| Chapter 10 |

The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

Martin Faix – Petr Stejskal

ABSTRACT

The chapter provides a comprehensive analysis of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT"), focusing on its legal context, key provisions, and the challenges in implementing its obligations. The UNCAT, a cornerstone of international human rights law, addresses the prohibition and prevention of torture by articulating specific duties for States Parties, including the criminalisation of torture, providing redress for victims, and ensuring universal jurisdiction over offenders. The chapter delves into the historical backdrop of torture and the legal developments that led to the adoption of the UNCAT, emphasising its importance in strengthening the prohibition of torture, which was already recognised in customary international law. The chapter further explores the structure of the UNCAT, focusing on its substantive obligations, such as the principle of non-refoulement, the duty to investigate and prosecute acts of torture, and the establishment of a monitoring body, the Committee against Torture. It also highlights issues with implementation of the prohibition of torture and explains the relevance of the Optional Protocol to the Convention, which introduced new mechanisms for preventing torture through national preventive measures and regular monitoring visits. In addition to explaining the legal framework of the Convention, the chapter includes a selection of key cases, particularly those involving Central and Eastern European States, which have shaped the interpretation and enforcement of the UNCAT provisions. These cases demonstrate the evolving understanding of the obligations under the UNCAT and the importance of state accountability in the fight against torture.

KEYWORDS

torture, ill-treatment, universal jurisdiction, country-visit, Committee against Torture

1. Introduction

Torture is considered as one of the gravest forms of violation of human rights. It represents a direct attack to personal integrity and human dignity, it has no excuse

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in human society.[1] Also for this reason, the prohibition of torture or other cruel, inhuman or degrading treatment or punishment ("ill-treatment") is widely accepted and forms a cornerstone of contemporary international law and international human rights law. It is part of customary international law, is enshrined in several universal and regional human rights treaties and belongs to the rules of peremptory character. However, despite wide acceptance of the rule and its importance in international law, international community have been witnessing the use of torture and ill-treatment in many regions of the world. For this reason, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT") was adopted in 1984 and was later ratified or acceded to by a majority of states. Even decades after the entry into force of the UNCAT and despite its wide membership, there are still challenges to the endeavour to eradicate and prevent all forms of torture and ill-treatment. Nevertheless, the UNCAT represents an important human rights treaty, complementing other international mechanisms.

The UNCAT entered into force on 26 June 1987 and it currently has 174 States Parties.[2] It consists of a Preamble and thirty-three articles divided into three thematic parts. Its primary objective is to make more effective the struggle against torture and ill-treatment by articulating specific substantive obligations of States Parties that should prevent acts of torture from happening. It also prescribes monitoring procedures and establishes a monitoring body, the Committee against Torture ("Committee"). At the time of adoption, the UNCAT brought some novel features into the field of human rights. However, it needs to be understood as one of several mechanisms available to combat torture and ill-treatment as both on a universal[3] and regional level,[4] as there are also other conventions and mechanisms that reinforce each other.[5]

This chapter provides the reader with a systematic overview of a complex issue of the prohibition of torture, with particular focus on the UNCAT. Chapter 2 will firstly explain the historical and legal context in which the UNCAT was developed and adopted. It will also describe the status of the prohibition of torture and its distinct features. Chapter 3 then focuses on obligations stemming from the UNCAT, mirroring its structure. After explaining how torture is defined in the UNCAT, substantive obligations are addressed. This is followed by an analysis of monitoring procedures and the mandate of the Committee. Chapter 4 contributes with a brief analysis of the implementation of the UNCAT. After providing general remarks on the effectiveness of the UNCAT in the struggle against torture, it explains the main features of the

1 Nowak and Monina, 2018, para. 1.
2 United Nations Treaty Collection, 2024.
3 International Covenant for Civil and Political Rights, UN Human Rights Council, UN Special Rapporteur on Torture.
4 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Inter-American Convention to Prevent and Punish Torture, European Convention on Human Rights, International Covenant on Civil and Political Rights, American Convention on Human Rights, African Charter on Human and Peoples' Rights.
5 For an overview of international protection against torture, see for example: Birk and Nowak, 2020.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("OPCAT") which was adopted in 2006 to complement and reinforce the UNCAT provisions. Finally, Chapter 5 offers a selection of the decisions of the Committee that contributed to the understanding and development of some of the central issues pertaining to the Convention.

2. Historical and Legal Context

2.1. Historical Context and Adoption of the Convention

A practice of torture can be traced back to different historical periods and various social and cultural settings. Examples include ancient Rome and the torture of slaves and Christians, the torture of criminal suspects or inquisition in medieval times, the torture of African slaves in Americas or the harassment of peoples by colonial powers in Africa, Asia and Latin America. The practices of torture persisted during the eighteenth and nineteenth centuries and were also massively used by totalitarian regimes in Europe or Asia in the twentieth century.[6] With the development of international human rights law after the Second World War, efforts to combat practices of torture were given a strong momentum in a form of development of international regulatory framework. However, torture was systematically practiced even in the 1960s and 1970s in many parts of the world. Literature refers to French practices of torture in Algeria, Portuguese conduct in its former African colonies or of military dictatorships in Latin America, including the practices of the Pinochet regime in Chile.[7]

For these reasons, the United Nations General Assembly ("UNGA") put the issue of torture and ill-treatment as a standing item on its agenda already in 1973.[8] Another important step was the adoption by the UNGA of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration) in 1975. Even though the Declaration is a non-binding document, it formed an important basis of the UNCAT.[9] Finally, in December 1977, the UNGA entrusted the then-existing Commission on Human Rights with the complex task to draft the text of a new convention 'in the light of the principles embodied in the Declaration (..)'.[10] An inter-sessional Working Group was formed by the Commission to pursue this task. Between 1978 and 1984, the Working Group managed to reach compromise on most of the substantial issues associated with the design and scope of the draft Convention.[11] Two issues remained unresolved when the Working Group adopted the draft text in March 1984 and transmitted it to the UNGA

6 Novak, Birk and Monina, 2019b, p. 2.
7 Ibid.
8 Ibid.
9 See in detail: Novak, Birk and Monina, 2019a, pp. 19–20.
10 UN General Assembly, 1977. The Commission on Human Rights was replaced with the UN Human Rights Council in 2006.
11 Novak, Birk and Monina, 2019b, p. 4.

– power of the Committee to issue country specific comments and suggestions and to conduct mandatory inquiry procedures. However, a compromise was reached when the draft text was amended to prescribe only general comments and an opting-out clause in relation to the inquiry procedure was inserted by the Third Committee of the UNGA.[12] Subsequently, on 10 December 1984, the UNCAT was adopted by the UNGA.[13] The Convention was adopted and opened for signature, ratification and accession by the UNGA Resolution 39/46 of 10 December 1984. It entered into force on 26 June 1987, currently having 174 States Parties.[14] It consists of a Preamble and thirty-three articles divided into three thematic parts.

Adoption of the UNCAT was an important milestone in combatting torture and ill-treatment. Notably, it was not a goal of the UNCAT to establish the prohibition of torture and the obligation to prevent it. In fact, nowhere in the UNCAT is a prohibition of torture or ill-treatment. This is because the prohibition of torture and ill-treatment has already been part of international law already then, as will be explained below. The primary objective of the UNCAT is rather to make more effective the struggle against torture and ill-treatment as the mere prohibition was insufficient to combat these practices.[15]

2.2. Status of the Prohibition of Torture and Relevance of the Convention

As mentioned earlier, already at the time of the adoption of the UNCAT it was generally recognised that the prohibition of torture was part of customary international law.[16] It was articulated in the Universal Declaration of Human Rights from 1948 (art. 5). Notably, it also formed part of several human rights conventions, such as the four Geneva Conventions from 1949 in common Article 3, the European Convention on Human Rights from 1950 in Article 3 ("ECHR"), the International Covenant on Civil and Political Rights from 1966 in Article 7 ("ICCPR"), the American Convention on Human Rights from 1969 in Article 5 ("ACHR"), and the African Charter on Human and Peoples' Rights from 1969 in Article 5 ("ACHPR"). There are also specific regional conventions focusing directly on torture, such as the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment or the 1985 Inter-American Convention to Prevent and Punish Torture ("Inter-American Torture Convention"). Customary status of the rule means that states are obliged by this general prohibition irrespective of their membership in the UNCAT or the above-mentioned human rights treaties.

Apart from the general acceptance of this rule as part of international customary law followed by a rich treaty practice, the prohibition of torture is also distinct with respect to its legal nature. Because of the importance of the values it protects, the prohibition is considered to form part of peremptory norms of international law.

12 Ibid.
13 UN General Assembly, 1984.
14 United Nations Treaty Collection, 2024.
15 UNCAT Preamble.
16 *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, para. 99.

