

Is it futile to attempt to prevent torture using international law?

Written by Flavio Paoletti

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FLAVIO PAIOLETTI, JUL 7 2011

‘On the one hand, the prohibition on torture has achieved the status of an obligation erga omnes and the jurisprudence and procedures for tackling torture are the most comprehensive in existence for any right. On the other hand, incidents of torture and inhuman and degrading treatment are endemic. This tells us all we need to know about the futility of using law to tackle serious violations of human rights and the gap between theory and reality.’

Introduction

In the aftermath of the disasters and atrocities of the Second World War, and given the legacy of the horrors of the fascist totalitarian regimes ruling Europe in the second quarter of the twentieth century, the international community reacted with the building of an international organization whose prime purposes were aimed at the promotion and maintaining of peace and security, and promotion and respect for human rights. The task was not so easy: the prohibition of war as a way to end inter-state disputes had a sole predecessor in the Kellogg-Briandt Pact[1] of 1928, which challenged the established hobbesian-realist system in which states utilize any means in order to achieve their national interests. Probably even more challenging, the human rights protection regime, which traces its origins back to the establishment of the United Nations, faced the concept of state sovereignty. The idea that human beings possessed rights, not only as citizens, but as individuals, lead to the progressive, but still not definitive, erosion of the basis of the rule that state actions toward their own citizens were regarded as domestic jurisdiction, a matter on which only states could intervene (Buergerthal: 1988, p. 3). It cannot be forgotten that we are the very nations that helped shape the new international order, meaning that, while in a way they wanted to promote the purposes listed above, they were still not ready to give up portions of their sovereignty, as Article 2.7 of the UN Charter shows.[2]

Within the broad spectrum of human rights, torture is paid significant attention to. Torture can be traced to ancient times, but it was not until the Enlightenment era that a philosophical approach favoured less cruel penalties, and a more humane investigation system (Amnesty International: 1975, p. 25). During the nineteenth and twentieth centuries the laws and constitutions of many states prohibited torture, but it never disappeared completely. It reappeared heavily in totalitarian regimes, especially in the Nazi one, or when institutional guarantees were weakened during states of emergency (situations of war or threats to security) (Nowak and Arthur: 2008, p. 2).

For this reason, states decided to include the prohibition of torture in the set of human rights that the United Nations would have to promote and enforce. First, this paper will look over the provisions adopted, at the international and regional level, in order to create a mechanism capable of promoting such a prohibition, and of eradicating acts of torture. As the list of such provisions is very large, it would be impossible to go into the details of every single one, though, the most significant aspects of the UN's instruments which challenge torture will be highlighted. Examples that breached the ban will then be reviewed, in order to highlight the role of international human rights law against

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such behaviour, along with state reaction and justification of such accusations.

At the end of the analysis it will be clear how, although breaches to the torture ban could suggest the uselessness of international human rights law when national interests and politics are involved, it has an undeniable role in the development of legal condemnation against torture.

Provisions of International Human Rights Law

The first concern regarding the prohibition of torture can be found in Article 5 of the Universal Declaration of Human Rights, adopted by the General Assembly on the 10th December 1948, which states that “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*” [3] Although it did not include a clear and exhaustive definition of torture, and was not binding under international law, it is worth noting the significance of this document as the first to provide a common definition of human rights, and the great impact it had on successive conventions. Further, scholars like Humphrey, claim that given the universal acceptance of the UDHR, “its provisions are now part of customary law” (Humphrey: 1989, p. 155).

The 1966 “International Covenant on Civil and Political Rights” (ICCPR) referred to article 5 of the UDHR when assessing the prohibition of torture in its Article 7[4], adding a reference to “medical or scientific experimentation” probably as a legacy of Nazi conduct. It is fundamental to emphasize two main aspects concerning the ICCPR. First, given the principle of *pacta sunt servanda* recognized by article 26 of the 1969 Vienna Convention on the Law of Treaties[5], ICCPR has a binding character for member states, and represents an “evident source of law” (Evans: 2006, p. 119). Second, and even more important for the purposes of this article, Article 4(2)[6] of the ICCPR prohibited any derogation of some of the rights included in the Convention, even in times of emergency and threats to a states’ existence. Absence of torture was one of these “fundamental” rights, which were deemed so related to the concept of human integrity that their respect could not be denied even in exceptional state security cases (Twiss: 2007, p. 357).

