PART I

OVERVIEW OF THE HUMAN RIGHTS COMMITTEE AND THE COMMITTEE AGAINST TORTURE

1.1 The International Prohibition of Torture and other Ill-treatment[5]

This *Handbook* is designed to provide guidance on the process of seeking redress for violations of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment primarily under the ICCPR and the CAT. Before describing the relevant processes and jurisprudence under these treaties, it is important to bear in mind the fundamental nature of the prohibition of torture and ill-treatment under international law.

The prohibition of torture and other forms of ill-treatment is universally recognised and is enshrined in all of the major international and regional human rights instruments.[6] It is also a firmly rooted principle of customary international law, and as such, it is binding on all states at all times, irrespective of whether States have assumed additional treaty obligations in respect of the prohibition.[7]

All international instruments that contain the prohibition of torture and ill-treatment recognise its absolute, non-derogable character.[8] In the ICCPR, the prohibition is contained in Article 7 which states in relevant part: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 4(2) of the ICCPR provides that the prohibition in Article 7 is non-derogable, "even in times of public emergency which threatens the life of the nation." Thus, Articles 7 and 4(2) in conjunction, establish the prohibition as absolute under the treaty.

5 Section 1.1 describing the status of the prohibition of torture under international law borrows from the Joint Third Party intervention in the case of *Ramzy v. The Netherlands*, submitted to the European Court of Human Rights on 22 November 2005, which is reproduced in full in Appendix 11.

6 Universal Declaration of Human Rights (Article 5); ICCPR (Article 7); American Convention on Human Rights (Article 5); African Charter on Human and Peoples' Rights (Article 5), Arab Charter on Human Rights (Article 13), CAT and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The prohibition against torture is also reflected throughout international humanitarian law, in e.g. the Regulations annexed to the Hague Convention IV of 1907, the Geneva Conventions of 1949 and their two Additional Protocols of 1977.

7 See discussion below on the *jus cogens* status of the prohibition under customary international law.

8 The prohibition of torture and ill-treatment is specifically excluded from derogation provisions: see Article 4(2) of the ICCPR; Articles 2(2) and 15 of the CAT; Article 27(2) of the American Convention on Human Rights; Article 4(c) Arab Charter of Human Rights; Article 5 of the Inter-American Convention to Prevent and Punish Torture; Articles 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The African Charter of Human and Peoples' Rights prohibits torture and ill-treatment in Article 5; the African Charter does not contain a derogation provision.

In General Comment 20, the HRC further emphasised that:

> "The text of article 7 [of the ICCPR] allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force … [N]o justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons."[9]

The absolute nature of the prohibition is also enshrined in the Convention against Torture. Article 2(2) of the CAT provides:

> "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

The non-derogability of the prohibition has consistently been reiterated by human rights monitoring bodies, human rights courts, and international criminal tribunals including the HRC, the CAT Committee, the European Court of Human Rights, the Inter-American Commission and Court and the International Criminal Tribunal for the Former Yugoslavia ("ICTY").[10]

The prohibition of torture and other forms of ill-treatment does not therefore yield to other societal or political interests however compelling those interests may appear to be. In particular, the treaty provisions discussed above make clear that it is not permissible, under international law, to balance national

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9 General Comment 20 § 3.

10 See General Comment 20 § 3 (cited in text above); General Comment 29; Concluding Observations on the U.S., (2006) UN doc. CAT/C/USA/CO/2, § 14; CAT 's consideration of the Reports of: the Russian Federation, (2002) UN doc. CAT/C/CR/28/4, § 90, Egypt, (2002) UN Doc. CAT/C/CR/29/4 A/57/54, § 40, and Spain, (2002) UN Doc. CAT/C/SR.530 A/58/44, § 59; Inter-American cases, e.g. *Castillo-Petruzzi et al. v. Peru*, Series C, No 52, judgment of the Inter-American Court of Human Rights of 30 May 1999, § 197; *Cantoral Benavides v. Peru*, Series C, No. 69, judgment of the Inter-American Court of Human Rights of 18 August 2000, § 96; *Maritza Urrutia v. Guatemala*, Series C, No 103, judgment of the Inter-American Court of Human Rights of 27 November 2003, § 89; European Court of Human Rights' cases, e.g. *Tomasi v. France*, No. 12850/87, Eur. Ct. of Hum. Rts. (17 August 1992): *Aksoy v. Turkey*, No. 21987/93, Eur. Ct. of Hum. Rts. (18 December 1996); and *Chahal v. the United Kingdom*, No. 22414/93, Eur. Ct. of Hum. Rts. (15 November 1996); ICTY cases, e.g. *Prosecutor v. Furundzija*, ICTY Trial Chamber, IT-95-171/1-T (10 December 1998).

security interests against the right to be free from torture and other ill-treatment.[11]

The absolute nature of the prohibition of torture under treaty law is reinforced by its higher *jus cogens* status under customary international law. *Jus cogens* status connotes the fundamental, peremptory character of the obligation, which is, in the words of the International Court of Justice, "intransgressible."[12] There is ample international authority recognising the prohibition of torture as having *jus cogens* status.[13] The prohibition of torture also imposes obligations *erga omnes,* and every State has a legal interest in the performance of such obligations which are owed to the international community as a whole.[14]

