Remarks - Strengthening the Prohibition against Torture The Evolution of the UN Committee against Torture

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I am very pleased to open this conference, “Strengthening the Prohibition against Torture: The Evolution of the UN Committee against Torture,” at American University Washington College of Law (WCL) for many reasons, although one reason would be enough.

The first reason is the importance of the topic. The international community wanted to achieve a world without torture and, to that end, adopted universal and regional norms as well as a specialized treaty on the topic, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1984, which in turn established the Committee against Torture, the purpose of which is to supervise compliance with the obligations set forth in the Convention. As a result, in some instances lives have been saved and torture has been prevented, and still in others, when torture or other forms of cruel, inhuman, or degrading treatment or punishment have taken place, investigations and punishment have followed.

The reality is, however, that the goals of those who imagined a world without torture and adopted this Convention have not yet been fully realized. Unfortunately, individuals around the world still believe that torture is acceptable in extreme circumstances. We still do not have consistent investigation and punishment of those who commit torture. Compensation and redress for, and to the extent possible, rehabilitation of, victims are still the exception. The Convention has provided, however, a specific normative framework that allows us to demand compliance with the treaty obligations freely acquired by states. Accordingly, violation of the Convention’s obligations undermines not only a treaty, but the very value of law as a whole. Today as we discuss how to strengthen the prohibition of torture, we need to bear in mind the dimensions of our task.

The second reason to have this conference here is to engage government representatives, civil society, academia, and members of international supervisory organs in a dialogue. The pressures of limited time and resources prevent the UN Committee against Torture from thinking strategically. In its two three-week meetings each year in Geneva, the Committee is hard-pressed to handle country reports, individual petitions, and basic administrative matters. As a result, there is hardly time for Committee members themselves to interact concerning the treaty body’s work, let alone time to receive valuable insights from academia, civil society, and governments. The value of initiatives like today’s event is demonstrated by the conference WCL organized last year with the Association for the Prevention of Torture. Moreover, that conference’s outreach was multiplied exponentially as the proceedings were published in WCL’s student-run Human Rights Brief, as will be the case again this year.

The third reason is that universities are the only places where we should be able to discuss everything, as other societal institutions such as government or private organizations perform different functions. Universities, however, can greatly enhance their outreach by joining forces with governmental and non-governmental actors on specific topics with the common goal of conducting a thorough discussion and examination. In that context, we are pleased to cosponsor today’s conference with Amnesty International, an important organization that has contributed greatly to the promotion and protection of human rights around the world. Jointly with Amnesty International, we have brought together an impressive group of speakers who I am certain will greatly contribute to the strengthening of the prohibi-
bition against torture through their analysis of the Convention and the Committee.

Let me conclude my comments by mentioning that this conference takes place as we celebrate the founders of our law school. American University Washington College of Law has a very impressive history. This law school does not have founding fathers, but founding mothers. WCL was created in 1896 when women were not allowed into legal education or the legal profession. WCL’s two founding mothers, Ellen Spencer Mussey and Emma Gillett, established this law school with the vision that it was essential to educate both men and women in the law to achieve equality in society. Their vision was grounded in the belief that law was a powerful instrument for positive change.

The history of WCL also illustrates the limits of conventional wisdom. In 1896, numerous individuals believed that, by nature, women did not have the analytical skills required to practice law. Now, thanks to the work of our founding mothers and other pioneering individuals, those types of arguments are no longer tenable, to say the least. Their struggle for human dignity taught us that we can imagine a better world and achieve it, if we act upon our imagination. The message of WCL’s founding mothers continues to be valid today and is relevant to the struggle against torture. We can imagine a world without torture and bring it about through our actions.

Let me now offer the floor to Widney Brown, Amnesty International’s Senior Director of International Law and Policy. We welcome you and all of the conference participants, including our keynote speaker, U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor, the Honorable Michael Posner, and those who have come from afar. Let me also explicitly thank Tania Baldwin-Pask, Amnesty International’s Adviser on International Organizations, International Law and Organizations Program. We started talking with Tania last year about jointly sponsoring a conference, and her efforts were essential to the organization of this initiative.

Thank you and good morning. On behalf of Amnesty International, I would like to join Dean Grossman in welcoming all of you here for this seminar on the evolution of the Committee against Torture. We are delighted to be a co-sponsor of this event with the American University Washington College of Law, particularly now that I know it had founding mothers. Let me take this opportunity to extend my thanks to Dean Grossman and to his staff, in particular Jennifer de Laurentis and Jennifer Dabson, who have worked hard to organize this seminar. I would also like to acknowledge the efforts of my own staff in this regard, particularly Tania Baldwin-Pask and Anna-Karin Holmlund. Many of you have made a long journey to participate in this seminar and share your experiences with us, and we are very grateful to you.

