



RESEARCH ARTICLE

Eroding the Absolute: Reinterpretation, Weakened Oversight, and the Normalisation of Exceptionalism in Prohibition against Torture

DOI: <https://doi.org/10.66699/rqtaav26>

Magha-A-Ngimba Charles GIMBA¹

¹ GIMBA is a Professor at the University of KIKWIT (Democratic Republic of the Congo) at the faculty of law and conducts research on Environmental Justice in Law School at Aston University (England).



ABSTRACT

The UN Convention against Torture strictly prohibits torture defined as intentionally inflicting severe physical or mental pain for information, punishment, or intimidation stating no exceptional circumstances, including war or public emergencies, justify its use. However, the post-9/11 "war on terror" has severely challenged this absolute prohibition. States, particularly the U.S., have increasingly justified coercive practices under the guise of national security, effectively creating implied exceptions to international standards. This paper analyzes how counterterrorism efforts and policies have eroded the Convention's legal protections. It examines specific instances of this shift, assesses the resulting damage to the broader international human rights framework, and highlights the global risks posed as more states adopt similar national security justifications to circumvent fundamental rights.

HOW TO CITE

Gimba, M.-A.-N. C. (2026). Eroding the absolute: Reinterpretation, weakened oversight, and the normalisation of exceptionalism in prohibition against torture. *Journal of Armed Conflict in Africa*, 1(2026). 30-37. <https://doi.org/10.66699/rqtaav26>

Open access under the Creative Commons Attribution-NonCommercial 4.0 International license (CC BY-NC 4.0). creativecommons.org/licenses/by/4.0/

Introduction

The prohibition against torture stands as one of the most universally accepted and absolute norms in international law. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), adopted in 1984 and entered into force in 1987, defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining information or a confession, punishment, intimidation, or coercion, 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." (Convention Against Torture, 1984) The Convention's Article 2(2) declares unequivocally that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." (Convention Against Torture, 1984).

This categorical language elevates the prohibition against torture to the status of *jus cogens*, or a peremptory norm of international law, from which no derogation is permitted. (Prosecutor v. Furundžija, 1998) The International Court of Justice, the European Court of Human Rights (ECHR), and numerous United Nations bodies have consistently reaffirmed that torture violates the most fundamental principles of human dignity and humanity. (Ireland v. United Kingdom, 1978; Prosecutor v. Kunarac et al., 2001) However, the beginning of the twenty-first century marked a turning point in the global human rights landscape. Following the September 11, 2001 attacks on the United States, the world entered what was described as the “war on terror,” a transnational campaign against terrorism that profoundly altered the balance between national security and individual rights. (Anwukah, 2016) The United States, leading this global effort, advanced doctrines of pre-emptive war, extraordinary rendition, and enhanced interrogation techniques, being policies that blurred the distinction between lawful interrogation and prohibited torture. (Turner, 2011)

The Bush administration’s legal strategy was particularly significant in reshaping interpretations of torture. In a series of memoranda from the U.S. Department of Justice’s Office of Legal Counsel, often referred to as the “torture memos,” lawyers argued that only pain equivalent to organ failure, death, or serious bodily harm would meet the threshold of torture. (Bybee, 2002) This narrow interpretation effectively authorized practices such as waterboarding, sleep deprivation, and stress positions, despite their clear contravention of both UNCAT and customary international law. (Luban, 2005)

In this context, the absolute prohibition against torture, once viewed as unassailable, began to erode both in practice and in discourse. States invoked national security and the need to protect citizens from terrorism as justifications for adopting methods that would otherwise be deemed unlawful. (Kelly, 2012) The emergence of the so-called ticking time bomb scenario in political and legal debate further challenged the moral and legal absoluteness of the prohibition, suggesting that torture might be permissible under extreme conditions to save lives. (Waldron, 2005).