This means that it cannot be derogated from by States through international treaties.[17] At the same time, the prohibition of torture imposes upon states obligations *erga omnes*, that is, obligations owed towards the international community as a whole.[18] This means that states other than those directly injured by the breach of this prohibition may invoke responsibility of the wrongdoing state[19] as all states can be held to have a legal interest as concerns breaches of obligations of this character.[20] Prohibition of torture and ill-treatment are also human rights of absolute nature.[21] That means that it cannot be restricted or limited in any circumstances. Article 2, paragraph 2 of the UNCAT confirms this by stating that no exceptional circumstances, whether a state of war, threat of war, internal political instability or other public emergency may be invoked to justify torture.[22] Thus, for example, it is not possible to use physical force and other means of pressure amounting to torture in order to obtain critical information from terrorist suspects even if such information could thwart terrorist attacks.[23] The same applies to justifications based on religion or tradition.[24] Moreover, prohibition of torture and ill-treatment is a right from which derogation (in the sense of the law of treaties) is not possible even in times of war or public emergency.[25] For the sake of completeness, it must be highlighted that prohibition of torture and ill-treatment is also mirrored in the law of armed conflict, as well as in the international criminal law. This prohibition is applicable in both international and non-international armed conflicts.[26] At the same time, torture and ill-treatment may also constitute elements of crimes under international law, such as crimes against humanity[27] or war crimes.[28]

When it comes to the relevance of the adoption of the UNCAT in the light of the above-mentioned, the existence of the prohibition of torture and ill-treatment, despite its widespread acceptance and distinct legal features, was not sufficient to prevent torture and ill-treatment from happening on a large-scale and systematic basis in several regions of the world. The UNCAT therefore brings additional and more specific obligations which focus primarily on prevention. Some of the obligations were quite innovative, such as the establishment of universal criminal jurisdiction and the

17 Ibid. *Prosecutor v. Anto Furundzija*, para. 153.
18 *Prosecutor v. Anto Furundzija*, para. 151.
19 International Law Commission, 2001, draft Art. 48.
20 *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, p. 32, para. 33.
21 For the discussion why this conclusion applies both to the prohibition of torture as well as prohibition of ill-treatment, see: Kretzmer, 2022, para. 24.
22 This has been reiterated by the Committee against Torture in its General Comment No. 2. See: Committee against Torture, 2008, para. 5.
23 Kretzmer, 2022, para. 23.
24 Committee against Torture, 2008, para. 5.
25 See: ICCPR in Art. 4, ECHR in Art. 15 or art. 27 of the ACHR.
26 Just to mention only a few out of the many examples, see the already mentioned common art. 3 to the Geneva Conventions, art. 12 of the Geneva Convention I, art. 75 of the Additional Protocol I to the Geneva Conventions or art. 4 of the Additional Protocol II to the Geneva Conventions.
27 See, for example: Art. 7 of the Rome Statute.
28 Art. 8 of the Rome Statute.

introduction of an inquiry procedure with the possibility to conduct country visits (albeit with some limitations, as will be explained later).[29] Substantive (preventive) obligations and procedures enabling international monitoring are therefore aimed at strengthening the implementation of the general prohibition. Moreover, Article 1 of the UNCAT was the first provision in international law that contained the legal definition of torture (even though subject to critical discussion in legal theory and practice).[30]

3. Structure of the Convention

3.1. Definition of Torture

Definition of torture for the purposes of the application of the UNCAT is provided in Article 1, paragraph 1. It contains four elements: a) severity of the pain or suffering, b) intention, c) specific purpose, and d) involvement of a public official. Prohibition of torture is part of customary international law. However, it does not necessarily apply to the definition of torture as formulated in the UNCAT, meaning that some of the elements of the definition may not be required in order for an act to be regarded as torture under other human rights mechanisms. In fact, whereas the Inter-American Torture Convention (Article 2) or the Rome Statute (Article 7, paragraph, 2 letter e)) contain the definition of torture, the ICCPR, the ACHR, the ACHPR, the Convention on the Rights of the Child and several other human rights treaties do not define torture despite the fact that they refer to it in some of its articles. However, with the exception of the Inter-American Torture Convention which does not refer to the severity requirement, severity of the pain or suffering and the intention seem to be common to most definitions of torture.[31]

In relation to the element of severe pain and suffering, the doctrine points to a rather case-by-case approach (sometimes short of appropriate reasoning) of the Committee in assessing this element.[32] But in general, severe pain and suffering relates equally both to physical as well as to mental suffering (caused for example by sleep deprivation, sensory deprivation or threats against life).[33] Torture as defined by the UNCAT refers only to intentional act or omission (for example purposeful deprivation of a detainee of food or medicine).[34] Purely negligent conduct does not meet this test (but could be eventually qualified as ill-treatment).[35] At the same time, objective determination of the facts is required when investigating allegations of torture, as elements of intent and purpose do not involve a subjective inquiry into the motivations of

29 Novak, Birk and Monina, 2019a, pp. 19–20.
30 Novak, Birk and Monina, 2019b, p. 7.
31 Kretzmer, 2022, paras. 8–10.
32 Zach, 2019a, paras. 81–89.
33 Ibid., paras. 91 and 93.
34 REDRESS, 2018, p. 9.
35 Zach, 2019a, para. 101.

the perpetrators.[36] In the sense of the UNCAT, torture must be inflicted for a specific purpose, examples of which are provided in a non-exhaustive list in Article 1 (punishment, soliciting information or confession, intimidation or coercion). As regards the element of involvement of a public official, a State Party is responsible not only for acts and omissions of its officials, but also its agents, private contractors and other persons acting in official capacity or otherwise on behalf of the State Party, in conjunction with the State Party, under its direction or control, or otherwise under colour of law. This means that the obligation to prevent torture applies to wide range of situations where people are under custody or control, such as hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled.[37] In this regard, due diligence test should be applied.[38]

Some distinction must be kept between torture and ill-treatment. In general, Article 2, paragraph 1 'is seen as an umbrella clause encompassing all the obligations to prevent torture as included in but not limited to the various provisions of the Convention,' whereas an obligation for States Parties to prevent ill-treatment is constituted in Article 16.[39] As seen by the reader of the UNCAT, most of the substantive articles of the UNCAT refer only to torture and not to ill-treatment. Article 16 stipulates that obligations included in Articles 10, 11, 12 and 13 apply to ill-treatment. The distinction between torture and ill-treatment is actually a thorny issue. It seems that in the practice of the Committee the distinguishing criterion is primarily the purpose and not the level of pain or suffering.[40] In particular, ill-treatment 'does not require proof of impermissible purposes.'[41] At the same time, powerlessness of the victim is also considered as an essential criterion of torture.[42] Even more challenging is the question if and to what extent the substantive obligations of the UNCAT also apply to the ill-treatment rather than torture only. As referred to earlier, Article 16 of the UNCAT specifies that obligations contained in Articles 10, 11, 12 and 13 apply to ill-treatment. However, the Committee expressed a more extensive approach when it claimed in its General Comment No. 2 that measures required to prevent torture must be applied to prevent ill-treatment. According to the Committee, the obligation of the prevention stipulated in Article 16 is not limited only to the articles listed therein as 'the obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture' and 'the definitional threshold between ill-treatment and torture is often not clear'.[43] Indeed, the use of the expression "in particular" in Article 16 indicates the non-exhaustive nature of the list.[44] However, interpretation

36 Committee against Torture, 2008, para. 9.
37 Ibid., para. 15.
38 Zach, 2019a, para. 131.
39 Zach, 2019b, para. 21.
40 Kretzmer, 2022, para. 21. For more detailed analysis, see: Zach, 2019a, paras. 67–80.
41 Committee against Torture, 2008, para. 10.
42 Zach, 2019a, paras. 117–121.
43 Committee against Torture, 2008, para. 3.
44 Zach and Birk, 2019, para. 13.

of Article 16 suggests that Articles 4 to 9 were intended to apply to torture only.[45] In contrast to the principle of non-refoulement as developed by the European Court of Human Rights or the UN Human Rights Committee ("HRC"), the obligations of Article 3 UNCAT also apply to torture only,[46] as acknowledged subsequently by the Committee.[47] However, ill-treatment not amounting to torture is not irrelevant in the context of Article 3 as the infliction of ill-treatment is an indication of a torture risk.[48] Articles 14 and 15 should be interpreted to extend to ill-treatment as well, despite the quite inconsistent positions of the Committee.[49]

3.2. Prevention of Torture – Substantive Obligations

The definition of torture in Article 1 of the UNCAT is followed by substantive obligations of States Parties in Articles 2–16. Article 2 generally obliges States Parties to take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under their jurisdiction. The umbrella clause in Article 2, paragraph 1 requires States Parties to also take other effective measures aimed at preventing torture in addition to the preventive obligations explicitly enlisted in the UNCAT (and in the following text).[50] Article 16 constitutes the obligation for States Parties to prevent ill-treatment. Similarly to other core human rights obligations, states are obliged both to refrain from committing acts of torture and ill-treatment as well as to protect persons subject under their jurisdiction from being subject to these acts.

