HOW INTERNATIONAL LAW CAN ERADICATE TORTURE: A RESPONSE TO CYNICS

*Juan E. Méndez**

I. INTRODUCTION

There is no doubt that torture and other cruel, inhuman, or degrading treatment ("other ill-treatment") is absolutely prohibited by international law. Nevertheless, torture continues to take place in various jurisdictions and under different circumstances around the world

* Professor of Human Rights Law in Residence, Washington College of Law, American University; United Nations Special Rapporteur on Torture. The author gratefully acknowledges the contributions of Ms. Andra Nicolescu, J.D., Associate Director of Anti-Torture Initiative, and of Ms. Claudia Bingham, Esq., Dual LL.M. Candidate, American University Washington College of Law.

today. In addition, the beginning of the twenty-first century saw some disturbing setbacks in the global fight against torture, with a weakening of the universal moral condemnation of torture in the aftermath of the terrorist attacks of September 11, 2001.[1] On the practices carried out by some countries, including the United States, in the name of the so-called "War on Terror," one commentator noted that "[w]e could never have envisaged that the history of the new century would encompass the destruction and distortion of fundamental Anglo-American legal and political constitutional principles in place since the seventeenth century, [with the use of] torture [being] nakedly justified . . . and vital international conventions consolidated in the aftermath of the Second World War—the Geneva Convention[s] [sic], the Refugee Convention, the Torture Convention—have been deliberately avoided or ignored."[2]

However, despite their gravity and negative impact on the global struggle against torture, such setbacks have not only failed to undermine the absolute legal prohibition of torture, but have also demonstrated the extant relevance and resilience of international legal norms prohibiting torture and setting out attendant State obligations. Indeed, the very attempts of governments that resorted to torture and other ill-treatment to deny and cover up their actions reveal the greater reality that these practices continue to be unequivocally prohibited in both a moral and legal sense. Likewise, the outcry and responses of international and regional human rights organizations, human rights lawyers and advocates, policymakers, civil society, and academics, among many others, to the use and justification of torture in the aftermath of September 11, 2001, further illustrates the tenacity of these principles. Persistent ongoing calls for, and incipient measures towards, accountability in some cases, while by no means sufficient, also illustrate the unabated import of the international legal prohibition of torture, and its impact on governments.

Today, the goal of universal ratification of the United Nations (UN) Convention Against Torture[3] is within reach, with 158 out of 195 member States and observers of the UN having already ratified

1. *See, e.g.*, *Torture and Other Ill-Treatment*, AMNESTY INT'L USA, http://www.amnestyusa.org/our-work/issues/torture (last visited Feb. 22, 2016).

2. GARETH PEIRCE, DISPATCHES FROM THE DARK SIDE: ON TORTURE AND THE DEATH OF JUSTICE ix-x (updated paperback ed. 2012).

3. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Convention Against Torture].

the Convention.[4] Efforts like the Convention Against Torture Initiative (CTI), a ten-year global plan to attain universal ratification of the Convention by the year 2024, are particularly telling.[5] While the practical challenges of implementation are certain to remain in some areas across jurisdictions, it is important going forward not to overlook the progress that has and will continue to be achieved by efforts to eradicate and prevent torture around the world. In addition, it is instructive to note that international standards pertaining to the concept of human dignity and the prohibition of torture and other ill-treatment have been evolving to encompass practices not traditionally associated with the prohibition—for instance, with regards to violence against women and domestic violence; abusive practices in healthcare settings; the treatment of children in conflict with the law or in institutions; and practices within criminal justice systems, such as the death penalty and the use of solitary confinement, among others. The evolution of the torture and other ill-treatment framework, along with more expansive understandings of States' extraterritorial human rights obligations and their responsibility for the actions of private actors, have yielded a tremendous impact on critical efforts to address a gamut of human rights violations at the local, regional, and international levels.

This article will first provide an overview of the absolute prohibition of torture and other ill-treatment in international law, noting its status as a *jus cogens* or peremptory, non-derogable norm. It will then address the definition and constitutive elements of torture under the Convention Against Torture (CAT or the "the Convention"), illustrating the gradual evolution of the understanding of torture and other ill-treatment in international law. It will later describe the normative framework applicable in international law to the States' obligations that are derived from the absolute prohibition of torture and other ill-treatment, and further discuss their status as customary international law norms. The article will conclude by reiterating and offering some examples to illustrate the continued potency of international law in

4. Multilateral Treaties Deposited with the Secretary General: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en (last visited Feb. 24, 2016).

5. Ass'n for the Prevention of Torture, *Convention Against Torture Initiative 2014-2024: Annual Report*, 3 (2014), http://www.apt.ch/content/files/CTI/CTI%20Annual%20Report%202014.pdf. The governments behind the CTI are those of Chile, Denmark, Ghana, Indonesia, and Morocco. *Id.*

furthering efforts to eradicate and prevent torture and other ill-treatment worldwide.

II. THE ABSOLUTE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT IN INTERNATIONAL LAW AND ITS EVOLUTION

The legal framework prohibiting torture and cruel, inhuman, or degrading treatment or punishment (CIDT or "other ill-treatment") is one of the most developed in international human rights law. While acts of torture and other ill-treatment are proscribed in the main international and regional legal instruments,[6] the prohibition is also a norm of customary international law[7] and enjoys the rare status of a *jus cogens* or peremptory norm of international law, along with the prohibition of slavery and genocide.[8] *Jus cogens* norms can be defined as norms that embrace customary international laws that are so universal and derived from values so fundamental to the international community that they are considered binding on all nations, irrespective of a State's consent.[9] The treatment of torture is unique among other human rights violations in international law because each act of torture must be investigated, prosecuted, and punished.[10] Furthermore, the "peremptory" nature of the norm authorizes States to institute universal jurisdiction for the prosecution of torturers, even where the

6. *E.g.*, Convention Against Torture, *supra* note 3, arts. 1-2; International Covenant on Civil and Political Rights art. 7, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, 213 U.N.T.S. 221; Organization of American States, American Convention on Human Rights art. 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention on Human Rights]; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 5 (Dec. 10, 1948); Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Geneva Convention]; Rome Statute of the International Criminal Court arts. 5, 7-8, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002); Banjul Charter on Human and Peoples' Rights art. 5, adopted June 1, 1981, 21 I.L.M. 58 (1982).

