UNCATand *jus cogens:*

A contemporary perspective

The Evolved Peremptory Prohibition of Torture Beyond the Custodial Paradigm and Its Application to Judicial Conduct and the Immunities That Shield It

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EXECUTIVE STATEMENT OF THE CONTEMPORARY STANDARD

As of 2026, the international prohibition of torture and cruel, inhuman or degrading treatment or punishment is not confined to custody, detention, interrogation, prison, police, military, or security-force settings. UNCAT[1] Article 1 contains no setting qualifier. Article 16 contains no setting qualifier. The peremptory prohibition of torture has evolved beyond the original custody/interrogation horizon reflected in the travaux préparatoires. Contemporary analysis turns on the substantive elements: an act; the intentional infliction of pain or suffering; that the pain or suffering be severe, whether physical or mental; a prohibited purpose where Article 1 is invoked; and the complete official nexus — infliction by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity — with the lawful-sanctions exclusion assessed separately as an exclusion from the definition, not as one of its components.[2] Where those elements are met, judicial, administrative, family-court, disability-accommodation, debtor-punishment, medical, welfare, and parent–child-separation settings are not categorically exempt. This Standard states the rule, demonstrates its derivation from the enacted text and forty years of authoritative evolution, and records its applications and compliance consequences. Historical examples such as MKUltra[3] confirm the necessity of that standard: a prohibition that could not reach non-consensual state human experimentation, covert psychoactive drugging, behavioral-control research, and officially sponsored psychological manipulation merely because the subject was not in a prison cell or formal interrogation room would be too narrow to account for one of the canonical modern examples of state-inflicted bodily and mental abuse.

The discipline of this Standard: two axes, one litmus. This Standard applies a conduct-centred and system-conscious discipline, not a situs-centred one. The severity axis classifies the individual harm. Article 1 torture requires the intentional infliction of severe physical or mental pain or suffering, a prohibited purpose, and the official nexus; Article 16 keeps its own classification for official ill-treatment not amounting to torture; and neither custody nor systematicity is an element of either. The systemic-control axis classifies the institutional mechanism: substantially similar harms produced through common official mechanisms, continued after notice, and accompanied by non-correction, concealment, retaliation, conflicted review, or remedial foreclosure. Findings on this axis may establish functional powerlessness, institutional tolerance or acquiescence, implementation failure, and reliable indications of systematic practice. Human dignity is the litmus governing both axes: the same official infliction of suffering cannot fall outside the prohibition merely because institutional architecture replaces the prison wall. Dignity guides the interpretation; it does not replace the Convention's elements, the evidence, or the methodology by which customary and peremptory law is identified. A single act may be torture. Pain or suffering is assessed along the severity axis and must reach the severe threshold where Article 1 torture is alleged. The systemic showing helps prove the elements; it never substitutes for them.

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[1] United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

[2] Some formulations state four elements rather than five, combining the act and severity dimensions under "the nature of the act"; see Meskele (2014), recording the same four-element framing in the work of Special Rapporteur Manfred Nowak. This Standard disaggregates those dimensions. The enumeration is analytical and does not alter the definition.

[3] See Digital National Security Archive (DNSA): CIA and the Behavioral Sciences: Mind Control, Drug Experiments and MKULTRA -- https://proquest.libguides.com/dnsa/64

One organizing observation frames everything that follows. On the substance of the prohibition, the IAJ reads the principal international human-rights materials as broadly consistent at the level of dignity-derived substance, drawing as they do on a common source: human dignity, named in the Universal Declaration[4] and in the preambles of the Convention against Torture, the International Covenant on Civil and Political Rights, and the regional human-rights treaties alike. On the IAJ's reading, the core propositions — that the prohibition of torture is peremptory and the prohibition of cruel, inhuman or degrading treatment absolute and non-derogable, neither admitting balancing; that it binds every organ and official of the State; and that individual responsibility may arise under an applicable domestic or international liability regime while the State concurrently bears responsibility and owes the reparation international law requires — find broad support across the International Court of Justice, the regional courts, the United Nations treaty bodies, and the domestic criminal law of States.

The comparative-constitutional foundation of that dignity reading is recorded in the companion IAJ Law Review *The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment*, whose 197-jurisdiction comparative survey — carrying row-level sources, operational-status fields, and confidence assessments, with intensified primary verification for the dignity–entrenchment subset — documents the widespread constitutional recognition of human dignity, corroborating the dignity foundation reflected in the instruments cited above.

The principal apparent exceptions, on the IAJ's reading, do not reach this substance. They arise on a different plane — the contested question of forum: whether a foreign State, or a named official of that State, may be sued civilly in another State's domestic courts. In *Jones*[5] the immunity was extended to four named officials as well as to the State, and this Standard records that rather than reducing it. What those decisions leave intact is the substance of the norm and of individual responsibility for its breach — *Jones* records, at ¶109, the International Law Commission's Article 58 and describes it as clarifying the position in respect of simultaneous individual responsibility. What they foreclose is the forum in which that responsibility might be enforced. The distance between a responsibility the authorities preserve and a forum they close is not a gap this Standard conceals; it is the defect this Standard documents.

Where divergence appears, it is of two kinds, and this Standard distinguishes them. On procedural immunity, forum and remedial consequence, international tribunals have themselves divided — the International Court of Justice in Jurisdictional Immunities of the State, the European Court of Human Rights in *Al-Adsani*[6] and in *Jones* — and that divergence is recorded here, not concealed; the *Jones* Court itself described State practice on the question as in a state of flux and directed that it be kept under review by Contracting States. No division appears on the absolute and non-derogable character of the prohibition or on the peremptory status of the prohibition of torture, and the principal contrary authority says so in terms: the International Court held that the rules of State immunity are procedural in character and "do not bear upon the question whether the conduct in respect of which the proceedings were brought was lawful or unlawful."

The second and larger divergence is between that substantive consistency and particular domestic doctrines that have failed to track it. The office of this Standard is to give effect to that consistency: to read the enacted text and the peremptory norm as the IAJ understands the international authorities, at the level of substance, to read them, and to identify where domestic application has fallen out of step. Absent that synthesis, the divergence is left to harden forum

4 Universal Declaration of Human Rights -- https://www.un.org/en/about-us/universal-declaration-of-human-rights

5 *Jones and Others v. the United Kingdom* (nos. 34356/06 and 40528/06, 2014)

6 *Al-Adsani v. the United Kingdom* [GC] (no. 35763/97, 2001)

by forum; the IAJ addresses it by returning, on every question, to the dignity-derived substance the IAJ reads the authorities as sharing.

Against that divided procedural record, the regional systems the ratification record treated as peers converge on this Standard's architecture from opposite directions: the European system states the conditioned legitimacy of judicial protection in its access-to-court doctrine and, in Union law, already overrides domestic shields for judicial acts at the State level; the Inter-American system states the peremptory continuum, the anti-foreclosure category, and the judge's own conventionality duty. The full comparative record, with the contrary holdings, is set out in Part III and Chapter 7.

Within that framework, one application receives sustained treatment, and the emphasis is deliberate. The question this Standard develops at greatest length is what the Convention requires where the official through whom severe harm is inflicted is a judicial actor, and where the domestic legal system confers personal immunity on that actor without regard to the character of the conduct. The constituent bodies of law are each well settled: the immunity of foreign States from civil suit for torture has been litigated to the highest levels; the standards of judicial accountability have been articulated with care in both regional systems; and the Convention's official-nexus element has never been in doubt. What has not been examined systematically is the point at which they meet. The Institute's determination on that question — that at and above the threshold into torture or ill-treatment meeting the defined severity, immunity falls away and is never available — is identified throughout as the IAJ's investigation and synthesis, held concurrently with the State's undiminished responsibility.

PREFATORY NOTE

History chronicles the evolution of peremptory norms of customary international law. What is the current state of *jus cogens* as regards torture and cruel, inhuman and degrading treatment and punishment? A current statement would bring numerous benefits including clarification of the modern interpretation and application of the 1984 Convention against Torture (UNCAT), combined with the international law absolute prohibition.

This Standard does not propose a novel interpretation in search of authority. Where it does propose — the analytical instruments and doctrines identified in the Methodology as IAJ proposals, and the jurisprudential determinations identified as the Institute's own — it says so in terms at the point of proposal, and the reader is never asked to take a proposal for an existing rule. It demonstrates the legal structure already contained in the Convention Against Torture's text, in the evolved *jus cogens* prohibition, and in the Committee Against Torture's authoritative interpretations — a structure that institutional doctrine, shaped by the custodial paradigm of the treaty's 1984 drafting, has not yet fully expressed. Where the law's logic and doctrine's expression diverge, this Standard identifies and closes the gap. The conclusions reached here are disclosures, not inventions.

Within that evolution, this Standard develops one area at disproportionate length, and the emphasis is deliberate. The relationship between the peremptory prohibition and the immunities that domestic legal systems confer on judicial actors has been examined only at its margins. The immunity of foreign States from civil suit for torture has been litigated to the highest levels — *Al-Adsani*, *Jones*, and the International Court of Justice in *Jurisdictional Immunities of the State*. The standards governing judicial accountability have been articulated with care by the Committee of Ministers, the Consultative Council of European Judges, the Venice Commission, and the Inter-American Court. The Convention's own official-capacity element has never been in doubt. What has not been asked, systematically, is the question these bodies of law meet in the middle: what the Convention requires of a State whose domestic law confers absolute personal immunity on the judicial officers through whom official harm is inflicted, where the conduct crosses the threshold into torture or cruel, inhuman or degrading treatment.

The gap is a consequence of the same drafting horizon this Standard examines throughout. A treaty framed against the interrogation cell did not invite its parties to ask what the courtroom might become. The result is that the actor whose conduct is least reviewable, in the institution whose decisions are hardest to reach, has received the least attention. This Standard accordingly gives the question the sustained treatment the record has not yet received: the judicial actor as a public official within Article 1; jurisdictional custody as a functional category; the equivalence between the immunity architecture the United States administers and the calibrated models its treaty peers apply; and the consequence the Institute determines to follow at and above the threshold. That determination — that immunity falls away absolutely at and above the gateway into torture or ill-treatment meeting the defined severity — is the IAJ's own, identified as such wherever it appears, and is not offered as a rule any tribunal presently administers.

This Standard was prepared by the Institute for the Advancement of Justice & Human Rights (IAJ) as an independent analytical work. All analytical positions, extensions, applications, and conclusions are exclusively the IAJ's.[7]

[7] In the course of preparing this publication the IAJ held an advisory consultation with Professor James Lin, Esq. — Istanbul Protocol Programme Coordinator at the International Rehabilitation Council for Torture Victims (IRCT), a coalition the IRCT identifies as 176 member centres in 80 countries (per IRCT institutional materials as of June 2026) — concerning whether and how

The IAJ's analytical work proceeds from the following foundation: the UNCAT's original drafting horizon was the custodial and interrogation context of Cold War-era state conduct, and the treaty's definitional text does not itself reproduce that horizon as a limitation. The text means what it says, and the subsequent evolution of the *jus cogens* prohibition and the Committee's authoritative interpretive practice have removed any principled basis for reading the custodial paradigm back into the enacted language.

Treaty evolution — through *jus cogens*, the CAT Committee's progressive interpretation, the Convention on the Rights of Persons with Disabilities (CRPD)-UNCAT convergence, the ICCPR-UNCAT convergence, the Istanbul Protocol (2022), and the adjudicated jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights — has already advanced beyond the original sovereignty horizon. The conclusions in this Standard are the logical entailments of authorities that already exist. Each conclusion requires not the creation of new law but the reading of existing law in its full logical relation, without the compartmentalization that institutional practice has introduced.

Convergent lines of authority support the conclusions reached here, and this Standard presents them in five Parts. Part I establishes the textual baseline: the UNCAT's enacted text, read on its face, contains no setting qualifier confining it to custodial or interrogation contexts, and the Vienna Convention on the Law of Treaties (VCLT), Article 31, requires interpretation in good faith in the light of the treaty's object and purpose, which a reading producing those consequences does not satisfy — the separate standard of a result "manifestly absurd or unreasonable" belonging to Article 32(b), which governs recourse to supplementary means. Part II reconstructs the evolved legal corpus from the 1978 drafting baseline through United States entry into force in 1994, and then examines the associated institutional corpus developed through treaty-body interpretation, the Istanbul Protocol, regional human-rights jurisprudence, and the United Nations Special Procedures — including the Committee Against Torture's authoritative confirmation that all parts of a State party's Government are bound (General Comment No. 2 ¶¶9, 15), reinforced for the judiciary by the parallel Human Rights Committee interpretation that all branches of government — executive, legislative and judicial — engage State responsibility (General Comment No. 31 ¶4); the Istanbul Protocol's documentation standards; regional human-rights jurisprudence; and the United Nations Special Procedures. Part III states the 2026 content of the peremptory prohibition: evolved *jus cogens* operates autonomously of and above the conventional treaty architecture, resolving the original-scope question through a different legal channel entirely. Its peremptory status is settled, but the specific setting-unconfined minimum content in civil judicial settings is the IAJ's synthesis from convergent authorities, and the IAJ records that synthesis as its own institutional position rather than as a proposition already adjudicated in a controlling international judgment. Part IV applies the standard beyond the custodial paradigm: judicial actors satisfy the "public official in official capacity" element of Article 1 without interpretive strain when the remaining elements are also met, and the IAJ proposes the functional category of jurisdictional custody — by analogy to OPCAT Article 4(2)'s anti-evasion logic, and as the IAJ acknowledges, not yet adopted by any treaty body or applied by any court — as an analytical instrument for evaluating court-compelled participation in the most severe documented cases. Part V records the United States compliance consequence: the reservations, understandings, and declarations (RUDs) and their equivalence premise, the domestic constitutional doctrines that corroborate related culpability and severity concepts without independently establishing an international Article 16 violation, and the IAJ's investigative record — including intake of 500+ registered complainants — supplying reliable

the analytical framework of UNCAT, developed primarily in custodial and interrogation contexts, applies to judicial and other institutional conduct. The IAJ records the limits of this acknowledgement: Professor Lin has not reviewed this publication; the IAJ's descriptions of the consultation are its own characterizations and have not been confirmed by Professor Lin; all analytical extensions, applications, conclusions, and doctrinal positions are exclusively the IAJ's; and no endorsement by Professor Lin or by the IRCT is claimed or implied.

information and well-founded indications warranting independent examination under Article 20.

