

Background Guide

UN Human Rights Council



By Vikram Advani and Dewang Vaidya

Letter from executive board

Dear Delegates,

It is an honor to be serving as the Executive Board of the United Nations Human Rights Council at LITMUN again in 2019.

Please consider that the aim of this guide, as the name suggests, is to provide you with the background of the agenda solely. Your real research lies beyond this guide and we hope to see strong content and debate in the conference.

The topic under discussion is, "**Reviewing the interrogation techniques in Military and State law enforcement**"

The agenda at hand is a highly sensitive and relevant issue, and a successful discussion on it would entail the collective participation of all of you. As far as the direction of the committee is concerned, it shall be entirely your prerogative.

Also, apart from simple knowledge of facts and figures that you gain while researching, analyzing and connecting to the same on a more intellectual and emotional level is necessary while approaching a crisis like this.

Lastly, put your best foot forward as you research into the varied aspects of the agenda and display the best of your diplomatic courtesy. Feel free to revert back to me and Dewang for any queries or for any form of assistance that you may require. Wishing you luck for the conference.

Looking forward to meet you all!

VIKRAM ADVANI.

Vikramadvani2112@gmail.com.

DEWANG VAIDYA

Dewangvaidya@gmail.com

INTRODUCTION TO THE HUMAN RIGHTS COUNCIL

The United Nations Human Rights Council (henceforth UN HRC) is an intergovernmental body within the United Nations system and one of the key bodies responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations. It has the ability to discuss all human rights issues and situations that require its attention and make recommendations on them. It meets at the UN Office in Geneva. The Council was established by the UN General Assembly (UN GA) on 15 March 2006 by Resolution 60/251 and as such replaced the UN Commission on Human Rights. All 47 Member States are elected by the UN GA for a term of three years. The UN GA takes into consideration the promotion and protection of human rights in those countries, as well as their voluntary pledges. It is not possible for a country to be represented in the Council more than two consecutive terms.

There are five regional groups in the UN HRC, each of which has a certain number of seats in the committee:

1. African States (13 seats)
2. Asia-Pacific States (13 seats)
3. Latin American and Caribbean States (8 seats)

4. Western European and other States (7 seats)

5. Eastern European States (6 seats)

The UN HRC uses various mechanisms such as the Universal Periodic Review, the Advisory Committee - considered the Council's "think tank" - and the Complaint Procedure which allows individuals and organizations to bring human rights violations to the attention of the Council. It has special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries.

Provided with a comprehensive mandate, the UN HRC “shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind in a fair and equal manner”. Besides that, it “should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon” (UN GA 2006, art. 3). This means that the work of the UN means that the work of the UN HRC is largely of advisory nature. Its resolutions HRC is largely of advisory nature could be called firm suggestions to the UN Member States since it is ultimately up to the countries’ governments to adopt legislation in line with said recommendations.

IMPORTANCE OF INTERROGATION

The interrogation of suspects, witnesses, and others is an essential source of information in the struggle against terrorism. It is accordingly important for the United States to perform this function well. This paper considers how we might think about the costs and benefits of different approaches to interrogation, and how we might balance costs and benefits to support decisions affect-U.S. interrogation efforts. As will become clear, any weighing of costs and benefits faces key uncertainties and areas of ignorance – most important, little rigorous information exists about the relative effectiveness of different techniques for eliciting information, and difficulties appear in identifying and weighing many qualitative benefits and costs. This discussion underscores the need for a stronger empirical foundation to support the choices of all kinds that we must make to perform this function well.

This is the destiny of a democracy—it does not see all means as acceptable, and the ways of its enemies are not always open before it. A democracy must sometimes fight with one hand tied behind its back. Even so, a democracy has the upper hand. The rule of law and the liberty of an individual constitute important components in its understanding of security. At the end of the day, they strengthen its spirit and this strength allows it to overcome its difficulties

INTRODUCTION TO THE AGENDA

The eradication of the practice of torture in the world was one of the major challenges taken up by the United Nations only a few years after its establishment. In order to ensure adequate protection all persons against torture and other cruel, inhuman or degrading treatment or punishment, over the years the United Nations has adopted universally applicable standards. These standards were ultimately embodied in international declarations and conventions. The adoption on 10 December 1984 by the General Assembly of the United Nations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment rounded off the codification process to combat the practice of torture. In developing this valuable instrument, the United Nations did not merely put in writing in a series of articles a body of principles and pious hopes, the implementation and observance of which would not be guaranteed by anything or anyone. It set up a monitoring body, the Committee against Torture, whose main function is to ensure that the Convention is observed and implemented. The Committee met for the first time in April 1988 in Geneva and has since carried out intensive activities which, although often discreet, should make it known to the public at large.

