude

²¹ S. Smith and W. Lewty, op. cited, pp. 342-345.

²² Stuart Grassian, op. cited, p.1453.

²³ Ibid.

²⁴ Peter Suedfeld, op. cited, pp.4-5.

which is difficult to describe" ²⁵. According to Shallice ²⁶, the lack of extraneous demands in a situation of solitary confinement prevents the attention from being redirected, and the disordered nature of the cognitive processes lessens the chance of the anxiety being rationally defended against. Experiments on monkeys (Mason 1960) and the experiences of humans whether adults or children (Bovard 1959) have shown that responses to stressful situations are more adaptive and less emotional when the subjects are in the company of others than when they are alone ²⁷.

Gradually fear and despair take over and the person's mental and physical strength are shattered. The feelings of total abandonment and deep anxiety coupled with the factors of thought disorder and hallucinations rapidly put a person into a constant state of doubt and uncertainty in which they may lose their self-confidence, self-esteem, and finally their identity.

This destabilized state renders the person far more susceptible to thought control, propaganda, and readiness to confession of acts which often that person did not perpetrate. Albie Sachs who was held in solitary confinement for a period of 168 days in a prison in South Africa described her state of confusion and suggestibility as such: "By isolating me from the world in which relevant events are taking place, they have succeeded in destroying my independent recollection of what happened. If I saw sentiments couched in a manner which I could recognize as my own, then I would have difficulty in deciding whether or not they are accurate. I could even be persuaded that I gave a talk on a subject far more dangerous than that on which I did speak" ²⁸. The use of solitary confinement, its reasons and aims, will however be covered in a following chapter.

- Physiological effects

The extreme anxiety caused by solitary confinement may in turn cause acute physiological disturbances. Victims of such treatment have suffered from gastro-intestinal, cardio-vascular and genito-urinary symptoms, tremulousness, migraine headaches, insomnia and profound fatigue. According to Hocking these symptoms may be very

²⁵ Dario Paez, "La Carriere Morale du Prisonnier Politique", Collectif Latino-americain du Travail Psycho-Social (COLAT), Lewen, Belgium, 1980.

²⁶ T. Shallice, op. cited, p.396.

²⁷ Peter Suedfeld, op. cited p.6-7, re experiments by Bovard (1959) and Mason (1960).

²⁸ Albie Sachs, The Jail Diaries of Albie Sachs, Harrill Press, 1966.

long-lasting if not permanent ²⁹. Other symptoms such as recurrent acute episodes of tachycardia, diaphoresis, and shortness of breath have been discovered. One prisoner interviewed by Dr. Grassian reported "shortness of breath a lot. My heart pumps real fast. I feel like I don't get enough oxygen. Get frantic." Another said "I start to feel dizzy. I can't breathe." And another "I start to dwell on things - too many roaches - get scared one might get into my ear. Start to feel hot - extreme heat - then I can barely breath, start sweating, heart races, can't sit still, shaking, get a headache - real bad" ³⁰. A South African prisoner placed in solitary confinement and subjected at intervals to sharp piercing noises for a period of seven days, had to be sent to hospital by the prison doctor. The prisoner stated "It completely wrecked my nervous system. I couldn't sit or sleep. I had to walk the cell day and night (...). Presently my mental and nervous health is getting worse. There are many times I feel my mind is cracking" ³¹.

The experience of 59 persons detained for 18 years (1973-1991) in incommunicado solitary confinement in the secret prison of Tazmamart, in Morocco, also illustrates this point. They were all subjected to the same terrible living conditions: single cells which they never left, almost complete darkness, exposure to extremes of temperature, poor food, little water, and no medical care. Thirty one died during detention. However, the prison was divided into two wings of equal size. In the wing where the detainees were able to organize a common structured activity, such as reciting from memory the Koran by communicating from their cells, 24 survived. Whereas only four survived in the other wing where this form of activity and communication had not occurred. Many of the deaths were apparently caused by terminal psychosis, suicide, and pulmonary tuberculosis ³².

Experiments on animals have also demonstrated the correlation

²⁹ F.Hocking "Extreme environmental stress and its significance for psychopathology" *Am.J. Psychother*, 24, 1970, pp.4-26.