The synthesis also provides the legal framework required in modern practice to address situations that would not constitute torture according to the original conceptualization of the UNCAT: for example, a torture victim whose subsequent judicial persecution could not be characterized as CIDT under the original treaty text. The synthesis provides the strongest available basis for arguing that case. The IAJ presents this synthesis as its own analytical work. The IAJ Case Archive (published separately) and the IAJ Severity-Intent Matrix establish institutional-character and mechanistic evidence for the disability-factor component of this submission; the non-disability factors documented in the Shadow Report submitted separately to the Committee are independently established by that submission's own evidentiary record and do not depend on inference from the disability archive.

A NOTE ON THE TWO LEGAL PLANES — A distinction that this Standard maintains throughout, and which is frequently collapsed in practice, is the distinction between: (a) the existence and content of the international legal obligation; and (b) the domestic enforceability of that obligation in U.S. courts. These are different legal planes governed by different legal frameworks. U.S. domestic doctrines — non-self-execution, Medellín, judicial immunity, sovereign immunity — operate on plane (b). They do not determine the content of the obligation on plane (a). The primary audience of this Standard is the CAT Committee, treaty bodies, IRCT investigators, Special Rapporteurs, and the international human rights community — actors who operate on plane (a) and who are not bound by Medellín. Where domestic enforceability is addressed, it is addressed separately and labeled as such.

A methodological preview: this Standard uses disability — judicially inflicted harm to disabled litigants through accommodation denial — as its most sensitive detection instrument for non-custodial institutional torture. The reasons, including the identity and trusted status of the officials involved, are developed in Chapter 12; the analytical framework the instrument yields is transferable to every other application domain in Part IV.

> Throughout this Standard, at each of its six most critical analytical junctures, a Dignity Alignment Test appears. The Test performs three operations: it states the IAJ's position in this Standard in its plainest form; it states the adversarial counter in its strongest form; and it derives, from the foundational principle shared by every instrument of international human rights law — the inherent dignity of the human person — which position is consistent with that foundation and which is not. The Dignity Alignment Test is not rhetorical; it is a normative consistency check. Every proposition in this Standard, if correctly derived, should remain consistent with the dignity foundation: the foundational principle is precisely what the treaty system was built to protect, and evolved *jus cogens* is the legal expression of that protection. Where the IAJ's position in this Standard and the adversarial counter are both tested against the foundation, and the IAJ's position in this Standard is the one consistent with it, that alignment supports (but does not by itself prove) the analysis. Dignity Alignment Tests inform object-and-purpose analysis under the IAJ's analytical framework; they do not substitute for treaty elements, evidentiary proof, causal analysis, or the competent international body's determination. The six Tests appear at Chapter 11 (lawful sanctions carve-out), Chapter 9.B (*jus cogens* minimum content), Chapter 9.B-bis (regional jurisprudence support), Chapter 13 (judicial actors), Chapter 14.J (jurisdictional custody), and Chapter 21 (Article 20 significance). They are visually marked and may be read as a standalone sequence. The six Tests draw their normative foundation from the comparative and international record documented in the companion IAJ Law Review The Inviolable Root:

> Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment; that record supports the use of dignity as an interpretive consistency check and as the normative core of the prohibition, and it does not make dignity a substitute for treaty text, customary-law identification, the Article 1 and Article 16 elements, or proof in an individual case.

METHODOLOGY, EVIDENTIARY BASIS, SCOPE, AND LIMITATIONS

This Standard rests on two distinct foundations, and it does not conflate them. The first is the body of public legal sources: the enacted text of UNCAT and OPCAT; the customary principles reflected in the Vienna Convention on the Law of Treaties, interpretation proceeding under the general rule reflected in Article 31 and the travaux consulted as a supplementary means under Article 32; the General Comments and Concluding Observations of the Committee against Torture and the interpretations of the Human Rights Committee; the jurisprudence of the International Court of Justice, , the European Court of Human Rights, the Inter-American Court and Commission of Human Rights, the Court of Justice of the European Union, the international criminal tribunals, and the domestic courts; the standard-setting and monitoring instruments of the Council of Europe (Committee of Ministers, the Consultative Council of European Judges, the Venice Commission, and the CPT) and of the Organization of American States; the codification work of the International Law Commission; the United Nations Special Procedures reports; the Istanbul Protocol (2022); the scholarly commentary recorded in Appendices E and F; and the United States ratification record. The second is the IAJ's own investigative record: the Istanbul Protocol medico-legal investigations, the Case Archive, the registered-complainant intake documented in the Shadow Report, and the National Evidentiary Record carried in the companion publications. The doctrinal framework of Parts I through IV rests on the public legal sources alone; the investigative record illustrates, applies, and evidences — it is not the source of the doctrine. Conclusions resting in whole or in part on the investigative record are identified as investigative or evidentiary findings, not as established law.

Every material proposition in this Standard belongs to one of six classes, and its attribution language identifies the class: treaty or statutory text ("Article 1 provides"); settled or presently administered domestic doctrine ("the Court held"); established international law or an institutional ruling ("the Committee stated"); an investigative or evidentiary finding ("the record documents"); an IAJ interpretive or jurisprudential determination ("the IAJ finds"; "the IAJ independently determines"); or an IAJ proposed analytical instrument or reform ("the IAJ proposes"). Contrary authority is stated with its actual holding, its institutional and precedential status, its factual and jurisdictional setting, and the IAJ's reasons for accepting, distinguishing, or rejecting its reasoning; divergences between the IAJ's positions and tribunal holdings are flagged as divergences, never concealed and never inserted as qualifications eroding the IAJ's stated positions.

The limits of the record are stated with the same discipline. The registered-complainant intake is intake, not adjudication; investigative findings are identified as completed or preliminary; bounded negative research findings are bounded to the archives actually searched; single-patient longitudinal evidence is used within its evidentiary scope and is not generalized; and the Article 20 systematic-practice determination belongs to the Committee alone — this Standard supplies convergent indications warranting independent examination and does not assert that the formal threshold is established. Proposed doctrines — jurisdictional custody, extended acquiescence, the juridical-statement application of Article 15, Forum Nullus, systemic voidability, and the corpus's analytical instruments — are identified as IAJ proposals or determinations wherever they appear. Appendix D sets out the Investigative Methodology for Non-Custodial Institutional Torture that governs how the investigative record described in this section is produced. Because these disciplines are stated here once, they govern throughout; individual chapters restate them only where the specific analysis requires it.

Scope Note: The Custodial Core This Standard Does Not Restate

This Standard does not survey the well-known forms of torture and ill-treatment. The beating in the station house; electric shock, stress positions, waterboarding, and the other techniques of interrogation torture; rape and sexual violence in custody; prolonged solitary confinement; incommunicado and secret detention; enforced disappearance; death-row phenomena; inhuman conditions of imprisonment; the abuse of detainees by police, military, intelligence, and security forces — these are the recognized heartland of the prohibition. They are documented across four decades of the Committee's jurisprudence, the Special Rapporteur on Torture's mandate, the Istanbul Protocol, and the regional courts, and their unlawfulness requires no demonstration from this Institute.

Their absence from these pages is a scope decision, not a ranking. The custodial core is settled law. The contested question — the question this Standard exists to answer — is whether the prohibition reaches severe official harm inflicted outside custody, through institutional process. Restating settled ground would add bulk, not knowledge. Where custodial authority bears on that question, this Standard uses it and says so: *Selmouni*'s rule that classifications rise as human-rights standards rise; *Herczegfalvy* on the powerlessness of the patient confined in a psychiatric institution; the conditions jurisprudence of *Brown v. Plata*; and the Istanbul Protocol's documentation method. Each is custodial authority, applied to the frontier by stated, reasoned extension.

Nothing in this scope decision, and nothing in this Standard, reorders the hierarchy of concern. The person tortured in a cell loses nothing by the recognition that the person destroyed through institutional process is also protected. The extension supplements the core; it does not compete with it, dilute its gravity, or divert the Convention's machinery from it. The converse is equally part of this Standard's thesis: the core does not confine the Convention. A reader seeking the law of the classic scenarios should consult the Committee's jurisprudence, the Special Rapporteur's corpus, and the Istanbul Protocol. A reader asking whether the law reaches the institutional settings documented here will find that answer in the chapters that follow.

PART I — THE 1984 DRAFTING HORIZON AND THE ENACTED TEXT

Part I establishes the textual baseline. The drafting horizon of 1984 was custodial and interrogational; the enacted text is not. Chapter 1 reads what Articles 1 and 16 actually enacted; Chapter 2 establishes why VCLT Article 31 forbids reading the drafting horizon back into the text. The lawful-sanctions clause — the one textual feature sometimes invoked as a legal-process safe harbor — is analyzed in full in Chapter 11, where the evolved standard is applied to it.

CHAPTER 1 — THE ENACTED TEXT OF UNCAT

Reading the Original Scope — What Was and Was Not Enacted

A. Article 1: The Enacted Language Contains No Setting Qualifier

The operational text of UNCAT Article 1(1) defines torture as:

> *"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."*

The definition specifies five elements: (1) an act; (2) intentional infliction; (3) severe pain or suffering, physical or mental; (4) infliction by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity; (5) for one of the enumerated purposes or any reason based on discrimination of any kind. The lawful-sanctions language operates separately, as an exclusion from the definition rather than as one of its components, and is analyzed in full in Chapter 11. No element incorporates a setting qualifier. The word "detention" does not appear. The word "prison" does not appear. The phrase "during interrogation" does not appear. The IAJ's analytical position is that the drafters were operating against a background of sovereignty-sensitive concern about custodial and interrogation contexts — the setting that dominated the political debate — but the text they enacted is wider than that background concern. The enacted language covers public officials in any official capacity inflicting severe suffering for any of the enumerated purposes. The exclusion of judicial settings was not introduced by the drafters through any textual choice. It entered through the custodial paradigm that surrounded the treaty's negotiation — a paradigm that subsequent *jus cogens* evolution and the Committee's authoritative interpretive practice have progressively dissolved. The text, applied on its face without that paradigm's distorting lens, reaches the documented conduct — not in the sense that the textual point alone resolves a specific case, but in the sense that no categorical exclusion prevents the five-element analysis from proceeding. Whether the specific documented conduct satisfies each of those five elements is the work of the chapters that follow.

This breadth follows directly from the enacted subject of the definition. The fourth element is satisfied by a public official or other person acting in an official capacity; it draws no distinction among the offices such a person may hold. A judge, a child protective services worker, a family court administrator, an administrative or welfare official, and a law enforcement officer acting under executive, legislative, or judicial authority are, each and equally, public officials acting in an official capacity. Where any of them knowingly imposes conditions that cause severe pain or suffering, for a purpose of coercion, punishment, intimidation, or discrimination, every enacted element may be satisfied, and the analysis proceeds identically whatever the office and whatever the institutional setting. The point is best seen across the range of officials the enacted text reaches, not through any single office. A child protective services worker who compels a parent to submit to harmful procedures under threat of permanent family separation, for a purpose of coercion or discrimination; an administrative or welfare official who withholds urgent medical care in order to coerce compliance; a law enforcement officer who, under color of judicial or executive authority, inflicts severe suffering on a person for a discriminatory or punitive purpose; and a judge who imposes procedural conditions causing severe suffering on a litigant whose documented medical fragility is before the tribunal, for a purpose of coercion or disability-based discrimination — each may satisfy the five Article 1 elements in the same way, under the same enacted text, and none is privileged or excluded by virtue of the office held. Whether the threshold is met in a given case depends on the severity, purpose, intent, and lawful-sanctions analysis developed in Chapter 11 and applied, for the judicial subset of these officials, in Chapter 13, and, for the full range of institutional settings, in Chapters 14 and 15. The IAJ's position is that the original historical context informed the drafting but does not contract the enacted text; the IAJ synthesis reads the text that was actually ratified and applies the full five-element test to the documented conduct across all classes of public official and all institutional settings.

Doctrinal Objection and Reply 1.1: The Silence Argument — Architecture as Limitation on Textual Scope

A common central counterargument is that because Article 1 does not expressly include judicial or administrative settings, its silence must be read as exclusion. This argument inverts the standard rules of treaty interpretation. Under VCLT Article 31(1), treaties are interpreted in good faith in accordance with the ordinary meaning of their terms. Silence on a setting does not constitute an express exclusion of that setting. The correct inference from silence is that the term is read at its natural width. Silence does not constitute an express exclusion, and the correct interpretive starting point is the ordinary meaning of the enacted text. That said, textual silence alone does not resolve the scope question: context, structure, and object and purpose remain necessary, and architecture demonstrates emphasis that must be engaged rather than dismissed. The IAJ's position is not that silence forecloses the central counterargument, but that the central counterargument must demonstrate its claimed limitation from the same materials — which, as the preceding chapters show, it has not succeeded in doing.

