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Opening Remarks: Remarks of Dean Claudio Grossman

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OPENING REMARKS

Remarks of Dean Claudio Grossman*

I am very pleased to open this conference, “Strengthening the Prohibition against Torture: The Evolution of the UN Committee against Torture,” at American University Washington College of Law (WCL) for many reasons, although one reason would be enough.

The first reason is the importance of the topic. The international community wanted to achieve a world without torture and, to that end, adopted universal and regional norms as well as a specialized treaty on the topic, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹ adopted in 1984, which in turn established the Committee against Torture, the purpose of which is to supervise compliance with the obligations set forth in the Convention. As a result, in some instances lives have been saved and torture has been prevented, and still in others, when torture or other forms of cruel, inhuman, or degrading treatment or punishment have taken place, investigations and punishment have followed.

The reality is, however, that the goals of those who imagined a world without torture and adopted this Convention have not yet been fully realized. Unfortunately, individuals around the world still believe that torture is acceptable in extreme circumstances. We still do not have consistent investigation and punishment of those who commit torture. Compensation and redress for, and to the extent possible, rehabilitation of, victims are still the exception. The Convention has provided, however, a specific normative framework that allows us to demand compliance with the treaty obligations freely acquired by states. Accordingly, violation of the Convention’s obligations undermines not only a treaty, but the very value of law as a whole. Today as we discuss how to strengthen the prohibition of torture, we need to bear in mind the dimensions of our task.

The second reason to have this conference here is to engage government representatives, civil society, academia, and members of international supervisory organs in a dialogue. The pressures of limited time and resources prevent the UN Committee against Torture from thinking strategically. In its two three-week meetings each year in Geneva, the Committee is hard-pressed to handle country reports, individual petitions, and basic administrative matters. As a result, there is hardly time for Committee



members themselves to interact concerning the treaty body’s work, let alone time to receive valuable insights from academia, civil society, and governments. The value of initiatives like today’s event is demonstrated by the conference WCL organized last year with the Association for the Prevention of Torture. Moreover, that conference’s outreach was multiplied exponentially as the proceedings were published in WCL’s student-run *Human Rights Brief*, as will be the case again this year.²

The third reason is that universities are the only places where we should be able to discuss everything, as other societal institutions such as government or private organizations perform different functions. Universities, however, can greatly enhance their outreach by joining forces with governmental and non-governmental actors on specific topics with the common goal of conducting a thorough discussion and examination. In that context, we are pleased to cosponsor today’s conference with Amnesty International, an important organization that has contributed greatly to the promotion and protection of human rights around the world. Jointly with Amnesty International, we have brought together an impressive group of speakers who I am certain will greatly contribute to the strengthening of the prohi-

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hibition against torture through their analysis of the Convention and the Committee.

Let me conclude my comments by mentioning that this conference takes place as we celebrate the founders of our law school. American University Washington College of Law has a very impressive history. This law school does not have founding fathers, but founding mothers. WCL was created in 1896 when women were not allowed into legal education or the legal profession. WCL's two founding mothers, Ellen Spencer Mussey and Emma Gillett, established this law school with the vision that it was essential to educate both men and women in the law to achieve equality in society. Their vision was grounded in the belief that law was a powerful instrument for positive change.

The history of WCL also illustrates the limits of conventional wisdom. In 1896, numerous individuals believed that, by nature, women did not have the analytical skills required to practice law. Now, thanks to the work of our founding mothers

and other pioneering individuals, those types of arguments are no longer tenable, to say the least. Their struggle for human dignity taught us that we can imagine a better world and achieve it, if we act upon our imagination. The message of WCL's founding mothers continues to be valid today and is relevant to the struggle against torture. We can imagine a world without torture and bring it about through our actions.

Let me now offer the floor to Widney Brown, Amnesty International's Senior Director of International Law and Policy. We welcome you and all of the conference participants, including our keynote speaker, U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor, the Honorable Michael Posner, and those who have come from afar. Let me also explicitly thank Tania Baldwin-Pask, Amnesty International's Adviser on International Organizations, International Law and Organizations Program. We started talking with Tania last year about jointly sponsoring a conference, and her efforts were essential to the organization of this initiative.