It is important to highlight the two main weaknesses that afflicted the UN torture prevention regime. First of all, it lacked a clear and shared definition of torture. As a practice with states as the only perpetrators, it could not have been that hard to defend themselves by justifying their conduct on a doctrinal basis. Second, even if the ICCPR played an important role in setting up enforcement mechanisms (Buerghenthal: 1988, p. 6), these proved to be ineffective in confronting systematic practices of torture around the world.

As a response to well documented cases of torture during the 1960’s and 1970’s (including acts involving the French in Algeria, the Portuguese in its former African colonies, the Greek military junta, and acts under Latin-American dictatorships), and especially to a highly worrying situation in Pinochet’s Chile, the UN General Assembly adopted the ‘Declaration’ in 1975, which protected all persons from being subjected to torture and other cruel, inhuman, or degrading treatment or punishment (‘Declaration’) (Nowak and McArthur: 2008, p. 3). The ‘Declaration’ finally included a comprehensive definition of torture in its Article 1[7], although many criticized it for not being precise enough, and it stressed that the prohibition of torture cannot be breached even in times of war or national emergency (de Than and Shorts: 2003, p. 187).

The most important provision at the global level is represented by ‘The Convention against Torture’, the specialized human rights treaty on torture adopted by the UN in 1984. In its Article 1(1)[8], appeared the very first legal definition of torture. Several aspects, representing both its limits and probable weaknesses, of the definition deserve to be highlighted. First, Article 1(1) referred to ‘severe’ physical or mental suffering; this kind of link to a subjective element, such as the degree of suffering, could lead to legal controversy especially when states appeal to the so-called ‘sliding scale’ doctrine. According to it, the greater the threat to security the more a state is authorized to escalate its means of interrogation. Article 1(1) left states interpreting ‘grey areas’ not clarified by its definition (Amnesty International: 1975, pp. 36-37). Second, limiting torture to purposes listed in Article 1(1) (such as gaining information or confession, sadistic punishment, or intimidation) may implicit the exclusion of other kinds of torturous acts that might be carried

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out in different ways (de Than and Shorts: 2003, p. 187). Third, another significant limitation is the reference to the involvement by a public official in acts of torture. Even if this category is broadened to include paramilitary organisations or vigilantes, “the definition is, however, restrictive in that it excludes acts of torture conducted by non-state actors and private individuals against other individuals or State officials” (Rehman: 2003, p. 413). Such an issue is more evident if we consider civil war or other internal conflicts, where certain factions fighting for power are not *de facto* governmental institutions, but still exercise certain prerogatives comparable to those normally applied by governments (de Than and Shorts: 2003, p. 188). In this regard, in the *Elmi v Australia* (CAT/C/22/D/120/1998)[9] case, the Committee Against Torture stated that “despite the lack of a central government, certain armed clans in effective control of territories within Somalia are covered by the terms “public official” or “other person acting in an official capacity” as required by article 1 of the Convention. In fact, the absence of a central government in a state increases the likelihood that other entities will exercise quasi-governmental powers” (Elmi v. Australia, CAT/C/22/D/120/1998, paragr. 5.1). At last, Article 1(1) states that the definition of torture excludes acts which are lawfully sanctioned, but this statement risks diluting the absolute and non-derogable character of the crime, leaving open for defendants the option of defence in certain circumstances (de Than and Shorts: 2003, p. 188).

