QUICK REFERENCE GUIDE ON JUDICIAL TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

Bench Companion to the IAJ Reviews of Law

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Institute for the Advancement of Justice & Human Rights

Prepared as a bench-facing reference for judges, prosecutors, civil rights litigators, judicial conduct authorities, and treaty-body advocates.

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 Quick Reference 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 Quick Reference.

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Purpose

This Quick Reference synthesizes the controlling international and comparative-law authorities on judicial torture and cruel, inhuman or degrading treatment or punishment (CIDT) for use by judges, prosecutors, civil rights litigators, judicial conduct authorities, and treaty-body advocates. It is the companion to the IAJ Review of Law titled *International Precedents and Comparative Law on Judicial Torture and CIDT* (IAJ-LRV-20260511-002-PUB, May 2026), which contains the underlying analysis. This Reference supersedes the prior edition of this Quick Reference titled *Quick Reference Guide on Judicial Torture and CIDT* (IAJ-QRF-20250903-001-PUB v1.0, September 2025).

Use of this Quick Reference. This document is designed for dual use across the two planes of the IAJ's analytical framework. For U.S. courts (Plane B), it helps translate judicial torture and CIDT allegations into domestic claims, defenses, remedies, referrals, and procedural requests under the Constitution, ADA Title II, § 504, § 1983, *Ex parte Young*, and federal criminal-referral statutes. For treaty bodies, Special Procedures, investigators, treaty-monitoring authorities, and reform bodies (Plane A), it preserves the independent analysis of whether the United States has complied with UNCAT, jus cogens, the Istanbul Protocol, and the duty to prevent, investigate, exclude, redress, and reform. **A U.S. court's refusal to provide relief — whether on immunity, finality, abstention, non-self-execution, post-*Egbert Bivens* narrowing, procedural default, or other Plane B grounds — is not proof that no human-rights violation occurred. It is part of the domestic-remedy and equivalence-failure record under UNCAT Article 16 and the implementing Reservations, Understandings, and Declarations.** Both pathways are expected; pleading only on one plane is incomplete IAJ practice.

Caution

This Reference does not treat every adverse ruling, procedural deadline, or judicial error as torture. Judicial torture or judicially administered CIDT requires a proof-based showing of (i) **notice** — actual or constructive knowledge of the harm; (ii) **control** — legal authority to prevent, stay, accommodate, or remedy; (iii) **compulsion** — procedural pressure to participate despite known risk; (iv) **severity and dignity harm** — clinically, medically, psychologically, or otherwise record-documented suffering of constitutional or international-law magnitude; (v) **prohibited purpose or function** — UNCAT-enumerated purpose, or constitutional purpose-inference where direct evidence of intent is unavailable; and (vi) **remedy failure** — illusory or structurally conflicted domestic remedies. The four-category taxonomy below operates as the disciplining frame.

Category	Description	Legal characterization
Judicial error	Ordinary mistake, incorrect ruling, bad reasoning	Not torture; not CIDT
Judicial abuse	Arbitrary, hostile, or retaliatory procedure	Due process / ADA / ethics

Category	Description	Legal characterization
Judicial CIDT	Knowingly imposes degrading, coercive, medically harmful, or access-denying conditions	UNCAT Art. 16; constitutional due process
Judicial torture	Severe suffering intentionally inflicted or knowingly maintained for prohibited purpose	UNCAT Art. 1; *jus cogens*

The framework in one paragraph

The prohibition of torture is a peremptory norm of customary international law (*jus cogens*), confirmed by the ICJ in *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 2012 I.C.J. Rep. 422, and generates obligations *erga omnes* (*Barcelona Traction*, 1970 I.C.J. Rep. 3). The prohibition of CIDT is absolute and non-derogable across every parallel human-rights instrument — UNCAT, ICCPR Art. 7, ECHR Art. 3, ACHR Art. 5(2), African Charter Art. 5, CRPD Art. 15, Rome Statute Art. 7(1)(f) and Art. 8 — and overlaps with torture in severe cases, but 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 (CAT GC No. 2, ¶ 15) in any territory under the State's jurisdiction. The IAJ argues that on the international plane, no domestic immunity doctrine can lawfully shield documented conduct satisfying all five UNCAT Art. 1 elements from accountability — a position advanced as the IAJ's best reading of VCLT Art. 53, *Pinochet (No. 3)* [2000] 1 AC 147, *Belgium v. Senegal*, and CAT General Comment No. 2, not as a settled holding of U.S. domestic law or any international court.