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11 The HRC, the CAT Committee, the European Court of Human Rights, the Special Rapporteur on Torture*,* the UN Security Council and General Assembly, and the Committee of Ministers of the Council of Europe, among others, have all recognised the undoubted difficulties States face in countering terrorism, yet made clear that all anti-terrorism measures must be implemented in accordance with international human rights and humanitarian law, including the prohibition of torture and other ill-treatment. A recent United Nations World Summit Outcome Document (adopted with the consensus of all States) in para. 85 reiterated the point. See e.g. *Klass and Others v. Germany*, No. 5029/71, Eur. Ct. of Hum. Rts. (6 September 1978); *Leander v. Sweden¸* No. 9248/81, Eur. Ct. of Hum. Rts. (26 March 1987), and *Rotaru v. Romania*, No. 28341/95, Eur. Ct. of Hum. Rts. (4 May 2000); General Comment 29, § 7, and Concluding observations on Egypt's Report, (2002) UN doc. CAT/C/CR/29/4, § 4; CAT's Concluding observations on Israel's Report, (1998) UN doc. CAT/C/33/Add.2/Rev.1, §§ 2-3 and 24; Report to the General Assembly by the Special Rapporteur on Torture, (Mr T. Van Boven), (2004) UN doc. A/59/324, § 17, and *Statement in connection with the events of 11 September 2001*, (2001) UN doc. A/57/44, § 17; General Assembly Resolutions 57/27(2002), 57/219 (2002) and 59/191 (2004); Security Council Resolution 1456 (2003) Annex, § 6; Council of Europe Guidelines on Human Rights and the Fight Against Terrorism (2002); Special Rapporteur on Torture, *Statement to the Third Committee of the GA*, (2001) UN doc. A/RES/55/89. Other bodies pronouncing on the issue include, for example, Human Rights Chamber for Bosnia and Herzegovina (see e.g. *Boudellaa and others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, nos. CH/02/8679, CH/02/8689, CH/02/8690 and CH/02/8691 (11 October 2002), §§ 264 to 267.

12 Advisory Opinion of the ICJ on the *Legal Consequences of the Constructions of a Wall in the Occupied Palestinian Territory*, General List No. 131, ICJ (9 July 2004), § 157. See also Article 5,3 Vienna Convention on the Law of Treaties (1969) which introduces and defines the concept of "peremptory norm."

13 See e.g. the first report of the Special Rapporteur on Torture, (Mr. P.Kooijmans), (1986) UN doc. E/CN.4/15, § 3; ICTY judgments *Prosecutor v. Delalic and others*, ICTY Trial Chamber, IT-96-21 (16 November 1998), *Prosecutor v. Kunarac*, ICTY Trial Chamber, IT-96-23&23/1 (22 February 2001), § 466, and *Prosecutor v. Furundzija*, ICTY Trial Chamber, IT-95-171/1-T (10 December 1998); and *Al-Adsani v. the United Kingdom*,.No. 35763/97, Eur. Ct. of Hum. Rts. (21 November 2001).

14 See ICJ Reports: *Barcelona Traction, Light and Power Company, Limited*, Second Phase (1970, § 33); *Case Concerning East Timor* (1995, § 29); *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (1996, § 31). See also Articles 40-41 of the International Law Commission's Draft Articles on State Responsibility ("ILC Draft Articles") and the commentary to the Draft Articles. See ICTY case *Prosecutor v. Furundzija*, ICTY Trial Chamber, IT-95-171/1-T (10 December 1998), § 151; Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, (2000, § 155); and General Comment 31, § 2.

The principal consequence of its higher rank as a *jus cogens* norm is that the principle or rule cannot be derogated from by States through any laws or agreements not endowed with the same normative force.[15] Thus, no treaty can be made nor law enacted that conflicts with a *jus cogens* norm, and no practice or act committed in contravention of a *jus cogens* norm may be “legitimated by means of consent, acquiescence or recognition”; any norm conflicting with such a provision is therefore void.[16] It follows that no interpretation of treaty obligations that is inconsistent with the absolute prohibition of torture is valid in international law.

The fact that the prohibition of torture is *jus cogens* and gives rise to obligations *erga omnes* also has important consequences under basic principles of State responsibility, which provide for the interest and in certain circumstances the obligation of all States to prevent torture and other forms of ill-treatment, to bring it to an end, and not to endorse, adopt or recognise acts that breach the prohibition.[17] Any interpretation of the ICCPR or the CAT must be consistent with these obligations under broader international law.

There are two corollaries that flow from the prohibition’s absolute nature: the *non-refoulement* rule, which prohibits states from returning individuals to countries where they face a risk of torture, and the exclusionary rule, which prohibits the use of evidence extracted under torture in any kind of judicial, administrative or other formal proceedings.

The expulsion (or ‘*refoulement’*) of an individual where there is a real risk of torture or other ill-treatment is prohibited under both international treaty and customary law.[18] It is explicitly prohibited under Article 3 of CAT which provides:

> “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

The jurisprudence of the HRC and other international human rights bodies has recognized the *non-refoulement* rule to constitute an inherent part of the gen-

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15 See Article 53 of the Vienna Convention on the Law of Treaties 1969; also ICTY *Furundzija*, ICTY Trial Chamber, IT-95-171/1-T (10 December 1998), §§ 153-54.