7. A customary international law norm is one that arises from the general and consistent practice of States, when the practice is followed from a sense of legal obligation. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1987). It binds all Governments, unless they have expressly and persistently objected to its development. *Id.* § 102, cmt. d.

8. David Weissbrodt & Cheryl Heilman, *Defining Torture and Cruel, Inhuman, and Degrading Treatment*, 29 LAW & INEQ. 343, 362 (2011).

9. Vienna Convention on the Law of Treaties arts. 53, 64, May 23, 1969, 1155 U.N.T.S. 331.

10. Convention Against Torture, *supra* note 3, arts. 4, 7, 12. The same is true for every case of enforced disappearances. *See* International Convention for the Protection of All Persons from Enforced Disappearance arts. 10-11, G.A. Res. 61/177, U.N. Doc. A/RES/61/177 (Dec. 20, 2006).

crime was committed in a foreign territory and neither the victims nor the perpetrators are nationals of the forum State.[11]

Many national courts and international courts, both in times of peace and during armed conflict, have affirmed the prohibition of torture and other forms of ill-treatment as *jus cogens*. One instructive pronouncement comes from the Trial Chamber opinion of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Prosecutor v. Furundžija*,[12] which describes the prohibition of torture as "a norm that enjoys a higher rank in the international hierarchy than treaty laws and even 'ordinary' customary rules" and accordingly cannot be derogated by States under any circumstances, for instance due to local or special customs.[13] Common Article 3 of the four Geneva Conventions of 1949 enshrines the prohibition of torture as binding on both state and non-state actors (i.e., armed groups) in the course of an international or non-international armed conflict.[14] This principle is illustrated in *Prosecutor v. Kunarac*,[15] wherein the Trial Chamber of the ICTY held that the involvement of state officials in the commission of torture is "not necessary for the offence to be regarded as torture under international humanitarian law."[16] The Appeals Chamber affirmed, noting that "the public official requirement is not a requirement under customary international law in relation to the criminal responsibility of an individual for torture outside of the framework of the Torture Convention."[17]

Furthermore, the absolute prohibition against torture and other ill-treatment is reflected in the treaties and jurisprudence relevant to the world's regional human rights systems. Article 3 of the European Convention on Human Rights states that "[n]o one shall be subjected

11. *See* Convention Against Torture, *supra* note 3, arts. 4, 6 (authorizing a State in which a person who allegedly has committed torture in a foreign jurisdiction to take the person into custody, investigate facts, and determine whether it intends to exercise jurisdiction).

12. Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998), http://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf.

13. *Id.* ¶ 153.

14. *See* Geneva Convention, *supra* note 6, arts. 2-3.

15. Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2002), http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf.

16. *Id.* ¶ 496.

17. Prosecutor v. Kunarac, Case No. IT-96-23 & IT-96-23/1-A, Appeal Judgment, ¶ 148 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002), http:// www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf.

to torture or to inhuman or degrading treatment or punishment,"[18] while the European Court of Human Rights (ECHR) elaborates that the prohibition "enshrines one of the [most] basic values of the democratic societies making up the Council of Europe."[19] The Inter-American System boasts not only of the Inter-American Convention to Prevent and Punish Torture,[20] but also Article 5 of the American Convention on Human Rights, which absolutely prohibits torture and other ill-treatment.[21] Both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have well-developed jurisprudence detailing the prohibition of torture.[22] Likewise, the African Charter on Human and People's Rights clearly prohibits torture,[23] and, similarly, "has developed jurisprudence as well as expansive 'soft law' protections against ill-treatment such as the Robben Island Guidelines."[24]

The earlier human rights treaties prohibited torture without defining what conduct constituted it. Nowadays, the most widely accepted definition of torture is that in Article 1 of the Convention Against Torture, according to which:

> 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such

18. Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 6, art. 3. The Convention for the Protection of Human Rights and Fundamental Freedoms is also known as the European Convention on Human Rights.

19. Makaratzis v. Greece, 2004-XI Eur. Ct. H.R. 195, 227-28.

20. Organization of American States, Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S.T.S. No. 67, http://www.oas.org/juridico/english/Treaties/a-51.html.

21. American Convention on Human Rights, *supra* note 6, art. 5 (stating that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment").

22. *See, e.g.*, Bueno Alves v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 164, ¶ 76 (May 11, 2007), http:// www.corteidh.or.cr/docs/casos/articulos/seriec_164_ing.pdf (reaffirming that "[t]he absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international jus cogens. . .[, prohibited] even under the most difficult circumstances"); Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 89 (Nov. 27, 2003), http://www.corteidh.or.cr/docs/casos/articulos/seriec_103_ing.pdf (declaring that "[t]he prohibition of torture is absolute and non-derogable, even in the most difficult circumstances[ ] such a[s] war," for example).