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. 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. They cannot define away the underlying human-rights violation on Plane A. Where current domestic doctrine fails to provide effective prevention, investigation, exclusion, 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 Quick Reference. This Quick Reference is to be read in two modes simultaneously. The first mode is assistive: it equips victims, their counsel, prosecutors, and judicial-conduct authorities to use available U.S. domestic mechanisms 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 human-rights baseline. Where the two modes produce different practical results, the divergence is itself the operative U.S. compliance failure and must be preserved as exhaustion evidence and as proof of domestic non-equivalence.

Definitions

Judicial torture and CIDT covers four distinct conduct categories:

1. Judicially ordered corporal punishment (*Tyrer v. UK*).
2. Torture and CIDT inflicted, instigated, consented to, or acquiesced in by judicial officers in connection with judicial proceedings.
3. State acquiescence in private violence connected to proceedings (CAT GC No. 2, ¶ 18; ECtHR positive-obligation line; IACtHR *Velásquez Rodríguez* line).
4. *Court-process-as-instrument* — adjudicative conduct satisfying all five Art. 1 elements through deliberate continuation of harmful conditions on a litigant after knowledge of severe foreseeable harm.

Five Article 1 elements (UNCAT). Torture requires: (1) any act intentionally inflicting; (2) severe pain or suffering, physical or mental; (3) for an enumerated purpose (information, confession, punishment, intimidation, coercion, or *discrimination of any kind*); (4) by, with the consent of, or with the acquiescence of, a public official or person acting in an official capacity; (5) not arising only from, inherent in, or incidental to lawful sanctions.

CIDT (UNCAT Art. 16). Acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Art. 1, when committed by or with the consent or acquiescence of a public official or other person acting in an official capacity, in any territory under the State's jurisdiction. No purpose requirement.

I. Severity continuum (ECHR Art. 3)

Article 3 ECHR is absolute and non-derogable. The Court distinguishes torture from inhuman treatment from degrading treatment on a continuum of severity.

Case	Holding	Why it matters
Ireland v. UK (1978)	Five "deep interrogation" techniques = inhuman & degrading, not torture	Foundational severity-continuum case

Case	Holding	Why it matters
Tyrer v. UK (1978)	Judicial corporal punishment = degrading punishment; "living instrument" doctrine	Judicially ordered sanctions are not exempt
Selmouni v. France [GC] (1999)	Re-emphasized purposive element citing UNCAT Art. 1; treatment formerly CIDT can be reclassified as torture	Living instrument; severity threshold can rise
Aydın v. Turkey (1997)	Rape of detainee by State agent = torture	Sexual violence by State agents in custody is torture
Bouyid v. Belgium [GC] (2015)	Slapping of person in custody by police officer = degrading treatment	Severity threshold does not require serious bodily injury where dignity is affronted by State agent

II. The duty to investigate (Art. 3 procedural limb)

An arguable claim triggers a State duty to conduct a prompt, independent, and effective investigation, capable of identifying and punishing those responsible. The duty is independent of any complaint.

Case	Holding
Assenov v. Bulgaria (1998), ¶ 102	Procedural duty established
El-Masri v. Macedonia [GC] (2012), ¶¶ 182–193	Duty independent of complaint; investigation must be capable of identifying perpetrators
Mocanu v. Romania [GC] (2014)	Procedural duty extends across time; State cannot defeat by delay
Bouyid v. Belgium [GC] (2015), ¶¶ 114–123	Promptness, thoroughness, independence required

UNCAT analogues: Art. 12 (prompt and impartial investigation); Art. 13 (right to complain without retaliation). CAT GC No. 3 (failure to investigate is structural impediment to redress).

III. The exclusionary rule

Authority	Scope
UNCAT Art. 15	Statements obtained by torture inadmissible in any proceeding (except against the torturer)
ECHR Arts. 3 + 6 (*Jalloh*, 2006)	Evidence obtained by treatment contrary to Art. 3 compromises Art. 6 fairness; per se violation where torture
ECHR (*Gäfgen*, 2010)	Admission of torture-obtained evidence is per se Art. 6 violation

Derivative-evidence scope varies by jurisdiction. UNCAT Art. 15 reaches direct use; ECHR doctrine reaches both direct and (where torture) derivative use.

IV. Positive obligations: private actors and acquiescence

The State has positive obligations to prevent and respond to torture and CIDT by private actors, particularly toward vulnerable persons.