16 Jennings and Watts, *Oppenheim’s International Law* (Vol. 1, Ninth ed.) 8 (1996). See also Article 53, Vienna Convention.

17 See ILC Draft Articles (40 and 41 on *jus cogens*; and Articles 42 and 48 on *erga omnes)*; see also Advisory Opinion of the ICJ on the *Legal Consequences of the Constructions of a Wall in the Occupied Palestinian Territory*, General List No. 131, ICJ (9 July 2004), § 159. In respect of the *erga omnes* character of the obligations arising under the ICCPR thereof, see General Comment 31, § 2.

18 For a detailed discussion of the sources, scope and application of the *non-refoulement* principle, see Appendix 11, Joint Third Party intervention in *Ramzy v. The Netherlands*, 22 November 2005.

eral and absolute prohibition of torture and other forms of ill-treatment.[19] The Special Rapporteur on Torture[20] and a number of human rights experts and legal commentators[21] have specifically noted the customary nature of *non-refoulement* and asserted that the prohibition against *non-refoulement* under customary international law shares its *jus cogens* and *erga omnes* character.

The exclusionary rule, which prohibits the use of evidence extracted under torture, is also inherent in the absolute prohibition of torture and has been codified in Article 15 of the CAT which provides:

> "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

To date, no State Party to CAT has made a reservation to Article 15, reflecting the universal acceptance of the exclusionary rule and its status as a rule of customary international law.[22] Both the HRC and CAT have concluded that the exclusionary rule forms a part of the general and absolute prohibition of torture.[23]

The obligations outlined above therefore create a global interest and standing against acts of torture and other forms of ill-treatment and those who perpetrate them, ensuring a united front against torture. It is against this background that the individual complaints mechanisms of the Treaty Bodies create a powerful tool for international enforcement of this universally recognized right in situations where municipal law and/or domestic courts have failed to give it effect.

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19 General Comment 20, § 9; *Chitat Ng v. Canada* (469/91) § 16.4; *Loizidou v. Turkey*, No. 15318/89, Eur. Ct. of Hum. Rts. (18 December 1996); *Soering v. United Kingdom*, No. 14038/88, Eur. Ct. of Hum. Rts. (7 July 1989); *Chahal v. the United Kingdom*, No. 22414/93, Eur. Ct. of Hum. Rts. (15 November 1996); African Commission: *Modise v. Botswana* Communication 97/93, (AHG/229XXXVII), §91. For further analysis, *see* CINAT recommendations on the Torture Resolution of the U.N. Commission on Human Rights, March/April 2005, at http://www.apt.ch/cinat.htm

20 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Interim Report to the General Assembly, (2004) UN Doc. A/59/324, § 34; *see* also, Interim Report to the General Assembly, (2005) UN Doc. A/60/316.

21 See E. Lauterpacht and D. Bethlehem (2001, §§ 196-216).

22 See http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet

23 General Comment 20, § 12; *P.E. v. France*, (CAT 193/01), § 6.3; *G.K. v. Switzerland*, (CAT 219/02), § 6.10. For further detailed analysis of the history, scope and application of the exclusionary rule, see Appendix 13, Written submissions to the UK House of Lords by Third Party Interveners in the case of *A. and Others v. Secretary of State for the Home Department* and *A and Others (FC) and another v. Secretary of State for the Home Department* [2004] EWCA Civ 1123; [2005] 1 WLR 414, pp. 35-59. See also Report of the Special Rapporteur on Torture, (2006) UN doc. A/61/259, discussing the significance of Article 15 of CAT and expressing concern that the "absolute probinition of using evidence extracted by torture has recently […] come into question notably in the context of the global fight against terrorism", p. 10.

1.2 The International Covenant on Civil and Political Rights

The ICCPR was adopted by the UN General Assembly in 1966, and came into force in 1976. As of 1 November 2006, it had 160 States parties, representing well over three quarters of recognised States in the world. The ICCPR is an international treaty, and therefore it imposes legally binding obligations on States parties.

The ICCPR makes up a part of what is known as the International Bill of Rights. The International Bill of Rights comprises the Universal Declaration on Human Rights (UDHR) 1948, the ICCPR and its Protocols, as well as the International Covenant on Economic Social and Cultural Rights 1966 (ICESCR). The UDHR was adopted by the United Nations in 1948 in the wake of the Second World War. Whereas "human rights" had largely been thought of as "internal" State matters prior to the Second World War, the horrors of that conflict awoke the world to the fundamental nature of human rights, and the need to recognise and protect these rights at the international level. The UDHR was not however legally binding at the time of its creation in 1948.[24] Over the next eighteen years, the provisions of that declaration were translated into legally binding treaty form in the two International Covenants, both adopted in 1966.

The ICCPR recognises and protects "civil and political" rights. It is reproduced in full at Appendix 1. The substantive rights are listed in Part I[25] and Part III of the treaty. Such rights include fundamental rights such as freedom from slavery and freedom of speech. Article 7 prohibits torture, and other cruel, inhuman or degrading treatment. Article 10 supplements Article 7, and provides for humane treatment for a particular vulnerable group, detainees. Breaches of Article 7 and 10 often occur in conjunction with other ICCPR violations. In particular, the following rights are often simultaneously violated:

- Article 6: the right to life
- Article 9: freedom from arbitrary detention and right to security of the person
- Article 14: the right to a fair trial
- Article 2(1) and 26: freedom from discrimination

24 It is arguable that the Universal Declaration of Human Rights now represents customary international law binding on all States: see, e.g., L. B. Sohn, 'The New International Law: Protection of the Rights of Individuals rather than States', (1982) 32 *American University Law Review* 1, p. 17.