23. Banjul Charter on Human and Peoples' Rights, *supra* note 6, art. 5.

24. *See, e.g.*, Dupe Atoki & Jean-Baptiste Niyizurugero, Foreward to AFRICAN COMM'N ON HUMAN AND PEOPLE'S RIGHTS ET AL., RESOLUTION ON GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA: ROBBEN ISLAND GUIDELINES (2d ed. 2008), http://www.achpr.org/files/instruments/robben-island-guidelines/achpr_instr_guide_rig_2008_eng.pdf; FRANS VILJOEN & CHIDI ODINKALU, VOL. 3, THE PROHIBITION OF TORTURE AND ILL-TREATMENT IN THE AFRICAN HUMAN RIGHTS SYSTEM: A HANDBOOK FOR VICTIMS AND THEIR ADVOCATES 92-98 (Boris Wijkstrom ed., 2006) (outlining various types of resolutions and guidelines adopted within Africa).

> 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.[25]

Before describing the evolution of this legal framework, it is necessary briefly to address each of these elements in turn, with a view to establishing the scope of their interpretation and applicability under international law according to relevant jurisprudence. The discussion of each of the constitutive elements of torture will demonstrate that the normative framework has continuously evolved to encompass acts and situations falling outside the traditional criminal justice system. The Convention Against Torture, like other fundamental human rights instruments, is and must be regarded as a "living instrument which must be interpreted in light of present-day conditions."[26] Notably, as explained by the ECHR in *Selmouni v. France*,[27] "[c]ertain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in the future."[28] Indeed, "the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies."[29]

A. Nature of the Act and Intensity of Pain and Suffering

Whether something legally qualifies as torture or as other ill-treatment depends on the specific circumstances of each case, and is fluid: "torture is not an act in itself, or specific type of acts, but [rather] a legal qualification of an event or behavior, based on the comprehensive assessment of this event or behavior."[30] In addition,

---

25. Convention Against Torture, *supra* note 3, art. 1. The definition also states that torture "does not include pain or suffering arising only from, inherent or incidental to lawful sanctions." *Id.*

26. *E.g.*, Mamatkulov v. Turkey, 2005-I Eur. Ct. H.R. 293, 333; Loizidou v. Turkey, 310 Eur. Ct. H.R. (ser. A) at 26 (1995); Soering v. United Kingdom, 161 Eur. Ct. H.R. (ser. A) at 40 (1989); Tyrer v. United Kingdom, 26 Eur. Ct. H.R. (ser. A) at 15 (1978); Bursuc v. Romania, No. 42066/98, ¶ 90 (Eur. Ct. H.R. Oct. 12, 2004), http:// hudoc.echr.coe.int/eng?i=001-67028.

27. Selmouni v. France, 1999-V Eur. Ct. H.R. 149.

28. *Id.* at 183.

29. *Id.*

30. Bd. of Tr., U.N. Voluntary Fund for Victims of Torture (UNVFVT), *Interpretation of Torture in Light of the Practice and Jurisprudence of International Bodies*, 2 (2011), http://www.ohchr.org/Documents/Issues/Interpretation_torture_2011_EN.pdf.

the jurisprudence of the United Nations Committee Against Torture ("UNCAT" or "the Committee") regularly and explicitly recognizes new methods of torture, as in the case of Mexico following the State's review by the Committee in 2003.[31]

It is well established that omissions giving rise to severe pain or suffering qualify as "acts" and meet the legal threshold for torture established by Article 1 of the Convention. Drawing upon the Convention's *travaux préparatoires*,[32] there is nothing to indicate "that the drafters intended a narrow interpretation that would exclude conduct such as intentional deprivation of food, water, and medical treatment from the definition of torture."[33] Other acts of omission that clearly qualify as torture include prolonged denial of rest, sleep, sufficient hygiene, or prolonged isolation and sensory deprivation.[34]

In many other cases, however, the determination of whether a certain act or situation crosses the threshold of severity to amount to torture is considerably more difficult. In all cases, the vulnerability of the victim should be taken into account, including factors such as age, gender, or other statuses like disability, as well as the environment.[35] The vulnerability of a particular victim is a critical component of the evaluation of the intensity of pain and suffering inflicted by the alleged action or inaction.[36] Accordingly, both the Committee and the Inter-American Court of Human Rights have stated that States have a heightened obligation to ensure special protection for vulnerable and marginalized individuals, who generally face a greater risk of experiencing torture and other ill-treatment.[37]

---

31. *See* Rep. on Mex. Produced by the Comm. under Article 20 of the Convention, and Reply from the Gov't of Mex., U.N. Comm. Against Torture (UNCAT), 30th Sess., April 28-May 16, 2003, ¶¶ 143-44, 218, U.N. Doc. CAT/C/75 (May 26, 2003); UNVFVT, *supra* note 30, at 2.

32. *Travaux préparatoires*, also referred to as negotiating history, drafting history, or preparatory documents or works, describes the documentary evidence of the discussions, negotiations, and drafting of treaties. *See* MANFRED NOWAK & ELIZABETH MCARTHUR, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A COMMENTARY 12 (2008).

33. Manfred Nowak, *What Practices Constitute Torture?: US and UN Standards*, 28 HUM. RTS. Q. 809, 819 (2006); *see also* Denmark v. Greece (*Greek Case*), App. No. 3321/67, 1969 Y.B. Eur. Conv. on H.R. 1, 461 (Eur. Comm'n on H.R.) (noting that torture and ill-treatment may be non-physical and would include "infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault[,]" "prolonged isolation[,]" "the impact of threats[,]" and "psychological attacks on. . .personal feelings or. . .feelings for others.").

34. Robert K. Goldman, *Trivializing Torture: The Office of Legal Counsel's 2002 Opinion Letter and International Law Against Torture*, 12 HUM. RTS. BRIEF 3 (2004).