After having analyzed the legal definition of torture in Article 1(1), it will be necessary to review some of the more interesting provisions of the Convention Against Torture, which are intended to affect the conduct of states. The state is deemed to be solely responsible for acts of torture committed by its officials, thus each state is required to take any measures, legislative, administrative, or legal, to prevent torture from occurring on its territory. The acts of torture must be considered an offense under criminal law and cannot be justified even by exceptional situations, not even obedience to a higher authority may justify torture (UN Convention against Torture, articles 2 and 4) (Rehman: 2003; pp. 419-422). Also, the Convention introduced the principle of universal jurisdiction for crimes of torture, and according to it, wherever alleged offenders are found, they should be extradited to where the offenses were committed or to the offenders’ country of origin, so that the government most directly affected can process or start the court proceedings themselves (UN Convention against Torture, Article 5, 6, 8). The Convention “incorporates the concept of *aut dedere aut judicare*” (Seibert-Fohr: 2009, p.160), which means that no safe haven exists for torturers. Moreover, Article 3 of the Convention established the unconditional right of a person not to be expelled, dismissed, or extradited to a country where there exists a risk of torture. It is unconditionally prohibited in any circumstance, as long as there are substantial grounds to believe there is a risk of torture (Rehman: 2003, pp. 415-418).

This is the legal basis which Part I (Articles 1-16) of the Convention is devoted to. Part II (17-24) is devoted to implementation mechanisms. The Convention established the Committee Against Torture in its Article 17[10], which provides four methods to accomplish its implementation functions. The first is the reporting procedure; according to Article 19(1)[11], states are asked to submit a report highlighting provisions undertaken, in order to give effect to the requirements contained in the Convention. The reporting system has been criticized over the years as inefficient and weak at confronting such a harsh and spread out crime as torture, as states are often impartial and may not submit their report on time, or may be reluctant to submit them at all (Rehman: 2003, pp. 424-425). Still, the importance of a measure that involves states in a friendly discussion, using a constructive approach that does not discourage states from working to improve or does not put them on the defensive, cannot be underestimated. The second implementation provision is the inter-state procedure; in order to resort to inter-state complaints, both the complainant state and the one who the complaint is addressed against, must submit a declaration under Article 21.[12] Under the CAT, this provision has never been used, and the failure of this measure cautions states to accuse each other, which affects their diplomatic relations (Rehman: 2003, pp. 427-428). Third, Article 22(1)[13] set up the individual complaint procedure. Once again, states must agree to a separate declaration that accepts the competence of the Committee to receive communications. The admissibility requirements are similar to those of other treaty bodies, and communications made either by, or in behalf of, individuals are accepted. Individual complaints were revolutionary at the time of their establishment, as it gave individuals the right to report abuses they had suffered from states. Nevertheless, only a limited number of states, so far, have submitted a declaration allowing individual complaints, and “there are no sanctions attached to the failure of the state concerned for not respecting the views of the CAT” (Vandenhoe: 2004, pp. 268-262). Fourth, under Article 20[14] the Committee is allowed to initiate an investigation on a state, given that it receives well-established information about systematic acts of torture in the territory of the state itself. Again, although this could be a powerful measure, there are a few features that weaken its

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scope. The nature of the procedure is confidential and needs the cooperation of the state. Also, Article 28(1)[15] provides opt-out options for a state undertaking a proper declaration. The Committee can decide to produce only 'summary accounts' of the result of the inquiry (Rehman: 2004, p.432).

On 18th December 2002, the General Assembly adopted the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Evans and Haenni-Dale define it as "a ground-breaking instrument. It features a 'twin-pillar' approach to torture prevention, based on the creation or designation of national preventive mechanisms by States Parties as well as the creation of an international preventive mechanism, the "Subcommittee on Prevention of Torture"" (Evans and Haenni-Dale: 2004, p.20). Even if it implicitly states that the Subcommittee is not empowered with unannounced visits, the strength of this mechanism relies on the close relationships between national and international bodies, and a state must compulsorily accept both.

