INTERNATIONAL PRECEDENTS AND COMPARATIVE LAW ON JUDICIAL TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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Prepared as a doctrinal review for federal and state judges, prosecutors, civil rights litigators, judicial conduct authorities, treaty-body advocates, and structural-reform bodies.

Institutional position. *The IAJ writes as a human-rights institution applying the Constitution of the United States in harmony with the Universal Declaration of Human Rights (UDHR), UNCAT, the ICCPR, the CRPD, jus cogens, the Istanbul Protocol, and comparative human-rights law to judicial conduct in the United States. On the source status of the listed instruments: UNCAT and the ICCPR are ratified treaty obligations of the United States; the UDHR articulates the foundational dignity baseline that the IAJ treats as binding on the IAJ's analysis; jus cogens binds the United States regardless of treaty ratification; and the Istanbul Protocol supplies the methodological standard for forensic documentation. The CRPD was signed by the United States on July 30, 2009, but was not ratified — the Senate voted 61–38 in favor of ratification on December 4, 2012, falling five votes short of the two-thirds supermajority. The CRPD is therefore not currently binding domestic positive law, but the United States is bound on the international plane by VCLT Article 18 to refrain from acts defeating the treaty's object and purpose, the treaty has not been formally disavowed and continues to appear in Senate treaty records, and the IAJ treats the CRPD as authoritative interpretive guidance on the substantive content of disability-related obligations and as a CRPD-calibrated standard for U.S. Equal Protection in disability contexts, per the dual-track analysis developed in the companion IAJ thesis Harmonizing the Architecture of Disability Rights (IAJ-STD-20260509-001-PUB, May 2026). Some IAJ positions require institutional uptake by U.S. courts, treaty bodies, judicial-conduct authorities, prosecutors, or legislators in order to produce particular institutional remedies; the institutional-uptake requirement is a feature of the U.S. enforcement architecture, not a condition on the IAJ's interpretation of the human-rights baseline. Positions that await institutional uptake for remedial purposes are not tentative on the international human-rights plane and are not tentative as an interpretive matter. The IAJ distinguishes source status throughout — what is settled domestic law, what is treaty obligation, what is jus cogens, what is the IAJ's structural argument — so that readers can plead accurately in U.S. courts while preserving the independent human-rights record of U.S. non-compliance. The IAJ does not treat U.S. domestic doctrine as the measure of the human-rights baseline. Where domestic doctrine and the human-rights baseline diverge, the IAJ identifies the divergence and documents it as part of the United States' compliance record.*

This Review provides general legal analysis for educational and reference purposes. It is not legal advice, does not create an attorney-client relationship, and is not a substitute for advice from licensed counsel familiar with the reader's specific facts and jurisdiction. This disclaimer addresses the reader's individual reliance posture; it does not qualify the IAJ's institutional interpretation of the human-rights baseline, the Constitution, applicable treaties, or the United States' equivalence failure as set out in this Review.

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Executive Summary

This Review of Law synthesizes the international precedents and comparative law that govern judicial torture and cruel, inhuman or degrading treatment or punishment (CIDT) and applies them to the contemporary problem of *court-process-linked* torture and CIDT — conduct in which the judicial process itself is the instrument of severe harm. It supersedes the prior edition of International Precedents and Comparative Law on Judicial Torture and CIDT (IAJ-LRV-20250903-002-PUB v1.0, September 2025).

The Review takes as its central premise three established propositions of international law. First, the prohibition on torture is a peremptory norm of customary international law (*jus cogens*) generating obligations owed *erga omnes*, confirmed by the International Court of Justice in *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 2012 I.C.J. Rep. 422. Second, every parallel instrument of international human-rights law — the ICCPR, the ECHR, the American Convention, the African Charter, the CRPD, and the Rome Statute — prohibits torture and CIDT absolutely, with no carve-out comparable to UNCAT Article 1's "lawful sanctions" clause. Third, the UN Committee Against Torture has authoritatively held in General Comment No. 2 (CAT/C/GC/2, 2008) that the Convention's obligations extend to *all branches of government*, including the judiciary, in *any territory under the State's jurisdiction*, without any custodial or institutional setting qualifier.

For the purposes of this Review, "judicial torture and CIDT" covers (i) judicially ordered corporal punishment; (ii) torture and CIDT inflicted, instigated, consented to, or acquiesced in by judicial officers in connection with judicial proceedings; (iii) State acquiescence in private violence connected to proceedings; and (iv) the *court-process-as-instrument* category — adjudicative conduct that satisfies all five Article 1 elements through the deliberate continuation of harmful conditions on a litigant after knowledge of severe foreseeable harm has been established. IAJ's analytical position, developed in *UNCAT and Jus Cogens: A Contemporary Perspective* (IAJ-STD-20260505-001-PUB), is that judicial acquiescence in torture or CIDT can satisfy the public-official involvement requirement under Article 1 where the court has notice, authority to act, and fails to prevent, investigate, exclude, or remedy the abuse; whether the resulting violation constitutes Article 1 torture or Article 16 CIDT depends on severity, prohibited purpose, knowledge, causation, and the nature of the court's control over the person or proceeding. Where the five Article 1 elements are documented, IAJ argues that on the international plane no domestic immunity doctrine can lawfully shield the conduct from accountability — a position developed by IAJ as the analytical extension of VCLT Article 53 and the *Pinochet (No. 3)* line.

The Review collects the controlling international authorities (UNCAT, CAT General Comments No. 2 and No. 3, the *Belgium v. Senegal* and *Barcelona Traction* lines from the ICJ, the *Pinochet (No. 3)* line from the UK House of Lords, the *Kunarac* line from the ICTY, and the *Velásquez Rodríguez* line from the Inter-American Court), the principal comparative regional jurisprudence (ECtHR Article 3 cases from *Tyrer* through *Selmouni*, *Aydın*, *Jalloh*, and *El-Masri*; IACtHR positive-obligation cases from *Velásquez Rodríguez* through *Cotton Field*; African Commission practice under Article 5 of the Charter), the principal Special Rapporteur authorities (the Méndez 2013 report on disability discrimination and CIDT; the Satterthwaite 2023 report on judicial independence; the Edwards 2023 work on indefinite sentences), and the IAJ analytical frameworks (the Six-Move Framework, the Two-Plane Framework, the Five-Level Gravity Scale, and the lawful-sanctions carve-out three-part test).

The Review integrates these authorities with the IAJ's analytical architecture and applies them to the contemporary problem of court-process-linked torture and CIDT.

The controlling methodological rule throughout the Review is the IAJ's Two-Plane Framework. On Plane A (the international human-rights plane), the question is whether the conduct and the United States' remedial architecture comply with the Universal Declaration of Human Rights (UDHR), UNCAT, jus cogens, the Istanbul Protocol, the ICCPR, the CRPD, and the duties to prevent, investigate, exclude, redress, and reform. On Plane B (the U.S. domestic remedial plane), the question is how the claim must be pleaded or preserved under the Constitution, ADA Title II, § 504, § 1983, *Ex parte Young*, *Bivens*/*Carlson* analogues where doctrinally available, federal criminal-referral statutes, and other doctrinal pathways currently recognized by U.S. courts. **The two planes are not alternatives; they are concurrent.** A Plane B doctrinal barrier — immunity, non-self-execution, abstention, finality, procedural default, the post-*Egbert* narrowing of *Bivens* — is not a Plane A defense. Where domestic doctrine fails to provide equivalent prevention, investigation, remedy, or accountability, the failure is itself part of the United States' compliance record and is documentable as equivalence failure under UNCAT Article 16 and the implementing Reservations, Understandings, and Declarations. The IAJ's foundational commitment is unconditional: every authority exercising public power within the United States — every Article III judge, every Article I judge, every state judicial officer, every administrative adjudicator, every prosecutor, and every official actor of the United States — is subject to the absolute prohibition of torture and cruel, inhuman, or degrading treatment under UNCAT, jus cogens, the UDHR, the ICCPR, and the CRPD. That commitment is not contingent on which enforcement mechanisms the United States has elected to accept. The documentary record so generated is operative for CAT Committee Article 20 inquiry-procedure purposes, because Article 20 is available against the United States since the U.S. did not opt out at ratification; for periodic-review submissions under UNCAT Articles 19 and 24; for Special Procedures communications, including the Special Rapporteur on Torture; for Universal Periodic Review; and for the IAJ's structural position that the United States should accept UNCAT Article 22 individual communications.

UNCAT Article 22 and the U.S. non-acceptance: the IAJ's structural argument. Article 22 is not currently available as a direct individual-communications procedure against the United States because the United States has made no Article 22 declaration. Article 22 is, on its face, an optional procedure within UNCAT; the IAJ does not claim that non-acceptance is, taken alone, a per se treaty breach. The IAJ identifies the United States' selective acceptance — accepting the substantive obligations of the Convention while withholding consent to the mechanism that would expose those obligations to direct international scrutiny by the persons protected — as inconsistent with the object and purpose of UNCAT under a good-faith reading of the Convention pursuant to VCLT Article 31.

VCLT Article 31(1) requires a treaty to be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." UNCAT's object and purpose, stated in its preamble, is to make more effective the struggle against torture. The IAJ position that a State Party undermines that object and purpose by accepting the substantive obligations while declining the mechanism that operationalizes individual scrutiny is a legitimate VCLT Article 31 argument — not a settled holding, but a defensible interpretive claim grounded in a recognized canon of treaty interpretation. It is the same kind of argument the CAT Committee itself has advanced, including in General Comment No. 3, paragraph 28, where the Committee "strongly encourages States parties to recognise the Committee's competence to consider individual

complaints under article 22." The IAJ's position is that U.S. acceptance of Article 22 is a non-negotiable element of any credible U.S. compliance posture, and that the absence of that acceptance is documented throughout this Review as part of the United States' equivalence-failure record.

Article 22 jurisprudence as the operative interpretive corpus. Article 22 jurisprudence developed by the CAT Committee in cases against other States Parties is authoritative treaty-body interpretation of the substantive content of UNCAT Articles 1, 2, 3, 13, 14, and 16. The United States is bound by those substantive articles as authoritatively interpreted by the body the Convention itself establishes for that purpose under UNCAT Article 17. The IAJ does not accept that a State Party may bind itself to the Convention's substantive obligations while electing to exclude the interpretive jurisprudence that gives those obligations operational content. The U.S. is bound by UNCAT. UNCAT is what the CAT Committee has interpreted it to be. The United States cannot accept the words of UNCAT and reject the meaning the Committee has given them. That is the IAJ position, and it is legally defensible — not merely credible advocacy but a sustainable reading of how treaty interpretation works when the treaty itself establishes its own interpretive body.

Two distinct propositions, only one of which the IAJ asserts. Adversarial responses to this position frequently conflate two distinct claims, and the IAJ's position depends on keeping them separate. **Claim A:** Article 22 decisions in cases against other States Parties are themselves binding judgments against the United States. This claim would be wrong, and the IAJ does *not* make it. A decision of the CAT Committee in a communication against another State Party is not a judgment against the United States; the U.S. is not a respondent and is not bound by the decision as such. **Claim B:** The United States is bound by the substantive articles of UNCAT as those articles have been authoritatively interpreted by the treaty's designated interpretive body. This is the IAJ's claim. It is correct. The U.S. ratified the substantive provisions of UNCAT. UNCAT Article 17 establishes the CAT Committee. The Committee's Article 22 jurisprudence, General Comments, and Concluding Observations are how the body the Convention designates to interpret the Convention performs that function. A State Party that accepts the Convention's substantive provisions accepts those provisions as the designated interpretive body interprets them. To hold otherwise would let any State Party redefine its substantive obligations unilaterally by selectively rejecting the interpretive output of the body the treaty establishes — a result that the Convention's structure does not permit and that VCLT Article 31's good-faith requirement forecloses.

Plane discipline on the "bound as interpreted" claim. On Plane B, U.S. courts may characterize CAT Committee views, General Comments, and Article 22 jurisprudence as non-self-executing or non-binding in domestic litigation; on Plane A, the IAJ treats them as the authoritative treaty-body interpretation of the substantive obligations the United States accepted. Domestic non-recognition of the Committee's interpretive authority is therefore not a defense to compliance; it is part of the equivalence-failure record.

Article 22 jurisprudence is invoked throughout this Review as the operative treaty-body interpretive corpus governing the substantive content of UNCAT, and is invoked in U.S. courts on the *Charming Betsy* canon directing interpretation of domestic law consistent with the United States' international obligations.

Gateway Definition

This Review does not equate legal error, adverse rulings, ordinary delay, or routine procedural enforcement with torture or CIDT. "Judicial torture" refers to the direct use, knowing maintenance, or official acquiescence of judicial power, procedure, custody, coercion, sanctions, evidence, or remedial denial in a manner that intentionally or foreseeably inflicts severe physical or mental suffering for a prohibited purpose, including punishment, intimidation, coercion, discrimination, or suppression of access to justice. Where the Article 1 UNCAT elements of torture are not fully established, the same conduct may still constitute Article 16 CIDT, denial of due process, disability discrimination, denial of access to courts, or failure of effective remedy.