This paper examines the extent to which the “war on terror” has undermined the absolute prohibition against torture, as enshrined in UNCAT and affirmed by international law. It contends that, while the prohibition remains intact in formal legal terms, its practical enforcement has been substantially weakened by state policies, discursive shifts, and institutional failures since September 11, 2001. (Anwukah, 2016) The analysis in this paper indicates that the erosion of this prohibition is not a legal repeal but a *de facto* degradation, resulting from reinterpretations of obligations, weakened oversight, and political normalisation of exceptionalism.

The significance of this inquiry lies in understanding how even the most entrenched human rights norms can falter when confronted with existential threats. The prohibition of torture is not merely a legal doctrine; it is a moral statement about the limits of state power and the inviolability of human dignity. As Tobias Kelly argues, the recognition of cruelty is fundamental to human rights discourse, and the failure to uphold it reveals deeper moral and political crises. (Kelly, 2012) Moreover, the erosion of the prohibition has broader implications for the credibility and universality of the international human rights regime. If a core *jus cogens* norm can be reinterpreted or ignored in the name of security, other non-derogable rights, such as the prohibition of slavery, genocide, or arbitrary killing, may also become vulnerable to exceptionalist reasoning. (Mokhtar, 2012).

The central research question guiding this analysis is to what extent has the “war on terror” eroded the absolute prohibition against torture, and what are the legal, political, and moral implications of this erosion? To answer this, the essay proceeds in four main parts. The next section reviews the existing literature, exploring how scholars, legal institutions, and NGOs have conceptualized the relationship between torture, counterterrorism, and international law. The third section undertakes a critical analysis of state practices, focusing particularly on U.S. policy, European complicity, and the normalization of exceptionalism. Finally, the conclusion synthesizes the findings, reaffirming the necessity of protecting the absolute nature of the prohibition to preserve the integrity of international human rights law.

Theoretical Framework: Tensions between the Principles of Legal Absolutism and Security Pragmatism

The literature on torture and counterterrorism reveals profound tensions between the principles of legal absolutism and security pragmatism. At the heart of this debate lies the question of whether the prohibition of torture, which is long regarded as non-derogable and absolute, can withstand the exceptional pressures generated by global terrorism. The literature addressing this issue can be broadly divided into three strands being legal and normative foundations of the prohibition; critiques of state practices during the “war on terror,” and; sociopolitical analyses of how discourses of fear and necessity have reshaped the meaning of human rights.

The Legal and Normative Foundations of the Prohibition

The starting point for most legal scholarship is the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which codifies the absolute nature of the prohibition. (Convention Against Torture, 1984) Under Article 2(2), “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” (Convention Against Torture, 1984) This clause leaves no room for derogation, reflecting the understanding that torture represents a violation of *jus cogens*, or peremptory norms of international law (Prosecutor v. Furundžija, 1998).

As Azizur Rahman Chowdhury and Jahid Hossain Bhuiyan observe in *An Introduction to International Human Rights Law*, the prohibition of torture is one of the few norms that binds all states, irrespective of consent, because it emanates from the fundamental principles of human dignity and humanity. (Chowdhury & Bhuiyan, 2010) The authors further explain that the absolute character of this right is complemented by procedural duties, namely, the obligation to criminalize torture domestically, investigate allegations, and prosecute offenders under the principle of universal

jurisdiction. (Chowdhury & Bhuiyan, 2010). However, Chowdhury and Bhuiyan also caution that the implementation of these obligations depends heavily on state cooperation and the strength of international monitoring mechanisms, both of which are susceptible to political manipulation. (Chowdhury & Bhuiyan, 2010) This weakness, as they argue, becomes particularly evident in times of perceived emergency, when states justify the suspension or reinterpretation of rights in the name of national security (Chowdhury & Bhuiyan, 2010).

Similarly, Khairil Azmin Mokhtar, in *The Right to Life and Freedom from Torture*, underscores that the right to freedom from torture is indivisible from the right to life. (Mokhtar, 2012) Once exceptions are introduced to the prohibition of torture, the entire foundation of non-derogable rights becomes unstable. (Mokhtar, 2012) Mokhtar contends that allowing derogations on the basis of necessity or national security legitimizes the use of *raison d'état*, the reason of state, as a justification for acts that international law unequivocally prohibits (Mokhtar, 2012).