25 Part I contains only Article 1, which recognises the right of self-determination. This Article is exceptional as it attaches to peoples rather than individuals. It is also the only right which is contained in both Covenants.

The substantive meanings of Articles 7 and 10 are discussed in Part III of this *Handbook*.

In addition to the substantive rights in the ICCPR, there are important "supporting guarantees" in Part II of the treaty. In particular, Article 2 states:

> "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
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> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.
>
> 3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted."

State parties must therefore:

- Immediately guarantee the enjoyment of rights in the ICCPR for people "within its territory and jurisdiction"[26] without discrimination.
- States parties must ensure that the rights in the ICCPR are protected by domestic laws and other measures.
- States parties must ensure that a person who has suffered a breach of his or her rights has access to an effective domestic remedy in respect of that breach.
- States parties should ensure that the domestic remedy is properly enforced.

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26 See Section 2.1.1(b)(iii).

There are two Optional Protocols to the ICCPR. A State party to the ICCPR can choose whether to ratify one or both Optional Protocols: it does not have to ratify either. It is not possible for a State to become a party to either Optional Protocol if it is not a party to the ICCPR. The First Optional Protocol was adopted by the UN General Assembly in 1966, and came into force in 1976. Ratification by a State of the First Optional Protocol permits the submission of individual complaints about violations of the ICCPR by that State to the HRC. As at 1 November 2006, there were 108 States parties to the First Optional Protocol. It is discussed extensively in this *Handbook*. The Second Optional Protocol was adopted by the UN General Assembly in 1989 and came into force in 1991. It prohibits the death penalty. The death penalty is not totally prohibited under the ICCPR itself.[27] As at 1 November 2006, there were 59 States parties to the Second Optional Protocol.

1.3 The Human Rights Committee

The "Human Rights Committee" (HRC) is established under Article 28 of the ICCPR. Its functions are outlined in Part IV of the treaty. It has the role of monitoring and supervising the implementation by States parties of their obligations under the treaty. The HRC is composed of 18 members. Each member is nominated by a State party, and is elected by secret ballot by the States parties. Each member serves a four year term, and may be re-elected if renominated. States parties should ensure that there is an equitable geographic mix of HRC members. Members "shall be persons of high moral character and recognised competence in the field of human rights".[28] A member serves in his or her personal capacity, rather than as a representative of his or her nominating State.[29]

The HRC meets three times a year, twice at UN headquarters in Geneva, and once at the main headquarters in New York City. Each meeting lasts for three weeks. Working Groups of the HRC, which perform various functions, convene for one week prior to each main meeting. Therefore, the HRC operates on a part time rather than a full time basis.

27 See Articles 6(2)-6(6), ICCPR. See also Sections 3.2.10 and 4.5.

28 Article 28(2), ICCPR.

29 Article 28(3), ICCPR.

The HRC performs its function of supervising and monitoring implementation of the ICCPR in four ways:

- Reporting Function
- Consideration of Individual Complaints
- Issuance of General Comments
- Consideration of Interstate Complaints

1.3.1 Reporting Function

A State party to the ICCPR must submit an initial report one year after the ICCPR comes into force for that State. Thereafter, the State party must submit periodic reports at intervals dictated by the HRC. States parties are generally required to submit a report every five years. A State may occasionally be required to report at an earlier time, particularly in a crisis situation.[30]

The report should detail the State party's implementation at the national level of the various rights in the ICCPR. The report should refer to relevant laws, policies and practices, as well as any problems in implementation. The report is examined in public session by the HRC in a dialogue with representatives of the State party. During this dialogue, the HRC will seek clarifications and explanations from the State representatives on the contents of the report, as well as on apparent omissions from the report. The HRC members commonly receive information regarding the State from non-governmental sources, and even from international bodies, which assist the members in conducting an informed dialogue with the State.

After the conclusion of a relevant dialogue, the HRC will debate in closed session the contents of its "Concluding Observations" on the State. Concluding Observations are then issued for each State party whose report has been examined in a particular session at the end of that session. Concluding Observations resemble a "report card" for the relevant State.[31] For example, the Concluding Observations will outline positive and negative aspects of a State's record in regard to implementation of the ICCPR. The Concluding Observations are

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30 See, on emergency reports, S. Joseph, 'New procedures concerning the Human Rights Committee's examination of State reports', (1995) 13, *Netherlands Quarterly of Human Rights,* p. 5, pp.13-22.

31 S. Joseph, J. Schultz, M. Castan, *The International Covenant on Civil and Political Rights,* 2nd edn., Oxford University Press, 2004, § 1.39.

publicly available, and are for example available via the UN "Treaty Bodies Website" at http://www.unhchr.ch/tbs/doc.nsf. Priority areas of concern are identified within the Concluding Observations, and are followed up by the Committee between reporting cycles.

The reporting process is discussed in more detail below in Section 2.3.1.