System	Lead case	Holding
UNCAT	GC No. 2, ¶ 18	Two branches: (i) public-official branch — States must prevent officials or persons under color of law from committing, encouraging, or acquiescing in torture, including in another official's conduct; (ii) private-actor branch — officials who know or should know of torture/ill-treatment by private actors and fail to exercise due diligence bear responsibility as complicit or acquiescent

System	Lead case	Holding
ECHR	*A v. UK* (1998); *Z v. UK [GC]* (2001); *M.C. v. Bulgaria* (2003); *Kurt v. Austria [GC]* (2021)	Positive obligation to protect vulnerable persons from private-actor ill-treatment; effective domestic legal framework and operational protection required
IACtHR	*Velásquez Rodríguez* (1988), ¶¶ 172–177; *Cotton Field* (2009)	State responsibility for failure of due diligence to prevent, investigate, punish, redress
African Charter	*Egyptian Initiative v. Egypt* (Comm. 323/06, 2011); GC No. 4 on Art. 5 (2017)	State responsibility for failure to prevent/protect/investigate private-actor harm

V. UNCAT vs. ICC: distinct frameworks

A common error is to conflate the public-official requirement of UNCAT with the contextual elements of the ICC Statute.

	UNCAT Art. 1	ICC Art. 7(1)(f) (CAH)	ICC Art. 8 (war crime)
Public official required	YES (or person acting in official capacity, or with consent/acquiescence)	NO	NO (but victim must be protected person)
Purpose element	YES (enumerated; exhaustive)	NO	YES (parallel to UNCAT)
Contextual element	None	Widespread or systematic attack against civilian population	Armed conflict

	UNCAT Art. 1	ICC Art. 7(1)(f) (CAH)	ICC Art. 8 (war crime)
Custody/control	Not required by Art. 1 (functional concept under OPCAT)	YES (custody or control)	(Implicit in protected-person context)
Lawful-sanctions carve-out	YES	YES	NO

ICTY *Kunarac* (IT-96-23, 2001/2002) established (i) the purpose list under customary IHL is *illustrative, not exhaustive* (Trial ¶ 485); (ii) under customary IHL, the involvement of a State official is *not required* (Appeal ¶ 148). The first holding supports the proposition that discrimination "on any ground" (including disability) satisfies Art. 1's purpose element.

ICTY *Furundžija* (IT-95-17/1-T, 1998), ¶¶ 153–157, articulated the *jus cogens*/*erga omnes* status of the torture prohibition before the ICJ confirmed it in *Belgium v. Senegal*.

VI. The ICJ doctrine

Case	Holding	Operative for
Belgium v. Senegal (2012)	Torture prohibition is *jus cogens*; *erga omnes* obligations; *aut dedere aut judicare* under UNCAT Art. 7; duty to investigate under Art. 6 independent of complaint	Foundational modern authority
Barcelona Traction (1970)	*Erga omnes* obligations derive from basic rights of the human person	*Jus cogens* hierarchy; not setting-limited
Arrest Warrant (DRC v. Belgium, 2002)	Personal immunity (*ratione personae*) is procedural; "immunity ≠ impunity"; prosecution may follow term, before international courts, or upon waiver. Majority did *not*	Distinguish from functional immunity (Pinochet)

Case	Holding	Operative for
	adopt *jus cogens* exception to personal immunity	
Jurisdictional Immunities (Germany v. Italy, 2012)	*State* immunity in *civil* proceedings continues despite *jus cogens* violation; the rule is procedural	Limited to State immunity in civil cases; does not reach individual criminal liability or domestic immunity doctrines
Avena (2004)	VCCR breach; "review and reconsideration" required; reparation principle (*Chorzów Factory*) confirmed	International obligation of review and reconsideration intact; domestic judicial enforcement constrained by *Medellín* (self-execution / implementing legislation required)

Important distinctions.

(a) *Personal* immunity (*Arrest Warrant*) bars enforcement during the term of office; it is procedural. *Functional* immunity (*ratione materiae*) for international torture prosecution of former officials does not attach to *jus cogens* violations (*Pinochet (No. 3)*); this holding is precise to former-official functional immunity for international torture and does not, by itself, decide every domestic immunity question.

(b) *State* immunity (*Germany v. Italy*) concerns the immunity of a *foreign* State from the jurisdiction of another State's courts in civil proceedings. *Domestic* immunity doctrines concern the immunity of officials of one State from the courts of that *same* State. The ICJ has not held that domestic absolute-immunity doctrines, applied to documented torture by the officials of the State whose courts are adjudicating the claim, are consistent with the State's *jus cogens* obligations.

VII. *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) holds that former-official functional immunity (*ratione materiae*) does not bar prosecution for torture committed in office, where the relevant treaty and international-law framework treats torture as outside lawful official functions. The reasoning:

1. Torture is prohibited by *jus cogens*.
2. The sovereign function of the State does not encompass acts that violate *jus cogens*.
3. Functional immunity is grounded in the proposition that the official acts on behalf of the State; the State cannot lawfully authorize acts that violate *jus cogens*.