35. UNVFVT, *supra* note 30, at 2.

36. *Id.*

37. *See, e.g.*, Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment: General Comment No. 2: Implementation of Article 2 by States Parties,

It should be noted, however, that treatment that does not meet the higher threshold of severity necessary to qualify as torture, may still inflict pain and suffering associated with the definition of "cruel, inhuman or degrading treatment or punishment" ("CIDT"), that is equally prohibited by international law under Article 16 of the Convention Against Torture.[38] Differences in the degree of pain and suffering will always be difficult to ascertain, as they involve both objective and subjective factors; yet, the international prohibition of CIDT is just as absolute and non-derogable (meaning: no invocation of an emergency may justify their use) as is the case with torture.[39] This prohibition against CIDT is why the "torture memos" produced by the United States Department of Justice during the George W. Bush Administration—and later withdrawn by the White House when they were made public—were fundamentally wrong as a matter of both international and constitutional law, in addition to being disingenuous by focusing on the prospects of prosecution for acts of torture without clarifying that such acts were illegal even if not prosecuted.[40]

B. Purpose

CAT Article 1 lists several prohibited purposes—extracting confessions, obtaining information, punishment, intimidation or coercion, and *discrimination of any kind*—that an act must fulfill in order to be considered as torture or other ill-treatment. While the UNCAT indicated that the list must be viewed as indicative rather than exhaustive,[41] it is, nevertheless, commonly accepted that other purposes must have "something in common with the purposes expressly listed" in

Comm. Against Torture, ¶ 21, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008) [hereinafter CAT General Comment 2]; Tibi v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 114, ¶ 26 (Sept. 7, 2004) (Trindade, J., separate opinion).

38. Convention Against Torture, *supra* note 3, art. 16.

39. *Id.* art. 2.

40. *See* Memorandum from Jay S. Bybee, Assistant Att'y Gen., Office of Legal Counsel, to Alberto R. Gonzales, Counsel to the President (Aug. 1, 2002), http://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-gonzales-aug2002.pdf; Memorandum from Jay S. Bybee, Assistant Att'y Gen., Office of Legal Counsel, to Alberto R. Gonzales, Counsel to the President, and William J. Haynes II, Gen. Counsel of the Dep't of Defense (Jan. 22, 2002), http://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/memo-laws-taliban-detainees.pdf.

41. NOWAK & MCARTHUR, *supra* note 32, at 75. The fact that the list of purposes is not exhaustive is indicated by the fact that most delegations involved in the Convention's drafting agreed that the list was indicative, *id.*, and by the Article's use of the clause "such purposes as." Convention Against Torture, *supra* note 3, art. 1.

Article 1 of the CAT to be sufficient.[42] Moreover, international bodies do not require proof that a prohibited purpose is the exclusive or even predominant motivation when establishing whether evidence is sufficient to establish a prohibited purpose, but only one among others.[43] While even a lofty purpose such as preventing greater harm—the "ticking time bomb scenario"—does not render the act of torture legal,[44] it may be considered in the mitigation of punishment.[45] Importantly, this scenario cannot, under any circumstance, justify an administrative policy of torture, as the Israeli Supreme Court ruled in 1999.[46] For the same reason, the proposal to allow judges to issue "torture warrants" is misguided: an illegal and immoral act is not "cured" by the fact that it is ordered by a court of law.[47]

Additionally, the UNCAT explicitly stated that "the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture," leaving no doubt that discrimination of any kind is sufficient to fulfill the purpose element of torture.[48] For instance, in regard to violence against women, "the purpose element is always fulfilled if the acts can be shown to be gender-specific,"[49] given that discrimination (in this case gender discrimination) always engages the State's obligation to prevent discriminatory acts.

Torture's purpose element also touches on "mental or physical" pain and suffering in defining torture. While sophisticated methods of attacking a person's psyche may be seen as a lesser degree of severity than physical abuse, the international norm explicitly prohibits psychological torture as long as the severity threshold and the requisite intent are present.[50] As of now, the characterization of prolonged or

42. J. HERMAN BURGERS & HANS DANELIUS, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A HANDBOOK ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT 118 (1988).

43. Kunarac, IT-96-23-T & IT-96-23/1-T, ¶ 816.

44. NOWAK & MCARTHUR, *supra* note 32, at 89.

45. ALAN M. DERSHOWITZ, WHY TERRORISM WORKS 136 (2002).

46. HCJ 5100/94 Pub. Comm. Against Torture v. Israel 53(4) PD 817 [1999] (Isr.).

47. ALAN DERSHOWITZ, SHOUTING FIRE: CIVIL LIBERTIES IN A TURBULENT AGE 477 (2002).

48. CAT General Comment 2, *supra* note 37, ¶ 20.

49. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 30, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008) (by Manfred Nowak). This is because the violence is "aimed at 'correcting' behavior perceived as non-consonant with gender roles and stereotypes or at asserting or perpetuating male domination over women." *Id.* ¶ 30 n.7.

50. *See* Convention Against Torture, *supra* note 3, art. 1.

indefinite solitary confinement as meeting those tests is becoming a powerful tool in raising awareness for profound prison reform in this area.[51]

C. *Intent*

The requirement that pain and suffering must be inflicted intentionally, or deliberately, upon the victim is, according to the UNCAT, an objective element that can be restated as the perpetrator's voluntary engagement in conduct that makes "severe pain or suffering objectively foreseeable."[52] In other words, "[i]ntent must intend that the conduct inflict severe pain or suffering and intend that the purpose be achieved by such conduct."[53] The suggestion that a perpetrator must specifically intend to torture, which was proposed by the United States, was explicitly rejected during the drafting of the Convention.[54] Accordingly, the intention to commit an act or omission that inflicts severe pain and suffering, such as rape—as opposed to the intent to torture *per se*—is sufficient.