The relevant inquiry turns on six elements: notice (actual or constructive knowledge of the harm); control (legal authority to prevent, stay, accommodate, or remedy); compulsion (procedural pressure to participate despite known risk); severity (clinically, medically, psychologically, or otherwise record-documented physical or mental suffering, degradation, or dignity harm of constitutional or international-law magnitude); prohibited purpose (UNCAT-enumerated purpose or constitutional purpose-inference under the *Chavez*–Kennedy concurrence); and remedy failure (illusory or structurally conflicted domestic remedies). These six elements operationalize the doctrinal architecture set out throughout this Review with full source-status discipline, so that each element is defended on the authorities and inferences that support it.

The conceptual category covers four distinct conduct types: (i) **direct judicial imposition** of prohibited treatment, such as judicially ordered corporal punishment (*Tyrer v. UK*); (ii) **court-process-linked torture or CIDT**, including coercive proceedings, torture-tainted evidence, or medically dangerous compulsion of participation; (iii) **judicial acquiescence in private or official abuse**, where the court has notice, authority to act, and fails to prevent, investigate, exclude, or remedy the harm (CAT GC No. 2, ¶ 18; ECtHR positive-obligation line; IACtHR *Velásquez Rodríguez* line); and (iv) **court-process-as-instrument** — adjudicative conduct that satisfies all five UNCAT Article 1 elements through deliberate continuation of harmful conditions on a litigant after knowledge of severe foreseeable harm.

Four-Category Doctrinal Taxonomy

This Review distinguishes four legally distinct categories of judicial conduct. The taxonomy operates as a disciplining frame: it prevents the conflation of legal error with constitutional violation, and prevents the conflation of CIDT with the more demanding Article 1 torture threshold.

Category	Description	Legal characterization
Judicial error	Ordinary mistake, incorrect ruling, bad reasoning, legal disagreement	Not torture; not CIDT. Remediable through appellate review.
Judicial abuse	Arbitrary, hostile, retaliatory, or coercive use of procedure that does not yet reach CIDT severity	May implicate due process, judicial ethics, ADA Title II, or recusal doctrine.

Category	Description	Legal characterization
Judicial CIDT	Court knowingly imposes degrading, coercive, medically harmful, or access-denying conditions on a litigant; severity meets the Article 16 threshold; purpose element not fully established	UNCAT Article 16; ECHR Art. 3 inhuman/degrading; ACHR Art. 5(2); African Charter Art. 5; CRPD Art. 15.
Judicial torture	Severe physical or mental suffering intentionally inflicted or knowingly maintained by judicial actors for an enumerated prohibited purpose	UNCAT Article 1; *jus cogens*; ECHR Art. 3 torture characterization; ICTY *Furundžija* line; ICJ *Belgium v. Senegal* line. Strongest legal characterization; requires disciplined proof on every element.

The categories are progressive: each higher category builds on the lower categories and adds additional required elements. The framework's analytical discipline requires distinguishing them at every stage of proof: a Category 2 case should not be litigated as a Category 4 case, and a Category 4 case should not be undercharged as Category 2 or 3 conduct.

1. Introduction

1.1 Purpose and scope

The absolute prohibition of torture is one of the most fundamental principles of international human-rights law. The prohibition is non-derogable, peremptory, and owed *erga omnes* — that is, by every State to every other State and to all persons. Yet judicial systems have historically been understood as the locus where the prohibition is *enforced* rather than as a locus where the prohibition is *violated*. That conventional framing has been substantially refined over the last four decades by treaty bodies, regional courts, international criminal tribunals, and Special Rapporteurs. The result is a body of international precedent and comparative law that supports a consistent position derived from multiple systems: judicial officers act under color of authority no less than custodial officers do, and the Convention Against Torture's prohibitions reach their official conduct without restriction to any institutional setting.

This Review synthesizes that body of precedent and comparative law. It is organized around six bodies of authority — the UN Committee Against Torture (Part 4), the European Court of Human Rights (Part 2), the International Criminal Court and the international criminal tribunals (Part 3), the Inter-American and African regional systems (Part 5), the International Court of Justice (Part 7), and comparative domestic

implementation in the United Kingdom, Canada, Germany, the United States, and selected common-law African jurisdictions (Part 6). It then synthesizes those bodies into a unified analytical framework in Parts 8–10 and identifies the principal implementation gaps and accountability deficits in Parts 11–12.

1.2 Methodology

The Review draws on primary legal sources (treaty texts, judgments of international and regional courts, treaty body decisions and General Comments, Special Rapporteur reports, and authoritative scholarly commentary) and comparative studies of domestic implementation. Where a proposition rests on inference rather than direct holding, the inference is identified as such. Where IAJ develops an analytical position that extends the cited authorities — for example, the proposition that VCLT Article 53 voids domestic immunity doctrines on the international plane to the extent they insulate documented torture — the position is identified as developed by IAJ and grounded in the authorities cited.

The Review is a companion document to three other IAJ publications. The companion *Quick Reference* (IAJ-QRF-20260511-001-PUB) provides a one-document summary of the controlling authorities and the IAJ framework for use by judges, prosecutors, and litigators. The companion *Judicial Torture Framework* (IAJ-LRV-20260511-003-PUB) is the U.S. domestic constitutional counterpart to this international-precedents Review. The companion *Guide to Domestic Criminal Enforcement* (IAJ-GDE-20260510-001-PUB) provides the operational framework for prosecutorial action under domestic statutes including 18 U.S.C. §§ 241–242 and 18 U.S.C. §§ 2340–2340A.

Dual use of this Review. This Review is not limited to litigation use. In U.S. courts, it helps counsel identify domestic pathways compatible with current doctrine: due process, ADA Title II, § 504, access-to-courts doctrine, evidentiary exclusion, recusal, mandamus, prospective relief, § 1983, *Ex parte Young*, federal criminal referral, and other available remedies. In international settings, it documents whether those domestic pathways satisfy or fail the United States' treaty obligations on a comparative-law evidentiary basis. If domestic doctrines block relief, the block should be preserved as exhaustion evidence and as proof of non-equivalence under UNCAT Article 16 and the implementing Reservations, Understandings, and Declarations — not treated as negating the underlying torture or CIDT analysis. Readers should expect to use this Review on both planes simultaneously.

Corrective Constitutional Interpretation

The IAJ's controlling interpretive position is that the Constitution of the United States must be interpreted and applied in harmony with the human dignity baseline reflected in the Universal Declaration of Human Rights (UDHR), UNCAT, the ICCPR, the CRPD, jus cogens, and the Istanbul Protocol. This is not a future-state aspiration; it is the IAJ's present-tense reading of what the Constitution requires when properly interpreted. The interpretation U.S. courts have given the constitutional text in modern doctrine is, in numerous specified respects identified throughout this Review's comparative analysis, not consistent with the human-rights baseline that the same constitutional text supports.

Domestic doctrines of immunity, finality, abstention, non-self-execution, jurisdictional limitation, and procedural default are domestic-implementation mechanisms. They affect how a claim is pleaded or preserved on Plane B (the U.S. domestic remedial plane). They cannot define away the underlying

human-rights violation on Plane A (the international human-rights plane). Where current domestic doctrine fails to provide effective prevention, investigation, exclusion of torture-tainted evidence, remedy, or accountability for documented torture or CIDT, the IAJ identifies that failure as a matter for documentation, treaty-body submission, Special Procedures engagement, legislative reform, judicial-conduct reform, and institutional accountability.

Dual-mode reading of this Review. This Review is to be read in two modes simultaneously. The first mode is assistive: it equips victims, their counsel, prosecutors, judicial-conduct authorities, treaty-body advocates, and reform bodies to use available U.S. domestic mechanisms and comparative-law authorities with full doctrinal precision. The second mode is authoritative: it states how U.S. domestic mechanisms should operate when the Constitution is interpreted in harmony with the comparative human-rights baseline this Review documents. Where the two modes produce different practical results, the divergence is itself the IAJ's subject matter and is recorded as the operative U.S. compliance failure. The IAJ does not present the assistive mode as a substitute for the authoritative mode; both must be read.

2. European Court of Human Rights: Article 3 ECHR in Judicial Contexts

2.1 Foundational principles

The European Court of Human Rights has developed the most extensive jurisprudence on the prohibition of torture and CIDT of any regional court. Article 3 of the European Convention on Human Rights (ECHR) reads: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." The Court has consistently held that Article 3 is absolute and non-derogable, allowing no exception even in time of war or other public emergency (Article 15(2) ECHR confirms the prohibition is non-derogable). The prohibition admits of no exceptions or derogations whatsoever, and applies regardless of the conduct of the victim — including in the context of criminal proceedings.

The Court has emphasized that Article 3 enshrines "one of the most fundamental values of democratic society" (*Soering v. United Kingdom*, App. No. 14038/88 (1989); *Chahal v. United Kingdom*, App. No. 22414/93 (1996)). The absolute character of the prohibition is the analytical foundation of every later development in Article 3 doctrine, including the severity threshold, the procedural duty to investigate, the exclusionary rule, the duty to protect against private violence, and the non-refoulement rule.

2.2 Definitional framework: the severity continuum

The ECtHR distinguishes between torture, inhuman treatment, and degrading treatment along a continuum of severity. In *Ireland v. United Kingdom*, App. No. 5310/71 (1978), the Court first articulated the distinction primarily on severity grounds, classifying the five "deep interrogation" techniques applied by the UK in Northern Ireland as inhuman and degrading treatment but not torture. The Court emphasized that "ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3" (¶ 162) and that the assessment of severity is "relative" and "depends on all the circumstances of the case" including duration, physical and mental effects, and the victim's sex, age, and state of health (¶ 162).

In *Selmouni v. France [GC]*, App. No. 25803/94 (1999), the Court re-emphasized the purposive element of torture, drawing explicitly on the UNCAT Article 1 definition (¶¶ 97–105), and re-classified the treatment in question as torture. The Court articulated the "living instrument" doctrine in unmistakable terms (¶ 101): the Convention is a living instrument, and the increasingly high standard required in the area of human rights "inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies." Treatment previously characterised as "inhuman and degrading" may, as social standards evolve, be reclassified as torture.

In *Aydın v. Turkey*, App. No. 23178/94 (1997), the Court held that the rape of a 17-year-old detainee in custody by a State agent constituted torture (¶¶ 83–86), and emphasized that rape of a detainee by a State agent is "an especially grave and abhorrent form of ill-treatment" given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim. The case is foundational for the recognition of sexual violence by State agents as torture under Article 3 and has been followed by the IACtHR and the African Commission.

In *Bouyid v. Belgium [GC]*, App. No. 23380/09 (2015), the Court held that the slapping of a person in police custody by a police officer constituted degrading treatment under Article 3, even in the absence of any serious physical injury, because of the affront to the victim's dignity inherent in such conduct (¶¶ 100–113). The case is the modern authority for the proposition that the severity threshold does not require serious bodily harm where the conduct affronts dignity by a State agent in a position of authority.

2.3 Judicial corporal punishment

In *Tyrer v. United Kingdom*, App. No. 5856/72 (1978), the Court held that judicial corporal punishment ("birching") of a 15-year-old by court order on the Isle of Man constituted degrading punishment within the meaning of Article 3 (¶¶ 28–35). The Court emphasized that the punishment, although authorized by law, "constituted an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity" (¶ 33). The case also articulated the "living instrument" approach (¶ 31): "the Convention is a living instrument which … must be interpreted in the light of present-day conditions."

Tyrer is critical for the present Review because it is the foundational authority on the proposition that *judicially ordered* corporal punishment is not insulated from the Article 3 prohibition by the formality of judicial process. Under UNCAT Article 1, judicial corporal punishment is normally treated as CIDT rather than torture; under ECHR Article 3, *Tyrer* characterised it as degrading punishment. The convergence point is that the formal lawfulness of a judicial sanction under domestic law does not exempt the sanction from the international prohibition.

2.4 The duty to investigate (procedural limb of Article 3)

The Court has developed an extensive procedural limb to Article 3, requiring the State to conduct a prompt, independent, and effective investigation whenever an arguable claim of ill-treatment is raised. The leading authorities are:

Assenov and Others v. Bulgaria, App. No. 24760/94 (1998), ¶ 102 — when an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to secure to everyone within

its jurisdiction the Convention rights, requires by implication an effective official investigation capable of leading to the identification and punishment of those responsible.

El-Masri v. "the former Yugoslav Republic of Macedonia" [GC], App. No. 39630/09 (2012), ¶¶ 182–193 — the procedural obligation is independent of any complaint and is triggered when the matter has come to the attention of the authorities. The investigation must be capable of leading to the identification of those responsible and must be sufficiently independent — both institutionally and in practice — from those implicated.