The most developed form of the architectural objection goes further than simple silence-as-exclusion. It runs as follows: even if Article 1's text does not expressly limit torture to custodial settings, the treaty's entire enforcement architecture — its criminalization provisions, its extradition and *aut dedere aut judicare* obligations, its custody-oriented prevention logic, the Optional Protocol's preventive visit system expressly directed at places of deprivation of liberty, and the historical paradigm of police, security, military, and prison abuse that motivated the Convention's drafting — collectively demonstrate that the Convention was designed to operate within a coercive-custody paradigm. On this reading, the absence of an express setting qualifier does not open the treaty to all official settings: it reflects the drafters' assumption that the paradigm was too obvious to require stating. The Convention's object and purpose, structural architecture, and travaux préparatoires all point in the same direction, and that direction is custodial. A court or treaty body reading UNCAT in accordance with VCLT Article 31's requirement of attention to context, object, and purpose would therefore confine the prohibition's primary application to that paradigm, regardless of the text's facial breadth. This is the architectural argument in its strongest form, and it deserves a precise response rather than dismissal. The IAJ's answer operates on three levels. First, even on the architectural argument's own terms, the Convention's structure demonstrates emphasis, not preclusion. The Optional Protocol's preventive-visit system is aimed at places of deprivation of liberty because that was the most acute and visible problem the drafters were addressing; it does not constitute a negative implication that all other official settings are excluded from the Convention's substantive prohibitions. The extradition and criminalization provisions speak to the most paradigmatic cases; they do not exhaust the Convention's protective scope. Architecture calibrates the instrument's primary focus; it does not contract its enacted text. Second, the VCLT Article 31 requirement of attention to object and purpose cuts both ways: the Convention's object is the absolute prohibition of torture by state agents, and its purpose is to ensure that no official conduct satisfying that prohibition escapes accountability. An architectural reading that creates a safe harbor for official torture wherever it occurs in a courtroom rather than an interrogation room is inconsistent with that object and purpose, not required by it. Third, and most importantly, even if the architectural argument successfully constrains the UNCAT's conventional reach — which the IAJ disputes — it has no purchase on the *jus cogens* norm, which operates independently of and above the treaty architecture, as established in Chapter 9. The two strongest textual tools against the analysis — the lawful sanctions carve-out and the specific purpose elements — are addressed with full analytical rigor in Chapter 11 and Chapter 13 respectively.

B. Article 16: The Broader Protective Scope

Article 16(1) extends the Convention's protective reach to acts of cruel, inhuman or degrading treatment or punishment committed by, instigated by, or with the acquiescence of public officials. The only geographic qualifier is that such acts occur "in any territory under its jurisdiction." There is no setting qualifier at all. A federal courtroom is territory under the jurisdiction of the United States. A federal judge is a public official. The IAJ's position is that Article 16, like Article 1, was negotiated with sovereignty-sensitive concerns in the background, but that Article 16's enacted text extends more broadly than those concerns, and that the CAT Committee has interpreted it progressively to reach institutional settings well beyond the custodial paradigm.

C. The Purpose Requirement Under Article 1

The IAJ's analytical position is that the enumerated purposes — information, confession, punishment, coercion, discrimination — while primarily conceived in custodial and interrogation contexts, are also satisfied by judicial conduct, grounded in how the CAT Committee and Human Rights Committee have interpreted these purpose elements in individual decisions.

On coercion: the Committee has addressed official conduct outside the custodial-interrogation paradigm in cases such as *Hajrizi Dzemajl et al. v. Yugoslavia, Comm*. No. 161/2000 — in which the Committee found Yugoslavia's acquiescence in the destruction of a Roma settlement by mob violence engaged State responsibility under Article 16(1), together with violations of

Articles 12 and 13 for failures of investigation and complaint handling. The IAJ records expressly that *Hajrizi Dzemajl* is an Article 16 holding by the Committee, not an Article 1 holding; individual Committee members in separate opinions would have classified the conduct as torture under Article 1, but that was not the operative finding. The case nonetheless supports the proposition that official acquiescence in serious harm outside custodial-interrogation settings — including in a discriminatory context — engages State responsibility under the Convention, and supplies analytical support for the IAJ's extension of the same framework to systematic acquiescence in disability-based judicial harm.

On discrimination: General Comment No. 2, ¶ 21, confirms that persons with disabilities are among the groups whose protection against torture and ill-treatment requires particular attention, and that discriminatory use of official power is relevant to Convention analysis. The IAJ applies that principle to systematic judicial accommodation denial where the independent severity, intent, official-nexus, and prohibited-purpose elements are each supported. A court that denies disability accommodations to force a disabled litigant to comply on pain of sanction, dismissal, and progressive medical injury is inflicting suffering for the purposes of coercion and for a reason based on disability-based discrimination. Both the Article 1 and Article 16 frameworks remain available for the documented conduct, and the IAJ's analysis addresses each on its own elements. The Istanbul Protocol supplies the investigative and medico-legal documentation framework for assessing psychological suffering of serious gravity against the Article 1 severity threshold — the documentation method, not the treaty classification — including where the deliberate prolongation of harmful official conduct over time — including through repeated procedural impositions — is among the patterns of treatment the Protocol's investigative standards are specifically designed to document and evaluate. The principle is stated expressly: physical injury is not a prerequisite to torture or CIDT classification; severe psychological suffering may independently satisfy the relevant severity requirement where its nature, duration, functional consequences, causation, and consistency with the alleged mechanism are documented through qualified clinical evidence.

One further point belongs here, because it bears on how the elements analyzed in this chapter are to be interpreted at all. When the Convention was drafted in 1984, no international standard governed the identification of torture and cruel, inhuman or degrading treatment. Since then such a standard has been developed and adopted: the Istanbul Protocol — the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment — first issued in 1999 and comprehensively revised in 2022. It was developed by forensic, medical, legal and human-rights experts and issued by the Office of the United Nations High Commissioner for Human Rights in its Professional Training Series, the Manual having been endorsed by the High Commissioner in August 1999. The Istanbul Principles it contains are annexed to General Assembly resolution 55/89 and were promoted in Commission on Human Rights resolution 2000/43, by which States were called upon to disseminate the Principles and to use them in combating torture. The IAJ states the position at that strength and no higher: the Principles carry that intergovernmental promotion, while the Manual is an OHCHR publication whose own notice records that its findings, interpretations and conclusions are those of its contributors in their individual capacities. It addresses, among much else, the continuum between cruel, inhuman or degrading treatment and torture, and it proceeds on the understanding that the two are points on a single gradient of severity rather than watertight categories — the same gradient this Standard develops in Chapter 10 — so that cruel, inhuman or degrading treatment must be interpreted consistently with, and not in isolation from, the torture standard to which it is continuous.

The IAJ's position on the Protocol's interpretive weight is deliberate and calibrated. The Protocol is not a treaty amendment, and nothing in this Standard treats it as one; it does not enlarge the enacted text, and its documentary and methodological function is developed separately in Chapter 6 ("Evidence, Not Expansion"). The Protocol's function is documentary and methodological, not definitional. As the internationally recognized standard for the investigation and documentation of torture and ill-treatment — developed under United Nations auspices by forensic, medical and legal experts, issued by OHCHR, and built on Principles annexed to General Assembly resolution 55/89 which States were called upon to disseminate and use — it establishes how severity, the continuum between cruel, inhuman or degrading treatment and torture, and the associated safeguards and investigative duties are to be documented and assessed. In that documentary capacity it is a persuasive reference that the IAJ consults alongside the International Court of Justice, the Special Procedures, and the Committee against Torture's Concluding Observations; it does not displace them, and it does not itself determine the interpretation of the Convention's terms. The IAJ draws on it, in that medico-legal documentation role, throughout this Standard.

D. Disability Accommodation Denial as the Most Sensitive Detector — One Application Among Many

The enumerated purposes established above are not satisfied by any one class of official or in any one setting. They are satisfied wherever a public official knowingly inflicts severe suffering for information, confession, punishment, coercion, intimidation, or discrimination. This chapter does not privilege judicial or disability-related conduct as a category of wrong; it isolates it as the single application in which the elements the Convention requires are most readily rendered visible, documented, and provable. In the terms developed in Chapter 12, disability accommodation denial in adjudicative settings is not privileged as a category — it is privileged as a detector. Its analytical value is epistemic, not substantive: it makes what Article 1 and Article 16 already prohibit legible, because the official notice is externalized in a documented accommodation request, the discriminatory purpose is isolated cleanly, and the resulting severity is converted into a measurable medico-legal record. It is examined first here for that evidentiary sensitivity, not because it enjoys any doctrinal priority over the other applications.

It is one application among many. The same five-element analysis reaches the full range of non-custodial institutional torture and CIDT developed in Part IV: coercive parent–child separation by courts and child protective services; denial of medical care through jurisdictional control; law-enforcement conduct facilitated by judicial process, including debtors' prison and fines-and-fees coercion; administrative agency and welfare or benefits coercion; functional custody, dependency-control, and non-criminal institutional confinement; and state experimentation, behavioral control, neurodata, and surveillance coercion. The detector below is developed at length because it is the most sensitive instrument for detecting the elements; it is not the only setting in which those elements appear, and nothing in its treatment narrows the enacted text to the judicial or disability context.

IAJ Finding 1: The Textual Baseline with the Lawful Sanctions Analysis Incorporated

Article 1's enacted text reaches severe suffering intentionally inflicted for any enumerated purpose by, at the instigation of, or with the consent or acquiescence of public officials[8] or other

[8] UNCAT art. 1(1). The quoted definitional text continues: "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." The official-capacity element is analyzed in Chapter 13.

persons acting in an official capacity. No setting qualifier limits this. The lawful sanctions carve-out does not protect intentional harmful conduct that exploits legal process for prohibited purposes. The IAJ's position is that the original sovereignty horizon informed the drafting of these provisions but does not contract the enacted text; the IAJ synthesis reads the text at its enacted width while fully applying the carve-out in the manner described above.

CHAPTER 2 — INTERPRETATION: VCLT ARTICLE 31 AND THE ABSURD-CONSEQUENCES CONSTRAINT

A. The Central Argument: What VCLT Article 31 Requires When Consequences Are Absurd

Under VCLT Article 31(1), treaties are interpreted in good faith in accordance with their ordinary meaning, in their context, and in light of their object and purpose. Two distinct provisions are in play and this Standard keeps them apart. Article 31 is the general rule, and a reading whose consequences defeat the treaty's object and purpose fails it on its own terms; Article 32(b) is the separate provision under which recourse may be had to supplementary means, including the travaux, where interpretation under Article 31 leads to a result that is manifestly absurd or unreasonable. The argument of this Chapter is made under Article 31. Where a proposed reading of a treaty produces results radically incompatible with the treaty's purpose, that incompatibility is itself an interpretive argument against the reading. The "detention only" reading of UNCAT—which would confine the Convention's substantive prohibitions to custodial, interrogation, and imprisonment settings — produces exactly those absurd consequences when confronted with the actual range of official conduct that causes severe, documented suffering with no domestic remedy.

The IAJ's September 2025 Shadow Report to the 83rd Session of the Committee Against Torture (IAJ-CAT-20250919-002-PUB) identifies 24 systemic factors of prohibited official conduct observed across the United States in family courts, child protective services, administrative agencies, and judicial proceedings. The IAJ classifies each factor as presenting alleged or documented conduct that, where the factual predicate is established: (a) causes documented severe physical or psychological suffering; (b) is inflicted by public officials in official capacity; (c) may satisfy at least one Article 1 purpose element; (d) has no effective domestic remedy; and (e) would be permanently and completely immunized from UNCAT coverage if the "detention only" reading were adopted.

This Chapter presents those 24 factors as a structural argument under VCLT Article 31: a reading of UNCAT that immunizes every one of them — not because they fail to satisfy the Convention's elements but solely because they occur outside a detention cell — is a reading incompatible with the Convention's object and purpose of absolutely prohibiting torture wherever it is inflicted by public officials.

The Article 31 argument as a Plane-A supplement. The reading advanced in this Chapter — that the enacted text carries no setting qualifier confining the prohibition to custody or interrogation — is offered as a Plane-A supplement. It is reinforced by the International Law Commission's recognition that treaty terms may be given a meaning capable of evolving over time[9], and that subsequent agreements and subsequent practice under Article 31, paragraph 3, are authentic means of interpretation[10]. The IAJ does not, however, rest the contemporary content of the prohibition on establishing an agreement of the parties under Article 31, paragraph 3 (b) — a common understanding the parties are aware of and accept[11] — which the United States' custody understanding withholds. The load-bearing pillar is the peremptory character established in Chapter 9, which operates outside the Vienna Convention's interpretive rules and is not subject to reservation, persistent objection, or amendment by practice. The treaty-interpretation argument corroborates; the peremptory norm decides.

Contrary authority and reply. The IAJ records a limit on the treaty-interpretation route and answers it. Subsequent practice is not a one-way ratchet toward expansion. In *Eastern Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991), the Supreme Court of the United States, construing "bodily injury" in Article 17 of the Warsaw Convention, took account of the negotiating history and the parties' post-conclusion conduct and declined the expansive reading, requiring convincing evidence of the signatories' intent before enlarging the term; a tribunal may thus deploy subsequent practice to confirm a narrow reading. The IAJ answers on three levels. First, the peremptory prohibition operates outside the interpretive machinery of Article 31, paragraph 3, and is neither established nor defeated by subsequent-practice analysis. Second, the IAJ does not claim that post-1984 practice amended Article 1; the Commission has confirmed that amendment of a treaty by subsequent practice "has not been generally recognized"[12], and the IAJ's contemporary-content determination rests on the peremptory character, not on amendment by practice. Third, on Plane B the United States' custody understanding is that State's own interpretive position, which the peremptory norm overrides — immune as it is from reservation and from the persistent-objector rule, as this Standard establishes in its treatment of the *jus cogens* draft conclusions. *Floyd* constrains the treaty route; it does not reach the peremptory determination.

