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## Opening Remarks

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## OPENING REMARKS

## Remarks of Dean Claudio Grossman\*

Good morning everyone and welcome to our law school, the American University Washington College of Law, for this conference on litigation before the United Nations Committee against Torture, which is co-sponsored by the World Organisation Against Torture. As we begin, I would like to mention that the proceedings of this conference will be published in the *Human Rights Brief*, which is a student-run publication of the law school that addresses current issues of international human rights law and is distributed to more than 4,000 subscribers around the world.

Our partner in organizing this event is the World Organisation Against Torture (OMCT). For us, as an educational institution, it is very important to work together with non-governmental organizations, civil society institutions, governments, and other entities, to achieve the common goals of human dignity. OMCT is an organization that has excelled in the struggle to have a world free from torture and other forms of inhuman treatment, and we are proud to collaborate with it. OMCT intends to increase its engagement on these issues by coordinating action with domestic and international NGOs that utilize the Committee's procedures.

The Convention against Torture was adopted in 1984 and currently has 153 States Parties.<sup>1</sup> Of the Parties to the Convention, only 65 have made a declaration accepting the individual

complaints procedure under Article 22. Pursuant to this procedure, the Committee considers complaints from alleged victims, or on behalf of alleged victims, of violations of the Convention by States Parties.<sup>2</sup> Since 1998, more than 522 complaints have been submitted to the Committee. The individual complaints procedure is only one of the methods of supervision developed by the Convention and applied by the Committee. Most of the



Committee's time is spent in its reporting system, which consists of periodic presentations by states—which are, in theory, submitted every four years, after an initial report—demonstrating the status of their compliance with the Convention. This important technique of supervision is mainly designed to analyze and evaluate the public policy of states and their compliance with their Convention obligations. Concluding Observations are the end result of this supervisory technique, through which the Committee determines the overall status of each state's compliance with its Convention obligations, while the individual complaints procedure is designed to determine whether a violation of the Convention in relation to an individual's rights, as alleged in the complaint, has taken place. If the individual's rights have been violated, the state is compelled to provide redress and rehabilitation in accordance with Article 14 of the Convention.<sup>3</sup> Because it is specific by nature, use of the individual complaints procedure is a more targeted way to address alleged violations of the Convention and to ensure states' compliance with their obligations under the Convention.

To date, of the countries that have declared acceptance of Article 22, most complaints submitted to the Committee have related to Article 3—meaning alleged violations of the provision of *non-refoulement*.<sup>4</sup> But, as a result of the process of democratization that has taken place in various countries and which has created more open environments and led to more open discussions regarding violations, we have seen an increase in complaints alleging violations of Article 1 and Article 16, meaning

\* Dean Claudio Grossman has been Dean of the American University Washington College of Law since his appointment in 1995. Dean Grossman also currently serves as Chair of the United Nations Committee against Torture and Chair of the United Nations Human Rights Treaty Bodies, and member of the Governing Board of the International Association of Law Schools, of the Board of the Inter-American Institute of Human Rights, and of the International Objectives Committee of the Association of American Law Schools (AALS). Dean Grossman is also serving as a referee in peer review evaluations for the European Research Council Dedicated Implementation Structure, under the Ideas Specific Programme (2008-2013). As a member of the Inter-American Commission on Human Rights from 1993-2001, he served in numerous capacities including President (1996-97; 2001), Special Rapporteur on the Rights of Women (1996-2000), and Special Rapporteur on the Rights of Indigenous Populations (2000-2001). Dean Grossman has authored numerous publications on international law and human rights, and received numerous awards for his work in those fields including the 2010 Henry W. Edgerton Civil Liberties Award from the ACLU of the National Capital Area and the 2012 Deborah L. Rhode Award from the AALS Section on Pro Bono and Public Service Opportunities.

torture and other forms of inhuman treatment, respectively.<sup>5</sup> However, the system continues to be underutilized—sometimes because of lack of knowledge or, in other cases, because victims lack protection. In addition, we have not yet achieved universal acceptance of Article 22.