Bouyid v. Belgium [GC], App. No. 23380/09 (2015), ¶¶ 114–123 — the investigation must be prompt, thorough, and capable of identifying and punishing those responsible. The procedural limb is breached where the investigation lacks promptness, independence, or capability of producing accountability.

Mocanu and Others v. Romania [GC], App. No. 10865/09 (2014) — the procedural obligation extends across time, and a State cannot defeat the obligation by allowing investigations to languish until evidence is no longer recoverable. The case applied the procedural duty to events occurring in 1990, with the violation found in 2014 — an analytical proposition with direct consequences for *res judicata* and statute-of-limitations arguments in domestic systems.

2.5 The exclusionary rule and fair trial

In *Jalloh v. Germany [GC]*, App. No. 54810/00 (2006), the Court held that the forcible administration of emetics to a drug suspect, for the purpose of recovering swallowed cocaine bags, violated Article 3 (¶¶ 67–83) and that the use of the resulting evidence at trial violated Article 6 (¶¶ 99–123). The Court emphasized that the use of evidence obtained through treatment contrary to Article 3 necessarily compromises the fairness of the trial — irrespective of the probative value of the evidence — at least where the treatment in question amounts to torture (¶ 105). The exclusionary rule is broader still where the evidence was obtained by torture; in *Gäfgen v. Germany [GC]*, App. No. 22978/05 (2010), the Court reiterated that the admission of evidence obtained by torture is, in any case, a per se violation of Article 6.

The exclusionary rule under ECHR Article 3 and Article 6 read together is functionally equivalent to UNCAT Article 15, but reaches further: the ECtHR has extended the rule to evidence obtained by treatment falling short of torture (CIDT) where its admission renders the trial unfair (*Jalloh*, ¶ 105).

2.6 The positive obligation: protection from private violence

The Court has developed an extensive line of positive-obligation cases requiring the State to protect individuals — particularly vulnerable individuals — from ill-treatment by private actors. The leading authorities are:

A v. United Kingdom, App. No. 25599/94 (1998) — the failure of UK law to provide adequate protection against severe corporal punishment of a child by a step-parent violated Article 3. The judgment establishes that the positive obligation extends to legislative protection against private-actor ill-treatment.

Z and Others v. United Kingdom [GC], App. No. 29392/95 (2001) — the failure to take reasonable measures to protect children from severe abuse and neglect by private caretakers, despite repeated reports to authorities, breached Article 3. The judgment is the modern authority for the proposition that the positive obligation extends beyond legislation to operational protection.

M.C. v. Bulgaria, App. No. 39272/98 (2003) — the State's failure to investigate and prosecute the rape of a minor by private actors, where the domestic legal definition of rape required physical resistance, breached Articles 3 and 8. The case is the modern authority for the proposition that the State's due-diligence obligation extends to the substantive content of domestic criminal law.

Šečić v. Croatia, App. No. 40116/02 (2007) — the State's failure to conduct an effective investigation into a racist assault by private individuals breached Article 3.

Kurt v. Austria [GC], App. No. 62903/15 (2021) — synthesizes the general principles on domestic-violence protection duties under Articles 2 and 3, confirming the modern positive-obligation framework toward non-State abuse and requiring the State to assess and respond to known risks.

The positive-obligation line of authority is doctrinally relevant to judicial-setting cases for two reasons. First, it confirms that the absence of direct State infliction does not foreclose State responsibility; State responsibility attaches through acquiescence and failure of due diligence. Second, it confirms that judicial officers, as State agents, have an obligation to act when ill-treatment by private parties (including parties to a proceeding) comes to their knowledge. A judge who allows litigation conduct that constitutes ill-treatment to continue, where the State has a positive obligation to prevent that conduct, may be acquiescing in the conduct for purposes of UNCAT Article 1 — the analysis depends on notice, control, severity, and available remedial authority.

3. International Criminal Court and the Ad Hoc Tribunals: Torture as International Crime

3.1 The Rome Statute framework

The Rome Statute of the International Criminal Court (1998, in force 2002) establishes torture as a crime against humanity (Article 7(1)(f)) and as a war crime in both international and non-international armed conflict (Article 8(2)(a)(ii), 8(2)(c)(i)). The ICC Elements of Crimes (ICC-ASP/1/3, 2002, as amended 2011) provide the contextual definitions.

Article 7(1)(f) — Torture as a crime against humanity. The Elements of Crimes require:

(1) The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

(2) Such persons were in the custody or under the control of the perpetrator.

(3) Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.

(4) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

(5) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Critically, Article 7(1)(f) does *not* require that the perpetrator be a public official. The Rome Statute therefore extends torture liability further than UNCAT in one direction (no public-official requirement) and constrains it in another (contextual elements of widespread or systematic attack).

Article 8 — Torture as a war crime. The Elements of Crimes for Article 8 require severe pain or suffering inflicted *for a specific purpose* (obtaining information or confession, punishment, intimidation, coercion, or discrimination of any kind), echoing the UNCAT Article 1 purpose element. For international armed conflict, the victim must be a protected person under the Geneva Conventions; for non-international armed conflict, the victim must be a person taking no active part in the hostilities.

The lawful-sanctions clause. The Rome Statute Article 7(1)(f) contains a lawful-sanctions exception parallel to UNCAT Article 1 ("did not arise only from, and was not inherent in or incidental to, lawful sanctions"). Article 8 does not contain that clause. This is significant: the Rome Statute drafters preserved the lawful-sanctions exception for crimes against humanity but excluded it from war crimes, signalling that the exception cannot operate where the conduct is committed in the context of armed conflict.

3.2 The ICTY *Kunarac* line: purpose, official capacity, and customary IHL

Prosecutor v. Kunarac, Kovač, and Vuković, ICTY Trial Chamber II Judgment, Case Nos. IT-96-23-T & IT-96-23/1-T (22 February 2001); Appeals Chamber Judgment (12 June 2002) (the "Foča case"), is critical for the contemporary doctrine of torture as an international crime, particularly for the purposes of analysing whether judicial conduct can satisfy the elements.

The illustrative-purpose holding. The Trial Chamber held that the list of purposes in the UNCAT Article 1 definition is *illustrative and not exhaustive* under customary IHL (¶ 485). The Chamber identified the following as encompassed: "obtaining information or a confession, punishing, intimidating or coercing the victim or a third person, or discriminating, on any ground, against the victim or a third person." It further held that humiliation may also be a relevant purpose (¶ 486). The holding is essential to the IAJ position that disability discrimination, age discrimination, and any other "reason based on discrimination of any kind" (UNCAT Article 1) — including discrimination by judicial officers against pro se litigants on the basis of disability — satisfies the purpose element.

The no-public-official-required holding. The Trial Chamber held that, under customary IHL, "the presence of a state official or of any other authority-wielding person in the torture process is not necessary for the offence to be regarded as torture" (¶ 496). The Appeals Chamber affirmed this holding (Appeal Judgment, ¶ 148): "the public official requirement is not a requirement under customary international law in relation to the criminal responsibility of an individual for torture outside of the framework of the Torture Convention."

The *Kunarac* holdings establish two analytic propositions that the IAJ adopts in this Review. First, where a State official *is* involved, the purpose element is satisfied by any discriminatory purpose, including disability-based discrimination, and is not limited to the canonical interrogation purposes. Second, the existence of the broader customary IHL prohibition — which does not require official involvement at all — strengthens, rather than weakens, the proposition that UNCAT's official-involvement requirement was intended to expand State responsibility (to acquiescence) rather than to limit it.

3.3 The ICTY *Furundžija* line: prohibition as *jus cogens*

Prosecutor v. Furundžija, ICTY Trial Chamber II Judgment, Case No. IT-95-17/1-T (10 December 1998), ¶¶ 153–157, is the leading authority for the proposition that the prohibition of torture has acquired the status of a peremptory norm of international law (*jus cogens*). The Trial Chamber held (¶ 153): "the

prohibition of torture imposes upon States obligations *erga omnes*, that is, obligations owed towards all the other members of the international community, each of which then has a correlative right." The Chamber further held that "no State can derogate from the obligation to outlaw or punish torture" and that "international rules prohibiting torture have a peremptory character."

Furundžija anticipates the ICJ's later confirmation in *Belgium v. Senegal* (2012) and provides the analytic bridge between the regional/treaty regimes and the customary international law framework analysed in Parts 7 and 8.

3.4 ICC jurisprudence

ICC jurisprudence on torture is still developing. The Court has interpreted the contextual elements of crimes against humanity in *Prosecutor v. Bemba* (ICC-01/05-01/08, Trial Chamber Judgment, 21 March 2016; subsequently reversed by the Appeals Chamber on other grounds, 8 June 2018), confirming that the "widespread or systematic" element does not require both elements simultaneously, and that "directed against a civilian population" requires a State or organizational policy to commit the attack.

3.5 Convergence and divergence between UNCAT and ICC frameworks

UNCAT and the ICC framework address overlapping but distinct conduct, and the differences are doctrinally important for judicial-setting analyses:

UNCAT (Article 1) requires (i) intentional infliction; (ii) severe pain or suffering, physical or mental; (iii) for a specified purpose (information, confession, punishment, intimidation, coercion, or discrimination of any kind); (iv) by, with the consent of, or with the acquiescence of, a public official or other person acting in an official capacity; (v) not arising only from, inherent in, or incidental to lawful sanctions. The purpose list under UNCAT is exhaustive; the official-involvement requirement is explicit.

ICC Article 7(1)(f) (crime against humanity) requires (i) severe pain or suffering; (ii) custody or control of the perpetrator; (iii) lawful-sanctions exception; (iv) widespread or systematic attack against civilian population; (v) perpetrator knowledge of the attack context. No public-official requirement; no purpose requirement.

ICC Article 8 (war crime) requires the elements parallel to UNCAT (severe pain plus purpose) but in the context of armed conflict and against protected persons.

For judicial-setting cases outside the context of armed conflict or systematic civilian attack, the UNCAT framework is the controlling treaty framework, supplemented by the *Kunarac* customary IHL analysis on the purpose element and the *Furundžija* analysis on the *jus cogens* character of the prohibition. Where the conduct is part of a widespread or systematic State practice, the Article 7(1)(f) crime against humanity framework may also apply.

4. The UN Committee Against Torture: Authoritative Treaty Interpretation

4.1 The Committee's interpretive authority

The UN Committee Against Torture (CAT), established under UNCAT Article 17, is the authoritative interpreter of the Convention. The Committee operates through four mechanisms: (i) periodic State reports under Article 19; (ii) the confidential inquiry procedure under Article 20 (which the U.S. has accepted); (iii) the individual communications procedure under Article 22 (which the U.S. has *not* accepted); and (iv) General Comments that articulate the Committee's authoritative interpretation of the Convention's substantive obligations.

4.2 General Comment No. 2 (2008): the architecture of State obligation

General Comment No. 2, CAT/C/GC/2 (January 24, 2008), is the most important interpretive instrument for judicial-setting cases. Three of its holdings are dispositive for the Review.

All branches of government. General Comment No. 2, ¶ 15, states that the Convention's obligations extend to "all branches of government." Paragraph 17 elaborates that States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. The IAJ position is that this General Comment authoritatively forecloses any reading of UNCAT that would exclude the judicial branch from the Convention's coverage.

Acquiescence and consent. General Comment No. 2 ¶ 18 articulates the acquiescence doctrine in two branches. *First* (the public-official branch), the Committee provides that States Parties must "adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture," and must prevent "such authorities or others acting in an official capacity or under colour of law, from consenting to or acquiescing in any acts of torture." *Second* (the private-actor / due-diligence branch), the Committee extends State responsibility to situations where officials "know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish" them. The second sentence performs distinct doctrinal work: it imports the due-diligence framework — developed in *Velásquez Rodríguez*, *Ximenes Lopes*, *Opuz v. Turkey*, and parallel ECtHR positive-obligation jurisprudence — into UNCAT analysis. The public-official branch does not need the due-diligence concept because the State actor is already the (potential) torturer or acquiescing official; the private-actor branch needs it because the chain of State responsibility runs through the State's omission rather than its commission.

Application to judicial-setting cases. The IAJ position is that *judge-to-judge* acquiescence sits in the public-official branch directly. Where a judicial actor commits or maintains conduct meeting the Article 1 or Article 16 thresholds and another judicial actor with notice and authority fails to prevent, investigate, exclude, or remedy the abuse, the analysis is acquiescence by a person acting in an official capacity in the conduct of another person acting in an official capacity — the public-official prong's express subject matter. Where the underlying conduct is by a private actor (a litigant, a private examiner, a private institution to which the court has entrusted a person), the due-diligence branch governs. The two branches together cover the four conduct types in the Four-Category Taxonomy: the public-official branch governs categories (i) (direct judicial imposition), (ii) (court-process-linked torture or CIDT), and (iv) (court-

process-as-instrument); the private-actor branch governs category (iii) (judicial acquiescence in private abuse, where notice plus authority plus inaction is the analytical core).