However, purely negligent conduct cannot be considered torture.[55] Since the intent requirement is not necessary to qualify an act as CIDT, it follows that CIDT can be committed via negligence. This standard allows advocates to invoke State responsibility under international law for a broad range of conditions involving detention (overcrowding, unsanitary premises, limited or absent medical treatment, poor quality or low quantity of food, etc.) and advocate for universal standards for humane treatment of all persons deprived of freedom.[56]

---

51. *See, e.g.*, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Gen. Assembly, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan E. Méndez); U.N. Econ. & Soc. Council, United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules), R. 43, U.N. Doc. E/CN.15/2015/L.6/Rev.1 (May 21, 2015); Shahid v. Scottish Ministers [2015] UKSC 58, (appeal taken from Scot.) (U.K.); Glossip v. Gross, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting).

52. Rhonda Copelon, *Gender Violence as Torture: The Contribution of CAT General Comment No. 2*, 11 N.Y. CITY L. REV. 229, 247 (2008).

53. Nowak, *supra* note 33, at 830.

54. *Id.*

55. *Id.* ("For example, when a detainee is forgotten by prison guards and slowly starves to death, the detainee certainly endures severe pain and suffering, but the conduct lacks intention and purpose and, therefore, can "only" be qualified as cruel or inhuman treatment.").

56. *See, e.g.*, U.N. Econ. & Soc. Council, *supra* note 51, R. 1, 3, 5; *Factsheet: Detention Conditions and Treatment of Prisoners*, EUR. COURT OF HUMAN RIGHTS (Jan. 2016), http://www.echr.coe.int/Documents/FS_Detention_conditions_ENG.pdf.

D. State Involvement, Treatment in Private Institutions, and of Private Actors

The requirement imposed by the Convention regarding the consent or acquiescence of a public official to acts of torture does not fully absolve State authorities of responsibility for acts committed by non-State officials or private actors. The Committee has made it clear that when State authorities "know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish" them, the State bears responsibility for the acts in question "and its officials should be considered as authors, complicit, or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts."[57] The Committee reasoned that in such cases, the State's indifference, inaction, and failure to intervene to stop prohibited treatment amounts to a "form of encouragement and/or de facto permission" for private actors to engage in prohibited torturous acts.[58]" This reasoning has been invoked directly by the Committee in its jurisprudence and concluding observations dealing with victims of gender-based violence, such as rape, domestic violence, female genital mutilation (FGM), and human trafficking.[59] The State's obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to private individuals as well, including those working in private hospitals, other institutions, and detention centers.[60] In addition, the Committee Against Torture interprets State obligations to prevent torture as indivisible, interrelated, and interdependent with the obligation to prevent cruel, inhuman, or degrading treatment or punishment because "conditions that give rise to ill-treatment frequently facilitate torture."[61]

The prohibition against torture and other ill-treatment has also evolved to apply extraterritorially, which means that whenever a State brings a person within their jurisdiction by exercising control or authority over an area, place, individual, or transaction, it is bound by its fundamental obligation not to engage in or contribute to such acts.[62] Furthermore, States have an obligation to protect persons from tor-

57. CAT General Comment 2, *supra* note 37, ¶ 18.
58. *Id.*
59. *Id.*
60. *Id.* ¶¶ 15, 18.
61. *Id.* ¶ 3.
62. Convention Against Torture, *supra* note 3, art. 5.

ture and other ill-treatment and to ensure a broad range of attendant human rights obligations whenever they are in a position to do so by virtue of their control or influence extraterritorially over an area, place, transaction, or persons.[63] This obligation to prevent prohibited acts includes action that States take within their own jurisdictions to prevent such acts in another jurisdiction, and violations can arise from States' direct perpetration, omissions, or acts of complicity.[64] The extraterritorial nature of States' obligations under the CAT seems well settled today, but it is worth remembering that in the course of the Global War on Terror, some countries, notably the United States, briefly took the position that some parts of the CAT did not apply to actions of its agents acting offshore: a position officially reversed on the occasion of the U.S.'s latest country report to the Committee Against Torture.[65]

III. STATE OBLIGATIONS DERIVED FROM THE PROHIBITION OF TORTURE

As crystalized in the CAT, the normative framework that international law attaches to torture and ill-treatment is the most detailed and sophisticated of all standards applying to violations of fundamental human rights. The text may offer some room for improvement in certain cases, but potential gaps in protection have been filled by jurisprudence and authentic interpretation, as will be seen in this section.

A. Obligation to Investigate, Prosecute, and Punish

According to the late Prof. Antonio Cassese of Italy, torture is unique in international law in that a single act of torture gives rise to the State's obligation to investigate, prosecute, and punish it.[66] This obligation, therefore, does not depend on the act of torture being part and parcel of a widespread or systematic attack on the civilian popula-

63. *Id.* art. 2; CAT General Comment 2, *supra* note 37, ¶ 16.

64. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 65, Gen. Assembly, U.N. Doc. A/70/303 (Aug. 7, 2015) (by Juan E. Méndez).

65. Comm. Against Torture, *Consideration of Rep. Submitted by States Parties Under Article 19 of the Conventional Pursuant to the Optional Reporting Procedure: Third to Fifth Periodic Reports of States Parties Due in 2011: United States of America*, ¶ 258, U.N. Doc. CAT/C/USA/3-5 (Dec. 4, 2013); Memorandum from Harold H. Koh, Legal Advisor, U.S. Dep't of State 2, 90 (Jan. 21, 2013).