Regional Systems, Humanitarian Law, and International Criminal Law

In addition to the bodies mentioned, other means of protection from torture can be found in many regional systems. In Article 3[16] of the 1950 European Convention on Human Rights (ECHR), in Article 5(2)[17] (together with Article 27(2)[18]) of the 1969 American Convention on Human Rights (ACHR), in Article 5 of the 1981 African Charter on Human and Peoples' Rights[19], and in the 1981 Universal Islamic Declaration of Human Rights.[20] Moreover, in 1987, the Council of Europe adopted the European Convention for the Prevention of Torture. It introduced the European Committee for the Prevention of Torture and of inhuman and degrading punishment, which differed from the CAT as its inquiry mechanism was more powerful. It can visit any place within the jurisdiction of the member states in which "people are deprived of their liberty by a public authority" (art. 2). To make such visits, the Committee does not require consent of the state, but must notify that it plans to visit, then the state is obliged to give free access to the facilities concerned, provide information, and to give collaboration (Nowak and McArthur: 2008, p. 3). The ban on the use of torture is not only regulated by international human rights law, for instance, common Article 3(1)[21] of the 1949 Geneva Conventions on Humanitarian Law provided a set of minimal protections that must be guaranteed (Fitzpatrick: 1994, p.4). Finally, according to the 1998 Rome Statute that established an international criminal court (which began in July 2002), acts of torture can constitute crimes against humanity (art.7.f) or war crimes (art.8.2.II). All those suspected of having committed such crimes on territory of a state party to the statute, and all citizens of state parties which have committed such crimes on any state, even if not party of the statute, are individually accountable at the international level (de Than and Shorts: 2003, p.228).

Torture: Theory against Practice

So far, international human rights law mechanisms set up in order to guarantee, and implement the eradication of acts of torture, have been reviewed. In addition, freedom from torture is widely recognized as being a principle of human dignity that acquired the status of *jus cogens*[22] (De Schutter: 2010, p. 68). Also, in 1998, the International Criminal Tribunal for the former Yugoslavia (ICTY) explicitly noted that "the prohibition of torture imposes upon States obligations *erga omnes*, that is, obligations owed towards all the other members of the international community, each of which then has a correlative right" (*Prosecutor v. Anto Furundzija* (Trial Judgement), ICTY IT-95-17/1-T, para. 151).

Despite what Cassese defines as a "*general rule*" in the international community, that torture be prohibited and states have the duty to prosecute the perpetrators of such acts (Cassese: 2003, p.119), several acts of torture are reported every year (by the CAT, the ECPT, and various NGO's such as Amnesty International or Human Rights Watch). Nevertheless, in most cases states deny that torture ever happened. When they do admit to it, they try to justify their actions using the rules and definitions of international law. Moreover, in some cases, actions "from various sectors of civil society, from international and regional human rights bodies, and from the pressure of international public opinion" (Amnesty International: 2003, p.23) may lead to improvements in the fight against torture.

Israel

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It is useful to review the case of Israel, as it has been, for more than a decade, the only country that legalised the use of torture, and has relied on justifications of “lesser evil for a greater good,” while at the same time, it has struggled for its security and existence. The 1987 Landau Commission Report officially sanctioned torture as a means of interrogation, at the end of its inquiry on the methods of interrogation for the General Security Services (GSS). Basing its findings on the hypothetical case of the “ticking bomb scenario,” it concluded that under exceptional circumstances, when the information sought is vital to prevent further deaths, the use of “moderate” physical pressure is unavoidable and permissible (Felner: 2005, pp. 29-31).

On November 2nd, 1991, Israel became a member of the United Nations Convention Against Torture. In submitting its initial report on January 24th, 1994, Israel highlighted the “relevant provisions of Penal Law [...] providing criminal sanctions for acts of torture” (CAT/C/16/Add.4, Article 4, Chapter 12) and in Article 11, 12, and 13 it exposed the guidelines provided by the Landau Commission Inquiry authorizing the use of “moderate physical pressure” in order to prevent terrorist acts. In addition, the state party assessed that “the use of such moderate pressure is in accordance with international law” (CAT/C/16/Add.4, Article 11, 12 and 13, Chapter 34). In June 1994, in its considerations on Israel’s initial report (Official Records of the General Assembly, forty-ninth session, Supplement No. 44 (A/49/44) paras. 159-171), the Committee Against Torture expressed its concerns on Israel’s reliance on “superior orders” and “necessity” in the attempt to justify acts in clear breach of Article 2.2 of the Convention (parag. 167), noting that “the Landau Commission Report [...] is completely unacceptable to the Committee” (parag. 168).