B. The Reductio: What the Detention-Only Reading Immunizes

Reading the 24 factors against the "detention only" interpretation crystallizes the reductio ad absurdum that interpretation produces. If the "detention only" reading is correct:

- **Every coercive parent–child separation by family courts and child protective services:** permanently beyond UNCAT's reach, regardless of the severity of psychological harm to parent and child, and regardless of the deliberateness of the officials who ordered it
- **All medical torture through jurisdictional control:** permanently immunized, even where judicial orders knowingly cause permanent physical harm to identified victims
- **All retaliation against disabled litigants for asserting legal rights:** permanently immunized because it occurs in a courtroom rather than an interrogation room This immunization of retaliation operates identically across all litigant categories — disabled, indigenous, racially marginalized, or unrepresented — and across all forms of protected assertion: a disability accommodation request (Factors 8 and 3), a DOJ discrimination complaint (Factor 10), an ethics filing against a judicial officer (Factor

[9] ILC, Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, with commentaries, A/73/10 (2018), Conclusion 8.

[10] ILC, Draft Conclusions on Subsequent Agreements and Subsequent Practice, A/73/10 (2018), Conclusion 3.

[11] ILC, Draft Conclusions on Subsequent Agreements and Subsequent Practice, A/73/10 (2018), Conclusion 10.

[12] ILC, Draft Conclusions on Subsequent Agreements and Subsequent Practice, A/73/10 (2018), Conclusion 7(3).

10), or an assertion of UNDRIP rights in a family proceeding (Factor 2 / UNDRIP); the detention-only reading forecloses accountability in each configuration.

- **All systematic immunization of judicial and CPS perpetrators:** permanently beyond international scrutiny, regardless of the documented pattern of abuse
- **All suppression of investigation into official torture:** permanently immunized, ensuring that Article 20 itself is undermined by the very reading that makes it least necessary
- **All failure to prosecute official torture as any criminal offense:** permanently licensed, because no international accountability attaches to non-custodial official violence
- **All debtors' prison and poverty-punishment systems:** permanently immunized where courts use fines, fees, warrants, license suspensions, extended supervision, or access barriers to coerce payment or punish inability to pay — even though the domestic constitutional system itself, in *Bearden v. Georgia*, holds that incarceration for nonpayment without an ability-to-pay determination, a willfulness finding, and consideration of alternatives is unlawful

This list does not describe marginal cases. It describes the majority of the IAJ's documented caseload. It describes the systematic pattern that the Shadow Report places before the Committee Against Torture. A treaty interpretation that produces these consequences is not a careful reading of UNCAT's scope. It is a wholesale nullification of UNCAT's purpose wherever states have been sophisticated enough to incorporate official violence into legal institutional form rather than physical confinement.

VCLT Article 31's requirement of interpretation in light of object and purpose is not satisfied by a reading whose consequences are the systematic immunity of some of the most prevalent forms of official torture alleged and documented in the IAJ record from the treaty whose purpose is the absolute prohibition of torture. The "detention only" reading fails on this ground independently of every other argument advanced in Chapters 1 through 12.

C. Historical Control Example: MKUltra and Non-Custodial State Experimentation

The absurdity of a custody-only reading is confirmed by MKUltra. MKUltra is not an IAJ case example and does not depend on the IAJ's contemporary investigative record. It is a historically documented United States government programme of covert human experimentation and behavioral-control research.[13] Congressional and public records describe official or officially sponsored experimentation involving psychoactive substances, psychological manipulation, institutional deception, state-funded intermediaries, and non-consensual or inadequately consented human subjects. The legal significance of MKUltra for this Standard is not that every subproject presents the same factual configuration, or that no subproject involved detention,

[13] U.S. Senate Select Committee on Intelligence and Subcommittee on Health and Scientific Research of the Committee on Human Resources, Project MKULTRA, the CIA's Program of Research in Behavioral Modification, Joint Hearing, 95th Cong., 1st Sess. (Aug. 3, 1977); U.S. Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (Church Committee), Final Report, Book I, Foreign and Military Intelligence (1976); Commission on CIA Activities Within the United States (Rockefeller Commission), Report to the President (1975). The Church Committee and related congressional materials record the absence or inadequacy of consent protections in the programme. The investigative record was affected by the 1973 destruction of MKUltra files; surviving records were produced through Freedom of Information Act disclosures in 1977.

intelligence interrogation, military custody, or prison-related settings. The significance is that the wrongfulness of the programme cannot be confined to those settings.

MKUltra demonstrates why the contemporary torture and CIDT prohibition cannot be limited to custody, interrogation, prison, police, military, or security-force environments. Some MKUltra conduct was related to interrogation and intelligence objectives; some involved institutional or detention-adjacent settings; but the core legal wrong also included official or officially sponsored drugging, experimentation, behavioral manipulation, and acquiescence in severe bodily or mental invasion without meaningful consent. A reading of UNCAT or of the peremptory prohibition that excludes such conduct solely because a subject was not held in a prison cell, questioned in a formal interrogation room, or placed in a conventional custodial setting would reproduce the very institutional evasion that the prohibition exists to prevent.

MKUltra is therefore a historical control case for the thesis. If the evolved standard could not reach non-consensual state human experimentation and behavioral-control practices outside formal custody, the standard would be too narrow to account for one of the canonical modern examples of state abuse. Conversely, an element-based standard explains why MKUltra-type conduct can be analyzed as torture or CIDT without collapsing every unethical study, administrative wrong, or policy failure into torture: the analysis still requires severe physical or mental suffering, intentionality, official involvement or acquiescence, and a prohibited purpose where Article 1 is invoked; the absence of meaningful consent bears on severity and on the lawful-sanctions assessment, and the lawful-sanctions exclusion must separately be found inapplicable.

D. The 1975 Declaration as the Foundation

The text the United States Senate would later describe as codifying international law "as it has evolved, particularly in the 1970's"[14] did not begin its life in 1984, and it did not begin as a rule about interrogation rooms. It began as a declaration of the General Assembly. On 9 December 1975, the Assembly adopted by consensus the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[15] The Declaration supplied the core definitional grammar from which the subsequent drafting proceeded: the intentional infliction of severe pain or suffering, physical or mental, by or at the instigation of a public official, for purposes of which the enumerated instances — information, confession, punishment, intimidation — were examples and not boundaries; and the formula, in its Article 1 in fine, that "torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."

By the time the Swedish draft was transmitted in January 1978, that formula was already doing judicial work. On 18 January 1978, the European Court of Human Rights, sitting in plenary in *Ireland v. the United Kingdom*, reached for Article 1 in fine of the Declaration as the touchstone for the boundary between torture and inhuman treatment, attaching to torture "a special stigma to deliberate inhuman treatment causing very serious and cruel suffering."[16] The Declaration was not merely aspirational: it was not a treaty and imposed no conventional obligations, but by January 1978 it was already functioning as an interpretive reference point for the leading regional court — in the very month the treaty process began. The Senate Committee on Foreign Relations later recorded

[14] S. Exec. Rep. No. 101-30, at 2–3 (1990).

[15] G.A. Res. 3452 (XXX), Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (9 Dec. 1975), art. 1.

[16] *Ireland v. the United Kingdom*, App. no. 5310/71, Judgment (Plenary), 18 January 1978, Series A no. 25, ¶ 167.

the same lineage in a single sentence: the 1975 Declaration "served as the foundation" for the Convention.[17]

E. The Swedish Draft of January 1978: The Definitional Structure as Tabled

By letter dated 18 January 1978, circulated as E/CN.4/1285 on 25 January 1978, Sweden transmitted to the Commission on Human Rights a complete "Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," framed — as Sweden's later preamble proposal put it expressly — by the desire "to convert the principles of the Declaration into binding treaty obligations."[18] Article 1(1) of the Swedish draft defined torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons," excluding pain or suffering arising only from lawful sanctions consistent with the Standard Minimum Rules for the Treatment of Prisoners.[19]

Three structural facts about this first text control everything that follows. First, the object of the prohibited act is "a person" — without qualification. The draft does not say a detainee, a prisoner, a person deprived of liberty, a person under interrogation, or a person in custody. Custody and interrogation appear expressly in the draft's preventive and review provisions — the training article reaches those "involved in the custody or treatment of persons deprived of their liberty," and the review article reaches "interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty"[20] — but not in its definition. From that textual distribution the IAJ draws its own inference, stated as such: the drafters demonstrably had custodial vocabulary at hand and deployed it where custodial context was intended; its absence from the definition is therefore a feature of the text, not an accident of drafting economy. Second, the purposes are introduced by "for such purposes as": illustrative from the first sentence ever tabled, never exhaustive. Third, Article 1(2) of the draft carried the Declaration's classificatory formula — torture as an "aggravated and deliberate form" of cruel, inhuman or degrading treatment — binding the new treaty definition to the instrument the European Court had just applied.

F. From the Swedish Draft to the Adopted Text: What Broadened, What Changed, and What Never Entered

The definition adopted on 10 December 1984 differs from the January 1978 text in identified, documented respects, and the record supports a precise statement of their direction. The changes bearing on prohibited purposes, attribution, and official involvement moved uniformly toward broader coverage. By the revised draft reproduced in E/CN.4/1367, the definition already: extended the punishment purpose to acts a third person had committed; added coercion; added "any reason based on discrimination of any kind" as a freestanding purpose; and — decisively for the law of institutional responsibility — extended attribution beyond infliction "by or at the instigation of" a public official to infliction "with the consent or acquiescence of a public official or other person

[17] S. Exec. Rep. No. 101-30, at 2.

[18] E/CN.4/1427 (2 Dec. 1980) (Swedish proposal for preamble and final provisions), draft preamble.

[19] E/CN.4/1285 (25 Jan. 1978) (letter dated 18 Jan. 1978 from the Permanent Mission of Sweden), draft art. 1(1).

[20] *Id.*, draft arts. 5(2), 6.

acting in an official capacity."[21] The successive Working Group reports carry that enlarged text forward into the adopted Convention.[22]

Other changes were of a different character, and the thesis claims nothing from them beyond what they show. The Declaration's classificatory sentence — torture as an "aggravated and deliberate form" of ill-treatment — appears bracketed in the revised draft[23] and does not appear in the adopted Article 1: a considered removal of classificatory language from the definition, not an enlargement. The lawful-sanctions exclusion was rewritten, shedding the Swedish draft's reference to the Standard Minimum Rules. And the two-tier architecture of Articles 1 and 16 — examined in section G — was created during the drafting, not inherited from it. What the record then establishes, across every text at every stage, is the fact on which this Part rests: at no point did any draft of Article 1 acquire a custody element, a detention element, an interrogation element, or any limitation of situs.

The record also shows what a genuine proposal to narrow the definition looked like, and what became of it. The United Kingdom proposed that the definition "should be more restrictive: systematic and intentional infliction of extreme pain or suffering rather than intentional infliction of severe pain or suffering."[24] The adopted text retains "severe," retains simple intentionality, and contains no systematicity requirement: a recorded narrowing proposal, not adopted. Canada's recorded dissatisfaction with the lawful-sanctions sentence[25] confirms that definitional objections could and did enter the formal record; it does not establish that every assumption held by every participant was recorded. The finding available to the IAJ is accordingly stated within the limits of its basis: the drafting records identified and reviewed by the IAJ — the Swedish draft, the revised draft texts, and the Working Group reports here cited — disclose no proposal, by any delegation, to confine Article 1 to persons in custody or under interrogation, and no such limitation appears in the adopted text. The travaux discipline of VCLT Article 32 reserves "rejected" for proposals actually made and actually disposed of; the custodial limitation is accordingly recorded as a limit not adopted. Its principal historical support lies not in any text or recorded proposal but in the genesis-based interpretive gloss examined in section H.

G. Article 16 as the Deliberate Residual — Its Documented Boundary, and the Committee's Later Interpretation

The two-tier structure of the adopted Convention was built, not inherited. The Swedish draft had run torture and other cruel, inhuman or degrading treatment or punishment in parallel through nearly every operative article — including non-refoulement and compensation.[26] The adopted Convention separates the tiers: Article 1 defines torture; Article 16 obliges each State party to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1," when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, and applies specified obligations to such acts by cross-reference. The composition of that cross-reference list was itself deliberated: the 1983 draft carried the redress article in brackets — "the obligations contained in articles 10, 11, 12, 13 and [14] shall apply"[27] — and the adopted text resolved the bracket by omission, enumerating Articles 10, 11, 12 and 13 only. That is what a considered non-extension looks like in this record: a bracketed candidate, and a disposition.

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[21] E/CN.4/1367, draft art. 1(1).

[22] E/CN.4/1983/63, Part I, art. 1; E/CN.4/1984/72, Part I, art. 1.

[23] E/CN.4/1367, draft art. 1(2) (bracketed).

[24] J.H. Burgers & H. Danelius, *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1988), at 45.

[25] E/CN.4/1984/72, ¶ 39.

[26] E/CN.4/1285, draft arts. 4, 12.

[27] E/CN.4/1983/63, draft art. 16.

That historical fact does not exhaust the Convention's contemporary interpretation, and the two inquiries must be kept distinct. The Committee against Torture has since stated that the obligations in Articles 3 to 15 are "likewise obligatory as applied to both torture and ill-treatment,"[28] and has expressly interpreted Article 14 as "applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment… without discrimination of any kind."[29] The historical notice inquiry relies only on materials available at the relevant 1990 and 1994 dates; later General Comments are never presented as sources the Senate had before it. The contemporary legal inquiry separately considers the Committee's later interpretations as explanations of the Convention's present content; their later issuance is not itself treated as proof that the interpreted obligations arose only then.

Two consequences follow, and the thesis maintains both without inflation. First, Article 16 is textually distinct from Article 1: it does not reproduce the enumerated-purpose element, and conduct within its reach engages the Convention without any showing of purpose — a distinctness the Committee's interpretation confirms.[30] Second, the residual tier is a floor of deliberately preserved breadth, not a concession of narrowness in the first tier: the drafters who built the two-tier structure defined the upper tier, at every stage, by the five elements examined in section H, with the lawful-sanctions exclusion standing apart — without any additional textual custody, detention, interrogation, control, or situs element.