66. Convention Against Torture, *supra* note 3, arts. 4, 7, 12; ANTONIO CASSESE, INTERNATIONAL LAW 445 (2d ed. 2005); *see also* JUAN E. MÉNDEZ WITH MARJORY WENTWORTH, TAKING A STAND: THE EVOLUTION OF HUMAN RIGHTS 44 (2011).

tion, which would make it a crime against humanity.[67] Unfortunately, making this legal obligation a reality in State practice is one of the greatest challenges of regional and universal organs of protection. In that pursuit, the jurisprudence that has evolved establishes clearly that amnesties or pardons that have the effect of crystalizing impunity for torture violate a State's human rights obligations under international law, even if the amnesty law is considered necessary as a means to put an end to a domestic armed conflict.[68] For the same reasons, treaty organs have insisted that the obligation to investigate torture remains in effect even if a domestic norm establishes a statute of limitation or "prescription" for the crime of torture.[69] The obligation to make torture punishable in the domestic jurisdiction for a State party to the CAT involves the obligation to criminalize the practice in harmony with the CAT definition of torture, to investigate each act independently and impartially, and to remove all obstacles to the performance of such an obligation.[70] For this reason, an emerging "right to truth" about torture has evolved in connection to the inherent "right to justice" that victims must enjoy.[71] When acts of torture have been mired in secrecy and clandestinity, there must be a concerted effort to explore the facts and reveal them to the public as a means of preventing their repetition.[72] The report of the United States Senate Select Committee on Intelligence,[73] published in December 2014 is a positive—though incomplete—step in the right direction to fulfill American obligations for what transpired during the "Global War on Terror." But the policy position of the United States government not to pursue

67. *Compare* CASSESE, *supra* note 66 *with* Rome Statute of the International Criminal Court, *supra* note 6, art. 7.

68. Max Pensky, *Amnesty of Trial: Impunity, Accountability, and the Norms of International Law*, 1 ETHICS & GLOBAL POL. 1, 9-10 (2008) (discussing an emerging consensus that regards domestic amnesties for international crimes as generally inconsistent with international law because they create situations of impunity).

69. Rome Statute of the International Criminal Court, *supra* note 6, arts. 29, 33.

70. Convention Against Torture, *supra* note 3, arts. 4, 12.

71. Comm. on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, Principles 2, 19, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005).

72. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, Human Rights Council, ¶ 33, U.N. Doc. A/HRC/19/61 (Jan. 18, 2012) (by Juan E. Méndez).

73. SENATE SELECT COMM. ON INTELLIGENCE, COMM. STUDY OF THE CENTRAL INTELLIGENCE AGENCY'S DETENTION AND INTERROGATION PROGRAM, S. REP. NO. 113-288 (2014).

prosecutions for the same acts put the United States in violation of this important obligation.[74]

B. *Non-refoulement*

States are absolutely prohibited from deporting, extraditing, or otherwise transferring a person to the jurisdiction of another State where that person is at risk of suffering torture or ill-treatment.[75] The norm is narrower than the *non-refoulement* clause of the 1951 Convention on the Status of Refugees, as it protects persons against the risk of torture and ill-treatment, not against other forms of persecution, as in the refugee law provision that has also become customary international law.[76] But it is also more absolute because it protects even the most culpable person from torture in another country, and it does not depend on the person having been awarded the status of a refugee or asylee.[77] Most highly developed countries respect this obligation or respond positively when protection organs inquire about the possibility of its application in certain cases.[78] However, the large inflow of persons fleeing conflict and persecution in their home countries put a strain on the operation of this norm, which has led the protection organs to question policies of interdiction in the high seas and off-shore detention.[79] In particular, it is important to insist that policies of long-term detention as a means to discourage entry, failure to grant a fair opportunity to state a claim for protection, and substandard conditions of detention—sometimes in developing countries—constitute violations of the receiving States' international commitments.

C. *Exclusionary Rule*

States are obliged to exclude confessions or statements obtained under torture from any proceedings in the domestic jurisdiction, except in trial against the perpetrator of torture and for the purpose of showing that the coerced statement was in fact delivered.[80] In the au-

74. *See* Mark Mazzetti, *Senate Panel Faults C.I.A. over Brutality and Deceit in Terrorism Interrogations*, N.Y. TIMES, Dec. 10, 2014, at A14.

75. Convention Against Torture, *supra* note 3, art. 3.

76. *Compare* Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137 *with* Convention Against Torture, *supra* note 3, art. 3.

77. Convention Against Torture, *supra* note 3, art. 3.

78. *See id.* art. 21.

79. Sara K. McGuire, *Offshore Interdiction Operations and the Refugee Rights of Irregular Migrants*, E-INT'L RELATIONS (Apr. 12, 2015), http://www.e-ir.info/2015/04/12/offshore-interdiction-operations-and-the-refugee-rights-of-irregular-migrants/.

80. Convention Against Torture, *supra* note 3, art. 15.

thor's experience, this is a norm that is mostly observed in the breach. In practice, judges and prosecutors ignore signs that a person has been mistreated and even ignore formal complaints to that effect. The norm in the CAT is deficiently stated, as it requires that the declaration against interest be "established" to have been obtained under torture.[81] In practice, judges and prosecutors shift the burden on the defendant to prove that he or she has been tortured: an impossible standard to meet when one is in detention and without the wherewithal to hire a lawyer or a doctor versed in the forensic detection of torture. The mandate of the Special Rapporteur on Torture (SRT) has consistently required States to apply an interpretation of the exclusionary rule that is consistent with its object and purpose: to discourage torture in the first place.[82] A judicial practice that rewards torture by not depriving it of all legal effects in fact encourages the torturer. The SRT urges States to apply a rule that excludes confessions and declarations unless the prosecutor can establish that they were free of any coercion.[83] Additionally, States must apply the doctrine of the "fruit of the poisonous tree"—applicable in several jurisdictions as a matter of constitutional law[84]—by which statements obtained in violation of procedural due process guarantees, and all other pieces of evidence obtained as a result, must be excluded from evidence.[85] In recent times, the SRT has also had occasion of countering practices by which States continue to use torture-tainted evidence as long as they are not applied to "proceedings;"[86] for example, in exchange of intelligence information with other States,[87] or for the determination of operational decisions, including "no fly" determinations and other sanctions that are applied without due process.[88]

---

81. *See id.*

82. *See* Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Rep. on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* Human Rights Council, ¶¶ 17, 21-22, 26, 29, U.N. Doc. A/HRC/25/60 (Apr. 10, 2014) (by Juan E. Méndez).