³⁰ Stuart Grassian, *op. cited*, p.1452.

³¹ Dr. Yosuf Veriava, "Torture and the medical profession in South Africa - complicity or concern?", in *Detention & Torture in South Africa: Psychological, Legal, and Historical Studies*. Claremont, South Africa, 1987, pp.39-52.

³² "Tazmamart: Fort Militaire Secret du Maroc, Consequences d'un Internement de 18 Annees", Johannes Wier Foundation for Health and Human Rights, The Netherlands 1993, pp.118. And Dr.Derek Summerfield, *British Medical Journal*, Vol.308, April 1994, p.1111.

between social isolation and physiological disturbances. Animals undergoing a stressful approach-avoidance conflict situation have developed gastric ulcers more rapidly when they are in the situation alone than when they are with others ³³.

The factors of cooperative effort and solidarity are essential in strengthening psychological and physical defence. A person placed in solitary confinement is therefore considerably weakened and rendered more vulnerable. But that may precisely be the aim of the detaining authority.

- Long-term effects of solitary confinement

According to Williams, solitary confinement "is designed to induce disorientation and confusion ...[and thus]... isolate the individual from his or her sense of self in such a way that it will prove very difficult for the victim ever to recover and function normally again" ³⁴. Persons who have been held in solitary confinement have reported continuing symptoms even after their release from this form of confinement. They often suffer from sleep disturbances, nightmares, depression, anxiety, phobias, emotional dependence, impaired memory and concentration, and confusion. Research has shown that these long-term effects generally do not subside over time as one would expect, but are actually intensified if they are not exteriorized and treated ³⁵.

To conclude this chapter, it can be noted that solitary confinement causes serious pathological effects on the persons who are confined in such a way. A high level of suffering is inflicted on them by this treatment, suffering which usually rapidly subsides upon termination of isolation ³⁶. This suffering once caused Charles Dickens to write regarding the effects of solitary confinement: "I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably

³³ Peter Suedfeld, op. cited, p.6, re findings of Conger, Sawrey, & Turrell (1956, 1958); Sawrey & Weisz (1956).

³⁴ Lindsey Williams, op. cited p.7, re F.E.Somnier and I.K.Genefke, "Psychotherapy for victims of torture", British Journal of Psychiatry, 149, 1986, pp.323-329.

³⁵ Robert J. Daly, "Compensation and rehabilitation of victims of torture", Danish Medical Bulletin, 27,5, 1980, pp.245-248.

³⁶ T. Shallice, op. cited, p.396.
S. Grassian, op. cited, p.1453.

worse than any torture of the body".³⁷

IV. Duration of detention in Solitary Confinement

One of the elements that renders solitary confinement more or less unbearable, is the length of time that a person will spend in this form of detention. One day alone in a cell is quite different from ten days, or ten weeks, months, or years. Each person is different, but there may be a certain limited time beyond which most people will find solitude unbearable, and will suffer from long-term consequences of this treatment.

According to a report presented by Canada to the United Nations Human Rights Committee, most States put a time limit on solitary confinement of 15 days to one month³⁸. However some allow it to last up to a year, and many have no time limit at all.

In the United States, prisoners are known to be held in solitary confinement for as long as eight months (Rikers Island, New York City jail), 10 years and 17 years (Marion Federal Prison in Illinois and Florida State Prison)³⁹. In the cases studied by Dr. Grassian at the Massachusetts Correctional Institution at Walpole (see chapter on effects of solitary confinement), the duration of confinement in isolation ranged from 11 days to 10 months, the median duration being two months.

Several experiments have shown the low level of endurance regarding the time spent in solitary confinement. In the study by Smith and Lewty (1959) where the duration of the experiment was unspecified (subjects were asked to stay as long as they could), the average quitting times were 29.24 hours for men and 48.70 hours for women. No subject was able to endure solitary confinement for more than four days. In another experiment where duration was unspecified, it was discovered that a two hour period was sufficient to generate confusional states and various fears including that of becoming insane⁴⁰. The level of endurance is higher when the length of stay in solitary confinement has been previously specified to the subjects. In this situation, studies have indicated that approximately two-thirds of the subjects were able to last for periods from three

³⁷ Quoted by T. Shallice, op. cited, pp.400-401.