H. The Textual Conclusion, the Contrary Interpretive Line, and the IAJ's Determination on Powerlessness

Applying Article 31's good-faith ordinary-meaning, context, and object-and-purpose framework, and consulting the travaux as a supplementary means under Article 32, the adopted Article 1 specifies five express textual elements: (1) an act; (2) intentional infliction; (3) severe pain or suffering, physical or mental; (4) infliction by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity; and (5) one of the enumerated purposes or any reason based on discrimination of any kind — the purposes illustrative, introduced by "such purposes as." The lawful-sanctions language operates separately, as an exclusion from the definition rather than as one of its components. No custodial, interrogative, control, or situs element appears among these express elements, in any predecessor text, or in any proposal disclosed by the records the IAJ has identified and reviewed. The IAJ concludes that the interrogation-cell conception is not a textual property of Article 1; its principal support lies in a genesis-based interpretive gloss and in later patterns of application.

Candour requires stating that gloss at its full strength, as held by the principal contrary interpretive authorities identified by the IAJ — commentators with direct drafting involvement and the Special Rapporteur mandate-holder line. The Handbook's authors write from inside the drafting: J. Herman Burgers, a member of the Netherlands delegation to the Commission on Human Rights, served during 1982–1984 as chairman-rapporteur of the Working Group that drew up the text; Hans Danelius, then Under-Secretary for Legal and Consular Affairs of the Swedish Ministry for Foreign Affairs, wrote the initial drafts of both the Declaration and the Convention and participated in all sessions of the Working Group.[31] Their commentary concedes that "the definition contains no particulars as to the victims of these acts," referring simply to "a person," and then supplies, from the Declaration's genesis in the Fifth UN Congress on the Prevention of Crime and the Standard Minimum Rules, the understanding that victims "must be understood to be" persons "deprived of their liberty or who are at least under the factual power or control of the person inflicting the pain or

[28] Committee against Torture, General Comment No. 2, CAT/C/GC/2 (24 Jan. 2008), ¶ 6.

[29] Committee against Torture, General Comment No. 3, CAT/C/GC/3 (13 Dec. 2012), ¶ 1.

[30] CAT/C/GC/2, ¶ 10.

[31] Burgers & Danelius, preface.

suffering" — a necessity reading.[32] Nowak's commentary adopts that passage and describes powerlessness as, "in our opinion… one of the essential definitional criteria of torture."[33] And the Special Rapporteur on Torture has stated the position at its most explicit: "Mandate holders have consistently held that, although not expressly mentioned in the treaty text, the 'powerlessness' of the victim is a defining prerequisite of torture,"[34] with intentionality, purposefulness, and "the powerlessness of the victim" described as "decisive" for classification.[35] The contrary interpretive line, accurately stated, is therefore not a formal requirement of carceral situs; it is the claim that powerlessness — detention, deprivation of liberty, or factual or equivalent control — operates as a non-textual defining prerequisite of torture.

Read as "factual power or control" rather than carceral situs, the criterion is met by judicial process itself: a State exercising judicial jurisdiction acts through its judicial functions, and the person subject to that jurisdiction stands under the State's coercive power, bound by determinations from which he cannot escape. Jurisdiction is a modality of factual power or control; the powerlessness the criterion identifies is present wherever the State's judicial power reaches the person, which meets the custodial-paradigm objection at the level of sources without disturbing the five express elements of Article 1.[36]

The IAJ independently determines as follows:

> The IAJ determines that Article 1 contains five express legal elements. Custody, detention, interrogation, physical control, and carceral situs are not express elements of Article 1. Custody, detention, interrogation, and carceral situs are not categorical settings required for Article 1's application, and physical control is not the exclusive form of control relevant to the analysis.
>
> The IAJ records the substantial interpretive line treating powerlessness or factual or equivalent control as a defining criterion of torture. The IAJ does not recognize powerlessness as a sixth freestanding legal element requiring independent proof in addition to Article 1's five express elements, or whose absence automatically defeats Article 1 notwithstanding proof of those elements. To the extent the contrary interpretive line asserts such an additional and independently dispositive legal requirement, the IAJ rejects it.
>
> Powerlessness, vulnerability, and factual or equivalent control nevertheless remain major and often decisive factual and classificatory considerations. They must be expressly assessed whenever they are invoked to establish or intensify severity, prohibited purpose, official instrumentalization, inability to resist or escape, or the distinction between torture and other ill-treatment, and whenever the classification could differ depending upon their presence.
>
> In the captive-litigant application, equivalent control and the practical inability to resist, escape, suspend, or obtain effective protection from officially inflicted harm must be proved because those facts are relied upon by this publication's application of Article 1; judicial jurisdiction alone is insufficient.
>
> Failure to establish torture does not exonerate the conduct or remove qualifying acts from the absolute prohibition or from the anti-impunity principle this publication applies to qualifying ill-treatment, including the applicable duties of prevention, investigation, complaint, prosecution and other appropriate accountability, and redress.[37] The precise

[32] Burgers & Danelius, at 120.

[33] M. Nowak, M. Birk & G. Monina, *The United Nations Convention Against Torture and its Optional Protocol: A Commentary* (2d ed. 2019), Introduction, at 1–2; Art. 1, § 114.

[34] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (N. Melzer), A/HRC/43/49 (20 Mar. 2020), ¶ 39 (citing A/63/175, ¶ 50; A/73/207, ¶ 7; A/HRC/13/39, ¶ 60; A/HRC/22/53, ¶ 31).

[35] A/HRC/43/49, ¶ 52.

[36] Conclusion 5, A/73/10 (2018). Read as "factual power or control," the powerlessness criterion is satisfied by the coercive judicial power the State exercises over persons subject to its jurisdiction.

[37] CAT/C/GC/2, ¶ 6; CAT/C/GC/3, ¶ 1.

offence, jurisdictional basis, individual responsibility, and proportionate sanction must be identified under the applicable international and domestic legal framework and must not be assumed identical to the Article 4 torture offence.

The IAJ's reasons are these. First, the text and its interpretation: the ordinary meaning of Article 1 attaches the definition to "any act" meeting the five enacted elements, inflicted "on a person"; the text, context, object and purpose, and reviewed drafting record do not, without clearer support, justify converting powerlessness into an additional independently dispositive condition whose absence defeats Article 1 notwithstanding proof of its express elements. Second, the drafting record: the reviewed travaux disclose no proposal to add such a condition, while the amendments that were made — acquiescence, official capacity, discrimination — broadened the official-nexus and purpose elements in ways that presuppose no custodial frame. Third, adjudicative practice: the mandate-holder line itself acknowledges that the asserted prerequisite is "not expressly mentioned in the treaty text,"[38] and the Committee authorities identified and reviewed by the IAJ do not expressly establish powerlessness as a universally mandatory additional element; the Committee's own formulations extend the Convention's obligations "to all contexts of custody and control" without expressly identifying powerlessness as an additional universally dispositive definitional gate.[39] Fourth, consequence: such a requirement could exclude conduct from the torture classification and its torture-specific consequences even where Article 1's five express elements are otherwise established — including in the contemporary institutional settings, examined in Part IV, where an independent condition of powerlessness or factual or equivalent control could not separately be established — an exclusion the enacted text does not make; it would not, however, remove qualifying conduct from the absolute prohibition and accountability architecture governing ill-treatment. Fifth, the continued force of the consideration: nothing in this determination diminishes the weight of powerlessness where it exists; the ruling itself requires its express assessment wherever invoked, and in the gravest documented cases it will often be the decisive fact.

The primary materials, read to their own limits, are consistent with this allocation without deciding it. In *V.L. v. Switzerland* — an Article 3 non-refoulement communication, not a merits adjudication of the abusing State's responsibility — the Committee found the complainant "clearly under the physical control of the police even though the acts concerned were perpetrated outside formal detention facilities," found severe pain and suffering inflicted for impermissible purposes "including interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender," and concluded that "the sexual abuse by the police in this case constitutes torture even though it was perpetrated outside formal detention facilities."[40] The decision establishes that formal-detention situs is not required and that physical control outside detention can supply the factual setting of torture; because control was expressly found on the facts, the decision does not resolve whether powerlessness is universally required, and the IAJ does not cite it for that proposition. The Special Rapporteur's own account of the concept likewise contains expressly non-custodial content — "direct physical or equivalent control," with effective powerlessness arising, among other identified routes, through "deprivation of legal capacity"[41] — authorities that concern persons with disabilities subjected to guardianship, incompetency declarations, and substituted decision-making; any application to the captive litigant is an analogy the IAJ draws and defends on its own criteria in Chapter 14, not a proposition those sources decide. The Special Rapporteur's closely related treatment of institutional and judicial arbitrariness as capable of constituting or contributing to psychological torture, together with the captive-litigant application of the equivalent-control standard, is examined — with its detention anchors and its limits — in Chapter 14.[42]

The drafting horizon accordingly closes with a conclusion stated to the measure of its basis. The purpose, attribution, and official-nexus amendments broadened Article 1's coverage; no custody,

[38] A/HRC/43/49, ¶ 39.

[39] CAT/C/GC/2, ¶ 15.

[40] *V.L. v. Switzerland*, Communication No. 262/2005, CAT/C/37/D/262/2005 (decision adopted 20 Nov. 2006), ¶ 8.10.

[41] A/HRC/43/49, ¶ 40 (citing A/72/178, ¶ 31; A/63/175, ¶ 50; A/HRC/22/53, ¶ 31); accord Nowak, Birk & Monina, Art. 1, § 115.

[42] A/HRC/43/49, ¶¶ 61–67; see Chapter 14 (jurisdictional custody and the captive litigant; defined criteria).

detention, interrogation, or situs limitation entered the definition at any documented stage; the contrary interpretive line treating powerlessness as a non-textual defining prerequisite is recorded in full, and the IAJ's ruling rejects it only to the extent it asserts an additional, independently dispositive legal requirement, while mandating the express assessment of powerlessness and equivalent control wherever invoked; and no such limitation confines Article 1 to the paradigm later attributed to it. The relationship between that treaty definition and the contemporary content of the peremptory prohibition is a distinct question, established on its own sources — customary law, international decisions, treaty-body interpretation, and State practice — in Part III.

PART II — THE EVOLUTION OF THE PROHIBITION AND ITS INSTITUTIONAL CORPUS

CHAPTER 3 — THE EVOLVED CORPUS: FROM THE SWEDISH DRAFT TO ENTRY INTO FORCE (1978–1994)

STAGE ONE — THE CORPUS EXISTING BY THE 1990 REPRESENTATION

§1 The January 1978 Baseline: What the Law Already Held When the Drafting Opened

The month the Convention's drafting horizon opened is also the month the European Court of Human Rights decided its first inter-State torture case. Sweden's draft convention was circulated on 25 January 1978[43]; *Ireland v. the United Kingdom* was decided by the plenary Court on 18 January 1978[44]. The two documents share more than a month: as Part I records, the judgment's classificatory touchstone — torture as "an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment" attaching "a special stigma to deliberate inhuman treatment causing very serious and cruel suffering" — is Article 1 in fine of the 1975 Declaration[45], the same instrument the Swedish draft was written to convert into binding treaty obligations. The baseline inquiry of this Stage is therefore precise: what did the international corpus of the prohibition — of which this regional adjudication formed a leading part — already contain, in January 1978, on the propositions the United States would later be asked to measure itself against in 1990?

Ireland, a January 1978 regional decision under the European Convention's cognate absolute prohibition, contributes four baseline propositions to that corpus. First, absoluteness: Article 3 of the European Convention "makes no provision for exceptions" and permits no derogation "even in the event of a public emergency threatening the life of the nation"[46] — the prohibition's non-derogable character was adjudicated law before the first treaty draft was tabled. Second, the severity gradient: the distinction between torture and inhuman treatment "derives principally from a difference in the intensity of the suffering inflicted"[47], assessed relatively — the Court identified duration, physical and mental effects, and the sex, age, and state of health of the victim as the relevant severity considerations[48]. Situs was not identified among the severity factors; the case, however, involved persons under State control, and it did not decide Article 3's application in the complete absence of custody or control. Third, mental suffering: the five techniques — wall-standing, hooding, subjection

43 U.N. Doc. E/CN.4/1285 (1978) (draft convention submitted by Sweden)

44 *Ireland v. the United Kingdom*, App. no. 5310/71, Judgment (Plenary), 18 January 1978, Series A no. 25

45 Id. ¶ 167.

46 Id. ¶ 163

47 Id. ¶ 167

48 Id. ¶ 162

to noise, deprivation of sleep, deprivation of food and drink[49], taught orally at a seminar of the English Intelligence Centre in April 1971[50] — were held, by sixteen votes to one, a practice of inhuman and degrading treatment in breach of Article 3: methods operating principally on the mind and senses engaged the prohibition as such. Fourth, and decisively for institutional analysis: the practice doctrine. A practice of ill-treatment consists of an accumulation of identical or interconnected breaches, and where a practice exists it is "inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware" of it; those authorities are answerable for subordinates' conduct, and the domestic-remedies rule does not apply to complaints directed at a practice[51]. Official knowledge, systemic accumulation, and command answerability entered the law of the prohibition at its baseline.

Candour requires the holding the thesis does not need and does not hide: the Court, by thirteen votes to four, classified the five techniques as inhuman and degrading treatment but not torture[52], reversing the unanimous Commission on the point. The dissents on classification — Judge Zekia's combined subjective–objective test, Judge O'Donoghue's warning against converting the margin of appreciation into "blanket exculpation" — are recorded, as is the fact that the classification dispute was a dispute about the gradient's application, not about the prohibition's absoluteness, which was unanimous. The IAJ cites *Ireland* for what it held: an absolute, non-derogable prohibition; a factual severity method; psychological techniques within the prohibition; and institutional answerability for practices — each proposition standing before a single word of UNCAT was negotiated.