Moving to the preventive obligations specifically listed in the UNCAT, Article 3 follows the general obligation of Article 2 with an important principle known as *non-refoulement*. This clause obliges States Parties not to expel, return or extradite a person to another state where there are substantial grounds for believing that such a person would be in a danger of being subjected to torture. Apart from all relevant considerations, paragraph 2 of Article 3 requires States Parties to take into account the existence of the consistent patterns of gross, flagrant or mass violations of human rights in another State. The Committee has provided a list of further factors that should be considered.[51] Substantial grounds are present where the risk of torture is 'foreseeable, personal, present and real.'[52] In contrast to the UNCAT, the non-refoulement principle is not expressly mentioned in general human rights conventions, but is derived from the ICCPR, ECHR, ACHR and ACHPR's duty to protect people from torture and forms part of customary international law.[53]

45 Ibid., paras. 13–18; Katona, 2019, paras. 14–17.
46 See the analysis at: Zach and Birk, 2019, paras. 19–21.
47 Committee against Torture, 2017.
48 Ammer and Schuechner, 2019, para. 4.
49 See: Zach and Birk, 2019, paras. 22–23 and Kretzmer, 2022, para. 33.
50 Zach, 2019b, at para. 2.
51 See: Committee against Torture, 2018, para. 29.
52 Ibid., at para. 11.
53 Kretzmer, 2022, para. 38.

Article 4 obliges States Parties to ensure that all acts of torture are offences under national criminal law. It further stipulates that this applies to an attempt to commit torture and to complicity or participation in torture. These offences must be punishable by appropriate penalties. This obligation has been inspired by earlier counterterrorism treaties and at that time could be considered as a novel feature in the human rights domain.[54] Article 5, paragraph 1 follows with establishing grounds for jurisdiction over offences of torture – the flag principle, active nationality and passive nationality principle. However, paragraph 2 brings one of the most important aspects of the UNCAT – the establishment of the principle of universal jurisdiction for acts of torture. In particular, a State Party is required to establish in its national law jurisdiction to prosecute any person suspected of committing torture that is present in any territory under its jurisdiction and was not extradited pursuant to Article 8 of the UNCAT, even if the act of torture was committed elsewhere. This obligation must be read in conjunction with Articles 7 and 8 as obligations aimed at reducing the existence of *safe havens* for torture offenders.[55] Article 7 stipulates that the State Party in the territory under whose jurisdiction a person alleged to have committed crime of torture is found shall submit the case to its competent authorities for the purpose of prosecution if it does not extradite such person. Therefore, Article 7 can be understood as a manifestation of the principle *aut dedere aut iudicare* (prosecute or extradite).[56] Article 8 closes the circle by obliging States Parties to treat acts of torture that are criminalised in accordance with Article 4 of the UNCAT as extraditable offences. In other words, States Parties are obliged to prosecute or extradite any suspected offender of torture found in the territory under their jurisdiction, regardless of the nationality of the suspect or the victim, or the place where the act was allegedly committed. However, there are also convincing arguments for a third avenue that is not explicitly envisaged by the text of the UNCAT – surrendering the suspect to a competent international (or regional) criminal court, typically the International Criminal Court.[57] While prosecution constitutes an obligation for the forum state (irrespective of whether there was any request for extradition), there is no obligation (on behalf of other states having jurisdiction based on Article 5, paragraph 1) to request extradition. Nor is there any obligation on behalf of the forum state to comply with any request for extradition.[58] However, the forum state has to notify the territorial, flag, or national states of its actions towards the suspect. If any of these states request extradition, the forum state has the choice to decide whether it extradites the suspect or proceeds with the prosecution of the person before its domestic courts.[59] This choice is naturally limited by Article 3 of the UNCAT.

54 Novak, Birk and Monina, 2019b, p. 8.
55 REDRESS, 2018, p. 14.
56 Kretzmer, 2022, para. 30.
57 See: Schmidt, 2019b, paras. 61–64.
58 Ibid., at para. 5.
59 Art. 6 para. 4 UNCAT, see also: Schmidt, 2019a, para. 4.

Under Article 9, States Parties have an obligation to provide each other judicial assistance in connection with criminal proceedings by, for example, supplying all evidence at their disposal. This obligation will typically apply to the territorial and the national state of the alleged torturer. These states shall supply all evidence at their disposal necessary for the criminal proceedings to other States Parties that decided to exercise universal jurisdiction or jurisdiction based on the passive nationality principle.[60] Article 10 calls for safeguards in the prevention of torture – an obligation to include education and information regarding its prohibition in the training of law enforcement personnel, medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of individuals subjected to any form of arrest, detention or imprisonment. Article 11 obliges States Parties to keep under systematic review interrogation rules, instructions, methods and practices for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment. Basic guarantees applied to persons deprived of their liberty should include, for example, the maintenance of an official register of detainees, the right to receive independent legal assistance, medical assistance, contact to relatives, impartial mechanism for inspections and visits of places of detention and confinement and the availability of judicial remedies.[61] According to Article 12, prompt and impartial ex officio investigation must be conducted if there are reasonable grounds to believe that an act of torture has been committed. This obligation should typically apply to police chiefs, prison directors, public prosecutors or prison doctors. It is an important obligation since victims of torture may be unable or unwilling (due to threats or fear) to report to the relevant authority.[62] At the same time, victims of torture have the right to complain and to have their case promptly and impartially examined by competent authorities, according to Article 13. In connection with this, victims and witnesses must be protected. These obligations are followed in Article 14 by the obligation of the States Parties to ensure that victims obtain redress and have enforceable right to fair and adequate compensation. Finally, Article 15 obligates States Parties to ensure in their legal systems that any statement which has been made as a result of torture shall not be invoked as evidence against any person (except against a person accused of torture). Inadmissibility of such evidence naturally applies not only to criminal, but also civil, administrative and other formal proceedings.[63]

3.3. Monitoring Procedures

Articles 17–24 form an important part of the UNCAT as they establish a monitoring body and procedures that are supposed to strengthen implementation of the preventative substantive obligations. This subchapter firstly describes the institutional setup and primary responsibilities of the monitoring body, the Committee against

60 Schmidt, 2019c, para. 11.
61 REDRESS, 2018, p. 15.
62 See for example: UN General Assembly, 2010, para. 55.
63 Kretzmer, 2022, para. 34.

Torture, focusing in a greater detail on the monitoring procedures conducted by the Committee.

3.3.1. Committee Against Torture

Article 17 provides for the establishment of the Committee, a UN human rights treaty body responsible for monitoring compliance with the UNCAT and cooperation with the States Parties. The Committee consists of ten experts of high moral standing and recognised competence in the field of human rights. They are elected for a term of four years by States Parties, from a list of candidates nominated exclusively by States Parties. In contrast to some other UN human rights treaties, the number of re-nominations and re-elections is not limited by UNCAT.[64] In comparison to the HRC (composed namely of experts with legal background), there is a more diverse composition of the Committee, involving professors of law and legal practitioners as majority members, but also including doctors of medicine, psychologists, political scientists or journalists to reflect the multidisciplinary task of combating torture and ill-treatment.[65]

The Committee works in sessions that take place three times a year and last for a period of three to four weeks.[66] Besides the procedural clauses contained in the UNCAT, the work of the Committee is also governed by the Rules of Procedure ("RoP") established by the Committee pursuant to Article 18, paragraph 2 UNCAT.[67] The RoP provides relatively detailed rules for the working methods of the Committee and for the procedures described in the following sections. Apart from the monitoring procedures that are briefly described in the following sections, the Committee may also prepare and adopt general comments on the provisions of the UNCAT with a view to promoting its further implementation or assisting States Parties in fulfilling their obligations. So far, the Committee has adopted only four general comments, General Comment No 4 replacing General Comment No 1. The Committee also has the obligation of submitting an annual report on its activities to the States Parties and to the UNGA.[68]

3.3.2. Reporting Procedure

Article 19 of the UNCAT requires States Parties to submit initial report on the measures they have taken to give effect to undertakings under the Convention. Subsequently, States Parties are required to submit periodic reports every four years on any new measures taken. In addition, Article 19, paragraph 1 of the UNCAT also allows the Committee to request a special ("other") report from a State Party, for example in emergency situations that require urgent response. However, this power is quite

64 Nowak and Monina, 2018, para. 11.
65 Ibid., para. 8.
66 For past and future sessions, see: UN Human Rights Treaty Bodies, 2024b.
67 For the latest version of the Rules of Procedure, see: UN Human Rights Treaty Bodies, 2024d.
68 Art. 24 UNCAT.

rarely used.[69] The terminology used in the Article 19, paragraph 1 of the UNCAT differs from the practice of the HRC and other treaty bodies.[70]

Periodic reports are examined by the Committee which may make general comments on the reports and forward them to the State Party concerned. During the examination of a particular report, the Committee engages in an interactive dialogue with the State Party's representatives.[71] After its consideration of each report, the Committee, in accordance with Article 19, paragraph 3 of the UNCAT, may make such general comments, concluding observations or recommendations on the report as it may consider appropriate and shall forward these to the state party concerned.[72] Concluding observations refer to positive aspects, subjects of concern and related recommendations.[73] The Committee may also decide to include any comments made by it, together with the observations received from the State Party concerned, in its annual report made in accordance with Article 24. In addition, to further the implementation of its recommendations, the Committee developed a follow-up procedure which includes the designation of a rapporteur to follow up with the State Party on its implementation of the recommendations identified by the Committee in its concluding observations. This procedure is currently an integral part of the reporting procedure.[74] Further details of the procedure are regulated by Rules 65–73 of the RoP.