³⁸ Canada State Report, U.N.Doc.CCPR/C/1 Add.43 at 23.

³⁹ Human Rights Watch, op. cited. pp.23, 56, 77.

⁴⁰ Cohen, Silverman, Bressler and Shavonian, "Problems in isolation studies", in P.Solomon et al., (Eds.), Sensory Deprivation, (1961), Cambridge, Mass., Harvard University Press.

to fourteen days ⁴¹. Even more severe forms of solitary confinement have resulted in even lower levels of endurance: subjects placed in a tank-type respirator (iron-lung), in constant noise and with unstructured visual stimulation (namely the end of the iron-lung) could only last between 3.5 and 10.5 hours. Only one subject lasted 30 hours and none stayed the required 36 hours ⁴².

It is important to note the connection between the level of endurance of the person and whether a time frame was given regarding the length of the stay in solitary confinement. Obviously the way the person conceives of what is happening to him or her is influential on how "well" he or she will come out of the experience, or in other words, how high the level of suffering may be.

In non experimental situations, a prisoner held in solitary confinement is very rarely told how long he will be subjected to this treatment. Prison regulations usually contain no limit on the time a person may spend in solitary confinement. This is contrary to the obligation stated in the Standard Minimum Rules for the Treatment of Detainees whereby the duration of a punishment must "always be determined by the law or by the regulation of the competent administrative authority" (Rule 29).

The question arises as to the utility of setting a time limit beyond which a prisoner must be taken out of solitary confinement. Some argue that the danger of setting a time limit is that the authorities will systematically keep a person in solitary confinement for that duration and feel justified in doing so merely because it is contained in the law, and not because it is in accordance with the principle of proportionality to be applied to each individual case. One can also question the utility of letting a violent prisoner out of solitary confinement if he/she is going to immediately assault other prisoners or guards again.

If there is a time limit set, will the prisoner simply be let out for a day, then placed back in solitary confinement for another specified duration? In the state of Massachusetts there is a statute which requires relief from isolation with closed solid steel doors for at least 24 hours every 15 days. Within the first few hours of relief the prisoners find very rapid diminution of

⁴¹ M. Zuckerman, "Perceptual isolation as a stress situation: A review, in Arch. gen. Psychiatry., 11, 1964, pp.255-276.

J.P. Zubek, "Behavioral and physiological effects of prolonged sensory deprivation". NATO symposium on man in enclosed space, 1969, Rome.

⁴² J.H.Mendelson et al (1960), "Catecholamine excretion and behavior during sensory deprivation. Arch. gen. Psychiat. 2, 1960, pp.147-155.

the symptoms they suffer from while in insolation ⁴³.

V. The Use of Solitary Confinement: Its Reasons and Aims

The reasons for placing a person in solitary confinement are varied. They range from the protection of the detainee, the protection of other detainees, the orderly operation of the institution, and the protection of national security.

In some cases prison authorities refer to the necessity to protect the prisoner from him/herself if there is a risk of suicide. The prisoner may be put in a bare room and monitored by television 24 hours a day. In the Krocher and Moller case, the Swiss prison authorities cited two recent deaths in the prison which had caused great controversy and stated that they had wanted to avoid the recurrence of such an event ⁴⁴.

In other cases, the prisoner himself may request to be placed in solitary confinement for fear of being attacked by other detainees. Political prisoners are often attacked by common law prisoners who do not share their views, a prisoner suspected of collaborating with the authorities may also be attacked by the other prisoners, or a young man may be sexually molested by older detainees in the same cell.

However, in the great majority of cases, the reasons given by the authorities revolve around the issue of security. Either security inside the prison (security of other detainees, security of prison guards), or security outside the prison (risk of escape, contact with dangerous outside groups, transmission of information relating to a crime, danger of terrorist attacks on the government, dissemination of a State military secret).

In the United Nations Standard Minimum Rules for the Treatment of Prisoners ⁴⁵, Rule 27, mentions "safe-custody and well-ordered community life" as reasons for maintaining

⁴³ Stuart Grassian, op.cited, p.1453.

