

**Forum:** Social, Cultural, and Humanitarian Committee (SOCHUM)

**Issue # 18-02 :** Measures to address the use of torture by government entities

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## Introduction

In a contemporary context, war can be defined as an armed conflict between political units. However, more recently, the concept has been narrowed down to formally declared war between states. In an 18th century context, Prussian General and military strategist, Carl von Clausewitz, cogently defined war as a rational instrument of foreign policy, as an “act of violence intended to compel our opponent to fulfill our will.”.

A very gruesome aspect of war is the extraction of information and punishment of an individual through the use of torture. Similarly to war, the systematic use of torture in criminal procedures dates back to the earliest of civilizations. The first recorded legal application of such were found in the Sumerian code. Today, by international law and the Universal Declaration of Human Rights (UDHR), stating that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”, torture is illegal worldwide. Unfortunately however, its prohibition both through international law and the UDHR has not prevented governments from performing torture.

As per reported by Amnesty International, the worldwide voluntary activist movement working for human rights, more than 150 countries performed torture in just a 4 year period, between 1997 and 2000. Among these 150 perpetrators of the UN Declaration of Human Rights are the United States. Contrary to the centuries old aim of torture, torture in modern times is being not only used to extract information, but more commonly to “break down the victim's personality and identity.”. It is used as a tool for repression and deterrence against dissent.

Although so many countries have been accused and ultimately found guilty of torture,

few states freely admit or even describe their means of extraction of information. Governments found guilty of engaging in torture simply deny their participation, regardless of physical evidence and overwhelming proof of their wrongdoing. Through denial and impunity granted by the government, individuals found performing torture rarely face legal consequences. As UN Special Rapporteur for the Commission on Human Rights, Sir Nigel Rodley, explains it, “impunity continues to be the principal cause of the perpetuation and encouragement of human rights violations and, in particular, torture.”

## Definition of Key Terms

### **Torture**

The United Nations Convention against Torture (UNCAT) currently defines torture as “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.”

### **Electric shock**

Electric shock is a method of torture which delivers an electric current to a victim via wires attached to a battery. This method of torture is cheap, effective and it allows for the torturer to control the pain inflicted with precision. Furthermore, it leaves little physical trace of the agony produced.

### **Detainee**

The Merriam-Webster dictionary currently defines detainee as “a person held in custody especially for political reasons”.

### **Summary executions**

A summary execution is an execution in which a person is accused of a crime and immediately killed without benefit of a full and fair trial.

### **Black project**

A black project is a highly classified military or defense project unacknowledged by government, military personnel, and contractors.

### **Black sites**

A black site is a location at which an unacknowledged black project is conducted. For the purposes of this document, this term may refer to the CIA's outside facilities originally created to detain and interrogate al-Qaeda suspects.

### **Refoulement**

The act of forcing a refugee or asylum seeker to return to a country or territory where he or she is likely to face persecution of some sort.

## **General Overview**

As one might come to find out, torture is a complicated topic, ranging in complexity of time to the reasoning and ethics behind it. The following are various subtopics important to be covered when discussing the issue of torture. Do keep in mind these are not the only generalities involved in this issue, and several other branches may be addressed.

### **Torture in the 21st Century**

Torture in a contemporary context is much different than torture in the past. Since the earliest known civilization of Sumer, torture has been used. The difference between then and now however, is that there has been huge outcry against its use, allowing for the prohibition of it by international law as well as most domestic law. Regardless of this newfound prohibition in modern society, governments have managed to defend their belief that torture is the only way for

extracting information. Some of the ways governments have managed to circumvent international law and in theory, remain lawful while engaging in torture, is resorting to waterboarding; an interrogation technique which simulates the experience of drowning. Although governments are major perpetrators of torture, there are other groups guilty of the crime. These include guerrilla groups, paramilitaries, kidnappers, and other criminals.