Collectively, these legal scholars affirm that the prohibition of torture is not only a treaty obligation but a moral and philosophical imperative. The literature thus establishes a strong theoretical consensus: torture is absolutely prohibited under international law, and no circumstance, however exceptional, may justify its use. Yet, this consensus fractures sharply when confronted with the realities of post-9/11 counterterrorism.

The Effectiveness of International Law in the War on Terror

The second strand of literature evaluates how effectively international law has constrained states in the post-9/11 environment. Ogechi Joy Anwukah, in her article “The Effectiveness of International Law: Torture and Counterterrorism,” argues that while international law formally prohibits torture, its enforcement mechanisms have been inadequate in preventing state violations. (Anwukah, 2016) Anwukah attributes this failure to the proliferation of soft law instruments, non-binding resolutions and guidelines that lack coercive power, and the reliance on state self-reporting under treaty bodies such as the UN Committee against Torture. (Anwukah, 2016). She maintains that counterterrorism has exposed the institutional fragility of international human rights law: when states assert national security exemptions or reinterpret treaty obligations, international institutions are often powerless to compel compliance. (Anwukah, 2016) This results in what Anwukah terms a “compliance gap,” where the formal strength of international law is undermined by its practical ineffectiveness (Anwukah, 2016).

Ian David Turner, in his seminal article “Freedom from Torture in the ‘War on Terror’: Is it Absolute?” published in *Terrorism and Political Violence* (2011), explores similar themes. (Turner, 2011) Turner identifies a series of state practices that have undermined the prohibition’s practical effect, including the narrowing of torture’s legal definition, the establishment of extrajudicial detention spaces such as Guantanamo Bay, and the invocation of necessity as a justification for coercive interrogation techniques. (Turner, 2011) He argues that although the legal prohibition remains absolute, state practices have “de facto qualified” its scope, creating a disjunction between law and political reality (Turner, 2011).

David Luban, in his influential essay “Liberalism, Torture, and the Ticking Bomb,” critiques utilitarian arguments that attempt to justify torture under extreme conditions. (Luban, 2005) He contends that the hypothetical “ticking time bomb” scenario which is often used to rationalise the use of torture, creates a false moral dilemma that obscures the systematic and bureaucratic nature of real-world torture practices. (Luban, 2005) According to Luban, once exceptions are admitted in principle, they quickly become institutionalized in practice, eroding both the moral and legal foundations of the prohibition. (Luban, 2005) These authors illustrate that the problem lies not in the inadequacy of the norm itself, but in the erosion of political will and moral conviction to uphold it. The war on terror has therefore transformed the debate on torture from one of legality to one of legitimacy.

The Cultural and Political Dimensions of Torture

A third and increasingly influential strand of literature moves beyond doctrine to examine the social, cultural, and political dimensions of torture in the post-September 11, 2001 era. Tobias Kelly, in *This Side of Silence: Human Rights, Torture, and the Recognition of Cruelty*, explores how state institutions and public discourse normalize or conceal acts of cruelty. (Kelly, 2012) He argues that bureaucratic euphemisms such as “enhanced interrogation” serve to desensitize societies, reframing torture as an acceptable instrument of national security policy (Kelly, 2012).

Kelly’s work highlights how the war on terror altered the collective perception of cruelty, shifting the moral boundaries that once defined torture as universally unacceptable. (Kelly, 2012) This cultural redefinition of cruelty, he suggests, weakens the social taboos that sustain the legal prohibition, transforming what was once unthinkable into a matter of pragmatic debate. (Kelly, 2012). This perspective aligns with the empirical findings of human rights organizations. Amnesty International, in its report *USA: Guantánamo – A Decade of Damage to Human Rights* (2012), documents how indefinite detention, incommunicado confinement, and “enhanced interrogation techniques” were justified as part of counterterrorism operations. (Amnesty International, 2011) Similarly, Human Rights Watch, in *Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi’s Libya* (2012), exposes the complicity of Western and Middle Eastern governments in the extraordinary rendition of suspects to states known for systematic torture (Human Rights Watch, 2012).