It is our intention that today's conference will address these vital issues, as well as the use of interim measures by the Committee. Because victims often lack protection and those who submit complaints may be particularly vulnerable, the Committee issues interim measures to avoid irreparable harm.<sup>6</sup> Such measures obligate the relevant state to protect alleged victims, and those who cooperate with the Committee, while the Committee reviews and evaluates the complaint. The Committee also emphasizes necessary actions in its Concluding Observations. As an example of this, you can read the 2011 Concluding Observations for Madagascar, in which the Committee concluded that "the State party should strengthen the complaints mechanisms available to victims and ensure that they obtain redress and are provided with the means of achieving social reintegration and psychological rehabilitation. The State party should ensure that persons lodging such complaints, witnesses and members of their families are protected from any act of intimidation in connection with their complaint or testimony."<sup>7</sup>

Procedural issues also have an important bearing on victims' access to justice—these issues include the duration of both domestic and international procedures, the availability of lawyers, standards of proof, and burdens of proof, amongst others. Thus far, with one exception, the individual complaints procedure has been completely in writing. The Committee does not hold hearings or directly examine witnesses; it has only a written record on which to make its decisions. Everyone's contribution today and ongoing collaboration will be crucial to shed light on different provisions and practices in order to further improve our mission and consider whether expansion is feasible. I hope this convening will lead to fruitful discussions that will enrich the understanding both of governments and of individuals regarding how these important legal procedures function and how they could be further developed.

When it is established that a state is responsible for violation of the Convention, it must provide redress and rehabilitation

as required by Article 14 of the Convention.<sup>8</sup> The Committee recently adopted General Comment No. 3 on this topic, an important guidance tool for those who utilize Article 22.<sup>9</sup> During today's convening, we will explore the different experiences and challenges that led to this General Comment and its impact on individual complaints before the Committee.

Now, I am pleased to have here Mr. Gerald Staberock, the Secretary-General of the World Organisation Against Torture, who along with the OMCT staff, co-organized this event, and Ms. Gisella Gori, Senior Political Advisor in the Political, Security, and Government section of the delegation of the European Union to the United States.

Gerald Staberock has been OMCT Secretary-General since September 2011, and since its creation in 1995, OMCT has been the main coalition of international NGOs fighting against torture, summary execution, forced disappearances, and other cruel, inhuman, and degrading treatment. With 311 affiliated organizations, the SOS Torture Network, and many tens of thousands of supporters in many countries, OMCT represents a critically important network of NGOs working for the protection of victims of torture in the world. Prior to joining OMCT, Mr. Staberock worked for more than eight years with the International Commission of Jurists (ICJ), including as Director of the Center for Independence of Judges and Lawyers, and as Director of the Rule of Law Initiative. In this context, he coordinated the most comprehensive program on law, counterterrorism and human rights, with a high level panel of jurists—the well-known ICJ Eminent Jurists Panel.

Gisella Gori is Senior Political Advisor in the delegation of the European Union to the United States, working on human rights and democracy, the UN and multilateral issues, international humanitarian law and Guantánamo, and other legal issues. Since 2002, Dr. Gori has worked at the Council of Europe as Director General of Human Rights and Legal Affairs, Department of Execution of Judgments and Human Rights in Strasbourg, France. She specializes in European Union law, international human rights law, human rights mechanisms, economic, social and cultural rights, and education and law. She teaches EU Law at George Washington University Law School, for which we will forgive her.

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## Remarks of Gisella Gori\*

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**T**hank you. Good morning everyone and thank you for having invited the European Union here. Thanks to the American University Washington College of Law and the World Organisation Against Torture. I'm honored to be here with you, to give some preliminary remarks. Since my Ambassador,

Mr. Vale de Almeida, was prevented from being here due to other commitments, I was asked to provide you with some introductory remarks.