1.3.2 Individual Complaints Process

If a State party to the ICCPR ratifies the First Optional Protocol (OP), it means that it will permit individuals to submit complaints of violations of the ICCPR by that State to the HRC. The complaints process is quite complex, and is extensively discussed in Part 2.1 of this *Handbook*. Here, we will make only a few general observations about the complaints process.

Individual complaints, also known as "individual communications", must satisfy certain admissibility criteria before they will be considered in full by the HRC. If a complaint is found to be admissible, the HRC will then consider the merits of the complaint. It will ultimately decide whether or not the facts alleged give rise to a violation or violations of the ICCPR, or whether no violations have arisen. It communicates its "final views" to both the State and the individual concerned under Article 5(4) of the OP. Its final views are eventually made public. If any violation is found, a State party is expected to inform the HRC within 90 days of the remedy it proposes to address the situation. The HRC will then follow up on the State's response to the finding/s of violation.

Table 1 Ratifications of the Optional Protocol to the ICCPR and Declarations under Article 22 of CAT (Countries by Region)[i]

Country (by region)	**Optional Protocol to the ICCPR**[ii]	**Article 22 of the CAT**[iii]
Africa		
Algeria	12 September 1989	12 September 1989
Angola	10 January 1992	
Benin	12 March 1992	
Burkina Faso	4 January 1999	
Burundi		10 June 2003
Cameroon	27 June 1984	12 October 2000
Cape Verde	19 May 2000	
Central African Republic	8 May 1981	
Chad	9 June 1995	
Congo	5 October 1983	
Ivory Coast	5 March 1997	
Democratic Republic of the Congo	1 November 1976	
Djibouti	5 November 2002	
Equatorial Guinea	25 September 1987	
Gambia	9 June 1988	
Ghana	7 September 2000	7 September 2000
Guinea	17 June 1993	
Lesotho	6 September 2000	
Libyan Arab Jamahiriya	16 May 1989	
Madagascar	21 June 1971	
Malawi	11 June 1996	
Mali	24 October 2001	
Namibia	28 November 1994	
Niger	7 March 1986	

i Table compiled using information available on the UN Treaty Bodies Database (see http://www.unhchr.ch/tbs/doc.nsf); information in table current as of 1 November 2006.

ii For States which ratified the Optional Protocol to the ICCPR before its entry into force on 23 March 1976, the present Protocol entered into force three months from this date. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession (Article 9, Optional Protocol to the ICCPR).

iii For States which ratified the CAT before it entered into force on 26 June 1987, the present Convention entered into force thirty days after this date. For each State ratifying the Convention or acceding to it after its entry into force, the present Convention entered into force thirty days after the date of the deposit of its own instrument of ratification or accession (Article 27, CAT).

Senegal	13 February 1978	16 October 1996
Seychelles	5 May 1992	6 August 2001
Sierra Leone	23 August 1996	
Somalia	24 January 1990	
South Africa	28 August 2002	10 December 1998
Togo	30 March 1988	18 November 1987
Tunisia		23 September 1988
Uganda	14 November 1995	
United Republic of Tanzania		
Zambia	10 April 1984	
Americas	**Optional Protocol to the ICCPR**	**Article 22 of the CAT**
Antigua & Barbuda		
Argentina	8 August 1986	24 September 1986
Barbados	5 January 1973	
Bolivia	12 August 1982	14 February 2006
Brazil		26 June 2006
Canada	19 May 1976	13 November 1989
Chile	27 May 1992	15 March 2004
Colombia	29 October 1969	
Costa Rica	29 November 1968	27 February 2002
Dominican Republic	4 January 1978	
Ecuador	6 March 1969	6 September 1988
El Salvador	6 June 1995	
Guatemala	28 November 2000	25 September 2003
Guyana	10 May 1993[iv]	
Honduras	7 June 2005	
Jamaica	[v]	
Mexico	15 March 2002	15 March 2002
Nicaragua	12 March 1980	
Panama	8 March 1977	

iv The Government of Guyana had initially acceded to the Optional Protocol on 10 May 1993. On 5 January 1999, the Government of Guyana informed the Secretary-General that it had decided to denounce the Optional Protocol. However, on the same date, the Government of Guyana re-acceded to the Optional Protocol with a reservation that the HRC will not be competent to receive and consider complaints from any prisoner who is under sentence of death.

v The Government of Jamaica had initially acceded to the Optional Protocol on 3 October 1975. On 23 October 1997, the Government of Jamaica notified the Secretary-General of its denunciation of the Protocol.

Paraguay	10 January 1995	29 May 2002
Peru	3 October 1980	7 July 1988
Saint Vincent and the Grenadines	9 November 1981	
St Kitts and Nevis		
Suriname	28 December 1976	
Trinidad and Tobago	[vi]	
Uruguay	1 April 1970	27 July 1988
Venezuela	10 May 1978	26 April 1994
Asia	**Optional Protocol to the ICCPR**	**Article 22 of the CAT**
Australia	25 September 1991	28 January 1993
Maldives	19 September 2006	
Mauritius	12 December 1973	
Mongolia	16 April 1991	
Nepal	14 May 1991	
New Zealand	26 May 1989	10 December 1989
Philippines	22 August 1989	
Republic of Korea	10 April 1990	
Sri Lanka	3 October 1997	
Europe/Central Asia	**Optional Protocol to the ICCPR**	**Article 22 of the CAT**
Andorra	22 September 2006	22 September
Armenia	23 June 1993	
Austria	10 December 1987	29 July 1987
Azerbaijan	27 November 2001	4 February 2002
Belarus	30 September 1992	
Belgium	17 May 1994	25 June 1999
Bosnia and Herzegovina	1 March 1995	4 June 2003
Bulgaria	26 March 1992	12 May 1993
Croatia	12 October 1995	12 October 1992
Cyprus	15 April 1992	8 April 1993