⁴⁴ Professor Gerard Cohen-Jonathan, "La Convention Europeenne des Droits de l'Homme", Collection Droit Public Positif, Presse Universitaire D'Aix-Marseille, pp.302-303.

⁴⁵ Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

discipline and order.

Usually solitary confinement is imposed as a disciplinary measure for prisoners who cause disciplinary problems or commit infractions while in jail. These infractions may range from spitting at a guard, throwing food or feces through the bars of the cells, abusing other prisoners or taking guards hostage. In the United States it is in fact the most frequently imposed sanction (more than 30% of all disciplinary measures). In the Florida State Prison at Stark almost one third of the 1180 prisoners there in April 1991 were in solitary confinement ⁴⁶.

However, in the U.S. prisoners convicted of politically motivated offenses may also be placed in solitary confinement, directly after sentencing, without having committed any disciplinary infractions during their pre-trial detention. Such was for instance the case with the American Indian Rights activist Leonard Peltier. Three women who were members of what the government viewed as "radical leftist organisations" were also placed in a solitary confinement unit without having committed any disciplinary infractions, solely on the basis of their political orientations. In the *Baraldini v. Meese* lawsuit challenging the reasons for and the conditions of confinement of the three women, it came out that the Federal Bureau of Prisons, in deciding whether to send a person to the High Security Unit (solitary confinement) looked primarily at the severity and the nature of the offense, prior criminal record, escape history and prior involvement with organizations involved in attempts to overthrow the U.S. government. The court decided that these criteria violated the prisoners constitutionally protected freedoms of association and of expression and served no legitimate penological purpose ⁴⁷. As a consequence of the suit, the women were transferred out of the solitary confinement unit.

The aim of the prison authorities in these cases, seems to have been more to punish these individuals for their political activities against the U.S. government, rather than the alleged aim of protecting the safety of prison employees or of other prisoners by isolating the most violent and dangerous prisoners.

It is a well established principle that if a person is sentenced to imprisonment by a court, the loss of liberty is the sole punishment which that person should endure for the acts committed outside of prison. It is not the role of the prison authorities

⁴⁶ Human Rights Watch, op.cited, pp.43-44.

⁴⁷ *Baraldini v. Meese*, 691 F.Supp. 432 (D.D.C. 1988), pp.437-444.
The First Amendment to the U.S. Constitution guarantees the freedom of belief, expression, and association.

to punish a person further for these acts. Additional punishments are not legitimate unless for infractions committed inside the prison.

Another reason for singling certain prisoners out for solitary confinement may sometimes be simply that they are outspoken about their grievances regarding prison conditions⁴⁸. In the case of Thomas McFecley et al. v. United Kingdom brought before the European Human Rights Commission in 1978, the prisoners had been sentenced to solitary confinement as a response to a "go-dirty" protest they made regarding living conditions in detention⁴⁹.

Worsening the conditions of detention of such prisoners seems like a somewhat illogical response to what may have been legitimate complaints.

In some countries, solitary confinement is mandatory during pre trial detention⁵⁰. This practice is clearly contrary to the principle that individuals are innocent until proven guilty, and should therefore receive treatment which is better or at least not worse than that which is given to convicted detainees. Art.10 of the United Nations International Covenant on Civil and Political Rights reaffirms this principle by stating that "accused persons shall be subject to separate treatment appropriate to their status as unconvicted persons".

Prisoners on death row (awaiting execution) in the U.S. are also automatically placed in solitary confinement in most States. The reason given for this is that they are extremely dangerous prisoners due to the nature of the crime they committed.

In many countries solitary confinement is used as one of the tools for repressing political dissent. It allows for the person to be isolated from others and thereby prevents the dissemination of that person's political opinions. Unlike a situation where

⁴⁸ According to prison expert, Robert Gangi of the Correctional Association of New York, quoted by Selwyn Raab in "Uprising Challenges "Maxi-Maxi" Prison Idea", The New York Times, June 2, 1991.

⁴⁹ Love Kellberg, "The Case-Law of the European Commission of Human Rights on Art.3 of the European Convention on Human Rights", in The International Fight Against Torture, Antonio Cassese (ed.), Baden-Baden 1991, p.112.