The Council of Europe’s Parliamentary Assembly also investigated and confirmed the involvement of European states, such as Poland and Romania, in hosting CIA “black sites.” (Council of Europe Parliamentary Assembly, 2007) The European Court of Human Rights subsequently ruled in *El-Masri v Macedonia* (2012) that Macedonia violated Articles 3 and 5 of the European Convention on Human Rights by participating in CIA rendition operations. (*El-Masri v. the former Yugoslav Republic of Macedonia*, 2012) These findings underscore that even within well-established human rights frameworks, states have actively participated in practices that contradict the absolute prohibition of torture.

It derives from the above review that the cumulative effect of this literature is twofold. First, there exists a robust legal consensus affirming the absolute nature of the prohibition of torture, grounded in both treaty and customary international law. This consensus is supported by philosophical and moral reasoning that locates the prohibition at the heart of human dignity. Second, however, there is substantial evidence that the war on terror has eroded this prohibition in practice. Through legal reinterpretations, institutional weakness, and cultural normalization, states have introduced implied exceptions to what was once considered an inviolable rule.

As O.J. Anwukah concludes, international law has been “effective in principle but ineffective in enforcement.” (Anwukah, 2016) Ian David Turner and Khairil Azmin Mokhtar similarly warn that this divergence between law and practice undermines the credibility of international human rights law. Meanwhile, Tobias Kelly and David Luban remind us that this erosion is not only a legal issue but also a moral and cultural crisis, one that threatens the universality of human rights norms themselves. The scholarship review thus sets the theoretical framework for the critical analysis that follows, which examines the specific policies and practices that have contributed to the erosion of the prohibition against torture in the post-9/11 era.

Critical Analysis: Torture, counterterrorism and the erosion of Jus Cogens Norms

The prohibition of torture, as codified in international law, has long been regarded as absolute. Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) declares that no exceptional circumstances may be invoked as a justification for torture (Convention Against Torture, 1984).

This clause expresses one of the most unequivocal moral and legal commitments within the international human rights framework. However, the conduct of states in the global “war on terror” since 2001 has demonstrated a pattern of deviation from this norm. The erosion of the prohibition has occurred not through formal derogation, which is impermissible, but through strategic reinterpretation, policy manipulation, and the creation of legal and moral ambiguities that permit acts amounting to torture under the guise of necessity.

Legal Reinterpretation and the Manipulation of Definition

In the aftermath of the September 11 attacks, the pursuit of intelligence to prevent further terrorist incidents led to a series of policy decisions that redefined the scope of what constitutes torture. Legal memoranda and internal directives within counterterrorism frameworks sought to narrow the meaning of “severe pain or suffering,” asserting that only pain equivalent to serious physical injury or organ failure would qualify. (Anwukah, 2016) Such interpretations effectively legitimised techniques including waterboarding, stress positions, exposure to extreme temperatures, and prolonged sleep deprivation, methods long recognised as forms of torture or cruel, inhuman, and degrading treatment. This reinterpretation represents a deliberate manipulation of legal language to accommodate state security interests. It undermines the universality of UNCAT by introducing a subjective threshold for suffering that depends on political or military expediency. (Chowdhury & Bhuiyan, 2010) In doing so, states maintained a façade of compliance with international obligations while in practice circumventing them. This process reflects a broader trend in which legal systems are instrumentalised to validate conduct that international law explicitly prohibits. The redefinition of torture in this context constitutes a semantic erosion of a peremptory norm (*jus cogens*), weakening the moral authority of human rights law as a whole (Turner, 2011).

Extraordinary Rendition and the Outsourcing of Torture

The post-9/11 counterterrorism landscape was further characterised by the use of extraordinary rendition, in which suspects were transferred to foreign jurisdictions for interrogation, often to states known for employing torture. (Amnesty International, 2011) This practice enabled the outsourcing of abusive methods while maintaining plausible deniability. Secret detention sites, which operated either directly or in cooperation with intelligence agencies of other states, allowed for the circumvention of both domestic and international oversight mechanisms.