The reporting procedure is a typical feature of the UN human rights conventions and also one of the most important competences of the Committee. It facilitates a monitoring process and provides a basis for dialogue between States Parties and the monitoring body.[75] Actually, most of the official meeting time of the Committee has been devoted to the review and assessments of these reports.[76] However, the Committee does not rely only on reports of States Parties in its monitoring. Civil society organisations, national human rights institutions as well as other international bodies provide an important input as well.[77] This is quite an important feature of the process given the fact that the problem of late reporting and non-reporting by States Parties is still present. Additionally, no penalty exists for late or no submission of a report (besides the wrongfulness of such a conduct and the power of the Committee to publicly note the delay of submission).[78] The Committee therefore invites non-governmental organisations to submit documentation and meet with its members before each interactive exchange with State Parties takes place,[79] making the reporting process more effective (source of information and advocation for the implementation

69 Monina, 2019a, para. 40.
70 See: Ibid., para. 36.
71 Rule 70 para. 2 RoP.
72 Rule 71 para. 1 RoP.
73 Nowak and Monina, 2018, para. 22.
74 Ibid., para. 23; Rule 72 of the RoP.
75 Nowak and Monina, 2018, para. 19.
76 Gaer, 2020, p. 133.
77 Nowak and Monina, 2018, para. 22.
78 Gaer, 2020, p. 134.
79 Ibid.

of the UNCAT).[80] In addition, to overcome the problem of late or non-reporting (the Committee being among the UN human rights treaty bodies with the lowest reporting rate),[81] a voluntary Simplified Reporting Procedure was developed by the Committee.[82] In particular, the Committee may submit to a State Party a list of issues prior to receiving its periodic report. If that State Party agrees to report under this reporting procedure, its response to the submitted list of issues replaces the report it would have to submit under Article 19.[83] A substantial fraction of States Parties accepted this simplified procedure.[84]

3.3.3. Inquiry Procedure

Another important power that the Committee is vested in is the inquiry procedure. According to Article 20 of the UNCAT, this procedure may be used if the Committee receives reliable information presenting well-founded indications that torture is systematically practised in the territory of a State Party. This procedure is also accompanied by Rules 75–90 of the RoP. When it comes to the subject-matter of this procedure, according to the Committee:

> 'torture is practised systematically when it is apparent that the torture cases (..) are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice'.[85]

After preliminary consideration of the information received as to the well-founded indications of the above-mentioned practice of torture (first phase), the Committee may determine that the threshold has been met. If that is the case, the State Party is invited to cooperate in the examination of the information and to submit observations (second phase). If the replies from the State Party are not satisfactory, the Committee decides to initiate an inquiry and conduct investigations (third stage).[86]

80 REDRESS, 2018, p. 22.
81 Monina, 2019a, para. 87.
82 Ibid., paras. 88–89.
83 Rule 66 RoP.
84 UN Human Rights Treaty Bodies, 2024c.
85 Committee against Torture, 1993, para. 39. In the practice of the Committee, this definition has not changed since its adoption in report concerning the inquiry of the situation in Turkey in 1994, as confirmed recently in the observations on the inquiry made on the situation in Belarus, see Committee against Torture, 2024, para. 43. However, for a brief analysis of the Commission's inquiries, see: Gaer, 2020, pp.143–146.
86 Nowak and Monina, 2018, para. 37.

It may designate one or more of its members to make a confidential inquiry and to report to the Committee urgently. The findings of the Committee are transmitted in a form of a report to the State Party concerned (fourth phase, terminating the inquiry). This contains comments and suggestions made by the Committee and terminates the inquiry. The whole procedure is based on cooperation and confidentiality.[87] But the Committee may decide to include a brief summary account of the results of the inquiry in its annual report.[88] After completion of the proceedings, the Committee is authorised (and has been doing so) to publish a summary account in its annual report even against the disagreement of the State Party concerned.[89]

What is quite a distinct feature and an important part of this procedure is the power of the Committee to conduct a country visit as part of the inquiry process. Such a visit includes meetings of the Committee's delegation with the state officials, victims, witnesses and NGOs. Importantly, it can also consist of inspections in the detention facilities, together with interviews with the detainees in private. The Committee has so far considered it necessary to conduct a country visit to all states under inquiry, requesting such a visit immediately after making a decision to conduct the inquiry and investigations.[90] However, the visit can be conducted only with the agreement of the State Party concerned (cf. below the OPCAT). In addition, Article 28 of the UNCAT provides the States Parties with the possibility to opt-out by means of a special reservation. Thus, in connection with confidentiality thorough the process, it is apparent that this procedure has been considerably watered down during the drafting of the UNCAT to reach a compromise among States.[91] But still, at the time of the adoption of the UNCAT, this procedure was innovative and has become a model for five other UN human rights treaties.[92]

Apart from being confidential and based on cooperation with the State Party concerned, this procedure is also reactive in nature. Therefore, an inquiry cannot be conducted in order to prevent torture.[93] Since its establishment in 1988, the Committee has carried out eleven inquiries.[94] Thus, the procedure is not used very frequently.[95] It is also quite a lengthy process as inquiry procedures so far conducted usually took four to six years.[96] Except for Sri Lanka, the Committee has found systematic

87 Ibid.
88 Art. 20 para. 5 UNCAT.
89 Monina, 2019b, paras. 79–80. See the overview of the inquiries at UN Human Rights Treaty Bodies, 2024a.
90 Monina, 2019b, para. 68.
91 Ibid., paras. 1–2.
92 Nowak and Monina, 2018, para. 35. See for example: Art. 11 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or Art. 13 of the Optional Protocol to the Convention of the Rights of the Child.
93 Monina, 2019b, para. 36.
94 In Turkey (1994), Egypt (twice – 1996 and 2017), Peru (2001), Sri Lanka (2002), Mexico (2003), Federal Republic of Yugoslavia (2004), Brazil (2008), Nepal (2012), Lebanon (2014) and Belarus (2024).
95 For some considerations of probable causes, see: Gaer, 2020, pp. 143–146.
96 See the comparison at: Monina, 2019b, para. 37 (Table 1).

torture in all of the cases.[97] The consent to a country visit by the Committee's delegation was not given (only) by Egypt (both in 1996 and 2017) and Belarus (in 2024) which, of course, did not prevent the Committee from completing the inquiry on the basis of other sources of information at its disposal. Interestingly, in the majority of cases, the inquiry procedure was triggered by the initiative of NGOs (such as Amnesty International or Human Rights Watch) or national organisations that approached the Committee with relevant information.[98] And similarly to other UNCAT procedures, information submitted by these organisations are an important source of information for the Committee's examinations. Only in one case did the Committee initiate the procedure on its own initiative (Nepal).[99]

3.3.4. Individual Complaints Procedure

Article 22 of the UNCAT equips the Committee with quite another important competence – to receive and consider communications from or on behalf of individuals. Individual communication may be lodged by or on behalf of an individual who claims to be victim of a violation of the UNCAT. Article 22 prescribes several requirements for the Committee to be able to consider such communication (such as the prohibition of anonymous communications, obligation to exhaust all available domestic remedies or the condition that the matter has not been or is not being examined under another international procedure). Importantly, as with the UNCAT inter-State communications (as well as individual communications procedures in other UN human rights treaties), this is only an optional procedure. According to Article 22, paragraph 1, this competence of the Committee *vis-à-vis* a State Party is subject to a voluntary declaration by that State Party recognising such competence. By the time of the finalisation of this chapter, there were only 71 UNCAT States Parties that accepted the individual complaint procedure (Honduras being so far the last state accepting the procedure in July 2024).[100] This is quite a low number in comparison to the inquiry procedure (155 States Parties accepting the procedure) or UNCAT membership in general (174 States Parties). Interestingly, the majority of States Parties accepting the UNCAT individual communications procedure are states that are also subject to mandatory complaints procedures under regional human rights mechanisms, such as the ECHR or ACHR.[101]

97 For example, with respect to Belarus, the Committee concluded that 'The practice of torture has been documented as having been frequent in the aftermath of the 9 August 2020 election at the hands of law enforcement personnel, who often resorted to severe beatings and excessive use of physical force. It was routinely carried out as a deliberate practice to intimidate detainees, extract incriminating statements and punish political dissenters and peaceful protesters. Torture was perpetrated by police officers, prison guards and security officers in police stations, prisons and vehicles transporting detainees.' See: Committee against Torture, 2024, para. 45.
98 Monina, 2019b, para. 3.
99 Gaer, 2020, p. 142.
100 A current list of States accepting this procedure is available at UN Human Rights Treaty Bodies, 2024e.
101 Nowak and Monina, 2018, para. 25.