⁵⁰ Norway State Report to the U.N. Human Rights Committee, UN Doc.CCPR/C/1/Add.52 at 2. And Byelorussian Soviet Socialist Republic State Report, U.N.Doc.CCPR/C/1/Add.27 at 14.

political prisoners may be held in a detention unit together, where they may exchange views, support each other regarding the repression they are being subjected to, and even organize a certain form of political education, the prisoner held in isolation is deprived of such a support group. Isolation may in fact be used as a means of destroying that prisoner's personality, views, and subsequently the political opposition which that person represented.

Government agents may sometimes find it more useful for their purposes to use the psychological techniques which destroy the personality, rather than to actually destroy a person physically. Psychological damage is less visible and harder to prove than physical injury. A person whose personality has been weakened and changed may be easily manipulated and behave publicly in a way which is in the interest of the oppressing power. Much was written regarding the use of solitary confinement as one of the methods for brainwashing American prisoners of war in Korea.

Such methods were also extensively used during the 1930's Purges in the Soviet Union, when was important not to immediately eliminate physically those persons who were to be portrayed as enemies of the State. First, public confessions were to be obtained and not retracted. In this way the whole population could be influenced and manipulated. The KGB therefore used and "improved" the technique of placing a person in solitary confinement in a featureless cell. As described by Hinkle and Wolff ⁵¹ within four to six weeks of being subjected to this form of treatment, the person gradually loses control of his usual behavior: "He sits and stares with a vacant expression perhaps endlessly twisting a button on his coat. He allows himself to become dirty and dishevelled. He no longer bothers about the niceties of eating. He mixes the food into a mush and stuffs it into his mouth like an animal. He goes through the prison routine automatically, as if he were in daze. The slop jar is no longer offensive to him. Ultimately he may lose some of the restraints of ordinary behaviour. He may soil himself. He weeps, he mutters and prays aloud in his cell."

A person held in prolonged solitary confinement is starved for human contact, for discussion, for some variety in his life devoid of all activity. He therefore ends up responding positively to the only people he encounters: his interrogators. He will finally be willing to comply totally with their demands.

Much discussion arose around the Ulster depth interrogation techniques, of which solitary confinement was a component, which the British started using in the early 1970's on suspected IRA activists. The aim of these techniques was to "soften-up" the prisoner for interrogation. The false confessions which these

⁵¹ L.E.Hinkle and H.G.Wolff, "Communist interrogation and indoctrination of "Enemies of the State"" in The American Medical Association Archives of Neurology and Psychiatry, 1956, 76, pp.115-174.

techniques may have induced in many cases, would lead to unjust sentencing, followed by years of uncalled for imprisonment.

Solitary confinement is used as one of the tools of torture, as a preliminary form of torture in preparation for or in between sessions of physical torture.

In examining the justifications for placing someone in solitary confinement, one must ascertain whether the aim of the measure is really to protect the security (of the detainee, of the carceral community, of the State) and whether the person really presented a threat to this security, or whether the aim was actually punishment, destruction of personality, and breaking of resistance. If the justification is truly one of protecting security, then the use and modalities of solitary confinement must always be in accordance with the basic respect due to all human beings whatever their dangerousity. The reasons and aims for which a person is ordered into solitary confinement, will affect the level of severity of the conditions of confinement, and thereby the impact the measure will have upon the prisoner.

VI. Does Solitary Confinement constitute a form of torture or ill-treatment as prohibited by international law?

According to the jurisprudence of the European Human Rights Commission, as well as the general opinion in international law, the exclusion of a dangerous detainee from the carceral collectivity does not constitute in itself a form of inhuman treatment⁵². There is no absolute prohibition against solitary confinement as such. However, it is after examining all the circumstances (the living conditions, the severity of the measure, its length, its aim, and its effects on a particular detainee due to his age and health), that one can determine whether this particular case of solitary confinement violates the prohibition against torture and ill-treatment.

The Inter-American Commission and Court of Human Rights has however been less restrictive than the European Human Rights authorities in the type of treatment it considers to be torture. This Commission has declared in several of its reports

⁵² Gerard Cohen-Jonathan, op.cited, p.302. Case ref. Baader, DR 14, p.64.
Eric Strover and Elena O. Nightingale, M.D., ed. "The Breaking of Bodies and Minds, American Association for the Advancement of Science, New York 1985, p.5.