A particular example of the circumvention of international laws as much as national, is the case of the United States and the CIA's infamous black sites. As a result of the September 11, 2001 attacks on the United States, the CIA sought out to "search for outside facilities in which to detain and interrogate high-level al-Qaeda suspects." These secret prisons, commonly referred to as black sites, were used by CIA officials to interrogate suspects outside of U.S. soil. This would, in theory, allow for the use of certain interrogation techniques, such as waterboarding, which would be frowned upon had they been employed in the U.S. The precise locations of these classified prisons is inherently unknown, however it is known that they span across eight countries. Their existence is held as highly confidential, and only a handful of officials as well as the President have knowledge of them. The Washington Post reports that the CIA has held suspects because of faulty intelligence, and deceived high-level U.S. officials. According to the CIA, the program ultimately helps produce "evidence that helped avert potential strikes against the U.S.". Ever since, the U.S. has been using black sites throughout the globe under the pretext that they are for the War on Terror. Most recently however, there are an estimated 50 prisons spread throughout 28 different countries. Countries who allegedly have hosted black sites for the CIA include Algeria, Egypt, Jordan, Poland, and the United Kingdom.

Other recent advancement in torture include the rise of social groups as well as organizations against the use of torture. Some distinguishable organizations include international groups such as Amnesty International (AI), Human Rights Watch (HRW), the United Nations (UN), as well as starting groups such as Association for the Prevention of Torture (APT) and Torture Abolition and Survivors Support Coalition (TASSC). As previously mentioned, in the past, there was generally little to no opposition against torture. Currently, as we have seen, there has been a large increase in groups opposing its use, likely due to the fact that its use has

increased and become systematic in certain regions, such as in Syria. Amnesty International released documented evidence of more than 30 types of torture practiced on Syrian detainees by the authorities. An even more recent example is the Saydnaya prison in Syria. As per reported by Amnesty International in a 2017 report, the military prison has detained thousands of prisoners since 2011, tortured and then executed them in mass hangings. Part of the process involved depriving the alleged opposers of the government from water, food, medicine, and proper medical care.

### **Ethics and Human Rights**

For the majority of history, torture was used quite commonly, and the use of torture was not exactly welcome but it was not opposed either. Civilizations ranging from the Egyptians, the Persians, the Greek, even the Romans used torture. The one thing these civilizations had in common, besides their use of torture, was the reason behind their actions. All these civilizations had the goal of either punishing, intimidating, controlling, or of extracting information from the individuals in question. As mentioned, torture involves deliberately inflicting physical or mental pain on a person without legal cause. This simplified version of what is set forth by the United Nations Convention against Torture usually raises several questions, predominantly due to the last section regarding “legal cause” or “lawful sanctions”. Although the only logical reason to include such a component would be to allow the death penalty, the inclusion of this portion allows for daily occurrences such as painful medical treatment and boxing matches to not be considered torture.

Going further into the ethics behind torture, it is important to point out the common objective governments have in mind when performing it. Typically, their objective is to either punishment, to intimidate or control people, or to get information. However, “governments have used torture to keep themselves in power, to enforce their particular political philosophy, to remove opposition and to implement particular policies.”. With these objectives in mind, torture is generally considered wrong due to its cruel nature, its treatment of people as means rather than ends, and it is statistically an inefficient method of obtaining intelligence. Although some individuals might consider it acceptable at times, since the middle of the 20th century, the

general consensus is that torture is wrong. Wrong to the point where the United Nations Convention against Torture allows absolutely no exceptions to the document, not even at times of war. The extensiveness in the use of torture is also a part of the problem. In 1996, it was believed that torture, either officially or unofficially, was used in one of every three countries in the world. Amnesty International however, states that between 1997 and 2000, there were reports of torture performed by state officials in over 150 countries.

Recent threats to our way of living have brought forth the questioning of the wrongness of torture. After repeated terrorist acts and the fear of the proliferation of weapons of mass destruction, governments as much as individuals begin to reconsider the use of torture. Some argue that torture would ultimately be the lesser of two evils, and that it should perhaps be allowed if its the last resort to prevent a greater wrong. Others argue that it is a “ ‘moral absolute’ that torture is always wrong, and so can never be justified by any form of ethical ‘cost-benefit analysis’.”