4. Therefore, former-official functional immunity does not attach to torture committed in office.

The holding is precise: it concerns *former-official functional immunity* for *international prosecution* of *torture*. It does not, by itself, decide every domestic judicial-immunity, prosecutorial-immunity, litigation-privilege, or civil-remedy question.

Analytic extension — IAJ position. IAJ argues that the reasoning of *Pinochet (No. 3)*, taken together with VCLT Article 53, *Belgium v. Senegal* (2012), and CAT General Comment No. 2, supports a broader international-plane objection to domestic immunity doctrines — including absolute judicial immunity, absolute prosecutorial immunity, litigation privilege, and expert-witness immunity — when those doctrines operate as perpetual shields against accountability for documented Article 1 torture. This is *not* a settled holding of U.S. domestic law and has *not* been definitively adopted by any international court in this precise form. It is advanced as IAJ's best reading of the cited authorities. The domestic enforceability of that position remains a separate Plane B question subject to *Stump v. Sparkman*, *Mireles v. Waco*, and the absolute-immunity architecture analyzed in the companion *Judicial Torture Framework* (IAJ-LRV-20260511-003-PUB).

VIII. UNCAT core duties

Art.	Duty	Pinpoint
1	Definition of torture; five elements	Strict construction; *Kunarac* illustrates the purpose element
2(2)	Non-derogability	No exceptional circumstances justify torture
3	*Non-refoulement*	Absolute (GC No. 4); *Saadi v. Italy*
4	Criminalization	Specific offence required; CAT/C/USA/CO/3-5 found U.S. non-compliance
6	Detention of suspect	Triggered upon credible allegation
7	*Aut dedere aut judicare*	*Belgium v. Senegal* confirmed
10	Training	Affirmative State obligation

Art.	Duty	Pinpoint
12	Investigation	Prompt, impartial; no complaint required
13	Right to complain	Without retaliation
14	Redress	Enforceable right; rehabilitation included (GC No. 3)
15	Exclusionary rule	Statements obtained by torture inadmissible
16	CIDT	No purpose required; broader than Art. 1
20	Confidential inquiry	Triggered by reliable information of systematic practice; U.S. has accepted
22	Individual communications	U.S. has *not* accepted

IX. CAT Committee findings on the U.S. (2014)

CAT/C/USA/CO/3-5 (Dec. 19, 2014). The Committee found that:

(a) The specific offence of torture has not been introduced at the federal level in full conformity with Art. 1 (¶ 9). The federal Torture Act (18 U.S.C. §§ 2340–2340A) is limited to extraterritorial conduct.

(b) The "prolonged mental harm" Understanding creates actual or potential loopholes for impunity (¶ 11). The Understanding was invoked in OLC memoranda as authority for "deeply flawed legal arguments."

(c) The Art. 16 reservation was invoked in OLC memoranda as authority for "deeply flawed legal arguments."

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

(e) Prosecution of perpetrators of torture has been limited (¶ 14).

Six-State objections to U.S. RUDs. Finland, France, Germany, the Netherlands, Spain, and Sweden filed formal objections at the time of U.S. ratification (1994), on the ground that the U.S. RUDs are incompatible with the object and purpose of the Convention. Under VCLT Art. 19(c) and ILC Guideline 4.5.3, an impermissible reservation may be severed; the State remains bound by the Convention but not by the reservation.

Status for domestic judicial use. The CAT Committee's Concluding Observations are not a substitute for domestic implementing legislation and do not themselves operate as a domestic court judgment. They are authoritative treaty-monitoring guidance from the body charged with supervising UNCAT compliance, and U.S. courts should consider them when interpreting constitutional, statutory, evidentiary, disability-rights, access-to-courts, and remedial doctrines consistently with UNCAT's object and purpose. Where a reservation, understanding, declaration, or domestic-law limitation would defeat the absolute prohibition of torture or make prevention, investigation, exclusion, or redress illusory, it should be construed narrowly, consistent with the *Charming Betsy* canon and the equivalence principle developed in Part X below.

X. The IAJ Two-Plane Framework

Plane A — international plane. UNCAT, customary international law, and *jus cogens* obligations are intact regardless of the State's domestic procedural mechanisms. *Medellín* does not affect Plane A.

Plane B — domestic plane. Domestic mechanisms for implementing the international obligation are constrained by U.S. doctrines (non-self-execution, immunities, procedural defaults). The U.S. RUDs were premised on the assertion that Plane B provides *equivalence* with Plane A. The CAT Committee found in 2014 that this equivalence has not been delivered.