"isolation in punishment cells" to be a form of torture ⁵³.

We will first define the notion of torture and ill-treatment, and then examine in what instances solitary confinement has been considered to enter into this category.

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states in its Art.1 that:

"...the term "torture" means any act by which severe pain or suffering, whether physical or mental, 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 other reason based on discrimination of any kind..."

The Inter-American Convention for the Prevention and the Repression of Torture has a very broad definition of torture as it states in Art.2 :

the "Torture also includes the application to any person of methods which aim at annulling the personality of victim or at diminishing their physical or mental capacity even if these methods and procedures cause no physical pain or psychological anguish."

The Inter-American Commission of Human Rights has determined the aims of torture as being:

- 1) to acquire information.
- 2) to punish a person who has accomplished acts which are considered dangerous for the government.
- 3) to intimidate individuals, and groups in order to discourage them from engaging in anti-governmental activities.

If one considers some of the effects of solitary confinement as well as some of the aims of the method as described in the above chapters, this form of confinement would certainly enter into this definition of torture.

The European Human Rights Commission has in fact declared that

⁵³ Informe sobre la situacion de los derechos humanos en Argentina (OEA/Ser.L/V/II.49 doc.19, 11 abril 1980), pp.218-219. Informe sobre la situacion de los derechos humanos en Nicaragua (OEA/Ser.L/V/II.45 doc.16 rev.1, 17 noviembre 1978), pp.58-59.

total sensory deprivation combined with total social isolation can lead to the destruction of personality and thus constitute a form of treatment (inhuman and degrading) which cannot be justified by security needs or by any other reasons ⁵⁴.

In the Krocher and Moller v. Switzerland case (see above chapter on conditions), the Commission did not condemn Switzerland stating that although conditions had been harsh during the first month (partial sensory deprivation combined with total social isolation), they had been gradually eased during the following months. The level of dangerousity of the detainees, who were suspected of having had terrorist activities in the past and who had resisted their arrest by shooting at the law enforcement agents, justified the strict carceral measure. This decision of the Commission was approved by eight members against five. In the dissident opinion it was stated that the treatment of total isolation during the first month was definitely contrary to Art. 3 of the European Convention on Human Rights, which prohibits inhuman and degrading treatment. The gradual improvements which followed did not justify retroactively the initial violation of human rights ⁵⁵.

In the Greek case of 1967, when Denmark, Norway and Sweden lodged a complaint against the military junta in Athens, the European Commission gave a definition of non-physical torture as being the :

"infliction of mental suffering by creating a state of anguish and stress by other means than by assault."

Prolonged isolation, in the circumstances of this case, was included in this category, as well as intimidation, humiliation, and threats of reprisals against relatives ⁵⁶.

However, since that case, the Commission has declared most complaints about solitary confinement as inadmissible because manifestly ill-founded. In its examination of the proportionality of the measure, the notions of dangerousity of the detainee and of security usually outweigh the notion of suffering endured in solitary confinement. According to former member of the Commission, Love Kellberg, "the jurisprudence of the Commission has established a high threshold which an applicant must climb over in order to be protected by Art.3 ECHR" (protection against

⁵⁴ Gerard Cohen-Jonathan, op.cited, p.302.

⁵⁵ Report of the European Commission of Human Rights, 16 Dec.1982, Dissident Opinion, pp.57-58.

⁵⁶ Love Kellberg, op. cited, p.104.

inhuman and degrading treatment) ⁵⁷.

The European Court of Human Rights has been even more restrictive than the Commission, in its interpretation of what circumstances constitute torture or ill-treatment. The treatment must reach a minimum level of seriousness. However, according to Judge Nicolas Valticos, this minimum level is relative: "it depends on all the circumstances of the case, namely the length of the treatment and its physical and mental effects, and also sometimes the sex, the age, the state of health of the victim etc..." . He goes on to say that it "seems now to be generally accepted that the notions of torture as well as inhuman or degrading treatment can encompass moral suffering as much, if not even more than physical suffering" ⁵⁸.