The procedure under Article 22 UNCAT is complemented and further elaborated on by a detailed set of rules in the RoP (Rules 102–121). Communications under Article 22 are examined by the Committee in closed meetings. It is a written procedure, however oral hearings are possible.[102] Also here, the Committee may consider information from other sources such as UN bodies or specialised agencies.[103] The findings on the merits are known as *decisions* or *views* of the Committee. A majority vote of all Committee members present is required to adopt a decision, however most decisions are adopted unanimously.[104] In practice, examining individual communications consumes quite a substantial amount of the Committee's meeting time and the Committee is being increasingly overloaded with cases at hand.[105] The great majority of cases dealt with do not concern allegations of the practise of torture or other forms of ill-treatment in a narrow sense but (potential) violations of the non-refoulement principle inArticle 3 of the UNCAT.[106]

Views and conclusions reached by the Committee are forwarded to the State Party concerned and to the individual.[107] From the legal point of view, decisions of the Committee lack binding force as the UNCAT does not explicitly oblige States Parties to implement them, a weakness that is also common to other UN individual complaints mechanisms.[108] However, its relevance is generally recognised due to its quasi-judicial character and functioning as the authoritative interpretation of the Convention.[109] Where a violation is found, the Committee typically asks the State Party to provide information within 90 days on the measures taken to remedy the situation. Typical remedies sought by the Committee towards the State Party concerned are compensation, legislative changes or symbolic reparations.[110] However, since most of the cases concern the non-refoulment principle, the most frequent remedy is avoidance of removal or deportation of the individual.[111]

3.3.5. Inter-State Communications

As with other human rights treaties, States Parties may formally complain about alleged violations of the UNCAT treaty by another State Party through the inter-State communication procedure that is prescribed by Article 21 of the UNCAT. However, this procedure is considered to be the weakest one as it is voluntary (subject to a

102 Rule 117 para. 4 RoP.
103 Rule 118 para. 2 RoP.
104 Nowak and Monina, 2018, paras. 30–31.
105 Gaer, 2020, pp. 147–148.
106 For possible reasons, see: Monina, 2019d, para. 5.
107 See: Art. 22 paras. 1–7 UNCAT.
108 Cf. for example with art. 46 of the ECHR giving a binding force to the judgements of the European Court of Human Rights.
109 Nowak and Monina, 2018, paras. 31–32.
110 Gaer, 2020, p. 148.
111 Ibid.

declaration accepting the power of the Committee to receive and consider these communications) and is not used by States Parties.[112]

4. Implementation of the Convention

4.1. General Remarks

An important question that somehow surrounds the topic of this chapter is how successful the UNCAT is in terms of implementation by States Parties. Naturally, this question requires a comprehensive, multidisciplinary analysis which this chapter cannot provide. At the same time, relevant UN mandate holders provide valuable information on this matter. This concerns concluding observations of the Committee and other treaty bodies, and reports of the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment ("UN Special Rapporteur on Torture"). There are also studies and analyses conducted by experts[113] and reports provided by relevant NGOs (notably the Human Rights Watch and Amnesty International). Nevertheless, this subchapter attempts to highlight at least the most important aspects of this question. Generally speaking, even though the status of the prohibition of torture in international law is quite firm and widely accepted, some authors still point to a deficiency gap between the unambiguous prohibition of torture and state practice.[114] It could be agreed that the prohibition of torture is fully-internationalised and influenced changes in the behaviour of states.[115] But still, according to many sources, torture is still practiced in a considerable part of the world.[116]

To provide a few examples in relation to particular UNCAT provisions, one of the core issues related to Article 4 obligations is the quality of the definition of acts that are criminalised in the sense of Article 4. Some states do not have specific criminal offence of torture in national criminal law, while some other states have definitions in their laws that are not in conformity with Article 1 of the UNCAT, are incomplete or otherwise insufficient.[117] Even though the text of the UNCAT does not explicitly require the inclusion of a specific crime of torture in national laws, the Committee is of the view that doing so helps to ensure that no instances of torture will fall between the gaps of other offences that were supposed to cover all prohibited acts.[118] In practice, related to Article 5 of the UNCAT, State Parties have been reluctant to exercise universal jurisdiction in torture cases. The authorities often even fail to arrest suspects,

112 Monina, 2019c, paras. 1–2.
113 Kelly, 2019; Gaer, 2020, pp. 130, 149–153; Nowak and Monina, 2018; Steiger, 2022; Kelly, 2009.
114 Kretzmer, 2022, para. 53.
115 Steiger, 2022, p. 161.
116 Human Rights Council, 2021, at para. 10. Amnesty International claims that it reported torture in 141 countries in the past five years. See Amnesty International, Torture.
117 REDRESS, 2018, p. 13.
118 Kretzmer, 2022, para. 28.

thereby providing them with an opportunity to leave the country.[119] The concept of universal jurisdiction can serve as a potent mechanism for combating impunity. This does not only apply in the context of fight against torture, but more broadly to crimes under international law. However, according to recent data, even on this general level (also covering other crimes against humanity or war crimes) states are not utilising the concept of universal jurisdiction as universally as they could.[120] Nevertheless, impunity can be a major factor leading to practices of torture.[121] To provide another example, in relation to safeguards for preventing torture in the sense of Articles 12–14 of the UNCAT, many countries lack clearly designated complaint mechanisms or there is a substantial gap between legal provisions and the reality.[122]

The insufficient record of state compliance also applies to procedural obligations stemming from the UNCAT. The lack of participation and cooperation of States Parties, the limited number of States Parties accepting the individual complaints procedure combined with the non-binding character of decisions of the Committee, but also limited financial and human resources are considered to be among the key problems hampering the effectiveness of the Committee's monitoring.[123] The low degree of cooperation and responsiveness of States Parties ongoing for decades has also been reported in relation to another human rights body – the UN Special Rapporteur on Torture.[124]

Nevertheless, the establishment of a monitoring organ that can authoritatively consider States Parties to be in violation of its obligations is an important feature of the UNCAT. It could be agreed that over the decades of its existence, the Committee has done a lot of work to advance the implementation of the UNCAT and to raise awareness about torture.[125] The periodic reporting procedure (imbued with a dialogue) in spite of the non-cooperation of many States Parties has its relevance in a wider context as well. One practical example is that that the dialogue process is webcast and archived on the UN webcast page, thus it can expose crimes and enable domestic or international authorities to take action.[126] The role of the Committee is also important in evolving effective measures to prevent torture (such as video

119 Schmidt, 2019a, para. 5.
120 Trial International, 2024 stating on p. 11 that 'In 2023, the number of investigations and prosecutions of international crimes opened before domestic jurisdictions under extraterritorial and universal jurisdiction continued to rise. (..) However, this upward trend is not uniform, and the use of this crucial prosecuting tool is not expanding evenly across countries. As long as cases continue to be concentrated in a few specific countries, the truly universal nature and potential impact of universal jurisdiction will remain unexploited.'
121 Kelly, 2019, p. 328.
122 See: UN General Assembly, 2021, referring to barriers and delays in the exercise of the right of detainees to contact a third party or to receive legal assistance, to access an independent medical doctor, preventing prompt detection and documentation or reliance on interrogation techniques heavily based on coercion and intimidation.
123 Nowak and Monina, 2018, para. 45.
124 See in particular: Human Rights Council, 2021, paras. 54–59 and 98–102.
125 Gaer, 2020, p. 153.
126 Ibid., p. 151.

surveillance) and identify appropriate (sometimes new) legal safeguards that should be applied by Member States to comply with the UNCAT.[127] According to the view of the authors of this chapter, the possibility of the CAT to make a public statement and publish the report of the subcommittee can also have an impact on the conduct of the States Parties due to reputational risk on an international level.

4.2. Optional Protocol to the Convention

From 2002 on, the text of the UNCAT is accompanied by the OPCAT. Although in legal terms it is a separate document binding only for its States Parties, its purpose is to complement and reinforce the UNCAT provisions.[128] It is therefore necessary to at least briefly describe this document that brings new features into the fight against torture.

The OPCAT was adopted by the UNGA Resolution A/RES/57/199 on 18 December 2002 and entered into force 22 June 2006. It currently has 94 States Parties.[129] It consists of a Preamble and thirty-seven articles divided into seven parts. In contrast to the UNCAT, the OPCAT reaffirms in the very first sentence of its Preamble that torture and ill-treatment are prohibited by international law. Article 1 stipulates the objective to establish a system of regular visits of places where people are deprived of their liberty, undertaken by independent international but also national bodies. In Articles 2 and 3, the OPCAT establishes a Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture ("Subcommittee") and obliges states to maintain, designate or establish the so-called national preventive mechanisms ("NPMs").