vi The Government of Trinidad and Tobago had initially acceded to the Optional Protocol on 14 November 1980. On 26 May 1998, the Government informed the Secretary-General that it denounced the Optional Protocol with effect from 26 August 1998. On 26 August 1998, the Government decided to re-accede to the Optional Protocol with a reservation. However, on 27 March 2000, the Government informed the Secretary-General of its decision to denounce the Optional Protocol with effect from 27 June 2000.

Czech Republic	22 February 1993	3 September 1996
Denmark	6 January 1972	27 May 1987
Estonia	21 October 1991	
Finland	19 August 1975	30 August 1989
France	17 February 1984	23 June 1988
Georgia	3 May 1994	30 June 2005
Germany	25 August 1993	19 October 2001
Greece	5 May 1997	6 October 1988
Hungary	7 September 1988	13 September 1989
Iceland	22 August 1979	23 October 1996
Ireland	8 December 1989	11 April 2002
Italy	15 September 1978	10 October 1989
Kyrgyzstan	7 October 1994	
Latvia	22 June 1994	
Liechtenstein	10 December 1998	2 November 1990
Lithuania	20 November 1991	
Luxembourg	18 August 1983	29 September 1987
Malta	13 September 1990	13 September 1990
Monaco		6 December 1991
Montenegro	23 October 2006	
Netherlands	11 December 1978	21 December 1988
Norway	13 September 1972	9 July 1986
Poland	7 November 1991	12 May 1993
Portugal	3 May 1983	9 February 1989
Romania	20 July 1993	
Russian Federation	1 October 1991	1 October 1991
San Marino	18 October 1985	
Serbia	6 September 2001	12 March 2001
Slovakia	28 May 1993	17 March 1995
Slovenia	16 July 1993	16 July 1993
Spain	25 January 1985	21 October 1987
Sweden	6 December 1971	8 January 1986
Switzerland		2 December 1986
Tajikistan	4 January 1999	
The Former Yugoslav Republic of Macedonia	12 December 1994	
Turkey		2 August 1988
Turkmenistan	1 May 1997	
Ukraine	25 July 1991	12 September 2003
Uzbekistan	28 September 1995	

1.3.3 General Comments

The HRC is empowered under Article 40 of the ICCPR to issue "General Comments". It had issued 31 such General Comments by 1 September 2006. General Comments are directed to all States parties, and provide detailed clarification of aspects of their duties under the ICCPR. Most often, a General Comment has been an expanded interpretation of a particular right in the ICCPR. However, General Comments have also related to numerous miscellaneous issues, such as the State's rights of reservation,[32] denunciation,[33] and derogation[34] under the ICCPR. General Comments have also related to a theme[35] and to reporting obligations.[36]

General Comments are extremely useful tools for interpreting the ICCPR. The most relevant General Comments on the issue of torture, cruel inhuman or degrading treatment and punishment are General Comments 20 (on Article 7) and 21 (on Article 10). The meaning of Articles 7 and 10 of the ICCPR is analysed in Part III, which contains many references to those General Comments.

1.3.4 Interstate Complaints

Under Article 41 of the ICCPR, a State party may declare that the HRC is competent to hear complaints about violations of the ICCPR by that State party from another State party. Article 41 sets out a complex procedure for the resolution of such complaints. This procedure will not be discussed in this *Handbook* as it has never been used.

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32 General Comment 24. A reservation is entered by a State upon ratification of a treaty. It signals that the State wishes to modify the treaty obligations, and normally signals an intention not to be bound by certain provisions.

33 General Comment 26. A State party 'denounces' a treaty by withdrawing from it. Denunciation means that a State is no longer bound by a treaty that it was once party to. Basically, the HRC has held that States parties have no right to withdraw from the ICCPR or the Second Optional Protocol once they have ratified one or both of those treaties. They do have a right to denounce the OP.

34 General Comment 29. States may sometimes 'derogate' from, or suspend, certain treaty provisions, in times of crisis or public emergency.

35 See, e.g., General Comment 15 on the Position of Aliens under the ICCPR.

36 See General Comments 1, 2 and 30.

1.4 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is an international human rights treaty which aims to eradicate the practice of torture in all countries across the world. The CAT represents the most detailed international codification of standards and practices which aim to protect individuals from torture and other cruel, inhuman or degrading treatment or punishment. The CAT is reproduced in full at Appendix 3.