The existence of such “black sites” reflects an intentional effort to exploit jurisdictional gaps and weaken accountability. Investigations by regional bodies confirmed that several European states facilitated these operations by providing logistical support or hosting detention facilities. (Council of Europe Parliamentary Assembly, 2006) These findings highlight a disturbing pattern: the prohibition of torture, though absolute, was subordinated to strategic alliances and intelligence cooperation. The legal rationale often relied on diplomatic assurances that detainees would not be tortured, a practice criticised as ineffective and disingenuous, given the known human rights records of the receiving states (Human Rights Watch, 2012).

The principle of non-refoulement under Article 3 of UNCAT prohibits the transfer of individuals to states where they face a substantial risk of torture. (Convention Against Torture, 1984) Extraordinary rendition systematically violated this principle, demonstrating how the war on terror fostered not merely isolated breaches but a coordinated international system of evasion.

The Weakness of Enforcement and Accountability Mechanisms

The erosion of the prohibition is also linked to the institutional weakness of enforcement mechanisms within international law. The Committee against Torture, though empowered to review state compliance and issue recommendations, lacks coercive authority and depends on voluntary cooperation. (Committee Against Torture, 2008) In cases where powerful states have been implicated in torture-related practices, political influence has often prevented meaningful accountability. The International Criminal Court (ICC) also faces structural limitations, as not all major powers are parties to the Rome

Statute, and even where jurisdiction exists, political resistance hinders prosecution (Rome Statute of the International Criminal Court, 1998).

This enforcement deficit has allowed states to project commitment to human rights norms in rhetoric while engaging in violations with impunity. The absence of binding enforcement measures or effective sanctions erodes the deterrent value of international law. Moreover, when states such as the United States reinterpret international obligations or withdraw cooperation, smaller states often emulate these practices, creating a cascading effect that further weakens normative compliance (Mokhtar, 2012).

The reliance on “soft law” mechanisms, such as recommendations, resolutions, and voluntary pledges, has proven insufficient to counter the entrenched culture of impunity surrounding counterterrorism abuses. (Anwukah, 2016) This reflects a deeper tension within the international system: the prohibition of torture remains absolute in theory but conditional in enforcement.

European Contradictions and the Global Normalisation of Exceptionalism

The European human rights framework provides a revealing case study. Article 3 of the European Convention on Human Rights (ECHR) explicitly prohibits torture and has been consistently interpreted by the European Court of Human Rights as absolute. (European Convention on Human Rights, 1950) Yet, cases such as *El-Masri v Macedonia* and *Al Nashiri v Poland* revealed that several European states participated in the CIA’s rendition programme, either directly or through complicity (*El-Masri v. the former Yugoslav Republic of Macedonia*, 2012).

This contradiction between judicial doctrine and executive conduct exposes the fragility of legal commitments in the face of political realities. While courts have reaffirmed the absolute nature of the prohibition, state behaviour demonstrates a willingness to compromise principle for strategic necessity. (*Ireland v. United Kingdom*, 1978) Such duplicity not only damages the credibility of European states but also undermines the authority of international human rights law globally.

The erosion is not confined to Europe. In regions where human rights institutions are less robust, the invocation of national security has become an increasingly common justification for the use of coercive interrogation and indefinite detention. (Kelly, 2012) The global diffusion of such practices indicates that the “war on terror” has created a transnational precedent for exceptionalism, whereby adherence to fundamental rights becomes negotiable under perceived existential threats.

The Moral Consequences and Transformation of Public Discourse

The most profound erosion of the prohibition lies not in law but in the shifting moral and social perceptions surrounding torture. The emergence of the “ticking time bomb” justification reframed torture as a pragmatic tool rather than a moral transgression. (Luban, 2005) Public opinion surveys during the height of the war on terror revealed growing acceptance of coercive interrogation under exceptional circumstances. The moral boundary that once rendered torture unthinkable was replaced by a utilitarian calculus measuring potential benefits against ethical costs. This transformation of discourse carries grave implications. Once torture is discussed as a matter of efficiency or necessity, the concept of absolute prohibition loses coherence. The universality of human dignity being the foundation upon which international human rights law rests, becomes conditional. (Mokhtar, 2012) By permitting even hypothetical exceptions, societies risk legitimising cruelty as an instrument of policy. Moreover, the moral corrosion extends beyond individual acts to the institutional level. When governments employ euphemistic language such as “enhanced interrogation,” they signal a collective willingness to sanitise brutality. This linguistic and ethical manipulation contributes to a process of normalisation in which violations are reinterpreted as legitimate exercises of state power.