The equivalence problem. Where domestic mechanisms fail to provide equivalence, the international obligation remains binding. The gap between the international obligation and the domestic enforcement structure is itself a subject of the State's compliance obligation.

XI. The IAJ Six-Move Framework

A disciplining tool for systematic analysis of non-classic UNCAT claims. Not a freestanding legal test.

1. **No setting qualifier.** Art. 1(1) defines torture as "any act" — no setting restriction. CAT GC No. 2, ¶ 15: "all branches of government."
2. **Five elements analysed individually.** Each Art. 1 element applied to documented conduct. Knowledge plus continued disregard after notice establishes the inference of intentional infliction or knowing maintenance of suffering — the doctrinally required reading under the human-rights baseline; the prohibited-purpose element must still be separately analyzed under Article 1 (*Farmer v. Brennan* analog).
3. **Lawful-sanctions three-part test** (see Part XIII).
4. **Severity confirmation under Istanbul Protocol (2022).** Multi-modal clinical methodology; causation analysis; consistency analysis.

5. **Jus cogens closes residual architectural gap.** Minimum content derived from *Belgium v. Senegal*, *Barcelona Traction*, CAT GC No. 2.
6. **Functional custody analogy.** OPCAT functional understanding of deprivation of liberty supports application to non-architectural custody.

XII. The IAJ Five-Level Gravity Scale

A unified gradient for analysing the relationship between domestic statutory violations and treaty-level CIDT/torture characterizations.

Level	Characterization	Proof architecture
1	Statutory violation (ADA Title II; Rehabilitation Act)	Element-by-element; no severity threshold required
2	Constitutional violation (Fourteenth Amendment; *Farmer* deliberate indifference)	Actual knowledge plus disregard
3	Pattern-or-practice systemic discrimination (34 U.S.C. § 12601 within its statutory scope; UNCAT Art. 20 independently)	Institutional intent from pattern; statistical evidence
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 Art. 1 elements; purpose element explicit

Méndez 2013 (A/HRC/22/53, ¶ 17 (acts short of torture are CIDT); ¶ 20 (intent implied by disability discrimination); ¶¶ 31–32 (powerlessness; forced psychiatric interventions satisfy Art. 1 intent/purpose); ¶ 35 (CRPD-violating coercion not justified by medical necessity); ¶ 64 (legal-capacity deprivation as powerlessness); ¶ 81 (healthcare abuses always reach at least inhuman/degrading; often arguably reach torture)): disability discrimination can reach the CIDT threshold; CIDT and torture are positions on a single continuum.

XIII. The lawful-sanctions carve-out (UNCAT Art. 1)

Three-part test:

(a) **"Only from" limitation.** Does the harm arise *only* from the formal sanction, or also from deliberate continuation of harmful conditions after knowledge of severe foreseeable harm? If the latter, the carve-out does not apply.

(b) **"Lawful" requirement.** Was the process genuinely lawful (proper jurisdiction, proper procedure, good faith)? Or was legal form used as a vehicle for substantively prohibited conduct (fabricated grounds, bad-faith coordination, weaponized process)? Where lawfulness is contested, the carve-out does not apply. The IAJ position, drawing on the 2023 Special Rapporteur thematic report on judicial independence (Satterthwaite, A/HRC/53/31) and the broader international judicial-ethics framework, is that court orders involving serious violations of internationally recognized judicial-ethics standards should not be treated as automatically final or as "lawful sanctions" for UNCAT purposes without independent human-rights review.

(c) **Cumulative pattern.** Even if each individual order is characterized as a lawful sanction, does the multi-year pattern of deliberately compounding harm defeat the characterization for the series taken together?

Multi-treaty convergence. The carve-out appears only in UNCAT Art. 1 (and partly in Rome Statute Art. 7(1)(f)). ICCPR Art. 7, ECHR Art. 3, ACHR Art. 5(2), African Charter Art. 5, CRPD Art. 15, and Rome Statute Art. 8 contain no equivalent carve-out. The pattern is uniform: the carve-out is a narrow shield for ordinary lawful penalties widely accepted by the international community, not an architectural escape hatch.