Other reports followed, as provided by Article 19(1) of CAT, in which Israel reassessed that “defence necessity” causes justified resorting to “moderate” physical means, even providing examples like the case concerning Abd al-Rahman Ismail Ghanimat, who was a confessed terrorist in possession of vital information (CAT/C/33/Add.3, parag. 43, Second Periodic Report submitted in 1996). The Committee, after clarifying that the particular security circumstances were known, repeatedly assessed that justification of necessity is contrary to Article 2(2) CAT.[23]

As a result of international campaigning, and initiatives by NGO’s and individual lawyers, in 1999 the High Court of Justice engaged the matter of torture, trying to go beyond the “security” justifications of GSS (Amnesty International Publications: 2002, p. 28). On September 6th, 1999, in *Public Committee Against Torture in Israel v. the State of Israel*, the Supreme Court banned all forms of physical force in interrogation. The Supreme Court assessed that “several of the predominantly used interrogation methods applied by the General Security Services in seeking confessions of suspected terrorists, were unconstitutional *per se*” (Greenberg: 2000-2001, p. 547). Yet, in its considerations on Israel’s 2001 Periodic Report the Committee Against Torture, even if it welcomed the 1999 Judgement of the Supreme Court, stated that torture, as defined by the Convention, was not yet incorporated into Israeli domestic law and that allegations regarding the use of actions of torture in interrogations continued to be received (General Assembly Official Records Fifty-seventh session Supplement No. 44 (A/57/44), paras. 50.a and 52.b). Nevertheless, even if not agreeing with Greenberg’s position that the Supreme Court decision “paved the way for human rights to trump communitarianism (i.e. security interests of the Israeli community)” (Greenberg: 2001-2002, p. 552), the formal ban of torture in Israel, achieved also through the UN pressure mechanism on Israel, can be deemed a relative success.

Sweden: Non-Refoulement and Diplomatic Assurance

Article 3 of the Convention prohibits a state to extradite, or ‘refouler,’ a refugee to a place where there is reasonable ground to believe he will be exposed to acts of torture, or experience prosecution. Due to “valued opinions of legal scholars, along with careful consideration of international refugee law, various human rights treaties, UNHCR Conclusions, UN General Assembly Resolutions and other regional declarations” (Duffy: 2008, p. 389) the rule of non-refoulement is deemed a part of international customary law. A substantial number of individual complaints, according to Article 22 of the Convention, contributed to the establishment of this rule (Joseph: 2006, p.574).

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Nevertheless, due to the attacks of 9 September 2001, the issue of the relationship between terrorism and torture was again brought to the attention of the international community. There are some cases of states that tried to overcome the restraints of the rule when faced with foreign nationals suspected of being involved in acts of terrorism. They did so, principally by seeking diplomatic assurance from the states the individuals might have been deported to (Moeckli: 2008, p. 536). The Committee Against Torture denied the lawfulness of these assurances (De Schutter: 2010, p. 279), as the following case highlights. In May 2005, the Committee Against Torture expressed its opinion about a complaint from Mr. Agiza.[24] He was an Egyptian national who claimed Sweden breached Article 3 of the Convention, when it extradited him to Egypt. Although he declared that he had been sentenced to “penal servitude for life” in his country, and that if he returned he would be executed, as others accused for the same thing had allegedly been (CAT/C/34/D/233/2003 para. 2.4), the Swedish authorities decided to expel him because of guarantees obtained from Egypt that Mr. Agiza would not have been tortured once back to his country. In the light of this assurance, Sweden argued it lived up to its commitments under the Convention (CAT/C/34/D/233/2003 para 4.29). The Committee ruled that the complainant was at real risk of being tortured if he returned to Egypt, and that Sweden’s actions were in breach of Article 3 of the Convention, as the Convention’s prohibitions are absolute (CAT/C/34/D/233/2003 paras. 13.5 and 13.8). The case of Mr. Agiza showed how Sweden did not recognise it breached such important obligations, as those related to the prevention of torture. The attacks of 09 September opened a new debate on the issues of torture and alleged terrorists, but the Committee still does not seem willing to soften its interpretation and application of the Convention.