Disability and other discrimination. General Comment No. 2, ¶ 21, holds that "the protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment." The Committee specifically identifies persons with disabilities as among the populations whose discriminatory treatment may engage Article 1 or Article 16. Read together with the Article 1 "discrimination of any kind" purpose, this paragraph supplies the doctrinal basis for treating disability-based judicial discrimination — when severe and intentional — as engaging Article 1.

4.3 General Comment No. 3 (2012): redress, rehabilitation, and the duty to investigate

General Comment No. 3, CAT/C/GC/3 (December 13, 2012), addresses State obligations under Article 14 (redress and compensation). The key holdings:

(a) Each State Party must ensure that the victim of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. The right to redress is *substantive* and not merely procedural.

(b) Failure to investigate is itself a structural impediment to redress. A State that fails to investigate documented torture cannot satisfy its Article 14 obligation by the mere existence of formal compensation mechanisms.

(c) Combatting impunity is part of the non-repetition obligation under Article 14. The Committee specifically identifies amnesties, statutes of limitations, and immunity doctrines as inconsistent with Article 14 where they shield perpetrators from accountability.

The General Comment No. 3 framework is the doctrinal foundation for IAJ's analytical position (developed in Part 8) that domestic immunity doctrines, *res judicata*, and statutes of limitations should be treated as voidable on the international plane to the extent they insulate documented torture from accountability.

4.4 General Comment No. 4 (2018) and *non-refoulement*

General Comment No. 4, CAT/C/GC/4 (September 4, 2018), addresses Article 3 *non-refoulement*. The Committee held that the *non-refoulement* obligation is absolute and admits of no exception, derogation, or balancing against national security or other interests. This holding rejects the suggestion in *Suresh v. Canada* (Part 6.2) that *non-refoulement* could yield to extraordinary circumstances.

4.5 CAT/C/USA/CO/3-5 (2014): the U.S. Concluding Observations

The Committee's Concluding Observations on the combined Third to Fifth Periodic Reports of the United States, CAT/C/USA/CO/3-5 (December 19, 2014), are the most important treaty-body finding on U.S. compliance with the Convention. The Committee found that:

(a) **Article 1 conformity.** The specific offence of torture has not been introduced at the federal level in full conformity with Article 1 of the Convention. The federal Torture Act (18 U.S.C. §§ 2340–

2340A) is limited to extraterritorial conduct and does not provide a comprehensive domestic offence (¶ 9).

(b) **Prolonged mental harm.** The U.S. understanding requiring "prolonged mental harm" for mental suffering to constitute torture creates actual or potential loopholes for impunity. This Understanding has been invoked in Office of Legal Counsel memoranda as authority for arguments that interrogation techniques amounting to torture could be authorized (¶ 11).

(c) **Article 16 reservation.** The U.S. Article 16 reservation, limiting CIDT obligations to the standard of the Fifth, Eighth, and Fourteenth Amendments, has been invoked as authority for "deeply flawed legal arguments." The Committee specifically references the OLC memoranda (¶ 11).

(d) **CIA rendition.** The CIA rendition and secret detention programme was not fully investigated or prosecuted (¶ 11).

(e) **Limited prosecution.** Prosecution of perpetrators of torture has been limited. The Committee specifically noted the absence of prosecutions for senior officials despite well-documented conduct (¶ 14).

These findings have not been remedied. The U.S. Sixth Periodic Report was due in 2018 and remains overdue. The Committee's Concluding Observations are authoritative treaty-monitoring findings and highly persuasive evidence of the Committee's interpretation of U.S. compliance obligations, but they are not domestic court judgments and do not themselves substitute for implementing legislation or a judicially enforceable cause of action.

4.6 Article 20 jurisdiction and the systematic-practice threshold

UNCAT Article 20 authorizes the Committee to undertake a confidential inquiry where it receives reliable information indicating well-founded reasons to believe that torture is being systematically practiced in the territory of a State Party. The U.S. has accepted Article 20 jurisdiction (the U.S. did not opt out under Article 28).

The Committee has articulated the systematic-practice threshold in successive cases (most prominently the inquiry into Mexico, 2003; Brazil, 2008; and Lebanon, 2014). Three elements are required: (i) the conduct must be "habitual, widespread, and deliberate" in a considerable part of the territory; (ii) the conduct need not be the result of a direct intention of the government — it suffices that authorities knew of the practice and did nothing effective to stop it; and (iii) the inquiry is appropriate where domestic mechanisms have failed to provide effective remedy.

The Article 20 threshold is critical for judicial-setting cases because the systematic-practice inquiry does not require individual case adjudication and can address structural deficiencies in the judicial system itself. The IAJ filed an Article 20 communication regarding the U.S. judicial-setting pattern in September 2025 (IAJ-CAT-20250919-002-PUB).

5. Comparative Regional Frameworks: Inter-American and African Systems

5.1 The Inter-American Court of Human Rights

The Inter-American Court of Human Rights has developed an extensive jurisprudence under Article 5 of the American Convention on Human Rights (ACHR, 1969) and the Inter-American Convention to Prevent and Punish Torture (IACPPT, 1985). Article 5(2) ACHR provides: "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

The foundational due-diligence rule. In *Velásquez Rodríguez v. Honduras*, Merits Judgment (29 July 1988), ¶¶ 172–177, the Court articulated the foundational rule that the State has a duty to prevent, investigate, punish, and provide redress for human rights violations; the State is responsible where its authorities permit or fail to act regarding private abuses. The rule is the analytic foundation for the Inter-American system's positive-obligation framework and has been adopted, in substance, by the ECtHR (*Z v. UK*) and by the CAT Committee (General Comment No. 2, ¶ 18).

Modern application to systemic failure. In *González et al. ("Cotton Field") v. Mexico*, Merits Judgment (16 November 2009), the Court applied the due-diligence rule to systematic femicides in Ciudad Juárez. The Court held that the State's failure to take reasonable preventive measures, conduct effective investigations, and provide redress, in the face of a known and persistent pattern, constituted State responsibility under Article 5 ACHR. The judgment is the modern authority for the proposition that State failure of due diligence regarding a known pattern of private-actor harm constitutes State acquiescence — analytically equivalent to the CAT Committee's General Comment No. 2, ¶ 18.

Sexual violence as torture. In *Penal Miguel Castro Castro v. Peru*, Merits Judgment (25 November 2006), the Court held that the rape of detainees by State agents constituted torture under Article 5(2) ACHR and Article 2 IACPPT. The Court explicitly referenced ECtHR *Aydın* and the international consensus that sexual violence by State agents in custody constitutes torture.

Disability-based discrimination. In *Furlan and Family v. Argentina*, Merits Judgment (31 August 2012), the Court addressed the prolonged judicial proceedings to which a person with disabilities had been subjected and held that the State's failure to provide reasonable procedural accommodations and effective access to justice constituted violations of Articles 5, 8, and 25 ACHR. The case is the closest Inter-American authority for the proposition that disability-based denial of accommodation in judicial proceedings, when severe and protracted, may engage the Article 5 prohibition.

5.2 The African Commission and Court on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights, Article 5, provides: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

General Comment No. 4 on Article 5 (2017). The African Commission's General Comment No. 4 codifies the right to redress for torture and ill-treatment and recognizes State duties toward harms by private persons, consistent with CAT General Comment No. 2 and Human Rights Committee General Comment No. 31.

Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt, Comm. 323/06 (2011) — the African Commission found that the State's failure to prevent, protect against, and effectively investigate

female genital mutilation by private actors violated the African Charter Article 5. The case is the African Charter analogue to the ECtHR positive-obligation line and the IACtHR due-diligence line.

5.3 The Robben Island Guidelines

The Robben Island Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (adopted by the African Commission, 2002) provide an authoritative regional articulation of State obligations under Article 5 of the African Charter. The Guidelines explicitly extend the prohibition to judicial settings and require independent investigation, exclusion of torture-tainted evidence, and access to redress.

5.4 Multi-treaty convergence

The Inter-American, African, and European regional systems have converged on a substantially uniform set of doctrinal propositions:

(a) The prohibition of torture and CIDT is absolute and non-derogable.

(b) The State has a positive obligation to protect against ill-treatment by private actors, with the extent of the obligation calibrated to the State's knowledge of risk.

(c) The State has a procedural obligation to conduct prompt, independent, and effective investigations into arguable claims of ill-treatment.

(d) Evidence obtained by torture is inadmissible in all proceedings (and evidence obtained by CIDT is generally inadmissible).

(e) Sexual violence by State agents in custody constitutes torture.

(f) The State has an obligation to provide redress, including rehabilitation, to victims.

None of the regional systems contains a "lawful sanctions" carve-out analogous to UNCAT Article 1. The carve-out is unique to UNCAT, and that uniqueness has interpretive consequences analysed in Part 8.

6. Comparative Domestic Implementation

6.1 The United Kingdom: *Pinochet (No. 3)* and the *jus cogens* override

R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3) [2000] 1 AC 147 (HL) is the most important comparative-domestic authority on the relationship between domestic immunity doctrines and the *jus cogens* prohibition on torture. The House of Lords held that General Pinochet, as a former head of state, was not entitled to immunity *ratione materiae* (functional immunity) before the UK courts in respect of acts of torture allegedly committed during his tenure as head of state. The judgment's analytic reasoning, articulated most clearly by Lord Browne-Wilkinson (pp. 197–205), is that:

(a) Torture is prohibited by *jus cogens*. The prohibition has the character of a peremptory norm of customary international law.

(b) The judicial function of the state does not encompass acts that violate *jus cogens*. Torture is not a sovereign function, and a head of state who commits or authorizes torture is not acting in the exercise of the sovereign functions of the State.

(c) Immunity *ratione materiae* therefore cannot attach to acts of torture, because the immunity is grounded in the proposition that the official is acting on behalf of the State, and the State cannot lawfully authorize acts that violate *jus cogens*.

The reasoning in *Pinochet (No. 3)* has been characterized by Bianchi (EJIL 1999) as resolving a "fundamental tension" in international law: "if torture on a large scale is a *jus cogens* norm, no treaty or customary rule including immunity can derogate from it." Bianchi's analytic move — that "human rights atrocities cannot be qualified as sovereign acts: international law cannot regard as sovereign those acts which constitute an attack against its very foundation and predominant values" — is the foundation for IAJ's analytical position (developed in Part 8) that domestic immunity doctrines, including absolute judicial immunity, should be treated as voidable on the international plane to the extent they insulate documented torture from accountability.

The analytic move from sovereign immunity to judicial immunity is the IAJ analytical extension of the *Pinochet* reasoning. If sovereign immunity — the most fundamental of all domestic immunity doctrines — yields to *jus cogens* accountability for torture in the *Pinochet* category, IAJ argues that lesser domestic immunity doctrines should yield by parallel reasoning. Developed by IAJ as the analytical extension of *Pinochet (No. 3)*, the position is that the judicial function should not be read to encompass acts that violate *jus cogens*, and that immunity should not attach to such acts as a matter of international law.

6.2 Canada: *Suresh* and the trajectory of *non-refoulement*

The Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3, ¶¶ 72–78, addressed the *non-refoulement* obligation under both UNCAT and the Canadian Charter. The Court condemned removal to a substantial risk of torture but left open a theoretical exception in "extraordinary circumstances." That dictum has not been followed in subsequent Canadian practice; the CAT Committee in General Comment No. 4 (2018) and the ECtHR in *Saadi v. Italy* [GC], App. No. 37201/06 (2008), have both confirmed that *non-refoulement* to torture is absolute and admits of no exception. The IAJ treats *Suresh*'s "extraordinary circumstances" dictum as superseded by subsequent international authority.

6.3 Germany: Constitutional integration of ECHR

Under the Basic Law for the Federal Republic of Germany, Article 25, the general rules of international law form part of federal law and take precedence over statutes. The ECHR is applied through implementing legislation and through the constitutional interpretation of basic rights. The Federal Constitutional Court (Bundesverfassungsgericht) has consistently held that Article 3 ECHR is among the general rules of international law that bind German authorities, and that German courts must interpret domestic law in accordance with ECHR standards. The Court's torture-related jurisprudence is limited but consistent with the ECHR framework analysed in Part 2.

6.4 The United States: doctrinal framework and structural gaps

The United States ratified UNCAT in 1994, subject to extensive Reservations, Understandings, and Declarations (RUDs). The U.S. framework for torture is structured around five elements:

(a) The Torture Act. 18 U.S.C. §§ 2340–2340A criminalizes torture committed outside the United States by a person acting under color of law. The Act's territorial limitation is significant: it does not provide a domestic offence for torture committed within the United States, despite the U.S. RUD-based representation to the international community that "existing domestic law" was sufficient to meet UNCAT obligations.