## Defining Torture

Although dictionaries might have a concrete definition for torture, there will arguably never be a set and unanimously agreed definition for torture. Different regions, different organizations, and different nations all have contrasting views on torture and its very definition. Generally (unless otherwise stated), the definition of torture is internationally agreed to follow Article 1 of the United Nations Convention against Torture (UNCAT). For such an act to be classified as torture, per the UNCAT definition, the act must intentionally inflict mental or physical suffering, be performed by a public official, and it must be for a specific purpose. The UNCAT definition however, explicitly excludes “pain or suffering arising only from, inherent in or incidental to lawful sanctions”, which appears to be designed to allow for the use of death penalty. This exception to the definition is entirely unique to the UNCAT, and is a prime example of the difference between definitions of torture. Other documents, such as the Declaration of Tokyo, provide a broader definition of torture, simply defining it as “the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield

information, to make a confession, or for any other reason.”. This definition, makes no mention of an exception to incidental pain arising from lawful sanctions. Other organizations such as Amnesty International, have adopted an even simpler and broader definition for torture. That being, “the systematic and deliberate infliction of acute pain by one person on another, or on a third person, in order to accomplish the purpose of the former against the will of the latter.”. Documents such as the Inter-American Convention to Prevent and Punish Torture go even further in the definition of torture, and define it in more detail than the UNCAT itself. Ultimately, torture is a complex concept whose definition proves to be entirely subjective to the individual, and reaching a unanimous definition has proven strenuous.

### **Types of Torture**

Torture, being such a complex and indefinable concept, inherently contains different types of torture. The most common form of torture, physical torture, as the name implies, involves the infliction of physical pain to the individual in question. The methods of inflicting said pain are vast and need not be mentioned. Some examples however, may include beatings, walling, and stress positions. The more complicated and less common form of torture, psychological torture, uses non-physical techniques that involve mental suffering. The effects of psychological torture might not be apparent immediately, which makes it a favorable method of torture. Due to the fact that there is currently no international consensus on what constitutes as psychological torture, it is often overlooked. It is difficult to distinguish between psychological and physical torture. It is aimed at the psyche of the individual and attempts to break their sanity. Other even less common forms of torture include medical torture. In this particular case, the torturer would usually apply treatments that enhanced torture. Another similar type is pharmaceutical torture, where drugs are used to produce both psychological as well as physical pain or perhaps discomfort.

### **Major Parties Involved and Their Views**

## United States of America

After the United Nations Convention against Torture was adopted on December 10, 1984, at the 39th session of the General Assembly, the United States signed the convention in the spring of the following year. Six years after the signature, the United States decided to ratify the convention under numerous reservations, understandings, and declarations. Among said understandings, the U.S. announced their interpretation of certain terms in the convention. For example, Article 3 of the convention forbids deporting a person “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”. The U.S. however, interprets the phrase as saying “if it is more likely than not that he would be tortured.”, forcing the deportee in question to prove a greater than 50% chance that he will be tortured in the country of removal. More recently however, in an interview with President Donald Trump, he expressed his support for torture while stating that he would “rely” upon the Secretary of Defense, the CIA Director and others in deciding whether the USA should use it. Moreover, the CIA has been accused of having “black sites” or secret prisons around the globe, where they send terror suspects for detention and torture. U.S. George W. Bush acknowledged the existence of secret prisons operated by the CIA during a speech on September 6, 2006, and after years of denying, Poland confirmed that they hosted one of many CIA black sites. Another known site of torture is Guantanamo Bay, located in Cuba. Although the use of “enhanced interrogation techniques” was banned in the United States over 10 years ago, reports by UN experts continue to accuse the government of torture. The U.S. Department of Defense has denied the allegations, saying there is no credible evidence to support them. In a common core report submitted to the UN Convention against Torture, the U.S. claims that “Protection against torture and cruel, inhuman or degrading punishment or treatment is provided by the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution and through U.S. federal and state laws, both criminal and civil.”