First of all, I would like to underline just how much the European Union is firmly committed to upholding the absolute prohibition of torture and cruel, inhuman, and degrading treatment or punishment. The prevention and eradication of torture is one of our priorities

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\* Gisella Gori is a Senior Political Advisor with the Delegation of the European Union to the United States.



and a cornerstone of our human rights policy. But before going into the details of our anti-torture policy, I would like to give you a bit of context to some recent evolutions in our general human rights policy that are also relevant for anti-torture and explain why 2012, in particular, was a very relevant year in this area.

In 2012, the European Union adopted for the first time a Strategic Framework and Action Plan on Human Rights and Democracy,<sup>10</sup> which includes the Action Plan devoted to implementation. It is the first time that the European Union adopted such a comprehensive, unified Strategic Framework for its human rights policy, and one with such wide-ranging objectives and a plan for implementation. Upon adoption, our High Representative, Catherine Ashton, underlined how human rights are a top priority for the European Union and a silver thread in our external action. The Strategic Framework is relevant not only for the European Union institutions (such as the European Parliament, the European Commission, and the External Action Service) but also for its Member States. It represents a common endeavor: all the Member States along with the European Union are committed to making human rights without exception one of the areas where we really go for a collective effort—one of the areas where the European Union will really try to be more effective and more coherent in its policy. So, it's really an instrument that allows for a wide partnership in order to advance the European Union's action in the field of human rights.

The Strategic Framework sets the policy, the principles, the objectives, and the priorities. It is organized around 97 actions and 36 headings. I will spare you the details. The only one that is really relevant for us today is Heading 17,<sup>11</sup> which deals in particular with the action against torture. I will go back to this. As I mentioned, the Strategic Framework will be implemented through the Action Plan, which lasts until December 2014. The Annual Report on Human Rights, which the European Union publishes every year,<sup>12</sup> represents one of the instruments to assess the EU performance in implementing the Framework.

Therefore, the Framework really represents a sort of watershed in our policymaking. While beforehand the European Union based its action on a series of different legal instruments (*i.e.* statements on human rights with respect to specific countries or

with respect to specific issues, such as the Guidelines on Torture) and some tools, the new Framework has systematized and made the action by the EU institutions, as well as by the Member States, more streamlined and effective, including in the multilateral context. You probably know very well that the European Union is very much engaged in multilateral fora, particularly the UN, and the Framework again underlines our commitment to continue playing such role. The UN Committee against Torture is one of these playing fields and our engagement will not only continue but will actually be strengthened by the Strategy. Support to the UN Special Rapporteur on Torture is another such engagement.

Finally, another relevant development in 2012 has been the appointment of a Special Representative, Mr. Stavros Lambrinidis. He is the new Special Representative of the European Union for Human Rights and his role will be to help with the implementation of the Strategic Framework and also to enhance the effectiveness and visibility of the European Union policy on human rights. He will be the EU “voice” on human rights.

Now, action against torture is one of our top priorities. To implement the objectives set by the Framework in this area, the EU has two sets of instruments: diplomacy tools provided under Point 17 of the Framework and cooperation assistance, which stands for our role in financing civil society work on issues of prevention and eradication of torture.

Point 17, entitled “Eradication of torture and other cruel, inhuman or degrading treatment or punishment,”<sup>13</sup> provides for three lines of actions. One action is our commitment to continuously and actively support and implement UN and Council of Europe anti-torture instruments and efforts that are continuing and enhancing our role in the multi-lateral fora. The second line of action is the promotion of the ratification and the effective implementation of the UN Convention against Torture<sup>14</sup> (CAT) and the Optional Protocol to the CAT<sup>15</sup>. Finally, the third line of action consists in integrating torture prevention measures into all the Freedom, Security, and Justice activities, including those related to law enforcement.