83. *Id.*

84. Segura v. U.S., 468 U.S. 796, 804 (1984).

85. *See* U.S. CONST. amend. V; Mapp v. Ohio, 367 U.S. 643, 649 (1961); Brown v. Mississippi, 297 U.S. 278, 283, 286 (1936).

86. Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *supra* note 82, ¶ 17.

87. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Rep. on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,* ¶ 34, U.N. Doc. A/63/223 (Aug. 6, 2008) (by Martin Scheinin).

88. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Promotion and Protection of all Human Rights, Civil,*

D. *Reparations and Rehabilitation*

In a recent commentary, the Committee Against Torture has illustrated the scope and extent of the obligation that States bear to offer reparations to victims of torture, including rehabilitation to the extent possible.[89] An outstanding issue is whether this obligation applies only to the State whose agents were responsible for the torture of the victim, or also to States where the victim actually resides, having escaped persecution and torture in their home country and found protection elsewhere, albeit in conditions that remain hard in large part because of the sequelae of torture. In addition, reparations cannot be limited to monetary compensation. Rehabilitation services are provided in some countries in increasingly sophisticated and scientific therapeutic environments.[90] And ultimately, a policy of reparations must include non-monetary aspects like access to justice, the right to know the truth about what happened, and official apologies and memorialization.

IV. INTERNATIONAL LAW AND THE ERADICATION OF TORTURE: FUTURE PROSPECTS

Despite the absolute legal prohibition of torture and the wealth of interpretive jurisprudence arising out of international and regional human rights mechanisms, the actions of some States in the aftermath of September 11, 2001—and in particular the extraordinary rendition and secret detention program conducted by the United States Central Intelligence Agency during the so-called "War on Terror"[91]—presented a setback to the global fight against torture. This dark chapter in global history saw fifty-four States collaborate and assist one another in contravening established international human rights standards by abducting, transferring, extra-judicially detaining, and subjecting individuals to torture.[92] The United States' practice of so-

Political, Economic, Social and Cultural Rights, Including the Right to Development, Human Rights Council, ¶ 55, U.N. Doc. A/HRC/10/3 (Feb. 4, 2009) (by Martin Scheinin).

89. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment: General Comment No. 3: Implementation of Article 14 by States Parties, Comm. Against Torture, ¶ 5, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012).

90. SARAH CULLINAN, TORTURE SURVIVORS' PERCEPTIONS OF REPARATION 24-26 (Miranda Bruce-Mitford ed. 2001), http://www.redress.org/downloads/publications/TSPR.pdf.

91. Mazzetti, *supra* note 74, at A1, A14.

92. AMRIT SINGH, GLOBALIZING TORTURE: CIA SECRET DETENTION AND EXTRAORDINARY RENDITION 61, (David Berry ed. 2013), https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf.

called "enhanced interrogation techniques" for several years unequivocally amounted to torture.[93]

While these developments constituted a setback in the global fight against torture and signaled a weakening of the universal moral consensus that torture is unequivocally wrong and unlawful, they are better framed as a perilous deviation from, rather than a meaningful blow to, the international legal framework prohibiting torture. Indeed, the global outcry in response to these practices and incipient steps towards accountability are encouraging. While progress in achieving accountability and obtaining redress for torture and other ill-treatment committed as part of the so-called "War on Terror" has been limited, some positive developments can be cited. President Barack Obama signed Executive Order 13491 (Ensuring Lawful Interrogations) to promote the human treatment of detainees and improve respect for the legal prohibition of torture and other ill-treatment, during his first day in office,[94] constituting a clear repudiation of the prior administration's disregard of international law. Acknowledgements by other world leaders of the wrongfulness of these practices,[95] while susceptible to the critique that they are merely symbolic, are nevertheless relevant. The release of the executive summary of the Senate Select Committee on Intelligence (SSCI) Study of the Central Intelligence Agency's (CIA's) Detention and Interrogation Program constitutes the first step toward fulfilling the United States' obligations under the Convention Against Torture to combat impunity and ensure accountability by investigating and prosecuting those responsible.

Some States have taken more concrete measures. For example, the United Kingdom provided financial compensation to victims of extraordinary rendition and secret detention as part of undisclosed out-of-court settlements for complicity in torture or other ill-treatment abroad.[96] In 2007, the Prime Minister of Canada issued a letter of apology to a victim of torture.[97] Moreover, the European Court of

93. SENATE SELECT COMM. ON INTELLIGENCE, COMM. STUDY OF THE CENTRAL INTELLIGENCE AGENCY'S DETENTION AND INTERROGATION PROGRAM, S. REP. NO. 113-288, at vii (2014).

94. Exec. Order No. 13491, 74 Fed. Reg. 4893, 4893 (Jan. 27, 2009).

95. David Cameron, Prime Minister, U.K., Press Conference in Turkey (Dec. 9, 2014), https://www.gov.uk/government/speeches/david-cameron-and-ahmet-davutoglu-press-conference-in-turkey.