XIV. Special Rapporteur authorities

Mandate	Holder (current/relevant)	Report	Key holding
Torture / CIDT	Juan E. Méndez (2010–2016)	A/HRC/22/53 (2013), ¶ 17; ¶ 20; ¶¶ 31–32; ¶ 35; ¶ 64; ¶ 81	Disability discrimination can reach CIDT threshold; CIDT and torture are a continuum
Torture / CIDT	Alice Jill Edwards (2022–present)	UK IPP statement (Aug. 30, 2023)	Indefinite sentencing with no clear path to release can engage CIDT

Mandate	Holder (current/relevant)	Report	Key holding
Independence of Judges and Lawyers	Margaret Satterthwaite (2022–present)	*Reimagining Justice* thematic report (June 26, 2023)	Judicial conduct violating internationally recognized ethics standards does not have the character of "lawful sanctions"; finality does not attach
Rights of Persons with Disabilities	(Successive mandate holders)	Multiple thematic reports	CRPD Art. 13 (access to justice) and Art. 15 (freedom from torture) apply to judicial settings

XV. The Istanbul Protocol (2022)

The international standard for documenting torture and ill-treatment. Used by CAT, HRC, ECtHR, IACtHR, African Commission, and domestic prosecutors.

- **Severity threshold** (¶¶ 6–10): psychological methods subject to same prohibition; severity may be satisfied by psychological suffering alone with rigorous methodology.
- **Methodology** (¶¶ 74–82): multi-modal clinical assessment; causation analysis; consistency analysis; second-bite re-traumatization protection.
- **Judicial-setting applicability**: methodology does not require physical custody and applies to non-custodial cases including prolonged judicial proceedings against vulnerable litigants.

XVI. Critical reading: U.S. doctrinal points

Filártiga v. Peña-Irala, 630 F.2d 876 (2d Cir. 1980) — torture violates customary international law; actionable under the ATS against foreign officials.

Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) — ATS cause of action available only for norms with sufficient specificity, universality, and obligatory character; torture qualifies. Subsequent decisions (*Kiobel*, 2013; *Jesner*, 2018; *Nestlé USA*, 2021) constrained ATS reach against U.S. defendants and against corporate defendants.

Torture Victim Protection Act, 28 U.S.C. § 1350 note — civil cause of action against persons acting under color of law of any *foreign* nation; does not reach U.S. officials.

Torture Act, 18 U.S.C. §§ 2340–2340A — criminalizes torture *outside* the U.S. by persons acting under color of law; does not provide a domestic offence.

Medellín v. Texas, 552 U.S. 491 (2008) — non-self-execution governs domestic *judicial* enforcement; international obligation preserved.

Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804) — limited interpretive aid where domestic text is genuinely susceptible to more than one permissible reading.

Constitutional thresholds (U.S. RUD equivalence). *Rochin v. California*, 342 U.S. 165 (1952) — "shocks the conscience." *Farmer v. Brennan*, 511 U.S. 825 (1994) — deliberate indifference; "the Constitution . . . does not permit inhumane" prisons. *Hudson v. McMillian*, 503 U.S. 1 (1992) / *Whitley v. Albers*, 475 U.S. 312 (1986) — unnecessary and wanton infliction of pain; malicious/sadistic or bad-faith use of official power in custodial-force settings. *Brown v. Plata*, 563 U.S. 493 (2011) — systemic prison conditions warranting structural remedy.

Chavez–Kennedy inference (IAJ evidentiary). Where no legitimate governmental alternative explains continued coercive harm after notice, the absence of a permissible alternative supports an evidentiary inference of prohibited purpose. This is the IAJ analytical reading of *Chavez v. Martinez*, 538 U.S. 760 (2003) (Kennedy, J., concurring in part); it is not a freestanding SCOTUS doctrine.

XVII. Five-element judicial-setting checklist

For evaluating whether documented judicial conduct satisfies the UNCAT Art. 1 requirements:

Element	Question	Where established
1. Any act	What specific official act(s) caused the harm? Not the litigant's condition — the official choice to continue imposing harmful conditions after knowledge	Identify by docket entry, date, official
2. Intentional infliction	When was knowledge of severe foreseeable harm established? Continued conduct after notice establishes the intentional-infliction / knowing-maintenance inference under the human-rights baseline; prohibited purpose must still be separately analyzed	*Farmer v. Brennan* analog; CAT GC No. 2, ¶ 18

Element	Question	Where established
3. Severe pain/suffering	Apply Istanbul Protocol (2022) severity grading. Level III moderate; Level IV severe; Level V incapacitating	ECtHR severity continuum; Méndez 2013
4. Public official, official capacity	Identify the specific official(s) responsible for each harmful order	Judge, court administrator, ADA coordinator, appellate panel
5. Enumerated purpose	Coercion (procedural compulsion under threat of sanction)? Discrimination (differential treatment by protected status)? Either suffices	Article 1 language; *Kunarac* illustrative-purposes holding

XVIII. Practical Judicial Checklist

When torture or CIDT is alleged in a judicial setting, the court should ask:

Notice. Has the court received an arguable claim of torture, CIDT, coercion, disability-related vulnerability, medical danger, or torture-tainted evidence?