When implementing these lines of action, the EU and its Member States are guided by the EU's main instrument concerning torture: the Guidelines on Torture, with which I trust you are familiar. They were first adopted in 2001 and were then reviewed in 2008 and again in 2012.<sup>16</sup> What are these guidelines? They represent the framework to direct our action on the protection, prevention, and promotion of human rights, specifically on action against torture. They do not set new obligations, but they are the political expression of our commitment with respect to preventing and eradicating torture and other inhuman and degrading treatment. They represent a guidance instrument that is applied by the European Union and its Member States, both in bilateral relations and multilateral fora, as well as in the assistance given to NGOs' projects. For example, in the political dialogues the EU carries out with third countries, when appropriate we systematically raise issues related to torture and ill treatment, and we also,

in our activities, promote the ratification and implementation of the UN instruments.

The second kind of tool consists, as I mentioned before, in the financial assistance the EU provides to NGOs that work on action against torture. Action against torture is one of our main priorities for funding under the European Instrument for Democracy and Human Rights (EIDHR).<sup>17</sup> In the period 2009-2015, the European Union provided 38 million euros to support projects by NGOs in this field. And in 2012, for example, we launched another project, a cooperative proposal specifically geared toward fighting impunity with respect to torture. So we are really trying through our financial assistance to cooperate with NGOs and we recognize the role of civil society to achieve these objectives.

Finally, as everyone, we do also have challenges, and one of the challenges is to implement as effectively as we can this

strategy and in particular Point 17.<sup>18</sup> Another challenge consists of developing a more effective and integrated approach to torture prevention. We consider that there are a number of avenues which may help achieve these objectives: i) intensifying our diplomacy efforts by raising the issues more consistently with third countries in our political and human rights dialogues; ii) strengthening the cooperation with the UN and regional mechanisms; and iii) ensuring coherence between our internal and external policy. This last point is particularly relevant with respect to the ratification of international treaties. It is very important that when soliciting third countries' ratifications, the EU can show a good record in terms of its own Member States' ratification and compliance with these instruments.

I hope these few remarks provided you with an overview of our action in the area of the prevention and eradication of torture. Thank you very much for your attention.

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## Remarks of Gerald Staberock\*

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Let me warmly welcome you on behalf of the World Organisation Against Torture (OMCT) to this joint conference hosted by the American University Washington College of Law. The objective of this meeting is to explore strategies for an effective use of the universal complaint mechanisms to the UN Committee against Torture (CAT).

The OMCT, as the principal civil society network against torture, is working with partner organizations and lawyers around the world. To our partners, as for us, the issue of our discussion today is far from academic. It is all too real and concrete. The remedy through the UN Committee against Torture can protect the physical integrity of individuals and it can determine whether a victim of torture is able to enjoy his or her right to remedy

and reparation. It is central to any strategy to seek justice and reparation and to advance the protection against torture globally.

Indeed, there could be few places more appropriate for this meeting than the American University Washington College of Law. This university not only hosts a well-known human rights program that many in the human rights community have benefited from, but it also hosts at this moment in time both the Chair of the United Nations Committee against Torture, Dean Claudio Grossman, and the UN Special Rapporteur on Torture, Juan Méndez. This is indeed truly unprecedented and there can thus be few more appropriate places for a forward-looking debate on the remedy to the Committee against Torture.

Let me also very warmly thank the European Union and the Oak Foundation, without whose support we would not have been able to gather some of the leading anti-torture litigators from various parts of the world. This should remind us all that in many countries it takes a great deal of courage to document and litigate torture cases. Having you with us today and being able to benefit from your perspective is the real added value of this meeting.

### CENTRAL ROLE OF THE UNIVERSAL COMPLAINT MECHANISM

The absolute prohibition of torture and cruel, inhuman, or degrading treatment is one of the most protected international legal norms, *e.g.* a norm of *jus cogens*. Unfortunately it is also one of the most violated norms of such status. More often than not, states content themselves with a legal prohibition that remains unenforced. Sadly, too, this applies to all regions of the world.