(b) The Alien Tort Statute. 28 U.S.C. § 1350 has been interpreted to provide a civil cause of action for torture committed in violation of the law of nations. *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), is the foundational authority for the proposition that torture violates customary international law and is actionable under the ATS. *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), confirmed that customary international law norms with sufficient specificity, universality, and obligatory character — including the prohibition of torture — are actionable under the ATS, though the Court limited the available causes of action and subsequent decisions (*Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108 (2013); *Jesner v. Arab Bank*, 138 S. Ct. 1386 (2018); *Nestlé USA v. Doe*, 141 S. Ct. 1931 (2021)) have substantially constrained ATS reach against U.S. defendants and corporate defendants.

(c) The Torture Victim Protection Act. TVPA, 28 U.S.C. § 1350 note, provides a federal civil cause of action against individuals who, under actual or apparent authority or color of law of any foreign nation, subject another individual to torture. The TVPA explicitly does not reach U.S. officials.

(d) The Constitution. The Fifth, Eighth, and Fourteenth Amendments provide constitutional protections that overlap with UNCAT obligations. The U.S. Article 16 reservation asserts that these constitutional protections are equivalent to the UNCAT CIDT obligation. The substantive constitutional standards include the Eighth Amendment "evolving standards of decency" line (*Trop v. Dulles*, 356 U.S. 86 (1958)); the substantive due process "shocks the conscience" line (*Rochin v. California*, 342 U.S. 165 (1952); *County of Sacramento v. Lewis*, 523 U.S. 833 (1998)); and the deliberate-indifference line (*Estelle v. Gamble*, 429 U.S. 97 (1976); *Farmer v. Brennan*, 511 U.S. 825 (1994)).

(e) Non-self-execution. *Medellín v. Texas*, 552 U.S. 491 (2008), held that the UN Charter Article 94 obligation to comply with ICJ judgments is not directly enforceable in U.S. courts absent implementing legislation. The non-self-execution doctrine has been extended in lower courts to UNCAT, though UNCAT itself was ratified subject to a declaration that the Convention is non-self-executing. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804), provides limited interpretive aid where domestic text is genuinely susceptible to more than one reading.

The U.S. framework leaves several structural gaps that the CAT Committee identified in 2014 (Part 4.5) and that the IAJ documents in *Guide to Domestic Criminal Enforcement* (IAJ-GDE-20260510-001-PUB): (i) no comprehensive domestic torture offence; (ii) no domestic civil cause of action for torture by U.S. officials; (iii) the Article 16 reservation does not, in practice, provide constitutional equivalence where the constitutional doctrines themselves are inadequately enforced; (iv) judicial, prosecutorial, and litigation-privilege immunities operate to insulate official conduct from accountability.

6.5 The six-state objections to U.S. RUDs

Six States Parties to UNCAT filed formal objections to the U.S. RUDs with the UN Secretary-General upon U.S. ratification in 1994: Finland, France, Germany, the Netherlands, Spain, and Sweden. The objections target principally the U.S. Reservation regarding Article 16 (which conditions the CIDT obligation on the Fifth, Eighth, and Fourteenth Amendment standards) and the U.S. Understanding regarding mental harm (which requires "prolonged mental harm" for mental suffering to constitute torture). The objecting States contend that these reservations are incompatible with the object and purpose of the Convention and cannot be considered to be in conformity with it.

The objections are doctrinally important for two reasons. First, under the Vienna Convention on the Law of Treaties Article 19(c) (cited by the U.S. as customary international law despite the U.S. not being a VCLT party), a reservation incompatible with the object and purpose of a treaty is impermissible. Second, the International Law Commission's Guide to Practice on Reservations to Treaties (UN Doc. A/66/10/Add.1 (2011)), Guideline 4.5.3, confirms that an impermissible reservation may be severed from the State's consent to be bound, with the result that the State remains bound by the treaty but not by the reservation.

The IAJ position is that the U.S. RUDs, to the extent they purport to limit Article 1 or Article 16 obligations below the threshold articulated by the Committee's authoritative interpretation, are impermissible and severable.

6.6 Common-law African jurisdictions

REDRESS's 2022 study of common-law African UNCAT implementation (*Anti-Torture Standards in Common Law Africa: Good Practices and Way Forward*) provides comparative data on:

- Kenya, Nigeria, South Africa, and Uganda — have enacted standalone anti-torture laws with definitions largely aligned with UNCAT Article 1.
- Ghana and Sudan — criminalize torture in limited contexts (prison officers, evidence extraction).
- The Gambia and Zimbabwe — rely on ordinary criminal offences rather than specific torture crimes.

Across these jurisdictions, the comparative pattern is that legislative frameworks are increasingly aligned with UNCAT but implementation gaps persist in procedural safeguards, independent investigation, and victim redress. The pattern parallels the U.S. structural gaps identified in Part 6.4.

7. The International Court of Justice: *Jus Cogens* and Treaty Supremacy

7.1 *Belgium v. Senegal* (2012): the modern *jus cogens* authority

Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, 2012 I.C.J. Rep. 422 (July 20, 2012), is the modern controlling ICJ authority on the *jus cogens* character of the prohibition of torture. The Court held that:

(a) **Peremptory norm.** The prohibition of torture is a peremptory norm of general international law (*jus cogens*). The Court (¶ 99) referenced its earlier judgment in *Belgium v. Spain (Barcelona Traction)* and the ICTY's *Furundžija* judgment.

(b) ***Erga omnes* obligations.** The prohibition generates obligations *erga omnes partes* under UNCAT (and *erga omnes* under customary international law) — that is, obligations owed by every State to every other State Party. Each State has a legal interest in the protection of the rights and may invoke the responsibility of another State Party for breach (¶¶ 68–70).

(c) ***Aut dedere aut judicare***. UNCAT Article 7 imposes an obligation to prosecute or extradite alleged torturers found in the State's territory. The obligation is unqualified and binds the State Party regardless of the absence of a prior extradition request (¶¶ 91–95).

(d) **The duty to investigate.** UNCAT Article 6 requires immediate investigation upon the State's becoming aware of credible allegations. The duty does not depend on a complaint and arises by operation of the Convention itself (¶¶ 86–88).

Belgium v. Senegal is the doctrinal foundation for the IAJ's *jus cogens* and Two-Plane Framework analyses in Part 8.

7.2 *Barcelona Traction* (1970): *erga omnes* and the basic rights

Barcelona Traction, Light and Power Company Ltd. (Belgium v. Spain), Second Phase, Judgment, 1970 I.C.J. Rep. 3, ¶¶ 33–34, is the foundational ICJ authority for the proposition that there exist a category of international obligations owed by States toward the international community as a whole (*erga omnes*). The Court identified, among the sources of such obligations, "the basic rights of the human person, including protection from slavery and racial discrimination." Subsequent practice and authority (including *Belgium v. Senegal* and ILC Draft Conclusions on Peremptory Norms of General International Law, 2022) have extended this category to include the prohibition of torture.

The combined effect of *Belgium v. Senegal* and *Barcelona Traction* is that:

(i) The prohibition of torture is a *jus cogens* norm.

(ii) The prohibition generates *erga omnes* obligations — owed to all States and to all persons.

(iii) The *erga omnes* character is derived from the basic rights of the human person — that is, from the dignity foundation of international human rights law, not from any particular treaty architecture or institutional setting.

The IAJ analytic position is that "basic rights of the human person" are not, by their nature, confined to persons in custodial settings. The minimum content of the *jus cogens* norm — intentional infliction of severe suffering by a state agent in official capacity for a prohibited purpose — applies wherever the conduct occurs.

7.3 *Arrest Warrant* (DRC v. Belgium, 2002): personal immunity is procedural

Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, 2002 I.C.J. Rep. 3, addressed personal immunity (*immunity ratione personae*) of an incumbent foreign minister before foreign national courts. The Court held that an incumbent foreign minister enjoys full personal

immunity before foreign national courts even in cases alleging international crimes (¶ 58). The Court characterized this immunity as procedural rather than substantive: it does not extinguish criminal responsibility, but only bars its enforcement during the term of office.

The Court was careful to distinguish personal from functional immunity: "immunity from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs does not mean that they enjoy impunity in respect of any crimes they might have committed" (¶ 60). Prosecution may proceed: (i) after the term of office; (ii) before certain international courts (e.g., the ICC); or (iii) upon waiver by the official's State.

The Court did *not* adopt the *jus cogens* exception to personal immunity that several Joint Separate and Dissenting Opinions urged. The majority's distinction between personal and functional immunity is critical: *Arrest Warrant* addresses the temporary procedural bar (personal immunity); *Pinochet (No. 3)* addresses the substantive question of whether functional immunity attaches to *jus cogens* violations in the precise category of former-official prosecution for international torture. The two cases are doctrinally consistent within their respective scopes: personal immunity is procedural and temporary; former-official functional immunity for international torture prosecution is unavailable under the *Pinochet* holding. See *Jurisdictional Immunities of the State (Germany v. Italy)*, 2012 I.C.J. Rep. 99 — the ICJ's treatment of State immunity in civil proceedings, which is distinct from the criminal-immunity question addressed in *Arrest Warrant*. The *Germany v. Italy* decision is the principal counter-authority cited against extending the Pinochet line, but it is limited to civil State immunity and does not address the criminal liability of individual officials for *jus cogens* violations.

7.4 *Avena* and treaty supremacy

Avena and Other Mexican Nationals (Mexico v. United States), Judgment, 2004 I.C.J. 12 (March 31, 2004), addressed the U.S. obligation under the Vienna Convention on Consular Relations. The Court held that the U.S. had breached its obligations by failing to inform Mexican nationals of their consular notification rights, and required "review and reconsideration" by U.S. courts of convictions and sentences impaired by the treaty violations (¶¶ 138–141).

Avena is doctrinally important for two propositions:

(a) **Treaty supremacy.** International treaty obligations take precedence over domestic procedural rules. The U.S. could not rely on the procedural default rule to avoid its treaty obligation.

(b) **Reparation.** International law requires "reparation in an adequate form" for proven treaty violations. The principle derives from *Factory at Chorzów (Jurisdiction)*, P.C.I.J., Ser. A, No. 9 (1927) ("It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form"), and is consistently applied in modern ICJ practice including *Ahmadou Sadio Diallo (Compensation)*, 2012 I.C.J. Rep. 324, and *Certain Activities (Costa Rica v. Nicaragua) (Compensation)*, 2018 I.C.J. Rep. 15.

The domestic enforceability of *Avena* in U.S. courts was addressed in *Medellín v. Texas*, 552 U.S. 491 (2008), which held that the ICJ judgment, by itself, did not constitute directly enforceable federal law absent implementing legislation by Congress. *Medellín* does not negate the international obligation; it concerns only its domestic judicial enforceability. The distinction between the international obligation (intact) and domestic enforcement (constrained) is the analytic foundation of the IAJ Two-Plane Framework in Part 8.

7.5 *Jurisdictional Immunities* (Germany v. Italy, 2012)

Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening), Judgment, 2012 I.C.J. Rep. 99, held that the customary international law of State immunity from civil proceedings in foreign national courts continues to apply even in respect of *jus cogens* violations (¶¶ 91–97). The Court was careful to limit the holding to *State* immunity in *civil* proceedings; it did not address individual criminal responsibility, nor did it reach functional immunity questions of the *Pinochet (No. 3)* type. The Court emphasized (¶ 91) that "the rules of State immunity are procedural in character and are confined to determining whether or not the courts of one State may exercise jurisdiction over another."

IAJ's analytical position is that *Germany v. Italy* is consistent with the *Pinochet* line and does not undermine the IAJ analysis in Part 8. *Germany v. Italy* concerns *State* immunity (the immunity of a foreign State from the jurisdiction of another State's courts), while the IAJ analysis concerns *domestic* immunity doctrines (the immunity of officials of one State from the courts of that *same* State). The ICJ has not addressed the consistency of domestic absolute-immunity doctrines, applied to documented torture by the officials of the State whose courts are adjudicating the claim, with the State's *jus cogens* obligations. IAJ's analytical extension is that such domestic immunity doctrines should be treated as voidable on the international plane to the extent they insulate documented torture from accountability — developed by IAJ as the analytical extension of the reasoning in *Pinochet (No. 3)* and Bianchi (1999).

8. Synthesis: The IAJ Analytical Framework

8.1 The Two-Plane Framework

The IAJ Two-Plane Framework, developed in *UNCAT and Jus Cogens: A Contemporary Perspective* (IAJ-STD-20260505-001-PUB), is the architectural foundation for analysing the relationship between international obligation and domestic enforcement.

Plane A — the international plane. On the international plane, the State's obligations under UNCAT, customary international law, and *jus cogens* are intact regardless of the State's domestic procedural mechanisms. *Medellín* does not affect Plane A. The CAT Committee's authoritative interpretation, ICJ judgments, and the *jus cogens* norm operate on Plane A.