Remarks of Widney Brown*

Thank you and good morning. On behalf of Amnesty International, I would like to join Dean Grossman in welcoming all of you here for this seminar on the evolution of the Committee against Torture. We are delighted to be a co-sponsor of this event with the American University Washington College of Law, particularly now that I know it had founding mothers. Let me take this opportunity to extend my thanks to Dean Grossman and to his staff, in particular Jennifer de Laurentiis and Jennifer Dabson, who have worked hard to organize this seminar. I would also like to acknowledge the efforts of my own staff in this regard, particularly Tania Baldwin-Pask and Anna-Karin Holmlund. Many of you have made a long journey to participate in this seminar and share your experiences with us, and we are very grateful to you.

As many of you know, Amnesty International has a long history of campaigning against torture through its support of the work of the international mechanisms to prevent torture, including the Committee. Indeed, it was the success of campaigning by NGOs, including Amnesty International, for a binding set of obligations upon states to eradicate torture that resulted in the drafting and eventual adoption in 1984 of the United Nations Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment and Punishment. While the ban on torture built on existing prohibitions in international law, the Convention was the first treaty to establish explicit measures that states must undertake to prevent torture and to punish those who engage in torture. Today that treaty remains in the



forefront of our efforts to demand that states eradicate torture. We continue to campaign vigorously for the ratification and implementation of the Convention in our bilateral dealings with governments, through our advocacy in international fora, and through national-level lobbying and public awareness-raising.

As the body established to oversee the implementation of the treaty, the ten-member Committee occupies a central place

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in the effort to prohibit torture. It performs its supervisory functions mainly in three ways: (1) through the process of considering States Parties' reports and issuing concluding observations that result from that review; (2) through its consideration of individual communications under Article 22 where states have recognized the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of violations of provisions of the Convention; and (3) through the confidential inquiry procedure established under Article 20.³

As with other international treaty monitoring bodies, the Committee is hampered to some extent because it has no means of enforcing its recommendations and decisions and is, for the most part, monitoring the application of the treaty largely on the basis of written reports prepared by states. However the Committee's jurisprudence, as articulated through its reviews and recommendations and in the gradual development of general comments, can provide an authoritative interpretation and guide for the practical application of the Convention.

Looking back at the development of the Committee over the last 22 years, it is important to acknowledge that in its first years of existence, the Committee was frequently criticized for its poor performance. Some of these criticisms include the lack of detail in the questions posed through the dialogues with states; an absence of cohesion among members, with members sometimes even contradicting each other; and questions which revealed a fundamental misunderstanding of the treaty by the members.

Over time, however, and with changes in membership, the Committee has taken steps to overcome some of these weaknesses. For example, the Committee has gone from initially being very accepting of states' explanations for failure to enact the criminal offense of torture, to requiring specific torture offenses with a definition that is the same, or at least covers the same elements, as the Convention definition. The Committee has also gradually become more progressive in terms of finding provisions, such as the compensation provision, that on the sur-

face refer only to torture, yet still apply, in some sense, to cruel, inhuman, and degrading treatment and punishment.

In recent years, whether it relates to discrimination against Roma or gender-based violations, the Committee has not hesitated to tackle the obligations of states to present abuses by non-state actors. Despite considerable pressure from states, the Committee has remained strong and resistant to attempts to dilute the Convention in the context of counterterrorism. The adoption of General Comment No. 2⁴ has brought clarity to the Committee's understanding of Article 2 and of the Committee's expectations of measures to be taken by States Parties to prevent torture. On a very practical level, through actively encouraging NGOs to provide information, the Committee's dialogue with States Parties has been considerably deepened and enriched. The creation of new working practices, such as the follow-up procedures, have facilitated longer engagements by States Parties on some priority recommendations and enabled the Committee to identify the main recurring concerns.

The purpose of this seminar, however, is to consider the future role of the Committee in strengthening the prohibition of torture. While it is important to acknowledge the positive steps taken by the Committee in recent years — which we hope will continue — we also need to consider some of the current challenges. These include ensuring greater consistency and clarity on a range of issues through the Committee's questions and dialogues with States Parties; consistency in how it approaches different States Parties; and increased analysis and greater consistency articulated through concluding observations and other jurisprudence.

Among our panelists and moderators today, we are fortunate to have individuals who can offer insight into how the work of the Committee can facilitate their human rights advocacy, whether with national courts, with governments in regional systems, or at the international level. I am sure that with their contributions and with your challenging questions we will be able to identify some very practical and achievable recommendations to continue to strengthen the prohibition against torture and the critical role of the Committee in this endeavor. *HRB*

Endnotes begin on page 53.