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\* Gerald Staberock is the Secretary-General of the World Organisation Against Torture (OMCT).

On the legal side, victims of torture and cruel, inhuman, or degrading treatment have a firmly established right to a remedy and reparation under international human rights law, including under the UN Convention against Torture.<sup>19</sup> The new General Comment of the Committee against Torture on Article 14 of the Convention<sup>20</sup> provides a compelling authoritative reaffirmation of this principle.

From a practitioner's perspective, seeking justice in domestic courts can be an uphill battle. There are multiple reasons for this, some being legal, and others having to do with institutional cultures, the false protection of a *corps spirit*, and very often with secrecy. Again others have to do with courts not being independent, or judges and prosecutors lacking human rights knowledge and/or consciousness. Even in established democracies traditionally committed to the rule of law and vested with all requisite institutions to investigate and prosecute torture, accountability can remain illusive. The failure to provide any legal accountability for a policy of torture and for complicity into torture within the extraordinary rendition program is a particularly troubling example of this reality.

All this speaks to a needed sea change. I believe that the CAT can be part of this needed change in perception. In fact, the challenges around the world testify to the need for robust and strong universal anti-torture remedies in addition to a system of domestic remedies. In our experience working with and for victims of torture, the remedy to the UN treaty bodies or regional courts are more often than not the only credible recourse to seek justice and reparation. Hence, there should be vital interest in the complaint procedure to the CAT as one of the principal universal tools against torture. Our common objective today is to explore how to reinforce this tool in the global fight against torture and how to use it more strategically.

### MOBILIZING ON THE CAT COMPLAINT PROCEDURE

The communication procedure has proved in the 25 years of the Committee's existence — which we will be celebrating later this year — its value and very practical relevance. This is particularly so in relation to its case work on *non-refoulement*, e.g. the prohibition of sending a person to another jurisdiction if there is a real risk of torture or other forms of cruel, inhuman or degrading treatment, or punishment. Indeed the large majority of cases adjudicated by the CAT as of today have concerned the risk of deportation or transfer. In contrast other cases have been far more limited and it is fair to say that the CAT remedy is an under-utilized weapon in relation to many of the vital guarantees against torture contained in the UN Convention against Torture.

Our common objective should be to change this. A few thoughts on what we would need to change:

First, we need to mobilize and advocate for the accession to the complaint procedure under Article 22 of the UN Convention against Torture. As we speak, the OMCT is conducting a training seminar for lawyers in the Asia and Pacific region with the support

of the European Union. Identifying countries that have accepted CAT jurisdiction is a challenge and possibly the single most important obstacle to this remedy's effectiveness today. I believe much more could be done to push not only for the ratification of the Convention against Torture and its Optional Protocol but equally for the universal acceptance of jurisdiction under Article 22. The Universal Periodic Review (UPR) and other mechanisms in particular could and should play a much more forceful role in this regard. States could systematically raise accession to the procedure under Article 22 of the Convention within the UPR process to help generate momentum and political will.

Second, as we know, in many countries, lawyers and human rights activists do not sufficiently know about the procedure even when their countries have accepted jurisdiction. Too often there is a false perception of a divide between national law and international law. Not the least, authoritarian states want us to believe that international human rights standards and mechanisms have nothing to do with domestic law. In the many transition processes over the last thirty years in Eastern Europe, Africa, and Latin America nothing has been further from the truth. International human rights standards have become a central element in domestic law across the world. The same needs to be the case with the Convention against Torture and the remedy that it provides. Hence, one of the ways forward has to be an investment in building knowledge, capacity, and interest to seek recourse to the complaint procedure.

Third, and closely related, is the need to protect lawyers and activists that document and litigate cases of torture, whether domestically or internationally, and who may often face a variety of direct and indirect threats. I know that some of our experts have personally lived through such threats and even direct attacks. The OMCT is today one of the leading organizations on the protection of human rights defenders. For us, it is important that protection is available at all stages of domestic and international litigation. We have seen internationally important improvements in dealing with reprisals against human rights defenders participating in UN mechanisms. The same attention now needs to be given to threats against torture activists documenting cases domestically.