Serbia: Implementation of Individual Complaints

The mechanism of individual complaints set up by Article 22 of the Convention, emphasising its merits and its weaknesses, has been reviewed. Referring to the latter, due weight must be given to the fact that communications by the Committee are not legally binding, and that at the present time, only 63 parties have submitted a declaration recognizing the competence of the Committee to receive communications from, or in behalf of, individuals. Nevertheless, the individual complaints procedure could most directly affect the concept of the absolute ‘domestic jurisdiction’ of states on its citizens, turning them from objects, into subjects of international law. Thus, it is worth looking at the decisions of three cases regarding individual complaints against Serbia, *Dragan Dimitrijevic v Serbia and Montenegro* (207/00)[25], *Dimitrov v. Serbia and Montenegro* (171/00)[26], and *Danilo Dimitrijevic v. Serbia Montenegro* (172/00).[27] Joseph collectively refers to them as the ‘Serb/Roma cases’ (Joseph: 2006, p. 571). The rationale behind considering them as a whole relies on the fact that all three complainants brought similar complaints before the Committee. In their opinion, the state breached its duty to prevent torture under Article 2(1) of the Convention, and did not investigate their complaints thoroughly, or address the complainants with the appropriate redress or compensation, as provided by Articles 12, 13, and 14 of the Convention. Probably even more important, in these three cases “the Committee made its first findings of ‘torture’ in individual complaints” (Joseph: 2006, pp. 571-572).

It is clear by the three decisions (views) of the Committee, that the three complainants are Serb citizens of Roman origins. The Committee notes, then, that the complaints should be interpreted in light of the systematic police brutality against the Roma perpetrated by the Serb state (paras 3.2). The complaints have in common, a lack of warrants or any communication by the authorities as to why they were arrested, and severe treatment with the purpose of extracting a confession, as well as intimidation or punishing.[28] In addition, all three complainants filed a criminal complaint, alleging to have been victims of bodily harm and civil injury. In all cases, no response was received from the Public Prosecutor’s Office after a considerable amount of time. The state party did not provide adequate information, limiting itself to generally ‘accept’ the complaints. In *Danilo Dimitrijevic v. Serbia Montenegro* (172/00) it explained that the “acceptance” of the complaint “implied that the State party recognised the competence of the Committee to consider the complaint, ‘but not the responsibility of the State concerning the complaint in question.’”[29]

The Committee, then, emphasised the lack of cooperation received by the state and stated that the insurmountable impediment faced by the complainants, as a result of the inaction of authorities, made unlikely the application of a

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remedy. Concluding, the Committee, in all the three cases, decided that the facts as submitted by the complainants constituted 'torture' and that the state breached Articles 12, 13, and 14. The state was invited to conduct proper investigations and to inform of the steps taken. Scholars, such as Joseph, emphasise the importance of the Serb/Roma cases as an example of how much international human rights law could benefit from a more robust approach of the Committee, through the individual complaint mechanism (Joseph: 2006, p. 575). It is surely shameful for a state to be shown in the Committee reports as guilty of having breached the prohibition on torture. Nevertheless, we must bear in mind that the Committee has no practical enforced means against states, as its recommendations can point out a path for states and admonish them, but good results can only be the outcome of a states' ultimate will.

Conclusion

The essay first outlined a brief history of the international legal mechanism, first in international organisations and documents, and then in regional organisations, set up in order to enhance a prohibition of torture and the empowerment of provisions. In doing so, weaknesses and critical points have been highlighted to showcase the reasons why international law provisions are often deemed and criticised as inefficient. At the same time, the innovativeness and the powerful characteristics of the systems have been presented to demonstrate the progresses made by the international community in facing such a grave human rights violation as torture.

In second part of the essay, a few cases were examined to analyze how the Committee Against Torture works, and what its strengths and limits are. The cases were chosen to show the dialectical approach adopted by the Committee in its workings, showing the reader that the power of its actions does not rely on its enforcement capacity, but on the ability to build a constructive relationship with the state addressed.