The work of the subcommittee is supervised by the Committee.[130] Articles 5 to 9 prescribe in some degree of detail the composition of the subcommittee and the process of nomination as well as the election of its members. The subcommittee consists of ten members, nominated and elected by States Parties at their meeting. Similarly to the Committee, it also adopts its own rules of procedure. The mandate of the subcommittee includes the power to visit places where persons are or may be deprived of liberty. It also makes recommendations to States Parties and assists them in relation to the activities of the NPMs. The subcommittee can also maintain direct and confidential contact with the NPMs, advise and assist them and offer them training and technical assistance.[131] With respect to the country visits, an important feature of the OPCAT is that these are not optional as is the case with the UNCAT. According to Article 12 of the OPCAT, a State Party is obliged to receive the subcommittee in

127 See: Gaer, 2020, p. 152.
128 Nowak and Monina, 2018, para. 44.
129 United Nations Treaty Collection, 2024b. For the historical background of its adoption, see: Novak, Birk and Monina, 2019b, pp. 5–6.
130 For ways in which the work of the Committee and the Subcommittee interrelate, see: Arts. 10 paras. 3 and 16 para. 3 OPCAT, as well as Rules 62 and 63 RoP. For comparison of the work of the Committee and the Subcommittee, see Steiger, 2022, pp. 161–162.
131 Art. 11 OPCAT.

its territory and grant it access to the places of detention. It also has to provide the subcommittee with all relevant information requested and the opportunity to hold private interviews with persons deprived of liberty.[132] According to Article 16, the subcommittee communicates its observations and recommendations confidentially to the State Party. If the latter refuses to cooperate in the process of the country visit or to take steps in improving the situation in light of the recommendations, the Committee is given a mandate to decide (upon the request of the subcommittee) to make a public statement on the matter or to publish the report of the subcommittee (Article 16, paragraph 4).

Articles 17–23 are focused on the NPMs. These national bodies must be given functional independence. Articles 19 and 20 provide for minimum powers to be granted to NPMs in domestic laws which to certain extent mirror the range of powers of the subcommittee. NPMs have to be granted access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of such places and their location, all information referring to the treatment of those persons and conditions of detention. States Parties must provide access to all places of detention and the opportunity to have private interviews with the persons deprived of their liberty or with any other person who may supply relevant information to the NPM. NPMs have the liberty to choose the places of visit and persons to be interviewed and person or organisation communicating with NPMs must not be sanctioned in any way (Article 21).

In contrast to the UNCAT, the OPCAT explicitly allows for no reservations or opt-out mechanisms. Only the implementation of its parts dealing with the mandate of the subcommittee and NPMs can be postponed for a few years by way of declaration.[133]

5. Selected Decisions of the Committee

The Committee has made an important contribution to the understanding of the Convention through its elaboration of the general comments and also through its decisions. According to the Annual Report,[134] as of 10 May 2024, the Committee had registered 1,211 complaints concerning 45 States Parties since 1989. Of those, 406 complaints had been discontinued and 145 had been declared inadmissible. The Committee had adopted final decisions on the merits in 495 complaints and found violations of the Convention in 206 of the cases. Some 164 complaints were pending consideration. The aims of the Convention are threefold: to establish specific obligations for States Parties to prevent torture and to assist victims of torture; to require the use of criminal law and jurisdiction to fight impunity of torturers; and to provide for stronger measures of international monitoring of states' compliance with the absolute

132 See: further details in Arts. 12–15.
133 See: Arts. 30 and 24.
134 Committee against Torture, 2024, para. 52.

prohibition of torture.[135] Given these primary aims, it is somewhat surprising that the vast majority of decisions on the merits do not concern allegations of the practise of torture or other forms of ill-treatment itself, but allegations of the violation of the non-refoulement principle in Article 3 of the UNCAT.

5.1. Decisions of the Committee Against Torture

The following cases represent a selection of decisions, which contributed to the understanding and development of some of the central issues pertaining to the Convention.

5.1.1. Definition of the Term "Torture" and Related Obligations of States under the CAT

Article 1 CAT stipulates that torture must be 'inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.' Consequently, without the involvement of government authorities in acts of torture or ill-treatment, no violation of the UNCAT can occur. In the case of *G.R.B. v. Sweden*,[136] the complainant argued that deportation to Peru would expose her to the risk of torture by a Peruvian rebel group, thereby breaching Article 3 of the UNCAT. However, the Committee rejected the claim arguing that torture committed by non-governmental rebel groups does not fall under the definition of torture in Article 1. The Committee further noted that the Peruvian government could not be said to "acquiesce" to the actions of a terrorist group it was actively combatting.

Roitman Rosenmann v. Spain[137] concerned the saga of the proposed extradition of General Pinochet from the UK to Spain (from 1998–2000) to face allegations of torture perpetrated upon Spanish citizens in Chile. The complainant alleged that Spain violated its obligations under the Convention Against Torture by failing to pursue the extradition of former Chilean dictator General Pinochet from the United Kingdom for alleged acts of torture committed in Chile. The main legal issue focused on whether Spain was obligated under the Convention to seek the extradition of an alleged torturer and whether Spain's failure to do so violated the Convention's provisions regarding universal jurisdiction over torture. The Committee found that the Convention does not impose an obligation on a state party to insist on extradition or to continue to seek extradition when political or diplomatic decisions intervene. The Committee emphasised that while Spain exercised its discretion to seek extradition initially, it was not legally required to continue once the UK government declined to extradite Pinochet for health reasons. The Committee concluded that Spain had not violated its obligations under the Convention, as there is no mandatory requirement to pursue extradition indefinitely under international law.

135 Monina, 2019e, para. 27.
136 *G.R.B. v. Sweden*, Communication No. 083/1997, CAT/C/20/D/83/1997.
137 *Roitman Rosenmann v. Spain,* Communication No. CAT/C/28/D/176/2000.

5.1.2. Non-Refoulement (Article 3)

In the case *Z.Z. v. Canada*,[138] Z.Z., a citizen of Afghanistan, challenged his deportation from Canada, arguing that it violated Article 3 of the UNCAT due to the risk of torture in Afghanistan. However, after being convicted of drug offenses, he was deemed a danger to the public and deported in 1998. Z.Z. argued that his deportation placed him at a significant risk of torture due to his Tajik ethnicity and Afghanistan's unstable political environment under the Taliban. The key legal issue addressed was whether Z.Z. had demonstrated a personal risk of torture upon return. The individual must show that he or she is personally at risk, which in this case Z.Z. did not provide sufficient evidence of. General information about the situation in Afghanistan was insufficient to substantiate his claim.

The non-refoulement obligation under Article 3 is considered absolute. The case of *Gorki Ernesto Tapia Paez v. Sweden*[139] before the Committee concerned Sweden's decision to expel Tapia Paez, a Peruvian national and member of the Shining Path (Sendero Luminoso), a group linked to terrorism. Tapia Paez argued that returning to Peru would expose him to a real risk of torture, violating Articlr 3 of the Convention against Torture. While his mother and sisters were granted asylum, his request was denied due to his involvement in violent activities. The UNCAT emphasised that Article 3 provides "absolute protection"[140] against refoulement, meaning the risk of torture must be assessed independently of the individual's past activities. The 'nature of the activities in which the person is engaged is not a relevant consideration' for the purposes of non-refoulement. The Committee concluded that despite Tapia Paez's connection to violent actions, his deportation would expose him to a foreseeable risk of torture, making Sweden's decision inconsistent with Article 3. The case reinforced the absolute nature of the non-refoulement principle, underscoring that no exceptions can justify exposing a person to the risk of torture.

In Agiza v. Sweden,[141] the Committee reaffirmed the absolute nature of the non-refoulement principle under Article 3 of the UNCAT, even in cases involving national security concerns. Ahmed Agiza, an Egyptian national and terrorism suspect, sought asylum in Sweden but was swiftly deported to Egypt in December 2001 despite concerns over the risk of torture. Sweden defended its actions by citing diplomatic assurances from Egypt that Agiza would not be subjected to ill-treatment, and by allowing embassy staff to monitor him upon his return. However, Agiza was reportedly tortured and held under harsh prison conditions. The Committee found Sweden in breach of Article 3, as the swift deportation deprived Agiza of the opportunity to appeal, and the risk of torture was foreseeable given his high national security rating. The diplomatic assurances were deemed insufficient, as Swedish monitors were unable to interview Agiza alone. Additionally, the Committee found Sweden in violation of Article 22 for

138 *Z.Z. v. Canada*, Communication No. 123/1998, CAT/C/26/D/123/1998.
139 *G.E.T. Paez v. Sweden*, Communication No. 39/1996, CAT/C/18/D/39/1996.
140 Ibid., para. 14.5.
141 *Ahmed Hussein Mustafa Kamil Agiza v. Sweden*, Communication No. 233/2003, CAT/C/34/D/233/2003.

failing to fully cooperate with the Committee during the case's review. The decision emphasised that the absolute prohibition of torture under Articles 1 and 3 applies regardless of national security concerns or the "war on terror".