The Systemic Nature of Erosion

The erosion of the prohibition against torture is not the result of isolated misconduct but a systemic phenomenon encompassing semantic, structural, institutional, and moral dimensions. Semantically, the manipulation of legal definitions has reconstituted the boundaries of permissible conduct. Structurally, secret detention and rendition networks have institutionalised impunity. Institutionally, the weakness of enforcement mechanisms has enabled powerful states to act without consequence. Morally, the acceptance of torture as a necessary evil has eroded the universal recognition of human dignity (Turner, 2011).

This systemic erosion poses a fundamental challenge to the integrity of international law. If peremptory norms such as the prohibition of torture can be compromised in the name of security, then the concept of non-derogable rights itself is jeopardised. The war on terror has revealed that even the most entrenched principles of human rights are vulnerable to reinterpretation when confronted with political expediency. Reasserting the absolute nature of the prohibition thus requires not only legal reaffirmation but a moral and political recommitment to the universality of human rights.

The absolute prohibition of torture is a cornerstone of the international human rights regime and one of the few principles recognised as *jus cogens*. It embodies the notion that certain acts are so fundamentally contrary to human dignity that they can never be justified under any circumstance. Yet, as demonstrated throughout this analysis, the period following the onset of the global “war on terror” exposed serious fractures in the normative, institutional, and moral fabric supporting this prohibition. Despite its theoretical absoluteness, state conduct since 2001 has illustrated how easily moral conviction can be diluted and legal principles reinterpreted in the pursuit of national security.

Reaffirming the Absolute Nature of the Prohibition

The first and most crucial conclusion is that the prohibition of torture must remain absolute. Article 2(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) explicitly precludes any justification based on emergency, war, or public necessity. (Convention Against Torture, 1984) However, the post-9/11

reinterpretations of torture definitions demonstrate a gradual shift from moral clarity to pragmatic ambiguity. The legal memoranda that sought to redefine “severe pain or suffering” illustrate how political expedience can hollow out a peremptory norm without formally derogating from it.

Reaffirming this absolute nature requires more than rhetorical commitment. States must align domestic legislation and operational practices with international standards. This entails ensuring that legal definitions of torture within national statutes mirror those found in UNCAT Article 1, without qualification or narrowing. (Chowdhury & Bhuiyan, 2010) Moreover, any invocation of necessity or proportionality in the context of interrogation must be categorically excluded. Legal clarity is the first defence against interpretive manipulation. (Anwukah, 2016)

Strengthening Enforcement and Accountability Mechanisms

The second conclusion concerns enforcement. The persistence of torture-related practices within counterterrorism efforts reflects not merely moral failure but institutional weakness. The Committee against Torture and the Human Rights Council possess valuable monitoring functions but lack the coercive authority to compel compliance. (Committee Against Torture, 2008) Without binding mechanisms, the prohibition depends on voluntary adherence, which powerful states can easily evade.

A key recommendation is to strengthen both international and domestic accountability frameworks. States parties to UNCAT should recognise the competence of the Committee against Torture under Articles 21 and 22, allowing for inter-state and individual complaints. (Convention Against Torture, 1984) Universal jurisdiction provisions should be applied consistently, enabling national courts to prosecute alleged torturers regardless of nationality or location. The successful prosecutions of former officials in some European jurisdictions demonstrate that national courts can act as effective substitutes for international mechanisms when political will exists.