Three months later, *Tyrer v. the United Kingdom* carried the baseline from the interrogation context to judicially authorized punishment[53]. The applicant's birching was not the act of a rogue official; the sentence was judicially imposed by the Isle of Man juvenile court and was executed by State agents. Although birching was a non-custodial sentence and an alternative to detention, its execution occurred at a police station while police officers physically held the applicant. The Court held the punishment degrading in breach of Article 3. The case therefore establishes that judicial authorization, official procedural safeguards, and the availability of a more severe custodial alternative did not immunize degrading punishment; it does not decide Article 3's application in the complete absence of custody or physical control. Within those limits, its reasoning fixed three propositions at the baseline. First, judicially ordered violence is institutionalised violence: the applicant was subjected to a penalty "in which he was treated as an object in the power of the authorities," an assault "on precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity" — aggravated, not excused, by "the whole aura of official procedure attending the punishment"[54]. Second, anticipatory mental suffering counts: the delay between sentence and execution inflicted "the mental anguish of anticipating the violence he was to have inflicted on him"[55]. Third, neither judicial provenance nor penological purpose saves the practice: a punishment "does not lose its degrading character just because it is believed to be, or actually is, an effective deterrent or aid to crime control"; Article 3's prohibition is absolute[56] — and it was irrelevant that birching was available as an alternative to detention, the Court refusing to let the existence of a harsher custodial option launder a degrading non-custodial one[57].

Tyrer also supplied the interpretive method the entire subsequent evolution presupposes: the European Convention "is a living instrument which… must be interpreted in the light of present-day conditions," influenced by "the developments and commonly accepted standards in the penal policy

49 Id. ¶ 96

50 Id. ¶ 97

51 Id. ¶ 159

52 operative holding #4

53 *Tyrer v. the United Kingdom*, App. no. 5856/72, Judgment (Chamber), 25 April 1978, Series A no. 26

54 Id. ¶ 33

55 Id. ¶ 33

56 Id. ¶¶ 30–31, 38.

57 Id. ¶ 34

of the member States"[58]. Judge Fitzmaurice's separate opinion — warning against the Convention's use as a "vehicle of indirect penal reform" — is recorded as the contemporaneous objection to that method; the method became influential in subsequent regional interpretation, and its wider reception is examined, on its own sources, in the evolution sections that follow. The IAJ's use of *Tyrer* is stated precisely: the judgment does not construe UNCAT, which did not yet exist; it is regional judicial interpretation of the cognate absolute prohibition that formed part of the international corpus preceding UNCAT, and it establishes that, at the baseline, judicially authorized punishment could constitute degrading treatment; that official procedure could aggravate rather than excuse the indignity of a person treated as an object in the power of the authorities; and that the prohibition was already interpreted dynamically. The severity gradient of Ireland and the judicial reach of *Tyrer* are the two fixed points against which everything in this Stage — *Filártiga*'s law-of-nations holding, the Convention's own adoption, the Inter-American instruments, Velásquez, *Soering* — accumulates toward the corpus the Senate confronted in 1990.

§2 Filártiga (1980): The Law of Nations Recognizes the Prohibition in a United States Court

Two years after the January 1978 baseline, the prohibition's status crossed into United States law — not by treaty, for there was none yet to ratify, but by judicial recognition of what customary international law already contained. In *Filártiga v. Peña-Irala*, the Second Circuit held that "deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties," and that the Alien Tort Statute, 28 U.S.C. § 1350, supplies federal jurisdiction "whenever an alleged torturer is found and served with process" within the United States[59]. The precision of what was decided matters and is maintained here: *Filártiga* was a jurisdictional holding — the court did not at that stage adjudicate the merits or award damages — and its facts were custody-adjacent; the IAJ cites it for the propositions it decided, universality and customary status, and not for the definitional reach questions examined in Part I.

Three features of the opinion carry Stage One's weight. First, the evolutionary principle, stated as a rule of decision for United States courts: "courts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today"[60]. The interpretive method *Tyrer* had articulated regionally three months into the baseline — the prohibition read in the light of present-day conditions — thus had, by 1980, a domestic analogue adopted by a United States court of appeals as the governing approach to the law of nations. Second, the customary-law conclusion, stated without hedge: "official torture is now prohibited by the law of nations. The prohibition is clear and unambiguous"[61]. The court's path to that conclusion runs directly through the instrument this Part has traced from its adoption: the opinion rests on the United Nations Charter and the Universal Declaration, and it sets out the 1975 Declaration — the same General Assembly text the Swedish draft was written to convert into treaty form and the European Court had applied in January 1978 — in full, treating it as specifying the Charter's human-rights obligations "with great precision"[62]. The Declaration that footnoted the baseline judgments is the operative text of the American recognition: one instrument, three fora, thirty months.

A further consideration bears on the reach, though it must be handled with the restraint the method requires. Under Conclusion 10(3) of the 2018 Conclusions, failure to react over time may serve as evidence of acceptance as law, but only where the State was in a position to react,

58 Id. ¶ 31

59 *Filártiga* v. Peña-Irala, 630 F.2d 876, 878 (2d Cir. 1980)

60 630 F.2d at 881

61 630 F.2d at 884

62 630 F.2d at 883–84

the circumstances called for a response, and the failure persisted.[63] The IAJ does not present a completed audit of State reactions to the proposition that the prohibition reaches beyond the custodial-interrogation paradigm, and it does not treat the same institutional interpretations as at once the practice and the *opinio juris*; it records non-objection as one consideration weighed within its determination, kept distinct from the Article 1 acquiescence element, which is not enlarged.

Third, the characterization that would become the moral grammar of the ratification debate: "the torturer has become — like the pirate and slave trader before him — *hostis humani generis*, an enemy of all mankind"[64]. The court joined to that characterization two structural holdings of continuing significance for this publication's later Parts: it treated the law of nations as part of United States law to be ascertained and applied by the federal courts[65], and it doubted that the act-of-state doctrine could shelter official torture unratified by the state of origin[66]. The sovereign-shield move — the claim that official character excuses rather than aggravates — was thus rejected in the very decision that domesticated the prohibition, a rejection the IAJ records here as a Stage One fact and develops, on its own sources, in the immunity analysis of later chapters.

For the corpus the Senate would confront in 1990, *Filártiga*'s dating is its argument. Decided 30 June 1980 — two years after *Ireland* and *Tyrer*, more than four years before the Convention's adoption, a decade before the Senate's representation, fourteen years before deposit — the decision meant that when the United States came to measure UNCAT against its own law, an American court had already held the customary prohibition of official torture to be clear, unambiguous, universal, and judicially enforceable through an ordinary jurisdictional statute. The representation of 1990 was made against that domestic background, not in ignorance of it. What the Senate was told the Convention codified, a federal court of appeals had already recognized as binding custom — resting on the very Declaration from which the Convention's definition descends.

§3 1982–1985: The Threat Principle, the Convention's Adoption, and the Inter-American Enlargement

The corpus did not pause between the American recognition and the treaty's adoption. In February 1982, the European Court added a proposition the baseline judgments had implied but not held: the prohibition reaches threats. In *Campbell and Cosans v. the United Kingdom*, the Court stated that "provided it is sufficiently real and immediate, a mere threat of conduct prohibited by Article 3 may itself be in conflict with that provision"[67] — threatening a person with torture could itself constitute at least inhuman treatment. The IAJ records the judgment's outcome with equal precision: on the facts — corporal punishment in Scottish schools that was never administered to the applicants' children — the Court found no violation of Article 3, holding the threshold of humiliation or debasement, measured on the *Tyrer* standard, not attained[68]. The section cites *Campbell and Cosans* for the principle it announced, not for an application it did not make: anticipatory subjection to prohibited conduct — the mental dimension *Tyrer* had located in the wait between sentence and execution — was, by 1982, an autonomous ground of engagement with the prohibition.

On 10 December 1984 — Human Rights Day, nine years and a day after the Declaration — the General Assembly adopted the Convention against Torture by consensus, completing the conversion

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[63] Conclusion 10(3), A/73/10 (2018): "Failure to react over time to a practice may serve as evidence of acceptance as law (opinio juris) ..." This operates at the level of identifying the customary norm's content and does not enlarge the Article 1 acquiescence element, which the IAJ keeps to its textual scope.

[64] 630 F.2d at 890

[65] 630 F.2d at 887, citing The Paquete Habana and The Nereide

[66] 630 F.2d at 889–90

[67] *Campbell and Cosans v. the United Kingdom*, nos. 7511/76 & 7743/76, Judgment, 25 February 1982, Series A no. 48, ¶26

[68] Id. ¶¶ 28, 31.

Sweden had proposed in January 1978[69]. Part I of this publication has traced what the adopted Article 1 contains and what it does not; Stage One records the adoption's place in the sequence: the definitional text whose drafting history discloses no custody element, whose purposes are illustrative, and whose attribution reaches consent and acquiescence entered the corpus as treaty law available for signature — with the United States among the states that would sign it within four years and ratify it within ten. From the adoption forward, the question for every subsequent authority in this Stage is no longer what the prohibition was, but what the treaty's own terms were understood to require by the institutions that began applying them.

One year later to the day — 9 December 1985, at Cartagena de Indias — the Organization of American States adopted the Inter-American Convention to Prevent and Punish Torture[70]. The IAJ states this instrument's status before its content: the United States is not a party; the treaty binds only its parties; and nothing in this publication treats its definition as the operative one, which remains UNCAT Article 1. Its probative value for Stage One lies precisely in what a definition drafted immediately after UNCAT, by states of this hemisphere, chose to say. Article 2 defines torture as intentional infliction of physical or mental pain or suffering "for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose" — dissolving the purposes list into open texture — and extends the definition to "the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish." Article 5 forecloses justification by emergency, by "the dangerous character of the detainee," or by prison insecurity; Article 3 attaches liability to the official who, "being able to prevent it, fails to do so"; Article 4 removes superior orders; Article 10 excludes tainted evidence. The regional instrument adopted twelve months after UNCAT was in every listed respect as broad or broader — and its preamble names the wrong: "an offense against human dignity."

For the Stage One sequence, the 1982–1985 triptych does specific work. The threat principle established that the prohibition's mental dimension operates prospectively; the adoption converted the Declaration's grammar into treaty obligation; and the Inter-American enlargement showed the direction of contemporaneous state practice in the Western Hemisphere — toward open purposes, personality-directed methods without a pain threshold, and prevention-failure liability — in the year immediately following the text the United States would sign. When the Senate came to its 1990 representation, the regional instrument of this hemisphere had been in force for three years. The corpus against which equivalence was represented was not static treaty text; it was a body of law whose every post-adoption development recorded in this Stage ran toward breadth, and the IAJ draws that direction — not any single instrument's bindingness — as the finding of this section.

§4 1988–1989: The Enforcement Architecture — Attribution, Due Diligence, and the Inherent Consequence

The last two authorities of the pre-representation corpus supplied what the prohibition had until then largely lacked: an adjudicated architecture of State responsibility. In *Velásquez Rodríguez v. Honduras* — the Inter-American Court's first contentious merits judgment, decided 29 July 1988 under the American Convention — the Court held that a State incurs responsibility for "any exercise of public power that violates" protected rights: the acts and omissions of "any public authority" are acts of the State[71]. From that attribution principle the Court built the ensure-rights architecture this publication's later Parts apply: the State must "organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights"[72]; responsibility attaches, through the due-

[69] G.A. Res. 39/46, annex (10 Dec. 1984)

[70] OAS Treaty Series No. 67, entered into force 28 February 1987

[71] *Velásquez Rodríguez v. Honduras*, Merits, IACtHR Series C No. 4, 29 July 1988, ¶¶164, 170

[72] Id. ¶ 166

diligence principle, even to acts not directly imputable where the State fails to prevent or respond[73]; tolerance or acquiescence engages the State[74]; and the resulting duties are fourfold — prevent, investigate, punish, and compensate[75] — with the investigation duty one of substance: "an investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests… or as a mere formality preordained to be ineffective"[76]. The judgment also placed a marker on the prohibition's own terrain: prolonged isolation and incommunicado detention were held, in themselves, cruel and inhuman treatment[77].

Two disciplines govern this publication's use of *Velásquez*, and both are stated here. First, the judgment construes the American Convention, not UNCAT; it enters Stage One as the leading adjudicated statement, before 1990, of how a human-rights treaty's ensure-and-respect clause organizes State responsibility — an architecture the Committee against Torture's own later interpretation parallels on UNCAT's terms, examined in its place. Second, the attribution principle speaks of public power generally; that it comprehends judicial organs — whose acts are exercises of public power in the paradigm sense — is an application the IAJ draws and defends where this publication makes it, and the principle is never used to enlarge UNCAT Article 1's acquiescence element beyond its textual scope: acquiescence under Article 1 addresses official toleration of specific conduct, and the IAJ does not extend it to legislative or reporting inaction.

One year later, on 7 July 1989, the European Court's plenary decided *Soering v. the United Kingdom* — and completed the Stage One arc by holding that the prohibition carries its consequences within itself. The question was whether extraditing the applicant to face a capital charge would engage the sending State's responsibility. The Court's method is the point: interpretation must make safeguards "practical and effective"[78]; and while the Court noted that UNCAT's Article 3 spells out a non-refoulement obligation in terms, it treated that provision as corroborative of a conclusion reached on the European Convention's own text: "the fact that a specialised treaty should spell out in detail a specific obligation attaching to the prohibition of torture does not mean that an essentially similar obligation is not already inherent in the general terms of Article 3"[79]. Removal to a real risk of prohibited treatment engages the removing State[80]. The prohibition, that is, was held to generate its own enforcement consequences — unwritten but inherent — a decade before anyone would argue that consequences not spelled out are consequences not owed.