In *Brada v. France*,[142] the complainant challenged his deportation to Algeria, asserting that he faced a risk of torture if returned. He was deported before exhausting all available domestic remedies in France. Subsequently, a French appellate court ruled that the deportation violated French law. The Committee determined that France's actions constituted a breach of Article 3 of the UNCAT. The case raised concerns about whether the premature deportation and failure to comply with interim measures requested by the Committee violated France's obligations under the Convention.

Where a complainant provides a certain level of detail and information, the burden of proof may then shift to the States Party. In *A.S. v. Sweden*,[143] the complainant feared being stoned to death for adultery if deported to Iran. She provided detailed evidence regarding her forced marriage and arrest, including names, dates, and other verifiable information, which shifted the burden of proof to the state. Additionally, she submitted evidence of the poor human rights conditions for women in her situation in Iran. The Committee found that Sweden's failure to sufficiently investigate and follow up on the evidence, rather than any lack of detail from the complainant, led to the rejection of her claim. The Committee concluded that deporting her to Iran would violate Article 3 of the UNCAT.

5.1.3. Prompt and Impartial Investigation

In *Blanco Abad v. Spain*,[144] the Committee stressed the importance of prompt investigations into torture claims to ensure the cessation of such acts and prevent the loss of physical evidence. The complainant, held incommunicado and allegedly tortured, had sufficient evidence, including medical reports, to warrant immediate investigation. However, a 14-day delay before judicial action and an 18-day delay before the investigation commenced were found to violate Article 12 of the UNCAT. The Committee clarified that under Article 13, a formal complaint is not necessary; it suffices for the victim to inform a state authority for an investigation obligation to arise. In *Blanco Abad*, the investigation was slow and incompetent, with delays in accessing crucial evidence and the failure to call key witnesses. The Committee concluded that the court's failure to admit pertinent evidence and its overall mishandling of the case breached the obligation to conduct an impartial investigation, violating Article 13.

142 *Brada v. France*, Communication No. 195/2002, CAT/C/34/D/195/2002.
143 *A.S. v. Sweden*, Communication No. 149/1999, CAT/C/25/D/149/1999.
144 *Encarnación Blanco Abad v. Spain*, Communication No. 59/1996, CAT/C/20/D/59/1996.

5.1.4. Universal Jurisdiction

In *Guengueng et al. v. Senegal*,[145] the complainants, victims of torture in Chad between 1982 and 1990 by agents of then-president Hissène Habré, alleged breaches of Article 5, paragrap 2 and Article 7 of the UNCAT. After Habré sought refuge in Senegal in 1990, the complainants initiated legal action there in 2000, but the Senegalese courts dismissed the case, citing lack of jurisdiction over acts committed in Chad. The Committee found Senegal in breach of Article 5, paragraph 2, which requires states to establish jurisdiction over torture when the alleged offender is present in their territory and is not extradited. The Committee held that Senegal had failed to comply with this obligation within a reasonable time since ratifying the UNCAT in 1986. Additionally, the Committee found a breach of Article 7, paragraph 1, clarifying that the obligation to prosecute an alleged torturer does not depend on the existence of an extradition request. Therefore, Senegal was required to prosecute Habré unless there was insufficient evidence, regardless of an extradition request.

5.2. Cases Against CEEC

As of 29 September 2024, with regard to sixteen Central and Eastern European States,[146] 3 complaints had been discontinued and 2 had been declared inadmissible. The Committee had adopted final decisions on the merits in 12 complaints. The review reveals that the most common issue arising in the complaints is the states´ obligation to conduct proper and impartial investigation (Articles 12–14 UNCAT). In the following, an overview of the cases, in which the Committee had adopted final decisions, will be presented.

The earliest two cases were decided against Yugoslavia, *Ristic v. Yugoslavia* and *Dzemajl et al. v. Yugoslavia*. In *Radivoje Ristic v. Yugoslavia*,[147] the petitioner claimed that his son, Milan Ristic, was killed by police during an arrest in 1995, and that the authorities failed to conduct a proper investigation into the incident. Local courts ruled the death as suicide, despite conflicting forensic evidence. The case centred on Yugoslavia's obligations under the UNCAT, particularly Articles 12, 13, and 14. The Committee found that Yugoslavia violated Articles 12 and 13 by failing to conduct an effective investigation. Key issues included inconsistencies in medical reports, failure to order a new autopsy, and the absence of judicial oversight during the investigation. The Committee emphasised that six years had passed since the incident without a proper investigation. Without this, it was impossible to assess compensation claims under Article 14. The Committee urged Yugoslavia to carry out a proper investigation and provide remedies to the petitioner's family.

In *Hajrizi Dzemajl et al. v. Yugoslavia*,[148] the case revolved around the racially motivated destruction of a Roma settlement in Danilovgrad in 1995, following the

145 *Guengueng et al. v. Senegal*, Communication No. 181/2001, CAT/C/36/D/181/2001.
146 Albania, Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia.
147 *Radivoje Ristic v. Yugoslavia*, Communication No. 113/1998, U.N. Doc. CAT/C/26/D/113/1998.
148 *Dzemajl et al. v. Yugoslavia*, Communication No. 161/2000, CAT/C/29/D/161/2000.

alleged rape of a local girl by two Roma minors. The Roma residents were warned by police to flee, as their safety could not be guaranteed. Despite being fully aware of the impending violence, the police failed to take any preventive actions. Soon after, a large mob of non-Roma residents gathered and then proceeded to raze the settlement using arson, Molotov cocktails, and other weapons. The police, although present, did not intervene, allowing the violence and destruction to unfold for several hours.

The central legal issue in the case was whether the inaction of the police constituted a violation of the UNCAT, particularly under Article 16. The Committee determined that the police's failure to act amounted to "acquiescence" in the violence, as defined in both Articles 1 and 16 of the UNCAT. Article 1 requires that torture be inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or person acting in an official capacity.

In interpreting the meaning of "acquiescence," the Committee emphasised that the police's knowledge of the immediate risk to the Roma residents and their failure to take reasonable steps to prevent or stop the violence was a clear violation. Although the violence was perpetrated by non-state actors (the mob), the police, as public officials, had an obligation to intervene. Their passive role and lack of action were considered acquiescence, making the state responsible under Article 16. This finding aligned with previous decisions where the Committee expressed concern about law enforcement officials failing to protect individuals from racially motivated attacks.

The Committee found Yugoslavia in violation of Article 16 due to the racial motivations behind the attack and the state's failure to protect the Roma residents, constituting cruel, inhuman, or degrading treatment. Additionally, the Committee ruled that the state had violated Articles 12 and 13 of the UNCAT by failing to conduct a proper investigation and inform the victims. The Committee highlighted that a state's failure to act, even in cases involving private actors, could still lead to accountability under the Convention if public officials failed to prevent or address such violence.

The Committee's decision confirmed that States Parties have a duty not only to refrain from direct involvement in torture or ill-treatment but also to prevent such acts, especially when public officials are aware of the threat and fail to intervene. The case underscores the broader interpretation of "acquiescence" in international human rights law, establishing that failure to protect individuals from racially motivated violence by private actors can amount to a violation of the state's obligations under UNCAT.

Most of the other cases decided upon by the Committee concern complaints against Serbia and/or Serbia and Montenegro. In *Dragan Dimitrijevic v. Serbia and Montenegro,*[149] the complainant, a Romani man, was arrested in 1999 and subjected to severe physical abuse by police officers, including racial insults. Dimitrijevic sustained serious injuries but did not seek medical help due to fear of reprisals. Despite filing a criminal complaint in 2000, no investigation or action was taken by the authorities.

149 *Dragan Dimitrijevic v. Serbia and Montenegro,* Communication No. 207/2002, CAT/C/33/D/207/2002.

The key legal issues centred on the failure of the state to investigate and provide redress for the alleged torture. The Committee found that the state violated Articles 2, 12, 13, and 14 of the Convention Against Torture, determining that the treatment Dimitrijevic endured constituted torture. The Committee concluded that the state failed to conduct a prompt and impartial investigation into the allegations, effectively preventing Dimitrijevic from seeking private prosecution or compensation.

In *Jovica Dimitrov v. Serbia and Montenegro* (Communication No. 171/2000), the complainant, a Roma man, alleged that he was subjected to severe physical abuse by police officers during detention in 1996, with no justification or formal charges. Despite filing a criminal complaint, no investigation was taken on for over three years. The legal issues revolved around the state's obligations under the UNCAT, particularly regarding prompt and impartial investigations, redress, and compensation under Articles 12, 13, and 14. The Committee found that the treatment Dimitrov endured constituted torture under Article 1, given the physical abuse inflicted by public officials. Furthermore, the state failed to fulfill its obligations under Articles 12 and 13 by not conducting a timely and impartial investigation, which prevented Dimitrov from pursuing private prosecution. The Committee also ruled that the absence of criminal proceedings deprived Dimitrov of the ability to seek compensation, constituting a violation of Article 14.