### BUILDING STRATEGIC LITIGATION ON THE CAT

Beyond mobilization, capacity building, and protection, we need to initiate a discussion about the strategic use of the communication procedure with the UN Committee against Torture, and I hope that this meeting can serve as a starting point. This touches on considerations of the choice of the forum. Some of the practicing lawyers here today will no doubt prefer to go to a regional court, such as the European Court of Human Rights, the Inter-American Court of Human Rights, or maybe in the future also the African Court on Human and Peoples' Rights, not the least because of its legal status and the implementation of the decisions. Others may argue that pursuing cases with the UN Human Rights Committee instead of the UN Committee against Torture is advantageous because it allows raising related violations, such as arbitrary detentions and unfair trials. All these are

legitimate points for any litigator to consider. Yet, I am convinced that there is added value in choosing the communication procedure under the Convention against Torture.

Alternatives may have practical benefits, such as the fact that a good number of states have accepted the jurisdiction of CAT as the only relevant international remedy. This was, for example, the case in relation to Tunisia until the revolution. The CAT procedure also tends to be substantially more expedient than other universal or regional human rights remedies, which is a very important point for consideration. Another distinct advantage for a human rights organization is the particular stigma entailed in a condemnation through the UN Committee against Torture.

In many instances submitting cases to the UN Committee against Torture can also be advantageous from a strategic litigation perspective. Submissions to the CAT have notable advantages, namely being able to rely on more explicit provisions for the prevention and protection from torture and cruel, inhuman, or degrading treatment. Let me give some examples for reflection:

Should we not invest in developing case law using the quasi-universal jurisdiction clauses under the UN Convention against Torture to pursue states for failure to investigate those responsible for torture in their territory even if only transitory; case law on the definition of torture as a crime, for example, in order to reflect considerations of the particular vulnerability of children or women; case law that sets authoritative standards through interpretation of the general obligation to prevent torture, including the range of safeguards to be provided such as access to lawyers or independent medical personnel; or the need to build more detailed case law on the exclusionary clause under Article 15 [of the CAT], including on the exact scope of what judges and prosecutors have to do when they are confronted with allegations that evidence has been obtained by torture? These are just some ideas of issues we could develop further and that could have real impact in the fight against torture.

My last point on strategy is on the question of whether to submit a case with a regional or the universal system. There is no doubt some value to the argument that regional courts may have distinct advantages. But we are increasingly witnessing a sea change with our partners and a greater recognition of the utility of the universal system. In particular, when confronted with a systemic problem, such as a particular type of detention that is prone to torture, a parallel submission of different cases to the UN Committee against Torture is valuable from an advocacy perspective. This has been our experience most recently in Mexico, when the OMCT submitted together with its member organization the first ever case against Mexico to the treaty body system.

### THE NEED FOR EFFECTIVE PROTECTION MEASURES

In the quest for making the remedy to the Committee against Torture the principal tool in the fight against torture, we will have to look at a few selected challenges. The first is the role

CAT can play in providing protection from torture, cruel, inhuman, or degrading treatment, or punishment. As Dean Grossman highlighted in his introductory remarks, the Committee plays an important role in protecting individuals through the *non-refoulement* principle. This is fundamental at a time when states are challenging, in the name of national security, the fundamental principle that one cannot return a person to another country if there is a real risk of torture or of cruel, inhuman, or degrading treatment. The Committee's principled approach in this regard will remain fundamental. While *non-refoulement* cases initially were brought almost exclusively against Western countries (mainly Europe and Canada) to prevent deportation to countries of the South, we see more and more case law concerning the transfer of persons from other parts of the world, such as the former Soviet Union (Russia, Kazakhstan) or the Maghreb (Morocco). This contributes greatly to an enhanced awareness about this important universal human rights principle.