## Russian Federation

Although Part 2 of Article 21 of the Russian constitution states that “no one may be



subjected to torture, violence or any other harsh or humiliating treatment or punishment...”, Russian police has been reported to regularly practice torture during interrogation of arrested suspects. Torture and humiliation is also widespread in the Russian army, as per reported by Human Rights Watch. The abusive system, called *dedovshchina*, allowed for second-year recruits to abuse new recruits with impunity, to the point where recruits contemplated suicide. Moreover, both Amnesty International and Human Rights Watch have accused and proven numerous allegations of torture upon Chechen locals, where women were raped and tortured through electric shock. Furthermore, “disappearances” and abductions are a growing issue in the region of Chechnya, where thousands of Chechens have been “disappeared”. Amnesty International has reasonable grounds to believe that these missing people have been taken into custody by state agents, yet the authorities deny this. This places the victim outside the protection of the law, and opens the possibility of torture. Regarding Russia’s laws on torture, a 2018 State Report on the Russian Federation by the United Nations Convention against Torture, stated that Russia has yet to criminalize torture as an independent crime, and that the definition of torture does not contain all elements provided in Article 1 of the convention.

## Afghanistan

Torture in Afghanistan has been widely reported under each of the recent governments. Under Mohammad Najibullah's regime (1987-1992), beatings and electric shocks were common methods of torture and widely reported. After the civil war and the subsequent Mujahidin victory, Afghanistan fell into a state of chaos, where, according to Amnesty International, “Torture of civilians in their homes has become endemic ... In almost every jail run by the armed political groups, torture is reported to be a part of the daily routine”. Under the Taliban government, torture was equally reported. After the U.S. overthrew the Taliban however, torture was reported numerous times, both by U.S. troops and Afghan groups. More recently however, the annual Amnesty International Report states that Afghans remain at risk of torture and ill-treatment, and little progress has been done towards ending impunity in the issue.

## Iran

Iran’s constitution forbids “all forms of torture for the purpose of extracting confession”

and states that any confession obtained under distress is to be devoid. Regardless, numerous human rights groups such as Amnesty International, Human Rights Watch, and the United Nations, have accused Iran of performing torture on its political prisoners. According to Amnesty International's Annual Report, torture and ill-treatment remained common, specially during interrogations. Amnesty reports the authorities fail to exclude "confessions" obtained under torture as evidence and continued to deprive political prisoners adequate medical care.

## Syria

Similarly to the situation in Iran, prisoners in Syria have reportedly continued to be tortured, mainly in the Adra Prison. The Adra Prison houses around 7000 prisoners in an area designed for merely 2500 prisoners. Prisoners here are exposed to harsh living conditions and a historic amount of torture. Likewise, the now-destroyed Tadmor Prison was known for its harsh living conditions, its extensive use of torture, and summary executions, where people were immediately charged with a crime and killed without questioning. Amnesty International reports a systematic and widespread use of torture both in state prisons as well as government agencies. The extensive use of torture has resulted in the death of hundreds of detainees, where they are repeatedly tortured, deprived of food, water, ventilation, and proper medical care.

## Amnesty International

Amnesty International is a worldwide voluntary activist movement working for human rights, established in 1961. The alleged 7 million members and supporters in over 150 countries work towards "a world in which every person enjoys all of the human rights..". Regarding torture, Amnesty International prides itself for having exposed governments who torture, supporting torture victims, and leading international pressure which allegedly resulted in the creation of the UN Convention against Torture in 1984.

## Human Rights Watch

Much like Amnesty International, Human Rights Watch is "a nonprofit, nongovernmental human rights organization made up of roughly 400 staff members around the globe. Its staff consists of human rights professionals including country experts, lawyers, journalists, and

academics of diverse backgrounds and nationalities.” Human Rights Watch was established in 1978, and likes to be known for its “accurate fact-finding, impartial reporting, effective use of media, and targeted advocacy,...”. Regarding torture, Human Rights Watch has produced numerous reports on various countries regarding the situation on torture.