As many of you know, Amnesty International has a long history of campaigning against torture through its support of the work of the international mechanisms to prevent torture, including the Committee. Indeed, it was the success of campaigning by NGOs, including Amnesty International, for a binding set of obligations upon states to eradicate torture that resulted in the drafting and eventual adoption in 1984 of the United Nations Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment and Punishment. While the ban on torture built on existing prohibitions in international law, the Convention was the first treaty to establish explicit measures that states must undertake to prevent torture and to punish those who engage in torture. Today that treaty remains in the forefront of our efforts to demand that states eradicate torture. We continue to campaign vigorously for the ratification and implementation of the Convention in our bilateral dealings with governments, through our advocacy in international fora, and through national-level lobbying and public awareness-raising.

As the body established to oversee the implementation of the treaty, the ten-member Committee occupies a central place

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Opening Remarks from Dean Claudio Grossman, Moderator

Dear friends, we are going to begin the second panel on ensuring reparations for victims of torture and other ill-treatment. Each panelist will speak for approximately ten minutes, after which there will be time for questions.

Let me start by noting that the comments in this and other panels today are made à titre personnel (in a personal capacity) and, accordingly, do not necessarily represent the views of the UN Committee against Torture.

To open this panel, I would like to begin by saying that reparations cover everyone who has been subjected to torture and other violations defined under the Convention. That includes a right to reparations for, in some cases, “very bad people” such as common criminals or terrorists. As chair of the UN Committee against Torture, I oversee the meetings with States Parties, some of which tell the Committee, “You listen to terrorists and very bad people,” and on occasion that is true. I respond at those times that some individuals who claim that they have been tortured are not people who work for the local Rotary Club, go home early each night, and tuck their children in bed. Some petitioners who resort to the Committee are accused of being terrorists, but I do not know of any provision in the Convention that says, “A terrorist cannot complain if tortured.”

Exercising the right to petition to the Committee does not mean that what is being alleged is true. Let me add that the exclusion of a petition on the basis that the petitioner is a “bad person” would arguably have one upside: since the Committee has very limited resources, this would free up valuable Committee time. However, States Parties that have drafted and adopted these international instruments have been very clear, and in my view rightly so, in establishing that no one can be tortured. By choosing to act in accordance with the respect due to the human rights tradition, States Parties have reaffirmed what we have learned in this hemisphere and elsewhere: that you cannot defend the human rights of everyone unless you establish that every human being must be treated in accordance with validly accepted norms by states.

Another important consideration is consistency as a matter of legitimacy. Judicial, semi-judicial, and administrative organs must accord everyone the same treatment. Some tensions arise, however, when, in the process of interpreting a norm, supervisory organs encounter flawed or conflicting jurisprudence. These matters have been the object of extensive theoretical analysis, and at this point I would like to mention that the need for “consistency” could in some instances prevent the evolution of the law. That does not mean that consistency is unimportant, but in the complex decision-making process of collective supervisory organs, sometimes uncertainty or vague formulation may become unavoidable. This brings to mind, for example, the evolution that has taken place with regard to the treatment of extraordinary renditions or rape as a form of torture.

Relevant to our panel is that, for the Convention against Torture to be effective, full compliance with its obligations including an adequate system of follow up to the Committee’s findings is necessary. To illustrate this point, allow me to refer to the following comments attributed to a Central American dictator: “I don’t know why people complain that we don’t have free elections here. Everyone can be a candidate, everyone can campaign, everyone can vote. The only thing that I do is count the votes.” If individuals can come before the Committee, file petitions, and receive a finding in their favor, but there is no redress, we will find that the system’s legitimacy will be ultimately and rightly imperiled. As we discuss today how to ensure reparations, let us keep in mind that what is at stake is not only the right of the victims but also the value of the Convention against Torture as a whole.