But we have to go one step further and look at the type of protection measures to be provided by the Committee. I firmly believe that within the confines of the Convention and its existing rules of procedures, interim measures could be seized more creatively with a broader scope of (interim) protection orders and beyond cases of *non-refoulement*. At the same time I believe that amending the rules of procedures to be more explicit in covering the protection of witnesses, family members, or lawyers who may be threatened because of the case could be envisioned too. But overall, as lawyers we ought to be more creative in seizing the Committee. Interim measures have been largely confined to the "negative" order not to deport an individual, but there is no logical reason why we should not be able to use interim measures more effectively to order states to take "positive" measures of protection, such as taking measures to protect from torture in custody, to protect witnesses, lawyers, or family members. The Inter-American Human Rights System has been the most progressive in this regard, and we may draw from this inspiration for protection measures globally.

The problem of protection remains a real problem. I was in Libya last week, where the OMCT helps local organizations in building specialized capacity in documenting cases. There are enormous threats to the victim, the families, the lawyers or human rights organizations, and even prosecutors who may inquire into allegations of torture. No treaty body will ever be able to promise security in such circumstances and it would be unrealistic to ask for such protection, nor to suggest such level of protection to the victim or lawyers. But an ability to order broader protective measures as part of the interim protection system would be a considerable advantage in discussing with lawyers and those affected whether or not a case can be submitted internationally.

### THE NEED FOR EFFECTIVE REPARATIONS AND IMPLEMENTATION

Two of the other issues we are going to discuss are in fact different sides of the same coin: reparations and the implementation of decisions. We have heard that the Committee has adopted

the new General Comment on Article 14 concerning the right to remedy and reparation, including rehabilitation.<sup>21</sup> This is, in our view, a benchmark for states as the Committee endorsed the broader concept of the right to remedy and reparation for serious human rights violations that has emerged over the last two decades. At the same time, the decisions of the Committee against Torture themselves are an important element of the right to remedy indicating measures states have to take to implement (or repair) the violation. We can thus anticipate that the new General Comment may influence the Committee's further pronouncements about the requisite reparations and this provides an important tool for us as lawyers.

Globally, the core challenge we face in litigating cases to the treaty bodies is the lack of implementation. This challenge exists even *vis-à-vis* the CAT, which appears to have a better compliance rate than other treaty bodies. The non-implementation of the decisions challenges the very integrity of the human rights system, and it should be at the center of attention if we want to strengthen the treaty body system. Many of us, including at the OMCT, have started to do more systematic follow-up advocacy, and I hope that we can bring this collective wisdom of implementation strategies to the table. Questions to be raised range from the Committee's own follow-up procedure to issues of the legal framework (implementing legislation) to allow the "receipt of decisions" for example to re-open court cases or investigations. In many instances it concerns questions of political commitment but at the same time non-implementation is not always deliberate. In some instances we could observe that no institution appeared to feel responsible for the follow-up, and the setting up of a structure and a coordinating body could be of help. More often than not it is the foreign ministries that have followed the case, but have little or no awareness of the existence of case decisions within the justice ministry that would be entrusted with implementing legal remedies.

Finally and in conclusion, I firmly believe that the CAT as the universal anti-torture body is a venue that needs to be

strengthened and reinforced. It deserves so as it has also shown its progressive force in many instances. It is today the only committee that calls its findings "decisions," and we have seen recently the first-ever hearing held within an individual case.<sup>22</sup> It came at the request of Kazakhstan under rule 117, paragraph 4, of the Rules of Procedure and while not being a public hearing, this first-ever oral proceeding provides a unique and exciting precedent. The relevant rule reads:

The Committee may invite the complainant or his/her representative and representatives of the State party concerned to be present at specified closed meetings of the Committee in order to provide further clarifications or to answer questions on the merits of the complaint. Whenever one party is so invited, the other party shall be informed and invited to attend and make appropriate submissions. The non-appearance of a party will not prejudice the consideration of the case.<sup>23</sup>

It can only underline the quasi-judicial nature of the proceedings and contribute to the strengths and persuasive force of the Committee. Other examples include the openness of CAT to integrate a gender dimension into the torture debate as one of the first treaty bodies in the last fifteen years, which helped to reshape the debate on sexual violence from a private matter to one of due diligence and state responsibility.

