

*ESIL Interest Group on International Criminal Justice
Journal of International Criminal Justice (OUP)*

Online Conference

Torture by Non-State Actors: Rationale(s), Legal Frameworks and Implications

30 March 2021

12h00-13h45 (CET)

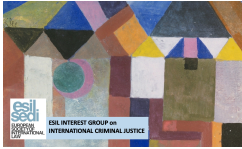
In legal discourse, ‘torture’ is a term used to broadly describe the deliberate infliction of severe physical or mental pain and suffering upon a person. One controversial aspect of the legal definition of torture has been the *status of the perpetrator/actor*, that is, *whose* acts are relevant for the purposes of the torture definition under international law. Article 1 of the CAT recognizes that torture must be punishable when committed by a public official or a person acting in an official capacity, or when committed by a private person subject to the active or passive involvement of a public official or other person acting in official capacity. While the Convention against Torture [CAT] considers the official capacity of the actor to be an element of the legal definition of torture, this is not the case under international humanitarian law and international criminal law. Current developments in domestic and transnational settings push us to reassess the reach of the concept of torture against unprecedented factual scenarios. This conference, organized by the ESIL Interest Group on International Criminal Justice and co-sponsored by the *Journal of International Criminal Justice* (OUP), revives the question of ‘whose’ acts may amount to acts of torture under the CAT and, more broadly, under international and transnational law relating to the prohibition, prevention and repression of this crime, on the basis of ‘which rationales’ and with ‘what wider implications’.

By way of illustration, the need to unpack this issue and its implications also emerges from the recent UK Supreme Court’s decision in *R v Reeves Taylor* (Appellant) [2019] UKSC 51 [*R v Reeves Taylor*]. The UK Supreme Court in *R v Reeves Taylor* expanded the scope of the category of ‘a person acting in an official capacity’, ruling that the category can include members of armed groups, if those groups exercise governmental authority over civilian population in a territory over which they control. The involvement of a State official was not considered a necessary requirement and torture could be committed also by members of an authority distinct from the State.

This decision touches upon multiple legal and conceptual questions that we intend to address in the conference: under what rationales are categories of actors legally capable of committing torture? How can such categories be extended or others added and with respect to which norms such extension occurs (torture under the CAT? as a war crime or a crime against humanity? as a domestic crime? as a prohibition under human rights law but not technically a ‘crime’? etc.)? What are the broader policy implications of different responses to these questions?

More specific questions include, but are not limited to:

1. What is/are the foundation(s) and rationale(s) for the international repression of torture and, more specifically, under the CAT, human rights conventions and other legal instruments?
2. When we discuss torture and its possible extension to various actors, which norms and rationales may justify an expansion of the definition to encompass various actors?
3. To what extent does signing and ratifying the CAT require a State to implement at the national level the definition of torture enshrined in Article 1? Should we instead say that the distinction between obligations and crimes is ultimately irrelevant as all the expressions of torture are strictly interconnected and infiltrations are unavoidable?



4. How is torture conceptualized and defined at the domestic level?
5. As a consequence of the rationale(s) followed (Question 1), what is the spectrum of actors, public and/or private, that could fall under the category of ‘perpetrators’ of torture under different ‘norms’ (Question 2)?
6. Is there a need or is it legally possible to expand the spectrum of perpetrators in the name of the protection of the victim’s human dignity?
7. How far can we go as a matter of policy? What would be the systemic implications of the expansion of the spectrum of actors?
8. What are the implications of a possible expansion of the definition under the CAT? What are the outer limits of torture as a crime under the CAT?
9. What is the value of such extension in the reconstruction of a customary norm different from what is enshrined in the CAT?
10. If we look at the core obligations deriving from the Convention against Torture, is a possible expansion of the scope of the actors/perpetrators justified? Aren’t we weakening the guarantees under criminal law? What about the principle of legality and of legal certainty?

Those interested in attending the online event should register sending an email to esiligicj@gmail.com, providing name, last name and institution, **by 29 March 2021 (18h00)**. A Zoom link will be circulated to those registered shortly before the event.

Programme

12:00 – 12:05 Welcome and Introduction to the Conference

Dr Ginevra Le Moli and Dr Letizia Lo Giacco

Assistant Professors of Public International Law, Leiden University; Chair and Co-Chair of the IG on International Criminal Justice

12:05-12:10 Opening Address

Prof. Salvatore Zappalà

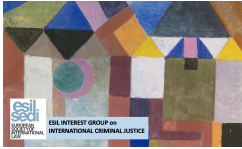
Professor of International Law, University of Catania (Italy); Editor-in-Chief of The Journal of International Criminal Justice

I. *R v Reeves Taylor* and Torture by Non-State Actors

12:10-12:20 “Torture by Non-State Actors: ‘Quasi-governors’ and questions relating to impunity and legal certainty”

Steven Powles QC and Dr Tatyana Eatwell

Barristers, Doughty Street Chambers



12:20-12:30 “What is torture? Making the case to expand the definition to include private individuals as perpetrators”

Emilie Pottle

Barrister, Temple Garden Chambers

II. The Prohibition of Torture and Non-State Actors: Rationales and Limits

12:30-12:40 “Can Private Actors Torture?”

Prof. Manfred Nowak

Professor of International Law and Human Rights, University of Vienna

12:40-12:50 “Another step in what it means to be human: prohibition v. criminalization of torture as a private act”

Prof. Paola Gaeta

Professor of International Law, Graduate Institute of International and Development Studies, Geneva

12:40-12:50 “Torture by Non-State Actors: Thinking Beyond the Offence of Torture”

Prof. Andrew Clapham

Professor of International Law, Graduate Institute of International and Development Studies

13:00-13:10 “Some views on torture from Asia”

Dr Cheah W. L.

Assistant Professor at the Faculty of Law, National University of Singapore (NUS)

13:10-13:45 Q&A Session