Control. Does the court have authority to stay proceedings, accommodate, investigate, exclude evidence, protect the person, or refer the matter for inquiry?

Prevention. Would continued proceedings, deadlines, custody, sanctions, evidentiary use, or forced participation foreseeably worsen the harm?

Exclusion. Is any statement, evidence, concession, waiver, default, or procedural loss the product of torture, CIDT, coercion, or medically unsafe compulsion?

Redress. Is there an effective remedy available, or is the person trapped in a forum that caused, enabled, or perpetuated the harm?

Classification. If Article 1 torture is not fully established, does the record nevertheless support Article 16 CIDT, denial of due process, disability discrimination, denial of access to courts, or another protective domestic-law remedy?

Dual-plane preservation. Has the filing preserved both the Plane B (U.S. domestic) argument and the Plane A (international human-rights) record? If domestic relief is denied on jurisdictional, immunity, abstention, finality, post-*Egbert Bivens*-narrowing, or procedural-default grounds, has the claimant documented the denial as exhaustion evidence for CAT Committee Article 20 inquiry-procedure purposes (available against the United States because the U.S. did not opt out at ratification), periodic-review

submissions under UNCAT Articles 19 and 24, Special Procedures communications (including the Special Rapporteur on Torture), Universal Periodic Review, and as proof of U.S. non-equivalence under Article 16 and the implementing Reservations, Understandings, and Declarations? The IAJ's foundational commitment is unconditional: every judicial actor in the United States is subject to the absolute prohibition of torture and CIDT under UNCAT, jus cogens, the UDHR, the ICCPR, and the CRPD, regardless of which enforcement mechanisms the United States has elected to accept. UNCAT Article 22 individual communications are not currently available as a direct 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 while withholding consent to the individual-complaints mechanism — as inconsistent with the object and purpose of UNCAT under a good-faith reading pursuant to VCLT Article 31(1), which requires interpretation "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 preamble identifying that object and purpose as making more effective the struggle against torture. CAT General Comment No. 3, paragraph 28, "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.

Two distinct propositions on Article 22 jurisprudence. Adversarial responses frequently conflate two claims; the IAJ keeps them separate. **Claim A** (Article 22 decisions in cases against other States are themselves binding judgments against the U.S.) is wrong, and the IAJ does *not* make it. **Claim B** (the U.S. is bound by the substantive UNCAT articles it ratified, as those articles have been authoritatively interpreted by the body the Convention itself establishes for that purpose under UNCAT Article 17) is the IAJ's claim, and it is correct. 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. Article 22 jurisprudence is therefore the operative treaty-body interpretive corpus governing UNCAT's substantive content in any forum, including U.S. courts under the *Charming Betsy* canon. On Plane B, U.S. courts may treat Article 22 jurisprudence as non-binding; on Plane A, the IAJ treats it as authoritative treaty-body interpretation of UNCAT's substantive obligations and documents domestic refusal as part of the equivalence-failure record.

The Checklist operates at the level of the individual proceeding. It supplements rather than replaces the five-element analysis above (XVII). The five-element analysis identifies whether documented conduct *constitutes* torture or CIDT; the Checklist identifies what the court *should do* once an arguable claim is raised. UNCAT Article 12 imposes a prompt-and-impartial-investigation duty independent of complaint; the procedural questions in the Checklist track that duty.

XIX. Convergent principles across jurisdictions

1. Absolute prohibition; non-derogable; *jus cogens*.
2. Comprehensive State responsibility (officials, agents, private actors under State control or with State acquiescence).

3. Procedural safeguards: prompt legal access; medical examination; judicial oversight; official registration; impartial inspection.
4. Exclusionary rule: torture-obtained evidence inadmissible (UNCAT Art. 15; ECHR Arts. 3 + 6).
5. Investigation duty: prompt, independent, effective; independent of complaint.
6. *Non-refoulement* (absolute).
7. Redress: compensation, rehabilitation, satisfaction, guarantees of non-repetition.
8. Positive obligations toward private-actor harm; due diligence.
9. *Jus cogens* override of immunity doctrines for documented torture (*Pinochet (No. 3)*).
10. RUD impermissibility severability for reservations defeating object and purpose.

XX. Common errors to avoid

Error 1: Conflating UNCAT and ICC public-official requirements. UNCAT requires public-official involvement or acquiescence; ICC Art. 7(1)(f) does not. The frameworks are distinct.

Error 2: Reading "lawful sanctions" carve-out as architectural escape hatch. The carve-out is unique to UNCAT (parallel only in Rome Statute Art. 7(1)(f) for CAH); it is interpretively constrained to ordinary lawful penalties widely accepted by the international community.