All this should encourage us to think creatively at this seminar. I would like to conclude with a remark of Judge Thomas Buergenthal, former Dean of this law school, who once told me that "as lawyers we sometimes have to be a little bit crazy if we want to move the law." I wish all of us a very sound level of craziness during this seminar in order to come up with refreshing new ideas that can shape our use of the remedy to the Committee against Torture for the future.

Thank you for your consideration.

## Endnotes: Opening Remarks

<sup>1</sup> See Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, status as of 18-07-2013, available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en).

<sup>2</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [hereinafter OP CAT] G.A. res. A/RES/57/199, Art. 22, entered into force June 22, 2006.

<sup>3</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter UN CAT], Art. 14, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>4</sup> *Id.* at Art. 3.

<sup>5</sup> *Id.* at Art. 1, 16.

<sup>6</sup> Committee against Torture, Rules of Procedure, Rule 117, ¶ 4, U.N. Doc. CAT/C/3/Rev.5 (Feb. 2011) available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/411/40/PDF/G1141140.pdf?OpenElement>.

<sup>7</sup> UN Comm. against Torture, Concluding Observations of the Committee against Torture, Madagascar (Nov. 2011) available at <http://www2.ohchr.org/english/bodies/cat/docs/followup/Extractsfollow-upMadagascar47th.pdf>.

<sup>8</sup> UN CAT *supra* note 3, Art. 14.

<sup>9</sup> UN Comm. against Torture, General Comment 3, U.N. Doc. No. CAT/C/GC/3 (2012).

<sup>10</sup> EU Strategic Framework and Action Plan on Human Rights and Democracy No. 11855/12 of June 25, 2012 [hereinafter Strategic Framework and Action Plan].

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., *EU Annual Report on Human Rights and Democracy in the World in 2012* (May 13, 2013), available at <http://register.consilium.europa.eu/pdf/en/13/st09/st09431.en13.pdf>.

<sup>13</sup> Strategic Framework and Action Plan, *supra* note 10, at point 17.

<sup>14</sup> UN CAT, *supra* note 3.



<sup>15</sup> OP CAT, *supra* note 2.

<sup>16</sup> *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment — An up-date of the Guidelines* (March 20, 2012), available at [http://eeas.europa.eu/human\\_rights/guidelines/torture/docs/20120626\\_guidelines\\_en.pdf](http://eeas.europa.eu/human_rights/guidelines/torture/docs/20120626_guidelines_en.pdf).

<sup>17</sup> See *European Instrument for Democracy & Human Rights (EIDHR)*, EUROPEAN COMMISSION (Feb. 17, 2012), [http://ec.europa.eu/europeaid/how/finance/eidhr\\_en.htm](http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm).

<sup>18</sup> Strategic Framework & Action Plan, *supra* note 10, at point 17.

<sup>19</sup> UN CAT, *supra* note 3.

<sup>20</sup> UN Comm. against Torture, General Comment 3, *supra* note 9.

<sup>21</sup> *Id.*

<sup>22</sup> See CAT communication No. 444/2010, Abdussamatov et al. v. Kazakhstan, available at [http://www.ohchr.org/Documents/HRBodies/CAT/Jurisprudence/CAT-C-48-D-444-2010\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/CAT/Jurisprudence/CAT-C-48-D-444-2010_en.pdf).

<sup>23</sup> Committee against Torture, Rules of Procedure, *supra* note 6, at Rule 117, ¶ 4.