The seeds from which the CAT evolved can be traced back to the global affirmation of the existence and value of human rights which emerged after the atrocities of the Second World War. However the real momentum for a treaty aimed specifically at the eradication of torture began in December 1973 at the first International Conference on the Abolition of Torture, convened by Amnesty International.[37] At this conference the

> "three hundred delegates declared that the use of torture is a violation of freedom, life and dignity [and] urged governments to recognise that torture is a crime against human rights [and] to respect, implement and improve the national and international laws prohibiting torture."[38]

The Conference was successful in bringing global attention to the disturbing fact that torture had not disappeared in mediaeval times, but was in fact a modern day human rights problem. In the following years, Amnesty International continued to keep torture on the international agenda.[39] The next major development in the global campaign against torture was the adoption in 1975 by the UN General Assembly of the "Declaration Against Torture". This Declaration was not binding but it was of crucial significance, representing the "first [targeted] international condemnation of torture."[40]

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37 Amnesty International, Conference for the Abolition of Torture: Final Report (1973).

38 M. Lippman, "The Development and Drafting of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", (1994) 17 *Boston College International & Comparative Law Review* 275, p. 296.

39 One of the major achievements of Amnesty International during this period was the development of Codes of Conduct. The aim of these Codes was to ensure that certain professional groups would not be involved in any practice of torture, including doctors, law enforcement personnel and members of the legal profession. See *ibid*, p. 296.

40 *Ibid*, p. 303.

In spite of this international condemnation, acts of torture continued to occur in States around the world, as evidenced in the reports of different groups monitoring and documenting these acts.[41] These reports clearly highlighted that further action needed to be taken to mount an effective fight against torture. In particular Amnesty's second report argued that there was a need to adopt a legally binding treaty in order to address many of the gaps in the Declaration.[42]

As a result of the growing recognition of the continued existence of the global scourge of torture, the UN General Assembly adopted the CAT on 10 December 1984. The CAT entered into force in June 1987 and by 1 November 2006 there were 142 States parties to the treaty.[43]

Part I of the CAT outlines the substantive obligations of States parties, including in particular the duty not to torture or perpetrate cruel, inhuman or degrading treatment or punishment, as well as the duty to take measures to ensure that such treatment or punishment does not occur. These duties are discussed in detail in Part IV of this *Handbook*.

An Optional Protocol to the CAT was adopted by the UN General Assembly in 2002, and came into force on 22 June 2006 with 20 States parties. As at 4 November 2006, there were 28 States parties (and 54 Signatories). It establishes mechanisms for monitoring places of detention within States parties to the Optional Protocol. This Optional Protocol is discussed in more detail in Section 2.3.3.

1.5 The Committee against Torture

The Committee against Torture ("CAT Committee") is established under Article 17 of the CAT. Its functions are set out in Part II of the treaty. It has

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41 For example; Amnesty International, "Report on Allegations of Torture in Brazil", (1976) 3; Argentine National Commission on the Disappeared, Nunca Mas xi, Writers and Scholars International Ltd. Trans., (1986); Amnesty International, "Political Imprisonment in South Africa", (1978), pp. 18-19, 22-23, 36, 56-57; Amnesty International's second report on torture was released in 1984 and reflected the continued practice of torture, containing allegations of torture and ill-treatment against 98 countries see Amnesty International, "Torture in the Eighties", (1984).

42 See M. Lippman, "The Development and Drafting of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (1994) 17 *Boston College International & Comparative Law Review* 275, p. 308.

43 For further information on the background of the CAT see J. H. Burgers and H. Danelius, *The United Nations Convention against Torture : a Handbook on the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, Kluwer Academic Publishers, 1988.

the role of monitoring and supervising the implementation by States parties of their obligations under the treaty. The CAT Committee is composed of ten members. Each member is nominated by a State party, and is elected by secret ballot by the States parties. Each member serves a four year term, and may be re-elected if renominated. States parties should ensure that there is an equitable geographic mix of CAT Committee members. Members shall be persons "of high moral standing and recognised competence in the field of human rights".[44] A member serves in his or her personal capacity, rather than as a representative of his or her nominating State.[45]

The CAT Committee operates on a part time basis. It generally meets twice each year, once for three weeks and once for two weeks, while a pre-sessional working group meets for one week.

The CAT Committee performs its function of supervising and monitoring implementation of the CAT in six ways:

- Reporting Function
- Consideration of Individual Complaints
- Issuance of General Comments
- Consideration of Interstate Complaints
- Special Inquiries
- Duties under the Optional Protocol

The performance of the first four functions operates very similarly to performance of the same functions by the HRC. In this introductory commentary, we will only identify where practices are materially different from those of the HRC with regard to those first four functions.

1.5.1 Reporting Function

The process of reporting is very similar to that within the HRC. The main difference is that reports are generally supposed to be submitted every four years rather than every five years. The reporting process is discussed in Section 2.3.1 of this *Handbook*.

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44 Article 17(1), CAT.
45 Article 17(1), CAT.

1.5.2 Individual Complaints Process

If a State party to the CAT makes a relevant declaration under Article 22 thereof, individuals may submit complaints of violations of the CAT by that State to the CAT Committee. The complaints process is discussed in Section 2.1 of this *Handbook*. For a list of States parties that have made the declaration under Article 22, *see* Table 1 above.

1.5.3 General Comments

The CAT Committee is empowered to issue General Comments, directed to all States parties. By 1 September 2006, the CAT Committee had only issued one such comment, on Article 3 of CAT. This General Comment is an invaluable tool for interpreting the relevant part of the CAT.

1.5.4 Interstate Complaints

Under Article 21 of the CAT, a State party may declare that the CAT Committee is competent to hear complaints about violations of the CAT by that State party from another State party. This procedure will not be discussed in this *Handbook* as it has never been used.