Plane B — the domestic plane. On the domestic plane, the State's mechanisms for implementing the international obligation are constrained by U.S. doctrines of non-self-execution, sovereign immunity, judicial immunity, and procedural defaults. *Medellín* governs Plane B. The Plane B mechanisms must be assessed for *equivalence* — that is, whether the domestic mechanism actually provides the protection, relief, remedy, and punishment that the international obligation requires.

The equivalence problem. The U.S. RUDs to UNCAT were premised on the representation that existing domestic law provided equivalence (Plane B equivalence with the Plane A obligation). The CAT Committee found in 2014 (CAT/C/USA/CO/3-5) that this equivalence has not been delivered. The IAJ position is that, where the domestic mechanism fails to provide equivalence, the international obligation remains binding and the domestic mechanism is, on the international plane, an inadequate implementation of the treaty. The international obligation is not extinguished by the domestic failure.

8.2 The Six-Move Framework

The IAJ Six-Move Framework is an IAJ analytic architecture for evaluating whether documented conduct in a non-classic UNCAT setting, including judicial-setting conduct, satisfies the Convention's requirements. It is not a freestanding legal test binding on courts; it is a disciplining tool for systematic analysis of each treaty element.

Move 1 — The text contains no setting qualifier. Article 1(1) defines torture as "any act" — the enacted language contains no restriction confining the prohibition to custodial or interrogation settings. The absence of a classic custodial setting does not, by itself, end the inquiry. CAT General Comment No. 2, ¶ 15 ("all branches of government"), confirms this textual analysis.

Move 2 — The five elements analysed individually. Each of the five Article 1 elements is analysed against the documented conduct:

(1) *Any act.* Identify the specific official act(s) causing harm. The act is not the disability or the litigant's condition — it is the official choice to continue imposing harmful conditions after knowledge of the harm was established.

(2) *Intentional infliction.* Apply *Farmer v. Brennan* by analogy to identify knowledge and deliberate disregard. Knowledge plus continued imposition of harmful conditions after notice establishes the inference of intentional infliction or knowing maintenance of suffering. That inference is the doctrinally required reading; adversarial dispute over the inference is expected, and the IAJ's position is that the inference must be drawn where the documentary record supports the knowledge-plus-continuation showing. The inference alone does not, however, establish every UNCAT Article 1 element — the prohibited-purpose element must still be shown separately through evidence of coercion, punishment, intimidation, discrimination, information-gathering, confession-seeking, or another qualifying purpose. This element discipline reflects the structure of Article 1, not a hedge on the strength of the inference. Document the specific point in the proceedings at which knowledge was established and analyze all subsequent conduct in light of notice, authority to act, available alternatives, and purpose/function.

(3) *Severe pain or suffering, physical or mental.* Apply the Istanbul Protocol (2022) severity threshold. Physical harm (e.g., nerve damage, immune failure, cardiovascular events) satisfies this independently; documented psychological harm (e.g., MDD, GAD, PTSD exacerbation) satisfies it under the psychological-suffering branch.

(4) *Public official in official capacity.* Identify the specific official(s) responsible for each accommodation denial or harmful order. Note the official capacity (judge, court administrator, ADA coordinator, appellate judge).

(5) *Enumerated purpose.* Apply the coercion and discrimination analysis. Coercion: procedural compulsion under threat of sanction. Discrimination: differential treatment based on disability, race, age, or other protected status. The *Kunarac* illustrative-purposes holding (Part 3.2) supports the proposition that discrimination "on any ground" satisfies the purpose element.

Move 3 — The lawful-sanctions carve-out three-part test. Apply the three-part test in Part 8.5 to determine whether the carve-out applies. If the carve-out does not apply, the analysis proceeds to Move 4.

Move 4 — Severity confirmation under the Istanbul Protocol. Apply the Istanbul Protocol (2022) methodology to confirm that the severity element is satisfied through generally accepted clinical methodology. The Istanbul Protocol is the comparative-law instrument used by all major treaty bodies and regional courts.

Move 5 — Jus cogens closes any residual architectural gap. Even accepting the strongest architectural argument that UNCAT's drafting history points toward a custodial paradigm, the *jus cogens* prohibition operates independently of and above that architecture. The minimum content of the *jus cogens* prohibition is derived from *Belgium v. Senegal*, *Barcelona Traction*, and CAT General Comment No. 2, and is: intentional infliction of severe suffering by a state agent in official capacity for a prohibited purpose, wherever it occurs.

Move 6 — Functional custody analogy. The Optional Protocol to UNCAT (OPCAT) extends State obligations to "places of deprivation of liberty" understood functionally. A litigant whose continued participation in proceedings is compelled on pain of sanction, dismissal, and adverse judgment is in functional custody to the proceeding. The functional-custody analogy supports the Article 16 CIDT analysis as well as the Article 1 analysis.

8.3 The Five-Level Gravity Scale

The IAJ Five-Level Gravity Scale, developed in *Harmonizing the Architecture of Disability Rights*, provides a unified gradient for analysing the relationship between domestic statutory violations and treaty-level CIDT/torture findings.

Level	Characterization	Proof architecture
1	Statutory violation (ADA Title II; Rehabilitation Act)	Element-by-element statutory; no severity threshold required
2	Constitutional violation (Fourteenth Amendment; Farmer deliberate indifference)	Actual knowledge plus disregard; no CIDT severity required
3	Pattern-or-practice systemic discrimination (34 U.S.C. § 12601, directly applicable within its law-enforcement, juvenile-justice, and juvenile-incarceration scope; institutional-pattern analogy outside that scope; UNCAT Art. 20 systematic-practice inquiry independently applicable)	Institutional intent from pattern; statistical evidence

Level	Characterization	Proof architecture
4	CIDT threshold (UNCAT Art. 16; ICCPR Art. 7)	Severity plus state-actor authority plus official context plus disproportionate imposition
5	Torture threshold (UNCAT Art. 1; *jus cogens*)	All five Article 1 elements; purpose element explicit

The gravity scale supports the Méndez 2013 proposition (A/HRC/22/53, ¶ 17 (acts short of torture constitute CIDT under Art. 16); ¶¶ 31–32 (powerlessness; forced psychiatric interventions against persons with psychosocial disabilities satisfy Art. 1 intent and purpose); ¶ 64 (legal-capacity deprivation as situation of powerlessness); ¶ 81 (healthcare abuses always amount at least to inhuman and degrading treatment, often arguably meet the torture criteria)) that disability discrimination can reach the CIDT threshold and that CIDT and torture are positions on a single continuum rather than categorically separate violations.

8.4 The Four-Tier Domestic Threshold Gradient

For U.S.-domestic equivalence analysis, the IAJ Four-Tier Domestic Threshold Gradient maps the SCOTUS constitutional doctrines that the U.S. Article 16 reservation invokes:

Tier	SCOTUS doctrine	Functional equivalent
I	Rochin "shocks the conscience"	Substantive due process severity threshold
II	Farmer deliberate indifference	Actual knowledge plus disregard
III	Hudson/Whitley wantonness	Unnecessary and wanton infliction of pain; malicious/sadistic or bad-faith use of official power in custodial-force settings
IV	Brown v. Plata systemic	Systematic institutional CIDT

The four tiers are *cumulative*: documented conduct that satisfies any tier is presumptively non-equivalent on the domestic plane, and the U.S. Article 16 reservation provides no shelter where the constitutional standards themselves are violated.

8.5 The Lawful-Sanctions Carve-Out: Three-Part Test

UNCAT Article 1 excludes from torture pain or suffering "arising only from, inherent in or incidental to lawful sanctions." This carve-out is the principal textual obstacle to applying UNCAT to judicial settings. The IAJ three-part test, developed in *UNCAT and Jus Cogens: A Contemporary Perspective*, governs its application:

Part (a) — The "only from" limitation. Does the harm arise *only* from the formal sanction, or does it arise additionally from the deliberate continuation of harmful conditions after knowledge of the harm was established? If the latter, the carve-out does not apply.

Part (b) — The "lawful" requirement. Was the process genuinely lawful (proper jurisdiction, proper procedure, good faith)? Or was legal form used as a vehicle for what is substantively prohibited (fabricated procedural grounds, bad-faith coordination, weaponized process)? Where the "lawful" character of the sanction is itself contested, the carve-out does not apply. The IAJ position, drawing on the 2023 Special Rapporteur thematic report on judicial independence (A/HRC/53/31, Satterthwaite) and the broader international judicial-ethics framework, is that a court order involving serious violations of internationally recognized judicial-ethics standards should not be treated as automatically final for human-rights compliance purposes.

Part (c) — The cumulative pattern. Even if each individual order is characterized as a lawful sanction, does the multi-year pattern of deliberately compounding harm defeat this characterization for the series taken together? Cumulative imposition of facially "lawful" sanctions, with knowledge of progressive serious harm, can constitute torture even where no individual order would.

Multi-treaty convergence support. The carve-out's anomalous status is confirmed by examining every parallel instrument: ICCPR Article 7, ECHR Article 3, ACHR Article 5(2), African Charter Article 5, CRPD Article 15, and Rome Statute Article 8 all prohibit torture and CIDT absolutely without any "lawful sanctions" carve-out. The carve-out appears only in UNCAT Article 1, and Rome Statute Article 7(1)(f) for the limited subset of crimes against humanity. The pattern is uniform and unambiguous: the carve-out is interpretively constrained to its drafting purpose — a narrow shield for ordinary lawful penalties widely accepted by the international community — and does not provide an architectural escape hatch for official conduct satisfying every other element of the Article 1 definition.

8.6 The *Jus Cogens* Override of Domestic Immunity Doctrines

The IAJ's most consequential analytic position, developed in *UNCAT and Jus Cogens: A Contemporary Perspective*, is that VCLT Article 53 voids domestic immunity doctrines on the international plane to the extent they insulate documented torture from accountability.

The argument. VCLT Article 53 provides that a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. The prohibition of torture is such a norm (*Belgium v. Senegal*). Developed by IAJ as the analytical extension of this principle, the argument is that no rule of customary or domestic law can lawfully derogate from the peremptory norm. A domestic immunity doctrine that operates so as to insulate documented torture from any legal consequence — providing a total and perpetual shield — would, on IAJ's analytical reading, conflict with *jus cogens* to the extent of that insulation, because *jus cogens* by definition permits no derogation. IAJ's analytical extension is that

the *Pinochet (No. 3)* reasoning, originally directed at former-official functional immunity for international torture prosecution, supports a broader international-plane objection to lesser domestic immunity doctrines that operate as perpetual shields: absolute judicial immunity (*Bradley v. Fisher*; *Stump v. Sparkman*), litigation privilege, absolute prosecutorial immunity (*Imbler v. Pachtman*), and expert witness immunity. Each is a domestic doctrine; none is a *jus cogens* norm. To the extent each operates as a perpetual shield insulating documented torture, IAJ argues, each should be treated as voidable on the international plane.

Scope of the position. This proposition is developed by IAJ as the analytical extension of the cited authorities (VCLT Article 53; *Pinochet (No. 3)*; *Belgium v. Senegal*; CAT General Comment No. 2, ¶ 18). It is the IAJ's analytical reading rather than a restatement of settled doctrine. The international obligation is binding regardless of whether U.S. domestic courts currently enforce it; the gap between the international obligation and domestic enforcement is itself a subject of the equivalence analysis in Part 8.1.

8.7 The Multi-Treaty Convergence

A unified set of doctrinal propositions emerges from the convergence of the bodies of authority analysed in Parts 2–7:

(1) The prohibition of torture is a peremptory norm of customary international law (*Belgium v. Senegal*; *Furundžija*).

(2) The prohibition generates *erga omnes* obligations owed to all States and to all persons (*Belgium v. Senegal*; *Barcelona Traction*).

(3) The prohibition applies to all branches of government, including the judiciary, in any territory under State jurisdiction (CAT GC No. 2, ¶ 15).

(4) Discriminatory purpose — including disability-based discrimination — satisfies the Article 1 purpose element (UNCAT Art. 1; *Kunarac*; Méndez 2013).

(5) The lawful-sanctions carve-out is unique to UNCAT and is interpretively constrained to narrow ordinary penalties; it does not insulate deliberate continuation of harmful conditions after knowledge (Part 8.5).

(6) The State's positive obligation extends to protection from ill-treatment by private actors and includes effective investigation (ECtHR positive-obligation line; IACtHR *Velásquez Rodríguez* line; CAT GC No. 2, ¶ 18).

(7) Evidence obtained by torture is inadmissible in all proceedings (UNCAT Art. 15; *Jalloh*; *Gäfgen*).

(8) The procedural duty to investigate is independent of any complaint and arises by operation of the Convention (UNCAT Art. 12; *Assenov*; *El-Masri*).

(9) IAJ's analytical position, developed in Part 8.6, is that domestic immunity doctrines should be treated as voidable on the international plane to the extent they insulate documented torture from accountability — extending the reasoning of VCLT Art. 53, *Pinochet (No. 3)*, and *Belgium v. Senegal*.