Soering also closed two threads this Stage opened. The living-instrument method received its confirmation in terms, the Court restating that the Convention "is a living instrument which must be interpreted in the light of present-day conditions" and citing *Tyrer* for the proposition[81] — the verified instance of the baseline method's subsequent regional reception, recorded here as §1 promised. And the anticipatory dimension reached its adjudicated culmination: the "death row phenomenon" — the years of mounting anguish awaiting execution — was held capable of crossing the Article 3 threshold[82], the line that runs from *Tyrer*'s wait between sentence and blow, through *Campbell and Cosans*' real-and-immediate threat, to a plenary holding that state-inflicted anticipation is itself within the prohibition. One case fact is recorded without embellishment: the requesting state in *Soering* was the United States. The judgment adjudicated the United Kingdom's obligations, not America's; but the decision that made the prohibition's inherent consequences operative in Europe was rendered, sixteen months before the Senate's representation, in a case arising from an American extradition request — and the corpus the Senate confronted contained it.

[73] Id. ¶ 172
[74] Id. ¶ 173
[75] Id. ¶ 174
[76] Id. ¶ 177
[77] Id. ¶ 156
[78] *Soering v. the United Kingdom*, no. 14038/88, Series A no. 161, ¶87
[79] Id. ¶ 88
[80] Id. ¶¶ 88, 91.
[81] Id. ¶ 102
[82] Id. ¶ 111

Stage One's pre-representation corpus thus closes with its architecture complete: an absolute prohibition (*Ireland*), reaching judicially authorized punishment (*Tyrer*) and real and immediate threats (*Campbell and Cosans*); recognized as clear and unambiguous custom by an American court (*Filártiga*); converted into treaty text whose drafting discloses no custodial limit (the adoption, with Part I); enlarged regionally within a year (the Inter-American Convention); organized into State responsibility — attribution, due diligence, prevent-investigate-punish-compensate (*Velásquez*); and held to carry inherent, unwritten consequences as a matter of effectiveness (*Soering*). What the Senate said about that corpus in 1990 is the subject of §5.

§5 1990: The Representation — What the Senate Said Against the Corpus This Stage Has Assembled

On 19 July 1990, the Senate Committee on Foreign Relations voted ten to nothing to report the Convention favorably; the report was ordered printed on 30 August 1990; and on 27 October 1990 the Senate gave its advice and consent, subject to a package of reservations, understandings, and declarations[83]. Stage One closes on that act, and on the words in which the Committee explained it — because those words, read against the corpus assembled in §§1 through 4, constitute the representation on which this publication's later Parts rest.

The Committee's words come first, verbatim. On what the Convention is: "The Convention codifies international law as it has evolved, particularly in the 1970's"[84] — the Committee's own acknowledgment that the object of ratification was not a static text but an evolved corpus. That the decade the Committee named is the decade of *Ireland*, *Tyrer*, and *Filártiga* is the IAJ's own historical reconstruction, stated as such: the report does not enumerate these authorities, and the IAJ does not represent that the Committee specifically reviewed each of them; it establishes only that these authorities existed, publicly, within the evolution the Committee itself invoked. On why no general implementing legislation was needed: "the majority of the obligations undertaken pursuant to the Convention are already covered by existing law," with new legislation required only for Article 5's extraterritorial criminal jurisdiction[85] — the statement from which the completion character of the later 18 U.S.C. § 2340A follows, and which this publication's later Parts hold to its terms: a statute enacted to fill the sole identified gap is evidence of the represented sufficiency of existing law everywhere else, not a master statute displacing it. On Article 4: "Existing law is therefore sufficient... except to reach torture occurring outside U.S. jurisdiction"[86]. On Article 14: existing private rights of suit are "sufficient"[87]. And on the whole: the Convention's terms, with the proposed conditions, are "consonant with U.S. law"[88].

The conditions themselves are documented here with the same precision, as domestic instruments lodged with the consent — and on the Two-Plane discipline this publication maintains throughout: what follows describes what the United States filed, and nothing in it alters or defines the Convention's international meaning, which Part I established on the treaty's own sources. The understanding at II(1)(b) states a custody or physical-control conception of the definition for United States purposes; the reservation at I(2) limits Article 16 to the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth and Fourteenth Amendments; the understanding at II(1)(a) states a specific-intent and enumerated mental-harm construction; II(1)(d) defines acquiescence as awareness plus breach of a legal duty to intervene; and the declaration at III(1) states that Articles 1 through 16 are not self-executing[89]. Each is a fact of the domestic record;

83 S. Exec. Rep. No. 101-30, 101st Cong., 2d Sess. (1990); U.S. Dep't of State, 94-1120.1 (chronology)

84 S. Exec. Rep. No. 101-30, at 3

85 Id. at 9 (Declarations discussion)

86 Id. at 18 (Summary and Analysis, art. 4)

87 Id. at 23 (art. 14)

88 Id. at 11

89 Resolution of Ratification, S. Exec. Rep. No. 101-30

their operation, their interaction with the representation of existing-law sufficiency, and their consequences for the availability of remedies are the subject of Part V and the equivalence analysis of Chapter 17 — not of this Stage. One further fact of the record is preserved because the record states it: the originally proposed Article 3 reservation was withdrawn, the administration explaining that it was “never the intent” to retain a juridical right to return a person to face torture[90].

The IAJ’s synthesis — stated as the Institute’s own determination, resting on the documented record above — is this. In October 1990 the United States Senate consented to a Convention its Committee described as codifying the international law of the 1970s’ evolution, on the express representation that existing United States law already covered the majority of the resulting obligations, identifying a single legislative gap. The corpus against which that equivalence was represented is the corpus this Stage has assembled: an absolute and non-derogable prohibition; adjudicated reach to judicially authorized punishment and to real and immediate threats; recognition as clear, unambiguous, universal custom by a United States court of appeals; a treaty definition whose drafting record discloses no custodial limitation; a hemispheric instrument broader still; an adjudicated architecture of attribution, due diligence, and the duties to prevent, investigate, punish, and compensate; and the holding that the prohibition’s consequences are inherent in it. The representation of equivalence was a representation of reach: that domestic law reached what the evolved corpus reached. Whether domestic law in operation delivered that reach — equivalence-as-operation — is the separate question this publication examines in Part V; Stage One establishes only, and exactly, what was represented and against what.

The Senate’s consent did not make the United States a party. The executive branch did not complete presidential ratification and deposit the instrument until after Congress enacted the federal implementing chapter: the President ratified on 19 September 1994, the instrument was deposited on 21 October 1994, and the Convention entered into force for the United States on 20 November 1994[91] — nearly four years of legal development after consent. What entered the corpus in those four years, and what the United States therefore had notice of before it bound itself, is Stage Two.

STAGE TWO — THE 1990–1994 DEVELOPMENTS: NOTICE BEFORE DEPOSIT

§6 1992: The Acceleration — Five Developments in Seven Months

Between the Senate’s consent and the deposit of the instrument of ratification, the corpus did not wait. In a single seven-month span of 1992, the legal and institutional corpus surrounding the prohibition developed on five fronts — treaty-body interpretation, federal statute, federal appellate holding, and two further judgments of the European Court. The discipline of this Stage is stated at its head: none of this is material against which the Senate made its 1990 representation, and the IAJ never presents it as such. Each authority below formed part of the publicly available international or domestic legal corpus before deposit and entry into force; the IAJ treats that chronology as institutional notice, and does not claim that the record proves a named United States decision-maker reviewed every source. On 21 October 1994, the United States deposited its instrument of ratification into a corpus that contained everything this section records; the Convention entered into force for the United States on 20 November 1994.

First, the Human Rights Committee. On 10 March 1992, the Committee adopted General Comment No. 20 on Article 7 of the ICCPR — the cognate universal prohibition, whose text combines torture

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[90] S. Exec. Rep. No. 101-30, at 37 (1990) (appendix A, explanation for deletion of the proposed article 3 reservation).

[91] U.S. Dep’t of State, treaty action record 94-1120.1

and cruel, inhuman or degrading treatment without an enumerated-purpose structure, and which is therefore cited here as interpretation of that provision and not of UNCAT Article 1. Its content ran, on every axis, toward the breadth this Part has traced. The prohibition's aim is "to protect both the dignity and the physical and mental integrity of the individual"[92]; the duty extends to acts committed "in their official capacity, outside their official capacity or in a private capacity"[93]; the prohibition "allows of no limitation," permits no derogation in emergency, and admits no superior-orders justification[94]. And its reach was expressly institutional and expressly non-custodial: Article 7 protects against corporal punishment "including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure," and protects "children, pupils and patients in teaching and medical institutions"[95]; prolonged solitary confinement may violate it[96]; States are responsible for "encouraging, ordering, tolerating or perpetrating" prohibited acts[97]; remedies must be effective and investigations prompt and impartial[98]; amnesties are generally incompatible[99]. The United States deposited its instrument of ratification of the Covenant on 8 June 1992, and the Covenant entered into force for the United States on 8 September 1992[100]: General Comment No. 20 existed in the public interpretive record before both events — a chronology the IAJ records as such, and does not represent as specific United States acceptance of every proposition in the General Comment.

Second, Congress. On 12 March 1992 — two days after General Comment No. 20 — the President signed the Torture Victim Protection Act, whose long title declares its purpose: "To carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights"[101]. The Act creates individual civil liability in damages for torture and extrajudicial killing committed "under actual or apparent authority, or color of law, of any foreign nation"[102] — and its committee record explains that "individual" was chosen to make clear[103] that foreign states and their entities could not be sued under the bill, the Foreign Sovereign Immunities Act remaining operative. The Act thus created a domestic individual civil-liability mechanism compatible with, but not itself establishing, the separate international responsibility of the State: it did not itself create or preserve any domestic cause of action against the foreign State. Three features of the Act are recorded as data of the domestic record, on the Two-Plane discipline and without smoothing. Its torture definition at §3(b) contains a custody or physical-control element that UNCAT Article 1 does not contain — a domestic divergence documented as such and never read back into the treaty. Its cause of action reaches foreign-nation color of law only: the TVPA itself created no cause of action against officials acting under color of United States law — a statement about this statute, with the operational adequacy of other domestic mechanisms examined in Part V. For purposes of the TVPA's definition of extrajudicial killing — that definition only — Congress excluded a killing authorized by "a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees" recognized as indispensable. That statutory boundary does not determine a killing's legality under every other applicable source of domestic or international law, and the IAJ draws no more from the definition than it states: it does not decide the torture classification, the general validity of judgments, or the consequences of every defective proceeding.

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92 HRI/GEN/1/Rev.1 at 30, ¶2
93 Id. ¶ 2
94 Id. ¶ 3
95 Id. ¶ 5
96 Id. ¶ 6
97 Id. ¶ 13
98 Id. ¶ 14
99 Id. ¶ 15
100 U.S. Dep't of State, treaty action record 92-908
101 Pub. L. No. 102-256, 106 Stat. 73 (1992)
102 Id. § 2(a).
103 S. Rep. No. 102-249, at 7 (1991).

Third, the Ninth Circuit. On 22 May 1992, in *Siderman de Blake v. Republic of Argentina*, the court delivered an early federal appellate holding expressly recognizing the prohibition of official torture as *jus cogens*, stating in terms: “the right to be free from official torture is fundamental and universal, a right deserving of the highest status under international law, a norm of *jus cogens*”[104]. The opinion states the international-law logic with equal directness: “International law does not recognize an act that violates *jus cogens* as a sovereign act,” and a state acting in violation “would not be entitled to the immunity afforded by international law”[105] — reasoning the court acknowledged “carries much force”[106]. The IAJ’s own determination that the peremptory norm displaces immunity rests on the IAJ’s independent legal analysis and jurisprudential determination; *Siderman* is recorded as supporting it, not deciding it. What the court then did is recorded with the same candour, as the documented domestic foreclosure it is: bound by *Amerada Hess*, the panel held that if violations of *jus cogens* committed abroad are to be exceptions to sovereign immunity, “Congress must make them so”[107] — the cure assigned to Congress, in the very circuit whose later jurisprudence in this lineage the IAJ documents, with the prominence its standing ruling requires, in the immunity analysis of the later Parts. And one holding of the case belongs to this publication’s core subject: the court adjudicated the implied-waiver consequence of Argentina’s request for United States judicial assistance through a letter rogatory[108]. The *Siderman*s alleged, and submitted evidence, that the underlying prosecution and the Argentine judicial process formed part of their persecution; that characterization was not a final merits holding. The record evidence the *Siderman* family presented[109] — describing courts transformed into instruments of the regime — is cited by the IAJ only as what it was: evidence presented, not judicial findings.

Fourth and fifth, Strasbourg. On 27 August 1992, *Tomasi v. France* found a violation of Article 3 — a custody case, cited as such — and fixed the principle that has no exception clause: the requirements of the investigation and “the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals”[110]; a person held by the authorities is in a state of inferiority the Convention answers with protection, not deference[111]. A month later, on 24 September 1992, *Herczegfalvy v. Austria* carried the same structure into the psychiatric institution: “the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with”; such patients “nevertheless remain under the protection of Article 3, whose requirements permit of no derogation”; and while therapeutic necessity is in principle decisive, the Court “must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist”[112]. On the treatment facts the Court found the evidence insufficient to disprove the asserted necessity[113] and concluded that no violation of Article 3 had been shown[114] — an outcome recorded as fully as the principle. The pair completed, within the notice window, the institutional trajectory General Comment No. 20 had stated in March: custody, hospital, school — the prohibition’s vigilance rising, not falling, with the subject’s dependence on official power.

The IAJ’s synthesis for this Stage — the Institute’s own determination, on the documented record — is short. When the United States deposited its instrument on 21 October 1994 — with entry into force following on 20 November 1994 — the surrounding corpus included: the universal cognate

[104] 965 F.2d 699, 717 (9th Cir. 1992)

[105] Id. at 718

[106] Id.