At the international level, the International Criminal Court (ICC) could expand its jurisprudence on torture as a crime against humanity under Article 7(1)(f) of the Rome Statute. (Rome Statute of the International Criminal Court, 1998). However, this requires broader ratification and, critically, depoliticization of prosecutorial decisions. The legitimacy of the prohibition ultimately depends on consistent enforcement; impunity undermines both the moral and legal fabric of the international order.

Transparency and the Dismantling of Secrecy

The third conclusion concerns the culture of secrecy surrounding counterterrorism operations. Extraordinary rendition, secret detention, and classified interrogation programmes created spaces where law was suspended and accountability obstructed. (Council of Europe Parliamentary Assembly, 2006) The very secrecy that shielded these practices also weakened public trust in institutions and eroded moral authority. Transparency is therefore essential for restoring legitimacy.

Governments should adopt binding transparency standards, including public reporting on interrogation practices, access for independent monitors, and disclosure of agreements involving intelligence cooperation with other states. (Amnesty International, 2011) The European Court of Human Rights’ decisions in *El-Masri* and *Al Nashiri* demonstrated that judicial oversight can pierce the veil of secrecy and reaffirm the rule of law even in sensitive security contexts. Such oversight should not be perceived as a threat to national security but as an essential safeguard of legality and democratic integrity.

Cultural and Ethical Reorientation

Legal reform alone cannot restore the integrity of the torture prohibition. The war on terror revealed the ease with which fear and utilitarian reasoning can normalise cruelty. The “ticking time bomb” argument reframed torture as a moral dilemma rather than a categorical wrong, transforming public perception and weakening societal resistance. (Luban, 2005) To counter this, states and civil society must invest in education, public awareness, and professional ethics training that reaffirm human dignity as the foundation of law.

Security agencies should incorporate human rights principles into operational training, emphasising that compliance with international norms is not a constraint but a reflection of democratic values. The restoration of moral clarity requires reclaiming the language of human rights from the language of necessity. When torture is discussed in the context of efficiency or intelligence value, it becomes detached from its ethical roots; the discourse must instead centre on the inviolability of the human person.

Rebuilding International Solidarity

The erosion of the torture prohibition was facilitated by the complicity of multiple states in rendition and detention networks. This transnational cooperation in evasion highlights the need for equally strong international solidarity in prevention. Mechanisms such as the Optional Protocol to the Convention against Torture (OPCAT), which establishes national preventive mechanisms for independent inspection of detention sites, should be universally ratified and robustly implemented (Optional Protocol to the Convention Against Torture, 2002).

Regional human rights systems also play a vital role. The African Commission on Human and Peoples’ Rights and the Inter-American Court of Human Rights have issued landmark decisions reaffirming the absolute nature of the prohibition. Strengthening these regional mechanisms enhances resilience against global backsliding. International cooperation should be directed toward information sharing, capacity building, and mutual legal assistance in investigations of torture-related crimes. Such collective reinforcement is necessary to prevent a return to the exceptionalism that characterised the early years of the war on terror. No state, however powerful, should be permitted to unilaterally redefine or suspend a peremptory norm under the pretext of security.

Reasserting the Centrality of Human Dignity

Ultimately, the prohibition of torture is not merely a rule of law but a statement about the nature of humanity and the limits of power. The degradation inherent in torture violates not only the victim's body but the moral legitimacy of the state itself. When governments inflict or permit torture, they abandon the claim to moral superiority that underpins their authority to govern. The commitment to human dignity, enshrined in both UNCAT and regional conventions, must therefore guide not only the interpretation of legal norms but the ethos of governance.

To rebuild this moral foundation, human rights must be re-centred as universal, indivisible, and non-negotiable. International law derives its strength from shared conviction; when that conviction weakens, law becomes a mere instrument of politics. The global community must therefore reaffirm torture's absolute prohibition not as an abstract legal norm but as a collective moral imperative.

Conclusion

The erosion of the prohibition of torture in the war on terror illustrates the fragility of international law when confronted with fear and political expedience. It reveals that the protection of human rights depends not solely on legal codification but on a continuous moral and institutional commitment to their defence. The absolute prohibition of torture must be reaffirmed as a defining boundary between civilisation and barbarism.