To explore what we can do to ensure reparations for victims of torture and other ill-treatment, we have assembled a very unique panel. The panelists will enhance our understanding of important obligations laid down in the Convention. This includes, for example, answering the questions: Who qualifies as a victim? Is the definition limited to the person who was tortured or does it encompass his or her dependents? The right to redress applies not only in cases of torture, but also of cruel, inhuman, or degrading treatment or punishment. What tests should be used in these instances to prove that redress is warranted? What are the scope and extent of state obligations under Article 12? What is the scope of redress, compensation, and rehabilitation, and what are the respective meanings of these terms? Anyone who has worked with victims of torture knows that while there are material damages, immaterial damages, and measures of rehabilitation, of utmost importance to the victims is the certainty that their ordeal will not be inflicted on anyone else. Accordingly, for victims, the provision of symbolic measures, such as high-level government authorities asking forgiveness, the opening of human rights museums, the naming of schools and streets, etcetera, is essential. Equally, the adoption of domestic norms to prevent torture, reject impunity, and ensure full reparations — measures which have taken place...
within the Inter-American system — are important components of ensuring full redress. Is it possible to follow such an approach within the universal system? To what extent should reparations be the subject of a general comment? Some of us believe that general comments are not the solution for every matter, but taking into account the importance of reparations, a general comment would provide guidance to petitioners and governments, as well as the Committee itself, thereby increasing the legitimacy of the prohibition against torture.

Without further delay, please join me in welcoming our first panelist, Christopher Keith Hall, and welcome again to everyone here including those who came from afar.

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**Remarks of Christopher Keith Hall***

My presentation will focus on how the UN Committee against Torture can strengthen its scrutiny and recommendations concerning the implementation of Article 14 of the Convention against Torture. First, I will discuss some of the essential elements of the awkwardly worded article. Article 14 requires each State Party to ensure in its legal system, normally entailing legislation, that a victim of torture obtains “redress,” or an obligation of result. Redress is a term that today is understood to include all five forms of reparations — restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition — and an enforceable right that requires access to a court, and to fair and adequate compensation, including the means for as full a rehabilitation as possible. The ungainly phrase from 1984 would certainly include all forms of reparations today.

One component of this obligation under Article 14 is the obligation for each State Party to ensure that each victim of torture subject to its jurisdiction has the enforceable right to obtain reparations for torture committed abroad, whether the torture was committed by a national or by a foreigner. The reasons why this is so are set out in some detail in an article in the European Journal of International Law.

Article 14, potentially one of the most important articles of the Convention against Torture, was largely overlooked by states, scholars, and the Committee itself for nearly two decades. Then, the Committee at its May 2005 session confronted Canada’s defense of its court’s decision in the Bouzari case against Iran, upholding Iran’s claim of state immunity in a civil suit for reparations based on torture committed in Iran. After carefully considering the mutually exclusive and entirely speculative arguments as to why Article 14 only applied to torture committed in territories in a State Party’s jurisdiction, and not committed abroad, the Committee expressed its concern about Canada’s inability to provide compensation to victims of torture in all cases, and recommended that Canada review its position under Article 14 of the Convention to ensure provision of compensation through its civil jurisdiction to all victims of torture.

Victims and those working on their behalf welcomed this bold step forward to make Article 14 the effective tool for reparations envisaged by the drafters. They hoped this decision would mark the beginning of a consistent approach by the Committee in its examination of each State Party’s report, leading perhaps to an authoritative general comment on the scope of Article 14. Finally, victims hoped that the general comment would lay to rest once and for all doubts about the Article’s scope.

What happened and what may have been the consequences? First, the Committee did not ask other States Parties at subsequent meetings whether they provided for universal jurisdiction under Article 14, nor express concern about the failure of states to do so, nor recommend that States Parties that had failed to do so amend their legislation forthwith. Instead, over the next few sessions, the Committee made three cryptic statements, which possibly could be taken to refer to the obligation under Article 14 for the right of victims to recover reparations for torture.

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*Christopher Keith Hall is a Senior Legal Adviser for the International Justice Project at Amnesty International.*
We are very pleased to welcome the Honorable Michael Posner, Assistant Secretary of State for Democracy, Human Rights, and Labor. Michael was sworn in as the Assistant Secretary on September 23, 2009. His appointment was wonderful news for us as he brings tremendous knowledge and expertise to this position. Michael was the Executive Director and then President of Human Rights First. In those capacities, he became a very important voice for human rights, particularly with regard to promoting a rights-based approach to national security, refugee protection, and challenging discrimination and crimes against humanity. He also played a key role in proposing and advocating for the first U.S. law providing for political asylum, which was subsequently included in the Refugee Act of 1980. Later, in 1998, he headed the Human Rights First delegation to the Rome conference during which the adoption of the Statute of the International Criminal Court was achieved.

Michael’s extensive bio is impressive and listing his numerous accomplishments would consume all of our time. I know, however, that we prefer to hear directly from Michael himself. Michael, I think it is good news to see you here, and we look forward to your presentation. Please join me in welcoming the Assistant Secretary of State for Democracy, Human Rights, and Labor, Michael Posner.