Error 3: Treating *Arrest Warrant* personal immunity as functional immunity. Personal immunity is procedural and temporary; functional immunity for international torture prosecution of former officials is unavailable (*Pinochet (No. 3)*). The Pinochet holding is precise to its category and does not by itself decide every domestic-immunity question; the broader IAJ position on lesser domestic immunity doctrines is advanced as IAJ's argued reading rather than a settled holding.

Error 4: Treating *Germany v. Italy* (State immunity in civil proceedings) as reaching individual criminal liability or domestic immunity doctrines. It does not.

Error 5: Treating *Medellín* as extinguishing the international obligation. *Medellín* governs domestic judicial enforcement; the international obligation under treaty and customary international law is intact.

Error 6: Treating *Suresh* "extraordinary circumstances" dictum as good law. It has been superseded by CAT GC No. 4 and *Saadi v. Italy*; *non-refoulement* to torture is absolute.

Error 7: Treating U.S. RUDs as effective limitations on the *jus cogens* minimum content. A reservation cannot derogate from a peremptory norm; the six-State objections to the U.S. RUDs are doctrinally significant.

Error 8: Treating ICCPR Art. 7 individual communications as available against the U.S. The U.S. has *not* accepted the ICCPR First Optional Protocol; individual communications under ICCPR Art. 7 are not available. ICCPR norms remain available through other mechanisms (Universal Periodic Review, Human Rights Committee periodic review, Special Rapporteur communications).

XXI. Core authorities

Treaties. UNCAT (1984); ICCPR (1966); CRPD (2006); CRC (1989); ECHR (1950); ACHR (1969); African Charter (1981); Rome Statute (1998); Inter-American Convention to Prevent and Punish Torture (1985); VCLT (1969).

ICJ. *Belgium v. Senegal* (2012); *Barcelona Traction* (1970); *Arrest Warrant* (2002); *Jurisdictional Immunities* (2012); *Avena* (2004); *Diallo Compensation* (2012); *Factory at Chorzów* (PCIJ 1927).

ICTY. *Kunarac* (2001/2002); *Furundžija* (1998).

ECtHR. *Tyrer* (1978); *Ireland v. UK* (1978); *Selmouni* (1999); *Aydın* (1997); *Soering* (1989); *Chahal* (1996); *Assenov* (1998); *A v. UK* (1998); *Z v. UK* (2001); *M.C. v. Bulgaria* (2003); *Šečić* (2007); *Jalloh* (2006); *Saadi v. Italy* (2008); *Gäfgen* (2010); *El-Masri* (2012); *Mocanu* (2014); *Bouyid* (2015); *Kurt v. Austria* (2021).

IACtHR. *Velásquez Rodríguez* (1988); *Cotton Field* (2009); *Penal Castro Castro* (2006); *Furlan* (2012).

African Commission. *Egyptian Initiative v. Egypt* (Comm. 323/06, 2011); General Comment No. 4 on Art. 5 (2017); Robben Island Guidelines (2002).

UK. *Pinochet (No. 3)* [2000] 1 AC 147 (HL).

Canada. *Suresh v. Canada* (2002).

U.S. *Filártiga* (2d Cir. 1980); *Sosa v. Alvarez-Machain* (2004); *Kiobel* (2013); *Medellín* (2008); *Stump v. Sparkman* (1978); *Imbler v. Pachtman* (1976); *Rochin* (1952); *Farmer v. Brennan* (1994); *Trop v. Dulles* (1958); *Tennessee v. Lane* (2004).

Statutes (U.S.). 18 U.S.C. §§ 2340–2340A (Torture Act); 28 U.S.C. § 1350 (ATS); 28 U.S.C. § 1350 note (TVPA); 18 U.S.C. § 242 (deprivation of rights under color of law).

Treaty bodies. CAT General Comments No. 2 (2008), No. 3 (2012), No. 4 (2018); CAT/C/USA/CO/3-5 (2014); HRC General Comment No. 31 (2004); ILC Articles on State Responsibility (2001); ILC Guide to Practice on Reservations (2011); ILC Draft Conclusions on Peremptory Norms (2022).

Special Rapporteurs. Méndez Report A/HRC/22/53 (2013); Satterthwaite *Reimagining Justice* (2023); Edwards UK IPP statement (2023).

Investigative standard. Istanbul Protocol (2022 edition).

Scholarly. Bianchi, *Immunity versus Human Rights: The Pinochet Case* (1999); Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes* (1996); Meron, *On a Hierarchy of International Human Rights* (1986); Nowak & McArthur, *The United Nations Convention Against Torture: A Commentary* (Oxford 2008).

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