To preserve the universality of human rights, the global community must resist the temptation to dilute principles in moments of crisis. The challenge is not merely to punish past violations but to ensure that the conditions that allowed them to occur are never permitted to take root again. Only through a reinvigorated alliance of law, morality, and accountability can the world restore faith in the foundational promise that every human being, even the accused and the despised, is entitled to freedom from torture.

References

- Amnesty International. (2011, December 16). USA: Guantánamo: A decade of damage to human rights and 10 anti-human rights messages Guantánamo still sends (Index No. AMR 51/103/2011). <https://www.amnesty.org/en/documents/AMR51/103/2011/en/>
- Anwukah, O. J. (2016). The effectiveness of international law: Torture and counterterrorism. *Annual Survey of International & Comparative Law*, 21(1), Article 4. <https://digitalcommons.law.ggu.edu/annlsurvey/vol21/iss1/4/>
- Bybee, J. S. (2002, August 1). Memorandum for Alberto R. Gonzales, Counsel to the President: Standards of conduct for interrogation under 18 U.S.C. §§ 2340–2340A. U.S. Department of Justice, Office of Legal Counsel. <https://www.justice.gov/olc/olc-foia-electronic-reading-room>
- Chowdhury, A. R., & Bhuiyan, J. H. (Eds.). (2010). *An introduction to international human rights law*. Martinus Nijhoff Publishers.
- Committee Against Torture. (2008). General comment No. 2: Implementation of Article 2 by States Parties (CAT/C/GC/2). United Nations. <https://www.refworld.org/legal/general/cat/2008/en/53514>
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85 (1984). <https://treaties.un.org/>
- Council of Europe Parliamentary Assembly. (2006, June 12). Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states (Doc. 10957). <https://pace.coe.int/en/files/11527/html>
- Council of Europe Parliamentary Assembly. (2007, June 11). Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report (Doc. 11302). <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=11555&lang=en>
- El-Masri v. the former Yugoslav Republic of Macedonia [GC], App. No. 39630/09 (European Court of Human Rights Dec. 13, 2012).
- European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221 (1950). https://www.echr.coe.int/documents/d/echr/convention_eng
- Human Rights Watch. (2012, September 5). Delivered into enemy hands: US-led abuse and rendition of opponents to Gaddafi's Libya. <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>
- Ireland v. United Kingdom, App. No. 5310/71, 2 E.H.R.R. 25 (European Court of Human Rights Jan. 18, 1978). <https://www.bailii.org/eu/cases/ECHR/1978/1.html>
- Kelly, T. (2012). *This side of silence: Human rights, torture, and the recognition of cruelty*. University of Pennsylvania Press. <https://doi.org/10.2307/j.ctt3fj3sz>
- Luban, D. (2005). Liberalism, torture, and the ticking bomb. *Virginia Law Review*, 91(6), 1425–1461. <https://scholarship.law.georgetown.edu/facpub/148/>
- Mokhtar, K. A. (2012). The right to life and freedom from torture. In A. G. Hamid @ Khin Maung Sein (Ed.), *Human rights law: International, Malaysian and Islamic perspectives* (pp. 57–86). Sweet & Maxwell Asia.
- Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2375 U.N.T.S. 237 (2002). <https://treaties.un.org/>
- Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment (International Criminal Tribunal for the former Yugoslavia Dec. 10, 1998). <https://documents.law.yale.edu/prosecutor-v-furundzija>

- Prosecutor v. Kunarac, Kovač & Vuković, Case Nos. IT-96-23-T & IT-96-23/1-T, Judgment (International Criminal Tribunal for the former Yugoslavia Feb. 22, 2001). <https://www.refworld.org/jurisprudence/caselaw/icty/2001/18198>
- Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3 (1998).
<https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774>
- Turner, I. (2011). Freedom from torture in the 'war on terror': Is it absolute? *Terrorism and Political Violence*, 23(3), 419–437.
<https://doi.org/10.1080/09546553.2010.549027>
- Waldron, J. (2005). Torture and positive law: Jurisprudence for the White House. *Columbia Law Review*, 105(6), 1681–1750.