Once this minimum level is met, there are no exceptions to the prohibition on inhuman and degrading treatment, not even public danger threatening the life of the nation ⁵⁹.

Amnesty International defines torture as :
 " the systematic and deliberate infliction of acute pain in any form..." ⁶⁰.

And according to the World Medical Association in its "Declaration of Tokyo" torture is "the deliberate, systematic, or wanton infliction of physical or mental suffering ...".

All these definitions of torture encompass the notions of physical as well psychological suffering. This is important in the analysis of solitary confinement, as in some cases the material conditions of detention may be acceptable, but the psychological suffering caused by being totally alone for long periods of time, may be unbearable.

The language used in international instruments to define torture and ill-treatment remains purposely vague in the hope that the scope of its application, particularly by governments, will be "interpreted so as to extend the widest possible protection

⁵⁷ Ibid, p.119.

⁵⁸ Nicolas Valticos, "La Jurisprudence de la Cour Européenne des Droits de l'Homme sur l'art.3 de la CEDH", in *The International Fight Against Torture*, op. cited, pp.121-134.

⁵⁹ Ibid, p.123.

⁶⁰ Amnesty International "Report on torture", New York: Farrar, Straus and Giroux 1975, p.35.

against abuses, whether physical or mental" ⁶¹.

The United Nations International Covenant on Civil and Political Rights also prohibits "torture, cruel, inhuman or degrading treatment or punishment" (Art.7), and states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (Art.10).

In a case presented to the United Nations Human Rights Committee, it was decided that placing the detainee in solitary confinement in an underground cell was a violation of Art.7 and Art.10 of the Covenant. In conducting investigations on issues of detention, the Committee asked two informative questions to States parties to the Covenant: has a State ever questioned the use of solitary confinement? ⁶². And how can a State justify a punishment of up to one month with only the notification of the supervisory board, and without a hearing? ⁶³.

According to the Standard Minimum Rules for the Treatment of Detainees:

"...punishment by placing in a dark cell, and all other cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offenses" (Rule 31).

These Rules accept the use of solitary confinement ("close confinement" Art.32), but only if a medical officer has examined the detainee and certified in writing that he is fit to sustain it. However, they go on to specify that in no case may such punishment be contrary to the prohibition against cruel, inhuman or degrading treatment (Rule 32). Depending on the global circumstances of a case, solitary confinement, which is an accepted method of punishment in international law, may become a cruel, inhuman or degrading punishment which is not accepted in international law.

In these Standard Minimum Rules the notion of proportionality is also present. Rule 27 states that:

"Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well ordered community life" (emphasis added by author).

⁶¹ Official Commentary to Art.5 of the U.N.Code of Conduct for Law Enforcement Officials, New York: U.N.Publications/Sales No.E.79.XIV.6, pp.161-166.
Eric Stover and Elena O. Nightingale, op. cited, p.6.

⁶² Denmark, Human Rights Committee Report 1981, at 18.

⁶³ Norway Human Rights Committee Report 1981, at 72.

To conclude this chapter and answer the question of whether solitary confinement constitutes a form of torture according to international law, we can say that there is no general and absolute prohibition of solitary confinement as such. However, in some cases, and depending on the circumstances of each case, solitary confinement has been declared to be torture, and therefore subject to the absolute prohibition contained in international law. If solitary confinement really cannot be prohibited because it presents the only means available in certain cases for preventing that violence be done to other prisoners or to prison guards, then at least the criteria for placing a person in solitary confinement must be strictly limited to considerations of internal security within the prison, in relation to real in disorderly conduct of the prisoner in the prison. The conditions of detention must be humane, the prisoner must be allowed some form of contact with other human beings on a regular basis. Communication and information from the outside world must be allowed in the form of correspondence, books, newspapers, radio and T.V. The prisoner must have access to an outside view, fresh air, and natural light. The prisoner must not be deprived of regular physical exercise. The prisoner should be able to practice some form of activity (crafts etc.).

Solitary confinement as punishment for political affiliations, or for crimes committed outside the prison, or as means of destroying the personality in order to acquire information or confession, cannot be justified. Authorities and courts examining a case of solitary confinement should be very sensitive to the real suffering caused by this measure to a person, and to the issue of what are the real motivations of an authority imposing such a treatment.