## Timeline of Events

| Date               | Description of event  |
|--------------------|---|
| December 10, 1948  | The Universal Declaration of Human Rights (UDHR) is adopted by the United Nations General Assembly at its third session as Resolution 217.                |
| 1973               | In response to international pressure, the UN General Assembly approved its first ever resolution denouncing torture.                                     |
| December 9, 1975   | The UN General Assembly adopted the convention against Torture.   |
| 1987               | The anti-torture committee of the Council of Europe, Committee for the Prevention of Torture (CPT), is founded.   |
| June 26, 1987      | The UN Convention against Torture enters into force after 20 states ratify it.  |
| February, 1989     | The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment comes into force.                                   |
| September 17, 2001 | President George Bush authorizes the detention of suspected terrorists by the CIA.  |
| 2002               | The Abu Ghraib prison, located in Iraq, officially closes.  |
| February 7, 2002   | President George Bush issues an executive order stating that members of al Qaeda, the Taliban, and associates were not entitled to the protections of the |

|                  |   |
|------------------|---|
|                  | Geneva Convention.  |
| 2003             | US-led coalition forces use the Abu Ghraib prison for detention purposes.   |
| January 28, 2003 | CIA Director, George Tenet, orders the recording of interrogations using enhanced techniques.   |
| March 1, 2003    | The believed mastermind of the September 11 attacks, Khalid Sheikh Mohammed, is captured and waterboarded an estimated 183 times.   |
| June, 2003       | Amnesty International publishes reports on the human rights abuse by the United States military in the Abu Ghraib prison in Iraq.   |
| September, 2003  | British soldiers abuse Iraqi civilians at the Bread Basket Camp. The Ministry of Defense apologizes in behalf of the Army for the ill-treatment of civilians and for the death of Baha Mousa. |
| June, 2004       | Director of the CIA, George Tenet, suspends the use of standard and enhanced interrogation techniques, however they are re-approved later in 2005.  |
| November 2, 2005 | The media reports the existence of secret CIA prisons overseas.   |
| November 8, 2007 | It is believed this was the last time the CIA used enhanced interrogation techniques on detainees.  |
| April, 2008      | The CIA ends its detention of terror suspects.  |
| 2009             | The Abu Ghraib prison reopens as the Baghdad Central Prison, after being returned to the Iraqi government.  |
| January 20, 2009 | Newly elected President Obama signs executive orders to close secret CIA prisons, close Guantanamo Bay, and bans coercive interrogations.   |

## UN involvement, Relevant Resolutions, Treaties and Events

The United Nations has actively been trying to resolve the issue of torture. The most prevalent involvement is the United Nations Convention against Torture (UNCAT). Adopted on December 10, 1984, the international human rights treaty has become the foundation for the creation of a Special Rapporteur on Torture, a Committee against Torture, and an Optional Protocol to the Convention against Torture (OPCAT). The initial Convention against Torture set forth the definition of torture and requires member states to take effective measures to prevent torture in any territory under their jurisdiction, all while prohibiting the transportation of individuals to places where they would be tortured. Whether this convention is truly effective is a matter to be discussed by the Committee against Torture and in the following section. The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, appointed through Resolution 1985/33, is an expert in charge of examining questions on torture. Furthermore, the Special Rapporteur in term may be invited or may ask for an invitation to visit a country and experience firsthand certain allegations. The Optional Protocol to the Convention against Torture, similarly to the Special Rapporteur, allows for the inspection of detention centers. Some examples of the actions by these UN subsidiaries include the all-important definition of torture, the ban on refoulement, and the ban on torture itself. The following is a list of more detailed accounts on the involvement of the UN on the issue of torture.