(10) The U.S. RUDs, to the extent they purport to limit Article 1 or Article 16 obligations below the threshold articulated by the Committee's authoritative interpretation, are impermissible and severable (six-state objections; CAT GC No. 2; ILC Guideline 4.5.3).

9. Special Rapporteur Authorities

9.1 Special Rapporteur on Torture: Méndez 2013

Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur* (Juan E. Méndez), U.N. Doc. A/HRC/22/53 (February 1, 2013), articulates two propositions critical for the present Review:

Disability discrimination can reach the CIDT threshold. The Méndez Report establishes the disability-discrimination move in three steps. *First*, intent is effectively implied where a person is discriminated against on the basis of disability (¶ 20). *Second*, where the conduct involves discriminatory non-consensual intervention, that mechanism does the doctrinal work: "the mandate has held that the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of 'good intentions'" (¶ 32). *Third*, the report identifies deprivation of legal capacity as "a situation of powerlessness, whereby the victim is under the total control of another person" (¶ 64) — supplying a disability-specific mechanism that links the Article 1 powerlessness element to a judicially performed act (depriving a person of legal capacity is paradigmatically an adjudicative act). The Report further establishes that treatment violating the CRPD through coercion or discrimination "cannot be legitimate or justified under the medical necessity doctrine" (¶ 35), eliminating an analogue of the lawful-sanctions defense in the healthcare setting. The Report is directed to healthcare settings; IAJ argues the analytical framework extends to judicial settings where comparable indicia of powerlessness, control over the person, and non-consensual imposition obtain. That extension is IAJ analytical work, not a holding of the Méndez Report itself.

CIDT and torture are a single continuum. The Report's interpretive framework states the continuum proposition twice. First in ¶ 17: torture's four essential elements (severe pain or suffering; intent; specific purpose; State involvement, at least by acquiescence) define a threshold; "acts falling short of this definition may constitute cruel, inhuman or degrading treatment or punishment under article 16." Then again in ¶ 81: the Report's conclusion is that healthcare abuses examined "always amount at least to inhuman and degrading treatment, often arguably meet the criteria for torture." The continuum is doctrinal: torture and CIDT share the severity-and-purpose substrate; what differs is whether all five Article 1 elements are documented. This proposition is critical for the IAJ Five-Level Gravity Scale (Part 8.3) and for the analytic treatment of cases where conduct begins below the torture threshold and escalates over time.

9.2 Special Rapporteur on Torture: Edwards 2023

Special Rapporteur on Torture Alice Jill Edwards (appointed 2022) has continued the line of analysis developed by her predecessors. In her 2023 statement on the United Kingdom's Imprisonment for Public Protection (IPP) sentencing scheme (30 August 2023), the Rapporteur identified indefinite detention with

no clear path to release as engaging the prohibition of CIDT under UNCAT Article 16 and ICCPR Article 7. The analytic move is significant: judicially imposed sentences that produce severe psychological harm through indefinite duration, even where each individual sentence was within the court's authority at the time of imposition, may constitute CIDT when assessed cumulatively over time.

9.3 Special Rapporteur on the Independence of Judges and Lawyers: Satterthwaite 2023

Special Rapporteur on the Independence of Judges and Lawyers Margaret Satterthwaite (appointed 2022), in her 2023 thematic report *Reimagining justice: confronting contemporary challenges to the independence of judges and lawyers* (June 26, 2023), articulated principles directly relevant to the present Review:

(a) Judicial independence is not an end in itself but a means to securing the rights of individuals appearing before courts, including the rights against torture and CIDT.

(b) The IAJ position is that where judicial conduct violates internationally recognized ethics standards or human rights obligations, the resulting court orders should not be treated as "lawful sanctions" for purposes of UNCAT Article 1 without independent human-rights review.

(c) States have an obligation under ICCPR Article 14 (fair trial) and UNCAT Article 12 (investigation) to ensure mechanisms for accountability for judicial misconduct that engages the prohibition.

The Satterthwaite Report is the modern authority on the international judicial-independence framework; the IAJ argues, drawing on that framework, that the formal finality of judicial orders should not be treated as extending to orders that violate human rights obligations, and that *res judicata* and finality doctrines cannot operate to perpetuate documented violations.

9.4 Special Rapporteur on the Rights of Persons with Disabilities

The Special Rapporteur on the Rights of Persons with Disabilities has, in successive thematic reports, applied CRPD Article 13 (access to justice) and Article 15 (freedom from torture) to judicial settings. The Rapporteur's reports establish that the denial of procedural accommodations to disabled litigants — particularly in cases of severe and progressive harm — can engage both CRPD Article 15 and (when severity and intent thresholds are met) UNCAT Article 1 or Article 16.

10. The Istanbul Protocol (2022): the Investigative Standard

The Istanbul Protocol — the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* — is the international standard for documenting torture and ill-treatment. The 2022 revised edition is the controlling version. The Protocol is used by CAT, the Human Rights Committee, the ECtHR, the IACtHR, the African Commission, and domestic prosecutors and investigators across multiple jurisdictions.

10.1 Severity threshold and psychological suffering

Paragraphs 6–10 of the Istanbul Protocol confirm that psychological methods of torture are subject to the same prohibition as physical methods and give rise to the same legal obligations. The severity threshold may be satisfied by psychological suffering alone where the suffering is severe and the methodology of documentation is clinically rigorous.

10.2 The methodology

Paragraphs 74–82 articulate the documentation methodology, including:

(a) Multi-modal clinical assessment combining psychological and physical examination.

(b) Causation analysis linking documented harm to documented conduct.

(c) Consistency analysis comparing harm patterns to the patterns expected from the alleged conduct.

(d) Documentation of the second-bite problem — the re-traumatization that occurs when victims are required to repeat their testimony in multiple proceedings without adequate trauma-informed methodology.

10.3 Application to judicial-setting cases

The Istanbul Protocol is methodologically suited to judicial-setting cases because its causation and consistency analyses do not require physical custody. The Protocol's documentation framework has been applied to non-custodial cases including welfare coercion, asylum proceedings, and prolonged judicial proceedings against persons with disabilities.

11. Critical Gaps and Implementation Deficiencies

11.1 The U.S. equivalence failure

The most consequential implementation gap is the failure of the U.S. to deliver the equivalence its RUDs promised. The CAT Committee documented the failure in 2014 (CAT/C/USA/CO/3-5). The IAJ Guide to Domestic Criminal Enforcement (IAJ-GDE-20260510-001-PUB) documents the continuing failure through 2026.

The structural failure: the bridge term "inhumane." The Article 16 reservation, as deposited with the U.N. Secretary-General on October 21, 1994 and reflecting the Senate's October 27, 1990 resolution of advice and consent (accompanied by S. Exec. Rep. 101-30), provides that the United States is bound by Article 16's prohibition of "cruel, inhuman or degrading treatment or punishment" only insofar as that term "means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."

The reservation imports a three-term formulation — "cruel, unusual and inhumane" — but the cited constitutional Amendments do not contain that formulation. The Eighth Amendment's textual standard is "cruel and unusual" (conjunctive). The Fifth and Fourteenth Amendments use "due process" — neither uses "cruel and unusual" nor "inhumane." The word "inhumane" appears in none of the cited Amendments' text.

The Supreme Court has, however, read "inhumane" into the Eighth Amendment. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (Souter, J., for the Court) holds: "The Constitution 'does not mandate comfortable prisons,' *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981), but neither does it permit inhumane ones." The Amendment "imposes duties on these officials, who must provide humane conditions of confinement." This doctrine traces through *Rhodes v. Chapman*, 452 U.S. 337 (1981); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Wilson v. Seiter*, 501 U.S. 294 (1991); *Hudson v. McMillian*, 503 U.S. 1 (1992); and *Helling v. McKinney*, 509 U.S. 25 (1993). The Senate's 1990 RUD therefore did not invent the term; it tracked an emerging line of Eighth Amendment doctrine.

The equivalence failure is not that "inhumane" lacks constitutional grounding. The failure is that "inhumane" as the Court has read it is contextually narrower than CAT Article 16's "cruel, inhuman or degrading treatment or punishment" in three respects:

(i) **The "punishment" limitation.** Eighth Amendment doctrine reaches conduct only as "punishment" in the criminal-sentencing sense. *Ingraham v. Wright*, 430 U.S. 651 (1977), holds the Amendment inapplicable to public-school corporal punishment because it is not criminal punishment. The "humane conditions" doctrine is therefore tied to post-conviction custodial contexts. CAT Article 16, by contrast, reaches any conduct meeting the substantive standard "in any territory under [State Party] jurisdiction" — no criminal-punishment limitation, no custodial limitation.

(ii) **The subjective culpability requirement.** *Farmer*'s two-element test requires both an objective showing (sufficiently serious deprivation) and a subjective showing ("deliberate indifference" — a state-of-mind requirement) (*Farmer*, 511 U.S. at 834). *Wilson v. Seiter*, 501 U.S. at 297, formalized the subjective component for prison-conditions cases. CAT Article 16 attributes responsibility through "consent or acquiescence of a public official" — an attribution test, not a state-of-mind test in *Farmer*'s form.

(iii) **The custodial scope.** The Court's "inhumane" cases are almost entirely prison-conditions cases (*Rhodes*, *Estelle*, *Wilson*, *Helling*, *Farmer*, *Hudson*, *Brown v. Plata*). The doctrine has not been extended in any robust way to non-custodial adjudicative settings — courtroom proceedings, family-court orders, judicial denial of accommodation. Article 16's coverage is not so limited.

The bridge term "inhumane" therefore performs work — it is not contentless — but the bridge is shorter than the river it tries to span. The U.S. has committed under Article 16 to prevent CIDT in any territory under its jurisdiction. The RUD reads that commitment as bounded by the Court's "inhumane" doctrine. That doctrine is narrower than the treaty obligation along all three axes above. The gap between them is the structural equivalence failure documented by six State Parties' formal objections (Denmark, Finland, Germany, Netherlands, Norway, Sweden) and by the CAT Committee in CAT/C/USA/CO/3-5 (2014).

The implementation failures. Compounding the structural failure are the following implementation gaps:

(a) No comprehensive domestic torture offence. The federal Torture Act applies only to extraterritorial conduct.

(b) No domestic civil cause of action for torture by U.S. officials. The TVPA reaches only foreign officials.

(c) Absolute judicial immunity (*Stump v. Sparkman*), absolute prosecutorial immunity (*Imbler*), litigation privilege, and expert witness immunity together create a domestic-immunity architecture that systematically insulates documented torture from accountability. The IAJ position is that this architecture is itself a violation of the United States' UNCAT Article 16, Article 13, and Article 14 obligations and constitutes the operative U.S. equivalence failure on Plane A.

(d) Non-self-execution doctrine (*Medellín*) constrains the domestic enforcement of treaty obligations even where the international obligation is unambiguous.

The doubled compliance failure is then the relationship between the structural and implementation tiers: even where conduct satisfies the narrower domestic standard the RUD imports, the implementation failures often preclude effective remedy; and where conduct falls within Article 16's broader treaty standard but outside the narrower domestic standard the RUD imports, the U.S. position is that no domestic obligation arises at all — leaving the international obligation undischarged.

11.2 The accountability gap

Despite comprehensive legal frameworks, accountability gaps persist across all examined jurisdictions:

(a) Low prosecution rates. Few criminal proceedings under specific anti-torture laws.

(b) Procedural barriers. Continuing obstacles including immunities, amnesties, and limitation periods.

(c) Political interference. Executive interference in judicial processes undermines independence.

(d) Inadequate redress. Victim compensation, rehabilitation, and non-repetition guarantees are unevenly implemented.

11.3 The captive-litigant problem

A structurally distinct gap — particularly relevant to the IAJ's judicial-setting analyses — is the captive-litigant problem: where the domestic forum that is the locus of the alleged violation is also the forum that adjudicates the claim of violation. Younger abstention, Rooker-Feldman, and § 1915(e)(2) screening operate as a pre-merits jurisdictional tier in U.S. federal courts. Absolute judicial immunity operates as the merits tier. Together, these two tiers constitute a complete barrier to federal review of state-court conduct in many cases. The captive-litigant problem is the most acute structural manifestation of the equivalence failure documented in Part 11.1.

11.4 Information and investigative deficits

Investigation under UNCAT Article 12 requires capacity, independence, and trauma-informed methodology. Most U.S. jurisdictions lack:

(a) Trained investigators with capacity to apply the Istanbul Protocol.

(b) Independent oversight mechanisms separate from the institutions implicated.

(c) Trauma-informed methodology that avoids re-traumatization in repeated proceedings.

(d) Mechanisms for cross-system data aggregation that would identify patterns across cases.

12. Recommendations

12.1 For domestic implementation

(1) **Comprehensive criminalization.** The U.S. and similarly situated States should enact a comprehensive domestic torture offence in conformity with UNCAT Article 1, applicable to conduct within the State's territory, by State officials and persons acting under color of law. The federal Torture Act's extraterritorial limitation should be removed.