INTERROGATION AND TORTURE

From the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The definition of interrogate yields very little sense of the fact that subjects of interrogation do not generally want to divulge information. Interrogators often utilize coercive techniques to cause the subject to cede the desired information. These coercive techniques exist on a continuum from "direct questioning" through "torture" and "death".

Scenario in some important countries

1.Russia

From 1999 to 2000, ten thousand Chechens were arrested by Russian authorities to regain control over Chechnya. Detainees at the Russian Chernokozovo "filtration" camp "suffered systematic beatings, rape, and other forms of torture"(Human Rights Watch). For example, when detainees arrived at the camp, they were forced to walk down a row of guards who struck them with batons. According to the testimony of one former detainee, the guards beat him unconscious, and when he awoke, began to beat him again. It should be noted that, by the time journalists and international monitors visited the site, most of the evidence of prisoner abuse had been removed.

On November 18, 2005, Russian law enforcement allegedly used ill-treatment to coerce confessions out of suspects involved in an armed attack on police and security forces in Nalchik. Rusal Kudaev, a former prisoner from Guantánamo Bay, was arrested by Russian authorities ten days after the attack. On October 26, his lawyer said that she saw him beaten so severely that he needed assistance walking. This evidence points to the possibility that the United States government is willing to commit extraordinary rendition.

2.China

On December 2, 2005, an envoy of the United Nations Commission on Human Rights who had investigated Chinese prisons and detention centers reported that torture was still a widespread practice in China. Authorities in these prisons and detentions centers are encouraged to extract admissions of guilt from detainees through inhumane treatment. Such treatment included “electric shocks, sleep deprivation and submersion in water or sewage”.

A political prisoner in China told the envoy that prison guards forced him to remain on his bed in one position for eighty-five consecutive days and that the guards would wake him up if he ever moved out of position while sleeping. Some prisoners detained in Beijing sentenced to death were handcuffed twenty-four hours a day, relying on fellow inmates to feed them and help them use the toilet.

Other forms of torture included hooding, beating by fellow inmates, “stress positions,” and denial of medical treatment. These abuses by Chinese officials are allowed to occur because the Chinese government only bans a narrow definition of violent punishment where physical harm leads to visible scars or disability. The nation’s “powerful security apparatus” has challenged demands to expand rights for detainees to ensure “stability” and prevent dissent.

The envoy claimed that although torture still pervaded the country, the violence against prisoners in China had declined since it signed an international covenant in 1988. The country also issued regulations in 2004 that “prohibit torture and threats to gain confessions”.

3. Israel

Israel is the only democratic country in the world that has openly admitted “moderate physical pressure” is permissible to extract information from prisoners. A report released in 2000 by the then Israeli state comptroller, Miriam Ben-Porat, stated that Shin Bet tortured Palestinians involved in the Intifada from 1988 to 1992. B’Tselem, an Israeli human rights organization, estimated that 85% of all Palestinian detainees, numbering in the thousands, had been tortured

It has been reported that Shin Bet security agents tied the hands of suspects behind their backs and placed them under air conditioners. In another technique, Shin Bet violently shook Palestinians, which led to at least one death. In yet another common practice of torture, Palestinians are forced into the “shabeh” position, where they are “bent backward over chairs, hands and legs shackled beneath”

A former detainee who had been arrested 14 times since 1983 claimed that Israeli interrogators had become “more clever and more experienced” over the years.

He also cited a difference between torture committed by soldiers and torture committed by actual interrogators. According to the detainee, Israeli soldiers casually beat and humiliated prisoners, similar to the way the US military had tortured prisoners in Abu Ghraib, while interrogators’ actions were more calculated, relying on psychological methods to break prisoners.

In 1999, the Israeli Supreme Court banned “all forms of physical abuse”.

However, it also create which allowed interrogators to continue practicing the same inhumane treatment it had traditionally relied upon if an imminent terrorist attack was suspected. Even so, Shin Bet agents responded to the new law by administering a new host of torture techniques on suspects, including “prolonged detention in subhuman conditions”.