International human rights law, as part international law, is based fundamentally on a state's consent. The absence of a greater legal authority standing over the community of states prevents us from building a so-called 'domestic analogy' when we judge the legal mechanism regulating inter-state relationships, or in the case of human rights, relations between a state and its citizens. We cannot, thus, refer to the lack of enforcement ability as a rationale to criticize, and deem the international legal system as inefficient. Undoubtedly, the UN human rights mechanism, as it has been mostly referred to in this article, still suffers many weaknesses and limits. Though, the role of its institutions in working for human rights education in governments around the world, the progress of the very idea of human rights, and its contribution to the promotion of a human rights culture has been pivotal in the struggle for human dignity, which has undeniably progressed in the last fifty years. Currently, torture is something every state would deny to have committed. As has been shown in the cases analyzed, states never base their defence from the starting point of admitting their responsibility for acts of torture. The fact that states who allegedly perpetrated torture justify it on legal points included in international law provisions, can be seen as one of the best results achieved by the prohibition of torture.

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[1] Signed by the United States of America, France, the United Kingdom, Italy, Japan, Weimar Germany, and other countries, it renounced aggressive war. States renounced the use of war as an instrument of national policy.

[2] Article 2(7) of United Nations Charter: "*Nothing contained in the present Charter shall authorize the United*

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Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

[3] UDHR text is available at <http://www.un.org/en/documents/udhr/index.shtml>.

[4] Article 7 ICCPR states that: *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."* Available at www2.ohchr.org/english/law/ccpr.htm.

[5] Article 26 of the 1969 Vienna Convention on the Law of Treaties states that: *Every treaty in force is binding upon the parties to it and must be performed by them in good faith."* Available at <http://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

[6] Article 4(2) of the ICCPR states that: *"No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."*

[7] Article 1(1) of the 'Declaration' states that: *"For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."* It is available at <http://www2.ohchr.org/english/law/declarationcat.htm>

[8] Article 1(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that: *"For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."* Available at <http://www2.ohchr.org/english/bodies/cat/>.

[9] Sadiq Shek Elmi v. Australia, CAT/C/22/D/120/1998, UN Committee Against Torture (CAT), 25 May 1999, available at: <http://www.unhcr.org/refworld/docid/3f588eda0.html>.

[10] Article 17(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that: *"There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience."*

[11] Article 19(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that: *"The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request."*

[12] Article 21(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

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states that: *"A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure."*

[13] Article 22(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that: *"A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration."*

[14] Article 20(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that: *"If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned."*

[15] Article 28(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that: *"Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20."*

[16] Article 3 of the European Convention on Human Rights states that: *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."* Available at <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>.

[17] Article 5(2) of the American Convention on Human rights states that: *"No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."* Available at <http://www.unhcr.org/refworld/docid/3ae6b36510.html>.

[18] Article 27(2) of the American Convention on Human rights states that: *"The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights."*

[19] Article 5 of the African Charter on Human and Peoples' Rights states that: *"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."* Available at http://www.achpr.org/english/_info/charter_en.html.

[20] Article 7 of the Universal Islamic Declaration on Human Rights states that: *"No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests"*. Available at <http://www.ntpi.org/html/uidhr.html>.

[21] Article 3(1) of the Convention (IV) relative to the Protection of Civilian Persons in Time of War states that: *In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting*

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Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.” Available at <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>.

[22] The Article 53 of the 1969 Vienna Convention on the Law of Treaties defines the meaning of a norm having the status of jus cogens: “[...]For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[23] For example, in 1998 Official Records of the General Assembly, forty-ninth session, Supplement No. 44 (A/53/44), in the Considerations of the Israel's 1996 Second Periodic Report, the Committee at paragraph 238(a) stated that it was concerned about: “The continued use of the “Landau Rules” of interrogation permitting physical pressure by the General Security Service, based as they are upon domestic law, as a justification of necessity, a justification which is contrary to Article 2(2) of the Convention.”

[24] CAT/C/34/D/233/2003

[25] 207/02, CAT/C/33/D/207/2002 (2004).

[26] 171/00, CAT/C/34/D/171/2000 (2005).

[27] 172/00, CAT/C/35/D/172/2000 (2005).

[28] 207/02, CAT/C/33/D/207/2002 (2004) para. 3.1; 171/00, CAT/C/34/D/171/2000 (2005) para. 2.3 and 172/00, CAT/C/35/D/172/2000 (2005) para. 3.2.

[29] 172/00, CAT/C/35/D/172/2000 (2005) para. 4.1.

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