In *Danilo Dimitrijevic v. Serbia and Montenegro*,[150] the complainant, a Roma man, was subjected to physical abuse by police during detention in 1997 without an arrest warrant. Despite filing a criminal complaint, no investigation ensued for several years. The legal issues centred on the state's obligations under the UNCAT, specifically under Articles 2, 12, 13, and 14. The Committee found that the treatment Dimitrijevic suffered constituted torture under Article 1 of the Convention due to the severe pain inflicted by public officials. The Committee also determined that Serbia and Montenegro failed to meet its obligations under Articles 12 and 13, as it did not conduct a prompt or impartial investigation into the allegations, effectively preventing the complainant from pursuing private prosecution. Furthermore, the state's failure to initiate criminal proceedings deprived Dimitrijevic of his right to seek compensation, violating Article 14.

In *Nikolic and Nikolic v. Serbia and Montenegro*,[151] the complainants, parents of the deceased N. N., claimed that the state failed to properly investigate the circumstances of their son's death, which they alleged involved torture by police officers. N. N. died after falling from a tenth-floor window while trying to evade arrest. The police claimed it was an accidental fall, while the complainants suspected foul play and asserted that N. N. was subjected to prior torture, citing inconsistencies in the autopsy report and forensic findings. The Committee found that there were reasonable grounds to investigate the allegations of torture, but the investigation was inadequate and biased, particularly as the same forensic experts responsible for the autopsy were tasked with

150 *Danilo Dimitrijevic v. Serbia and Montenegro*, Communication No. 172/2000, CAT/C/35/D/172/2000.
151 *Nikolic and Nikolic v. Serbia and Montenegro*, Communication No. 174/2000, CAT/C/35/D/174/2000.

investigating inconsistencies in their own report. The Committee concluded that the state violated Articles 12 and 13 of the Convention and urged an impartial investigation into N. N.'s death.

In *Kostadin Nikolov Keremedchiev v. Bulgaria*,[152] the complainant alleged that he was subjected to excessive force by police officers during his arrest in 2003 and that Bulgaria failed to conduct a proper investigation. The main legal issues revolved around the state's obligations under Article 12 of the UNCAT to investigate allegations of torture by state agents and whether the treatment Keremedchiev endured amounted to torture under Article 1 or cruel, inhuman, or degrading treatment under Article 16, paragraph 1 of the UNCAT. The Committee determined that, while the force used did not meet the threshold for "torture" under Article 1, the physical injuries – including bruising and kidney damage – amounted to cruel, inhuman, or degrading treatment under Article 16. Furthermore, the Committee found that the state's investigation was not impartial, noting the lack of consideration of key medical evidence and witness testimony. As a result, the Committee concluded that Bulgaria violated Articles 12 and 16 of the UNCAT.

In *Besim Osmani v. Serbia*,[153] the complainant, a Roma resident, alleged that during a forced eviction by police in New Belgrade, he and others were physically abused by officers. His subsequent attempts to identify the perpetrators and pursue legal action were thwarted by the state's failure to provide necessary information. The key legal issues in the case concern the question whether the state's inaction, particularly its failure to conduct a prompt and independent investigation, violated Articles 12, 13, and 16 paragraph 1 of the UNCAT. The Committee determined that Serbia had failed to meet its obligations under Articles 12 and 13, as it did not investigate the alleged cruel, inhuman, or degrading treatment adequately or facilitate the complainant's ability to pursue legal remedies by identifying the responsible parties. Additionally, the Committee found that the state's failure to investigate the police officers' conduct amounted to acquiescence to cruel, inhuman, or degrading treatment under Article 16, paragraph 1.

In *Cevdet Ayaz v. Serbia*,[154] the complainant, a Kurdish political activist, alleged that his extradition from Serbia to Turkey violated his rights under Article 3 of the UNCAT, as he faced a real risk of torture in Turkey due to a politically motivated conviction based on a confession obtained under torture. The key legal issues included whether Serbia failed to properly assess the personal risk of torture upon extradition, and whether Serbia violated its obligation to prevent refoulement under Article 3. The Committee found that Serbia had failed to carry out an individualised risk assessment of the danger of torture Ayaz would face in Turkey, violating Article 3. Additionally, the Committee determined that Serbia violated Article 22 by ignoring the Committee's interim measures request to suspend the extradition while it reviewed the case. The

152 *Kostadin Nikolov Keremedchiev v. Bulgaria*, Communication No. 257/2004, CAT/C/41/D/257/2004.
153 *Besim Osmani v. Serbia*, Communication No. 261/2005, CAT/C/42/D/261/2005.
154 *Cevdet Ayaz v. Serbia*, Communication No. 857/2017, CAT/C/67/D/857/2017.

extradition, which occurred despite warnings from the Committee, was deemed a breach of Serbia's international obligations. The Committee urged Serbia to provide redress, including compensation, and to monitor Ayaz's detention conditions in Turkey to prevent further violations of the Convention.

In *A v. Bosnia and Herzegovina*,[155] the complainant, a victim of rape during the Bosnian war in 1993, claimed that Bosnia and Herzegovina violated her rights under Article 14, paragraph 1 in conjunction with Aticle 1, paragraph 1 of the UNCAT. The complainant, who suffered severe physical and psychological harm, was awarded compensation in 2015, but could not enforce the judgement due to the perpetrator's inability to pay. The key legal issues in this case concerned the state's failure to provide effective mechanisms for victims of war crimes to receive compensation and redress, as required by Article 14 of the UNCAT. The Committee found that the acts inflicted on the complainant constituted torture under Article 1 of the UNCAT and that Bosnia and Herzegovina had failed to fulfil its obligation to provide the complainant with adequate redress, including compensation, rehabilitation, and satisfaction. The Committee concluded that the state's domestic laws and practice, including the lack of subsidiary liability, effectively deprived the complainant of her right to compensation, breaching Article 14. The Committee urged the state to ensure fair compensation, medical care, and legal reforms.

In *Cubrilov v. Serbia*,[156] the complainants, family members of Bozidar Cubrilov, alleged that Mr. Cubrilov was tortured while in detention in 1996, leading to his death, and that the state failed to properly investigate his death. The legal issues concerned Serbia's obligations under Articles 2, 12, 13, and 14 of the UNCAT, particularly the state's duty to conduct a prompt and impartial investigation and provide redress to the victims. The Committee found that Serbia violated Articles 2, 12, and 13 by failing to conduct a proper investigation into Mr. Cubrilov's death, despite strong evidence of torture. The Committee also highlighted the state's responsibility to investigate acts of torture ex officio, even without a formal complaint. However, it did not find a violation of Article 14, as the complainants had already received compensation for emotional suffering. The Committee urged Serbia to conduct a thorough investigation, prosecute those responsible, and implement measures to prevent similar violations in the future.

In *Lucia Černáková v. Slovakia*,[157] the complainant, a woman with intellectual disabilities, alleged that she was unlawfully restrained in a cage bed at a state-run social care facility in 2006. The key legal issues of the case concerned Slovakia's obligations under Article 2 paragraph 1, Article 4 paragraph 1, Articles 11–12, Article 14 paragraph 1 and Article 16 paragraph 1 of the UNCAT, specifically the state's duty to prevent ill-treatment, conduct a prompt and impartial investigation, and provide compensation. The Committee found that the use of the cage bed constituted cruel,

155 *A v. Bosnia and Herzegovina*, Communication No. 854/2017, CAT/C/67/D/854/2017.
156 *Cubrilov v. Serbia*, Communication No. 939/2019, CAT/C/72/D/939/2019.
157 *Lucia Černáková v. Slovakia*, Communication No. 890/2018, CAT/C/72/D/890/2018.

inhuman, or degrading treatment under Article 16 paragraph 1, as it was not medically justified and inflicted severe psychological harm. The Committee concluded that Slovakia violated its obligations under Article 12 for failing to conduct a prompt and independent investigation and under Article 14 for not providing adequate compensation and rehabilitation. The Committee urged Slovakia to provide redress, including compensation, and take measures to prevent similar incidents in the future, such as stricter regulations on restraints in social care facilities.

6. Conclusion

The UNCAT is a specialised human rights treaty body that was adopted in 1984 in response to widespread and systematic practice of torture and ill-treatment in Latin America and other regions.[158] Its main purpose is to contribute to efforts to combat torture namely by stipulating specific preventative obligations for States Parties and monitoring procedures. The central feature of the UNCAT monitoring procedures is state reporting. Indeed, human rights monitoring lies at the heart of the UN human rights system. Given that it lacks means of enforcement, the monitoring process is above a practice of knowledge production.[159] Nevertheless, the UNCAT also established individual communication or inquiry procedures, but with certain procedural limitations. In several aspects, the UNCAT served as a model for other UN-based human rights treaties. The OPCAT brings even more advanced obligations, however suffers from the lower number of States Parties.

Given the political situation and differences between the Western and Eastern block at the time, the adoption of the text of the UNCAT in its current form could be considered a success. However, there are still serious deficiencies in the universal observance of the UNCAT. Torture or ill-treatment is far from being eradicated, with many violations of the UNCAT documented (and probably far more even undocumented).

158 Novak, Birk and Monina, 2019b, p. 6.
159 Kelly, 2009, p. 799.

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