1.5.5 Inquiry Procedure

Under Article 20 of the CAT, the CAT Committee may undertake an inquiry into a State party if it receives credible information indicating that torture is being systematically practiced in that State. This procedure is discussed in Section 2.3.2 of this *Handbook*.

1.5.6 Duties under the Optional Protocol

Most tasks under the Optional Protocol are conferred upon a new body, known as the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture. The Subcommittee is discussed in Section 2.3.3(b). The CAT Committee maintains some role under the Optional Protocol. Once a year it should hold its meeting

at the same time as the Subcommittee.[46] It receives the public annual report of the Subcommittee.[47] It also may publicise the Subcommittee's findings under the Optional Protocol, or make a public statement about a State, if requested to do so by the Subcommittee due to a State's lack of cooperation.[48]

1.6 The Impact of the International Covenant on Civil and Political Rights and the Convention Against Torture

As noted above, there are opportunities for the HRC and the CAT Committee to "judge" the performance of a State party with regard to its implementation of the relevant treaty. For example, the HRC may find a State in violation of the ICCPR in an individual complaint. Or a Committee can condemn certain State practices in Concluding Observations issued pursuant to that State party's report. Or it may be patently obvious that a State is acting in a way that is contrary to the clear recommendations in a General Comment. In addition to substantive violations of the treaties, a State party may fail to fulfil its procedural duties. For example, a State may fail to submit a report on time, and/or it may submit a completely misleading report. Once a State party is found to be underperforming in regard to its treaty obligations, how are those obligations enforced?

The Committees are not courts. Rather, they are "quasi-judicial" bodies. Their decisions and views are not legally binding. However, the provisions of the ICCPR and CAT are legally binding. As the Committees are the pre-eminent authoritative interpreters of their respective treaties, rejection of their recommendations is evidence of bad faith by a State towards its human rights treaty obligations.[49]

Nevertheless, it is unfortunately true that numerous States have failed to comply with their duties under the ICCPR and the CAT. Indeed, no State party has a perfect human rights record. However, some of the facts regarding non-compliance are truly alarming. For example, the level of "perfect" compliance with HRC views under the OP is arguably as low as 20%.[50] Some States systemi-

46 Article 10(3), Optional Protocol to CAT.
47 Article 16(3), Optional Protocol to CAT.
48 Article 16(4), Optional Protocol to CAT.
49 S. Joseph, 'Toonen v Australia: Gay Rights under the ICCPR', (1994) 13 *University of Tasmania Law Review* 392, p. 401.
50 See Section 2.4.3.

cally and egregiously violate the CAT and the ICCPR, including its prohibitions on torture, cruel, inhuman or degrading treatment. Some States have dreadful records in failing to submit reports on time. Many reports are completely inadequate. And there is little the Committees can do in the face of brazen non-compliance beyond continual public rebukes to a recalcitrant State. There is no other sanction for non-compliance prescribed in the UN human rights treaties. Given this occasionally depressing picture of State compliance, what is the use of the ICCPR and the CAT? Do they offer a useful avenue of reparations for a torture victim?

The ICCPR and the CAT serve numerous significant purposes. First, the views, recommendations, and other jurisprudence of the Committees have had the effect of materially changing the behaviour of States on a number of occasions. Such changes may occur immediately, or later (even much later), for example after a State has undergone a transition from dictatorial to democratic government. They may have a "slow boil" effect, as State governments slowly reform themselves. They may galvanise opposition to an abusive government, both at home and abroad. They can inject human rights issues into domestic debates, and provide indicators for future reform. The views and recommendations of UN committees may at least force a government to engage with those views and to clearly explain its non-compliance. Finally, they may provide an important measure of vindication to a victim.

One must not underestimate the effect that "shaming" can have on a delinquent State. It shines an uncomfortable spotlight on a State, which is in itself an important form of accountability. No State likes to be embarrassed by adverse human rights findings. It is particularly mortifying for a State to be labelled a torturer under either the ICCPR or the CAT, or both. Adverse findings of torture or other human rights violations under the ICCPR or the CAT helps to build pressure upon a State, which may eventually bear fruit by prompting that State to abandon torture as a policy. It may even bear more immediate fruits by leading to the provision of a remedy for victims.

The jurisprudence of the HRC under the ICCPR also serves functions beyond enforcement. It provides important indicators of the meaning of the various rights in the ICCPR. For example, that jurisprudence helps us to identify the practices which classify as torture, or cruel inhuman or degrading treatment, and which do not. The jurisprudence helps to determine the human rights status of certain phenomena, such as amnesty laws or corporal punishment. Such interpretations are of use to all States, rather than only the State and the individual concerned in a particular case; it is of course crucial to understand and

recognise the contexts in which torture occurs in order to combat it. In this respect, the decisions of the HRC and the CAT Committee influence national courts and governments all over the world.

Finally, the ICCPR, CAT, and the jurisprudence developed under those treaties reinforce the crucial message that all acts of torture and cruel, inhuman, degrading treatment and punishment are simply unacceptable in all circumstances. And indeed, States rarely attempt to argue otherwise. Rather, a State will deny that such practices take place. Though such denials may constitute lies and cover-ups, the virtually uniform recognition by States that torture is in fact intolerable is an important step forward for human rights recognition and enforcement.