(2) **Civil cause of action.** A federal civil cause of action for torture by U.S. officials, parallel to the TVPA's reach against foreign officials, should be enacted.

(3) **Immunity reform.** The absolute immunity architecture (judicial, prosecutorial, litigation-privilege, expert-witness) should be reformed to incorporate a *jus cogens* exception consistent with the *Pinochet (No. 3)* line. At minimum, immunity should not extend to conduct that satisfies all five Article 1 elements.

(4) **RUD withdrawal.** The U.S. should withdraw the RUDs that the CAT Committee and six State Parties have identified as incompatible with the Convention. The "prolonged mental harm" Understanding and the Article 16 reservation should be withdrawn in particular.

12.2 For investigative capacity

(5) **Istanbul Protocol training.** Federal and state prosecutors, judicial conduct authorities, and disability rights coordinators should receive training in the Istanbul Protocol (2022) methodology.

(6) **Independent investigation.** Investigation of torture allegations should be assigned to bodies institutionally independent from the institutions implicated. Where the judiciary is the institution implicated, the investigative body should be outside the judiciary's hierarchical control.

(7) **Cross-system data aggregation.** Mechanisms should be developed to aggregate data across cases to identify patterns of conduct that constitute systematic practice under UNCAT Article 20.

12.3 For comparative analysis

(8) **Comparative database.** A comprehensive database of judicial-setting torture cases, drawing on the IAJ Case Archive and parallel international sources, should be maintained as a public resource.

(9) **Treaty body engagement.** State Parties' periodic reports should specifically address judicial-setting conduct; shadow reports should be encouraged.

(10) **Article 20 communications.** Where systematic practice is documented, Article 20 communications should be filed.

13. Conclusion

The international precedents and comparative law surveyed in this Review converge on a unified position with respect to several core propositions. The prohibition of torture is a peremptory norm of customary international law (*jus cogens*), owed *erga omnes*, derived from human dignity, and not limited by setting (*Belgium v. Senegal*; *Barcelona Traction*; *Furundžija*). The prohibition of CIDT is absolute and non-derogable across every parallel human-rights instrument; its *jus cogens* status is more contested than the prohibition of torture and is analyzed separately unless the Article 1 threshold is met. The prohibition applies to all branches of government, including the judiciary, in any territory under State jurisdiction (CAT GC No. 2, ¶ 15). Discriminatory purpose — including disability-based discrimination — satisfies the purpose element (UNCAT Art. 1; *Kunarac*; Méndez 2013). The lawful-sanctions carve-out, anomalous within the broader treaty architecture, does not protect deliberate continuation of harmful conditions after knowledge. Developed by IAJ as the analytical extension of VCLT Article 53, *Pinochet (No. 3)*, and *Belgium v. Senegal*, the IAJ analytical position is that domestic immunity doctrines — sovereign, judicial, prosecutorial, expert-witness — should be treated as voidable on the international plane to the precise extent they function to insulate documented torture from accountability. IAJ further argues that the U.S. RUDs cannot lawfully constrain the *jus cogens* minimum content; that position is supported by the formal objections of six State Parties and the CAT Committee's 2014 findings.

The implementation gap between the international obligation and the domestic enforcement structure is real, persistent, and documented. Closing it requires legislative reform, immunity reform, investigative capacity building, and treaty-body engagement on the equivalence failures the CAT Committee has identified. The IAJ analytical frameworks — the Two-Plane Framework, the Six-Move Framework, the Five-Level Gravity Scale, and the lawful-sanctions three-part test — are offered as methodological disciplines for that work. They are not freestanding legal tests binding on courts; they are tools for systematic analysis that ensure each treaty element and threshold issue is addressed before a CIDT or torture characterization is advanced.

The persistent gap between norm and implementation does not weaken the norm. It heightens the obligation of every State Party — and every official acting under color of authority — to bring practice into conformity with the obligation. The Review is offered in service of that conformity.

Selected Authorities

UN treaty law and General Comments

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85, especially arts. 1, 2, 4, 5, 7, 10, 12, 13, 14, 15, 16, 20.
- International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.
- Convention on the Rights of Persons with Disabilities arts. 13, 14, 15, 17, Dec. 13, 2006, 2515 U.N.T.S. 3.
- CAT Committee, General Comment No. 2: Implementation of Article 2, CAT/C/GC/2 (Jan. 24, 2008), esp. ¶¶ 15, 17, 18, 21.

- CAT Committee, General Comment No. 3: Implementation of Article 14, CAT/C/GC/3 (Dec. 13, 2012).
- CAT Committee, General Comment No. 4: Non-refoulement, CAT/C/GC/4 (Sept. 4, 2018).
- CAT Committee, Concluding Observations on the Third to Fifth Periodic Reports of the United States, CAT/C/USA/CO/3-5 (Dec. 19, 2014).
- Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties, CCPR/C/21/Rev.1/Add.13 (May 26, 2004).
- UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 2022 edition.

ICJ jurisprudence

- *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 2012 I.C.J. Rep. 422 (July 20, 2012).
- *Barcelona Traction, Light and Power Company Ltd. (Belgium v. Spain)*, Second Phase, Judgment, 1970 I.C.J. Rep. 3.
- *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, 2002 I.C.J. Rep. 3.
- *Jurisdictional Immunities of the State (Germany v. Italy)*, Judgment, 2012 I.C.J. Rep. 99.
- *Avena and Other Mexican Nationals (Mexico v. United States)*, Judgment, 2004 I.C.J. 12 (Mar. 31, 2004).
- *Factory at Chorzów (Jurisdiction)*, P.C.I.J., Ser. A, No. 9 (1927).
- *Ahmadou Sadio Diallo (Compensation)*, 2012 I.C.J. Rep. 324.

International criminal tribunals

- *Prosecutor v. Kunarac, Kovač, and Vuković*, ICTY Trial Chamber II Judgment, IT-96-23-T & IT-96-23/1-T (Feb. 22, 2001); Appeals Chamber Judgment (June 12, 2002).
- *Prosecutor v. Furundžija*, ICTY Trial Chamber II Judgment, IT-95-17/1-T (Dec. 10, 1998).
- Rome Statute of the International Criminal Court arts. 7(1)(f), 8(2)(a)(ii), 8(2)(c)(i), July 17, 1998, 2187 U.N.T.S. 90.
- ICC Elements of Crimes, ICC-ASP/1/3 (2002, as amended 2011).

European Court of Human Rights

- European Convention on Human Rights art. 3, Nov. 4, 1950, 213 U.N.T.S. 221.
- *Ireland v. United Kingdom*, App. No. 5310/71 (1978).
- *Tyrer v. United Kingdom*, App. No. 5856/72 (1978).
- *Selmouni v. France [GC]*, App. No. 25803/94 (1999).
- *Aydın v. Turkey*, App. No. 23178/94 (1997).

- *Assenov and Others v. Bulgaria*, App. No. 24760/94 (1998).
- *Soering v. United Kingdom*, App. No. 14038/88 (1989).
- *Chahal v. United Kingdom*, App. No. 22414/93 (1996).
- *A v. United Kingdom*, App. No. 25599/94 (1998).
- *Z and Others v. United Kingdom [GC]*, App. No. 29392/95 (2001).
- *M.C. v. Bulgaria*, App. No. 39272/98 (2003).
- *Šečić v. Croatia*, App. No. 40116/02 (2007).
- *Jalloh v. Germany [GC]*, App. No. 54810/00 (2006).
- *Saadi v. Italy [GC]*, App. No. 37201/06 (2008).
- *Gäfgen v. Germany [GC]*, App. No. 22978/05 (2010).
- *El-Masri v. "the former Yugoslav Republic of Macedonia" [GC]*, App. No. 39630/09 (2012).
- *Mocanu and Others v. Romania [GC]*, App. No. 10865/09 (2014).
- *Bouyid v. Belgium [GC]*, App. No. 23380/09 (2015).
- *Kurt v. Austria [GC]*, App. No. 62903/15 (2021).

Inter-American Court of Human Rights

- American Convention on Human Rights art. 5(2), Nov. 22, 1969, 1144 U.N.T.S. 123.
- Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, OAS Treaty Series No. 67.
- *Velásquez Rodríguez v. Honduras*, Merits, Judgment (July 29, 1988).
- *González et al. ("Cotton Field") v. Mexico*, Merits, Judgment (Nov. 16, 2009).
- *Penal Miguel Castro Castro v. Peru*, Merits, Judgment (Nov. 25, 2006).
- *Furlan and Family v. Argentina*, Merits, Judgment (Aug. 31, 2012).

African Commission and Court

- African Charter on Human and Peoples' Rights art. 5, June 27, 1981, 1520 U.N.T.S. 217.
- Robben Island Guidelines (African Commission, 2002).
- African Commission, General Comment No. 4 on Article 5 (2017).
- *Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt*, Comm. 323/06 (2011).

Domestic authorities (selected)

- *R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3)* [2000] 1 AC 147 (HL).
- *Suresh v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3.
- Basic Law for the Federal Republic of Germany art. 25.

- *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980).
- *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).
- *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108 (2013).
- *Medellín v. Texas*, 552 U.S. 491 (2008).
- *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804).
- *Stump v. Sparkman*, 435 U.S. 349 (1978).
- *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1872).
- *Imbler v. Pachtman*, 424 U.S. 409 (1976).
- *Rochin v. California*, 342 U.S. 165 (1952).
- *Trop v. Dulles*, 356 U.S. 86 (1958).
- *Estelle v. Gamble*, 429 U.S. 97 (1976).
- *Farmer v. Brennan*, 511 U.S. 825 (1994).
- *County of Sacramento v. Lewis*, 523 U.S. 833 (1998).
- *Hudson v. McMillian*, 503 U.S. 1 (1992).
- *Whitley v. Albers*, 475 U.S. 312 (1986).
- *Brown v. Plata*, 563 U.S. 493 (2011).
- *Tennessee v. Lane*, 541 U.S. 509 (2004).
- 18 U.S.C. §§ 2340–2340A (Torture Act).
- 28 U.S.C. § 1350 (Alien Tort Statute).
- 28 U.S.C. § 1350 note (Torture Victim Protection Act).

Special Rapporteurs

- Special Rapporteur on Torture (Méndez), *Report of the Special Rapporteur*, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013).
- Special Rapporteur on Torture (Edwards), Statement on Imprisonment for Public Protection sentences (United Kingdom) (Aug. 30, 2023).
- Special Rapporteur on the Independence of Judges and Lawyers (Satterthwaite), *Reimagining justice: confronting contemporary challenges to the independence of judges and lawyers* (June 26, 2023).

Vienna Convention and ILC instruments

- Vienna Convention on the Law of Treaties arts. 19, 31, 53, 64, May 23, 1969, 1155 U.N.T.S. 331 (cited as customary international law where applicable to non-parties including the U.S.).
- ILC Guide to Practice on Reservations to Treaties, U.N. Doc. A/66/10/Add.1 (2011), esp. Guideline 4.5.3.

- ILC Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens), with Commentaries (2022).
- ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001).

State objections to U.S. RUDs

- Finland, France, Germany, Netherlands, Spain, Sweden: Objections to U.S. Reservations and Understandings deposited upon U.S. ratification of UNCAT (1994), on file with the UN Secretary-General.

Scholarly authorities

- Bianchi, A., "Immunity versus Human Rights: The Pinochet Case," 10 European Journal of International Law 237 (1999).
- Bassiouni, M.C., "International Crimes: *Jus Cogens* and *Obligatio Erga Omnes*," 59 Law & Contemporary Problems 63 (1996).
- Meron, T., "On a Hierarchy of International Human Rights," 80 American Journal of International Law 1 (1986).
- Nowak, M. & McArthur, E., *The United Nations Convention Against Torture: A Commentary* (Oxford 2008).
- Nagan, W.P. & Atkins, L., "The International Law of Torture: From Universal Proscription to Effective Application and Enforcement," 14 Harvard Human Rights Journal 87 (2001).

IAJ primary authorities

- Inst. for the Advancement of Justice & Human Rights, *UNCAT and Jus Cogens: A Contemporary Perspective* (IAJ-STD-20260505-001-PUB, May 2026).
- Inst. for the Advancement of Justice & Human Rights, *Harmonizing the Architecture of Disability Rights* (IAJ Review/Standard, March 2026).
- Inst. for the Advancement of Justice & Human Rights, *Guide to Domestic Criminal Enforcement of Torture and CIDT in the United States* (IAJ-GDE-20260510-001-PUB, May 2026).
- Inst. for the Advancement of Justice & Human Rights, *Psychological Investigation Standard* (IAJ-STD-20260324-001-PUB, v1.5, Mar. 2026).
- Inst. for the Advancement of Justice & Human Rights, Article 20 Communication on U.S. judicial-setting practice (IAJ-CAT-20250919-002-PUB, Sept. 2025).

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