- United Nations Convention against Torture (UNCAT) (A/RES/39/46): The UNCAT is an international human rights treaty, whose main objective is to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. The Convention was adopted by the General Assembly on December 10, 1984, and came into force on June 26, 1987. The UNCAT not only works to prevent torture, but it also set forth the creation of the Committee against Torture.
- Committee against Torture (CAT): The Committee against Torture was established pursuant to article 17 of the Convention and began to function on 1 January 1988. It is “the body of 10 independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its

State parties.”. All state parties are required to submit regular reports to the Committee regarding the implementation of rights in the country. It meets during April/May and November each year in Geneva.

- **Optional Protocol to the Convention against Torture (OPCAT):** The OPCAT is a treaty adopted on December 18, 2002, which supplements the UNCAT. It came into force on June 22, 2006 and establishes an international inspection system for places of detention, primarily modeled after the existing system in Europe. Previous to the OPCAT, neither the CAT or the Special Rapporteur on Torture had the power to visit countries or even inspect detention centers. All they could do was discuss and analyze.
- **Special Rapporteur on Torture:** The Special Rapporteur on Torture (officially the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is an appointed expert, responsible of examining questions relevant to torture. Said individual mandate covers all countries “irrespective of whether a State has ratified the Convention against Torture.”. Other than examining questions, the Special Rapporteur is in charge of transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, undertaking fact-finding country visits, and submitting annual reports on activities to the General Assembly and the Human Rights Council.

### **Evaluation of Previous Attempts to Resolve the Issue**

The most prevalent previous attempt at resolving the issue of torture is undoubtedly the Convention against Torture. Though it's efficiency has been questioned at times, the Convention has successfully banned torture, refoulement, and cruel treatment. Furthermore, the document has become the first to provide an international definition, able to cover the wide range of definitions different countries might have in mind. Though simple concepts might not appear to be as progressive as one would expect, the settlement on these controversial ideas is a large step towards resolving the issue of torture. Previous to the Convention, every country had its own interpretation and definition of torture. The UNCAT managed to settle a common ground for all countries to follow.

A subsidiary of the UNCAT, the Committee against Torture, has functioned since 1988, however its effectiveness is questioned. Ronagh McQuigg, lecturer at the Queen's University

School of Law, examined the effectiveness of the Committee against Torture through the study of how eight Western European states responded to the comments of the committee. The 15 page article concluded that “the Committee's recommendations have had a substantial impact in four of the states surveyed, however only a limited effect in two other states, and little or no impact in the two remaining states.”. This recent study sheds light and raises the question on whether the UNCAT has indeed played a major role in solving this issue.

## Possible Solutions

Regarding possible solutions to resolving this issue, a very common and truly feasible example would be the exclusion of evidence obtained through torture. Given the fact that torture is frequently used to force an accused person into confessing, prohibiting the use of information obtained through torture would remove the incentive for officials to torture. Currently, State officials continue to torture individuals into providing them information, regardless of its inefficiency. Evidence has shown that under torture, a person will say anything merely to save themselves the pain. Consequently, there is no way for officials to determine whether the confession is accurate or not. Expanding on existent international laws which prohibit this very practice would address the problem of torture at the very center of its core, as it is one of the most frequent causes of torture worldwide. Although Article 15 of the UNCAT requires that any statement made as a result of torture is inadmissible as evidence, the establishment of a domestic law that further reinforces this idea of the exclusionary rule would prove beneficial to the solution of torture. Other possible measures include the creation of a legal requirement for parties to present video-recorded evidence of where the confession was obtained. If the former isn't satisfied, the statement would not be considered concrete evidence to defend the allegation.

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## Appendix

- I. Amnesty International Country Profiles  
<https://www.amnestyusa.org/our-work/countries/>
- II. Amnesty International Annual Report  
<https://www.amnesty.org/en/latest/research/2018/02/annual-report-201718/>
- III. Amnesty International Manual for Action, evaluates the current situation with torture  
<https://www.amnesty.org/download/Documents/100000/act400012003en.pdf>
- IV. Amnesty International Torture Overview  
<https://www.amnesty.org/en/what-we-do/torture>
- V. Torture Worldwide (Country Examples)  
<https://www.hrw.org/news/2005/04/27/torture-worldwide>
- VI. UN Convention against Torture  
<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>