Security officials often argue that Israel is a unique case in the democratic world, where terrorism occurs every day and such practices are necessary to protect the people.

4. United States

The abuses practiced by US Military soldiers in the One-Alpha cell block of Abu Ghraib prison were both physical and psychological. The soldiers forced Iraqis into simulated sexual positions, stripped them naked, and forced them to masturbate. The officer in charge of these torture sessions, Charles Graner, reportedly hit prisoners with his fists and iron rods. He made the prisoners eat food from a toilet. In another technique, the US soldiers confronted the Iraqis with police dogs. Yet another instance of inhumane treatment had a prisoner’s neck tied to a dog’s leash, forcing him to walk on all fours. Many of these tortures, including the act of taking pictures of the them, put Iraqi prisoners to shame because of established Iraqi custom. Such kind of public embarrassment could be considered as the highest form of dishonor for Iraqis.

It should be noted that the Iraqi government was a high-contracting player which agreed to the Geneva Conventions. Therefore, Iraqi military personnel possessed POW status, so there is no question as to whether or not the torture committed at Abu Ghraib broke international laws against torture.

Similar abuses were committed on a group of Iraqi journalists by different soldiers at a different base in Iraq. This seems to refute the US Military's argument that torture was only practiced by a few low-ranking soldiers in an isolated incident. Indeed, it appears as if "a clear program had been purposely devised and methodically distributed with the intention, in the words of General Sanchez's October 12 memorandum, of helping American troops 'manipulate an internee's emotions and weaknesses' ". Then there's the case of "extraordinary rendition." An article in the February 2005 issue of The New

Yorker stated that:

This program had been devised as a means of extraditing terrorism suspects from one foreign state to another for interrogation and prosecution. Critics contend that the unstated purpose of such renditions is to subject the suspects to aggressive methods of persuasion that are illegal in America—including torture.

A report on renditions and estimated that "one hundred and fifty people had been rendered since 2001".

There are a few reasons why the CIA practices this act, which is potentially illegal by both international and US law. First, it has been said that through extraordinary rendition, the CIA is returning terrorist suspects to their home countries and making the corresponding governments take responsibility for their own people. The US administration has assured the public that people are not rendered to a foreign country if the US believes that the person will more likely than not be tortured in the foreign country. Yet, Maher Arar was a man who lived in Canada and he was rendered to Syria where he was tortured.

More likely, extraordinary rendition is used by the US when the CIA or another federal department suspects a person is privy to actionable information regarding terrorist attack. The department believes that if the person is subject to torture in another country where such an act is legal, the person will “loosen his tongue”

HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: PROTECTION OF PERSONS SUBJECTED TO INTERROGATION OR IMPRISONMENT

(All actions taken by UN on the issue)

- United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Safeguards guaranteeing protection of the rights of those facing the death penalty
- Code of Conduct for Law Enforcement Officials

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Basic Principles on the Independence of the Judiciary
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- Declaration on the Protection of All Persons from Enforced Disappearance
- Basic Principles and Guidelines on the Right to a Remedy and Reparation
- International Convention for the Protection of All Persons from Enforced Disappearance
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)
- Updated Set of principles for the protection and promotion of human rights through action to combat impunity.

Issues Resolutions should contain,

- Detailed guidance on the purpose and parameters of a human rights-compliant interviewing model
- Prohibition of any form of coercion during the questioning of suspects, to interviews of witnesses, victims and other persons in the criminal justice system

- Irrespective of the international or non-international character of the conflict and of the status of the person questioned
- Interviewing model based on the principle of presumption of innocence
- Physical environment and conditions during questioning must be adequate, humane and free from intimidation
- Interviewers must seek to obtain accurate and reliable information in the pursuit of truth; gather all available evidence pertinent to a case before beginning interviews; prepare and plan interviews based on that evidence; maintain a professional, fair and respectful attitude during questioning; establish and maintain a rapport with the interviewee; allow the interviewee to give his or her free and uninterrupted account of the events; use open-ended questions and active listening; scrutinize the interviewee's account and analyse the information obtained against previously available information or evidence.
- Training and change in culture and mindset
- Information on rights
- Right of access to counsel
- Right to remain silent
- Additional safeguards for vulnerable persons
- Recording

- Medical examination
- Complaint mechanisms, investigations and sanctions
- Inclusion of evidence

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