96. JOINT COMMITTEE ON HUMAN RIGHTS, THE JUSTICE AND SECURITY GREEN PAPER, 2010-12, H.L. 286/H.C. 1777, ¶ 68 (U.K.).

97. Ian Austen, *Canada Will Pay $9.75 Million to Man Sent to Syria and Tortured*, N.Y. TIMES, Jan. 27, 2007, at A5.

Human Rights has ruled in favor of petitioners who suffered torture and other ill-treatment in the cases of *El-Masri v. Macedonia*,[98] *Zubaydah v. Poland*,[99] and *Al-Nashiri v. Poland*,[100] finding the States responsible for complicity in torture committed by the CIA and ordering compensation. The Inter-American Commission on Human Rights has also conducted in-depth studies of prolonged arbitrary detention and torture at the United States' Guantanamo Bay facility.[101]

Furthermore, in recent decades, the international law framework prohibiting torture and other ill-treatment and outlining attendant State obligations has evolved in meaningful ways to encompass an array of practices and acts not traditionally framed under its lens.[102] The evolution of jurisprudence and legal interpretations to address practices like sexual and domestic violence, FGM, reproductive rights violations, and other violations in the healthcare settings, *inter alia*, from the perspective of torture and ill-treatment,[103] has led to some contributions in efforts to combat and prevent such practices at local, regional, and international levels.

One apposite example is the use of the death penalty, and the fact that global trends towards its abolition have been significantly impacted by the evolution of an international standard towards considering the death penalty *per se* a violation of the prohibition of torture and other ill-treatment—and that it is in fact developing into a norm of customary international law, if it has not done so already.[104] Even if the death penalty has not yet been prohibited by international law, retentionist States are under certain stringent obligations: they may not apply it to juvenile offenders or to persons with mental disabilities; they may only apply it after strict rules of due process and fair trial guarantees have been observed; and they can only apply it to the "most serious crimes," meaning offenses committed with violence and

98. El-Masri v. Former Yugoslav Republic of Macedonia, 2012-VI Eur. Ct. H.R. 263, 267-69 (2012).

99. Husayn (Abu Zubaydah) v. Poland, App. No. 7511/13 (2015) (Eur. Ct. H.R.), http://hudoc.echr.coe.int/eng?i=001-146047.

100. Al Nashiri v. Poland, App. No. 28761/11 (2014) (Eur. Ct. H.R.), http://hudoc.echr.coe.int/eng?i=001-146044.

101. Inter-Am. Comm'n H.R., *Towards the Closure of Guantanamo*, at 48, OAS/Ser.L/V/II, doc. 20/15 (June 3, 2015).

102. UNVFVT, *supra* note 30, at 3.

103. *Id.* at 16-17.

104. U.N. Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 53, 64-65, 72, U.N. Doc. A/67/279 (Aug. 9, 2012) (by Juan E. Méndez).

intent to kill that effectively result in death.[105] It follows also that, in imposing or executing capital sentences, States cannot cross the line into cruel, inhuman, or degrading treatment or punishment because of their absolute prohibition. Certain methods of execution, like beheading or hanging, in fact cross that line.[106] Also, the "death row phenomenon," that includes prolonged or indefinite solitary confinement, similarly constitutes CIDT.[107] For that reason, a strong case can be made that under present conditions States shall find it impossible to impose or execute the death penalty without violating absolute *jus cogens* norms.[108]

Another example involves significant progress made in the United States to combat the use of prolonged and indefinite solitary confinement (otherwise referred to as administrative segregation, restrictive housing, or isolation), as well as the use of solitary confinement for juveniles and persons with psychosocial disabilities, in recent years. The qualification of these practices as amounting to torture or CIDT under international human rights law[109] has undoubtedly had a significant impact on driving reforms forward. Among important developments with regards to the use of solitary confinement in the United States are settlement agreements in New York[110] and California,[111] as well as the recent Department of Justice report and recommendations concerning the use of restrictive housing,[112] and President Barack Obama's intended ban on the use of solitary confinement for juveniles.[113]

V. CONCLUSION

While the elimination and prevention of torture in our time will continue to require dedicated, multi-disciplinary, and well-synergized efforts by many actors, the fundamental international legal framework

105. *Id.* ¶¶ 41, 62-63, 73, 80.

106. *Id.* ¶¶ 33, 36.

107. *Id.* ¶¶ 42, 48.

108. *Id.* ¶ 64.

109. Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 70-77, U.N. Doc. A/66/168 (Aug. 5, 2011) (by Juan E. Méndez).

110. *E.g.*, Settlement Agreement, Peoples v. Fischer, No. 11-CV-2694 (S.D.N.Y. Dec. 16, 2015).

111. *E.g.*, Settlement Agreement, Ashker v. California, No. C 09-05796 CW (N.D. Cal.).

112. DEP'T OF JUSTICE, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING: GUIDING PRINCIPLES 6 (2016).

113. Barack Obama, Op-Ed, *Rethinking Solitary Confinement*, WASH. POST, Jan. 26, 2016, at A1, A13.

prohibiting torture and other ill-treatment remains key to these efforts. In particular, the framework provides reasoned and powerful arguments to counter the corrosive relativism that popular culture inflicts on us, by leading citizens to believe that "torture is inevitable," that "it is ugly but often necessary," and that "it works" despite all reasonable evidence to the contrary. While the practical implementation of fundamental international human rights principles will never prove simple, and may suffer setbacks in certain contexts, the gradual evolution and entrenchment of the international legal framework prohibiting torture and setting out attendant obligations, as well as its role in bringing about its eradication, cannot be doubted.