[107] Id. at 718–19

[108] Id. at 720–22

[109] *Siderman*, 965 F.2d at 703 n.18

[110] *Tomasi v. France*, no. 12850/87, Series A no. 241-A, ¶115

[111] Id. ¶ 113

[112] *Herczegfalvy v. Austria*, ECtHR, judgment of 24 September 1992, Series A no. 244, ¶ 82

[113] Id. ¶ 83

[114] Id. ¶ 84

prohibition authoritatively interpreted to reach mental integrity, institutional settings, and non-custodial punishment, with the United States itself a new party to that instrument; its own statute carrying out the obligations through individual liability while marking, in its own text, the divergences and gaps documented above; a federal appellate holding that the prohibition is *jus cogens* and that international law withholds sovereign character from its violation — alongside that court's assignment of the immunity cure to Congress; and adjudicated requirements of heightened protection and vigilance associated with institutional dependence, from the police station to the psychiatric ward. None of this was before the Senate in 1990; all of it stood in the publicly available corpus before deposit and entry into force. The representation was made against the evolved corpus of Stage One; the deposit and entry into force came with institutional notice of Stage Two. Both facts are the IAJ's finding, and each carries its own consequences in the Parts that follow.

§7 1994: Implementation, Deposit, and Entry into Force

Stage Two closes with the three legal acts of 1994, kept distinct because each does different work. First, implementation. On 30 April 1994, Congress enacted the torture chapter of the federal criminal code — 18 U.S.C. §§2340, 2340A and 2340B — through section 506(a) of Public Law 103-236[115]. The offense provision is territorial in one direction only: "Whoever outside the United States commits or attempts to commit torture"[116], with jurisdiction where the alleged offender is a United States national or is present in the United States[117]. Congress supplied its own effective-date mechanism, and the mechanism is itself evidence: section 506(c) provided that the chapter would take effect on the later of enactment or "the date on which the United States has become a party to the Convention" — the statute was built to switch on with the treaty, and the official statutory note records the operative date: the Convention entered into force for the United States on 20 November 1994[118].

What Congress enacted, and what it did not, are both facts of the record. The definition at §2340(1) reaches acts "committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering… upon another person within his custody or physical control."[119] The specific-intent formulation and the custody-or-physical-control element are domestic implementation choices, made in the shadow of the ratification understandings documented in §5; they are recorded here on the Two-Plane discipline this publication maintains throughout — features of the United States' implementing statute, never read back into UNCAT Article 1, whose own elements Part I established from the treaty's text and drafting record. And §2340B states the chapter's limits in Congress's own words: "Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding."[120] Section 2340B thus preserves the applicability of State and local laws on the same subject and confirms that the federal chapter was not intended to occupy the entire field; it does not itself establish that those laws comprehensively or effectively discharged every domestic UNCAT obligation, and it creates no civil remedy under the chapter.

The IAJ determines from the combined ratification and statutory record that sections 2340–2340B principally served to complete the federal extraterritorial criminal-jurisdiction gap identified in 1990, rather than to operate as a comprehensive domestic torture code. That determination rests on §2340A's expressly extraterritorial offense, the treaty-linked effective date, the Senate's existing-law representation, and §2340B's preservation of State and local law. The chapter also performs other

115 108 Stat. 463
116 18 U.S.C. § 2340A(a)
117 18 U.S.C. § 2340A(b)
118 Pub. L. 103-236, §506(c), 108 Stat. 464; note to 18 U.S.C. §2340, citing Treaty Doc. 100-20
119 18 U.S.C. § 2340(1)
120 18 U.S.C. § 2340B

domestic statutory functions, and neither §2340B nor the completion inference establishes that Congress separately audited or verified the operational adequacy of every retained federal, State, or local mechanism. Whether that existing law delivered in operation what was represented in reach is Part V's question, and §2340A is never treated by the IAJ as a comprehensive domestic torture code, because its text and enactment history do not present it as one.

Second and third, the treaty acts. The instrument of ratification, executed by the President on 19 September 1994, was deposited with the Secretary-General on 21 October 1994; and pursuant to Article 27(2) of the Convention, the Convention entered into force for the United States thirty days later, on 20 November 1994[121] — the same date the official statutory note records as the switch-on of the criminal chapter. The three acts of 1994 close the sequence this Section has traced from January 1978: a representation of existing-law equivalence made in 1990 against the evolved corpus of Stage One; four years of further public development constituting institutional notice; a completion statute enacted for the single identified gap, wired to the treaty's operation; deposit; and entry into force. From 20 November 1994, the United States was bound on the international plane by the Convention, subject to the reservations, understandings, and declarations deposited with its instrument, whose validity and legal effect are examined later in this publication; domestic implementing legislation governed the operation of United States law but did not define the Convention's international content. What that binding meant, and what became of the represented equivalence in operation, is the work of the Parts that follow.

STAGE THREE — THE 1996–2026 DEVELOPMENTS: THE EVOLUTION WITHIN THE CUSTODIAL CORE AFTER ENTRY INTO FORCE

The record does not stop at deposit. The three decades after entry into force are the decades in which the custodial core itself — the prison, the police station, the interrogation room — was the site of documented, dated, repeated movement in the prohibition's content. This Stage traces that movement, because it is the direct evidence of the very phenomenon this Standard asserts: the prohibition evolves, in one direction, by identifiable steps, each contested when taken and settled afterward. The classic scenarios are not restated here for their own sake; they are called as the record of evolution.

§8 1996–1999: The Reclassification and the Evolutionary Rule

In four years, three fora named as torture what earlier decades had not. In 1996, the Inter-American Commission held in *Raquel Martí de Mejía v. Peru* that the rape of a woman by a State agent was torture.[122] In 1997, in *Aydın v. Turkey*, the European Court held for the first time that the rape of a detainee by an official of the State was torture under Article 3.[123] In 1998, the ICTY in *Furundžija* held that rape in interrogation constitutes torture under international law — in the same judgment in which it declared the prohibition of torture a peremptory norm.[124] The conduct was not new; the classification was. And in 1999 the European Court stated the rule that explains why. In *Selmouni v. France*, the Court held that the Convention is a

[121] UNCAT art. 27(2); U.S. Dep't of State, treaty action record 94-1120.1

[122] *Raquel Martí de Mejía v. Peru*, Case 10.970, Report No. 5/96, Inter-American Commission on Human Rights (1 March 1996).

[123] *Aydın v. Turkey*, ECtHR, judgment of 25 September 1997, Reports 1997-VI, ¶¶ 82–86.

[124] *Prosecutor v. Furundžija*, ICTY, IT-95-17/1-T, Judgment (10 December 1998), ¶¶ 176–186 (rape as torture); ¶¶ 153–157 (peremptory character).

living instrument, that the increasingly high standard being required in the protection of human rights entails greater firmness in assessing breaches, and — in the sentence this Standard has already placed at the centre of its evolution analysis — that acts classified in the past as inhuman and degrading treatment could be classified differently in future. The same year, the House of Lords in *Pinochet (No. 3)* denied a former head of State immunity for torture. The evolutionary rule was not implied; it was stated, applied, and enforced — inside the custodial core.

§9 2002–2015: Custody Functionalized and Accepted Practice Contracted

The next movement changed the boundary of custody itself. OPCAT, adopted in 2002, defines deprivation of liberty functionally — any form of detention or imprisonment or placement in a public or private custodial setting which the person is not permitted to leave at will, by order of any judicial, administrative or other authority (Article 4(2)) — and its preventive machinery reaches psychiatric institutions, care homes, and every setting the definition describes. The treaty system did not merely apply the prohibition within custody; it moved the line of what custody is. The second contraction was of accepted practice. In 2011, the Special Rapporteur on Torture concluded that solitary confinement beyond fifteen days can amount to torture or cruel, inhuman or degrading treatment.[125] In 2015, the General Assembly wrote the conclusion into the revised Standard Minimum Rules: the Nelson Mandela Rules define solitary confinement as confinement for twenty-two hours or more a day without meaningful human contact, define confinement beyond fifteen consecutive days as prolonged, and prohibit prolonged and indefinite solitary confinement as discipline outright.[126] A practice administered routinely, worldwide, within living memory was reclassified — with a numerical threshold — as presumptively prohibited. And in 2012 the International Court of Justice in *Belgium v. Senegal* declared the prohibition of torture peremptory and enforced the duty to prosecute or extradite — a custodial-torture case, carrying the peremptory doctrine this Standard's Part III applies.

§10 2020–2026: Consolidation, and the Pattern the Record States

The consolidation followed. The Special Rapporteur's 2020 report on psychological torture confirmed what the definition had always contained: severe mental suffering inflicted without physical contact is torture within Article 1, and the methods that leave no mark are methods of torture, not lesser wrongs. The 2022 Istanbul Protocol restated the single continuum of torture and ill-treatment and equipped its documentation for physical and psychological harm alike. Each instrument operates on the custodial core; each moves its content.

The pattern of the record

Read together, Stages One through Three state four vectors, each documented above by dated steps: severity classifications recalibrate downward as the standard of protection rises; the operative purposes widen beyond interrogation to punishment, intimidation, humiliation, and discrimination; the recognized forms of harm extend from the physical to the psychological and the cumulative; and the concept of custody itself has been functionalized — the boundary has

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[125] Special Rapporteur on Torture (Méndez), Interim report to the General Assembly, A/66/268 (2011) (solitary confinement beyond fifteen days can amount to torture or cruel, inhuman or degrading treatment or punishment).

[126] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175 (2015), rules 43–45.

already moved once, by treaty. Every step was contested when taken and is settled now. The restrictive classification in *Ireland v. the United Kingdom* was the mainstream of 1978; rape as torture was not the classification of 1980; prolonged solitary confinement as presumptive torture or ill-treatment was not the law of 1990. Each began exactly where the establishment objection, answered at Doctrinal Objection and Reply 9.1, says this Standard's position stands — as an institutional determination advanced against the settled restatement of its day. This Stage is stated with the same discipline that governs the whole: the custodial record does not itself prove the non-custodial content — Part III proves that, by acceptance and recognition. What the record proves is the direction, the repeatability, and the mechanism of movement, and that the line of custody is not fixed. The question this Standard answers is whether the vector continues; the burden of surprise lies on those who assume it stopped in 1994.

CHAPTER 4 — THE ASSOCIATED-STANDARDS ARCHITECTURE

The prohibition this publication enforces does not stand alone. By the time the United States deposited its instrument of ratification, the prohibition sat inside an evolving architecture of international standards addressed, by name, to every institutional actor whose conduct can engage it — judges, prosecutors, lawyers, and physicians. This Section sets out that architecture in the order of its authority, applying the hierarchy this publication maintains throughout: treaty text and established international law bind; treaty-body interpretation construes; authoritative United Nations operational standards and syntheses guide and concretize; professional and ethical standards discipline; and the IAJ's own synthesis and determinations are stated as the Institute's, supported but never decided by the instruments below. No instrument in this Section is treated as deciding what only treaty law or adjudication can decide, and none is diminished to optional guidance where it states the operational content of binding obligations.

The judicial-integrity predicate came first. The Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly in 1985[127], state the institutional conditions — independence, impartiality, integrity — on which every judicial function this publication examines depends. The Principles frame independence as the foundation of the judiciary's duty, not its shield: an independent judiciary is demanded so that rights are decided impartially, and the Principles nowhere convert institutional independence into personal impunity for rights-violating conduct.

Five years later the architecture reached the other officers of the courtroom. The Guidelines on the Role of Prosecutors, adopted at Havana in 1990[128], direct prosecutors to give due attention to the prosecution of crimes committed by public officials and, where prosecutors come into possession of evidence they know or believe on reasonable grounds was obtained through torture or other prohibited treatment, to refuse to use such evidence against anyone other than

[127] Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985, endorsed by G.A. Res. 40/32 (29 Nov. 1985) and G.A. Res. 40/146 (13 Dec. 1985).

[128] Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, guidelines 15–16.

those who used such methods, and to take all necessary steps to ensure that those responsible are brought to justice. The companion Basic Principles on the Role of Lawyers, adopted at the same Congress[129], secure the access to independent counsel without which the other safeguards cannot be invoked. The Two-Plane discipline applies to both: they state the operational content of the prevention and accountability obligations; they do not themselves create treaty obligations, and the IAJ cites them as what they are — authoritative United Nations standards adopted by consensus and repeatedly reaffirmed.

The documentation limb is the Istanbul Protocol. In its 2022 edition, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment records on its own face that its standards elaborate the obligations of States under the Convention against Torture and international law to investigate and document torture and ill-treatment, and that its Principles articulate minimum standards for State adherence[130]. That the Protocol is an authoritative United Nations operational standard and synthesis — not treaty text, and not optional guidance — is the classification the IAJ has adopted throughout its corpus, and it is stated here as the Institute's own. Its function in this publication is architectural: it supplies the operational content of the effective-investigation obligation whose treaty source is Articles 12 and 13 and whose interpretive elaboration is the Committee's.

The judicial-conduct limb is the Bangalore Principles of Judicial Conduct (2002), with their Implementation Measures and the 2007 Commentary[131]. The Principles state values — independence, impartiality, integrity, propriety, equality, competence and diligence — as standards of conduct addressed to judges personally, and the Commentary makes explicit that judicial office confers duties toward the persons subject to judicial power. Chapter 13 takes up what follows from that address. The monitoring limb completes the architecture: the Committee against Torture's General Comment No. 4[132] and the Subcommittee on Prevention's General Comment No. 1[133] show the system still elaborating, decades after adoption — deprivation-of-liberty concepts construed in institutional breadth, prevention obligations stated as continuing.

The IAJ's synthesis, stated as the Institute's own: read together, these instruments demonstrate that the international system has never treated the prohibition as a rule addressed only to interrogators. Each institutional actor in the chain that produces, ratifies, or remedies prohibited treatment is separately addressed by a standard bearing on investigation, judicial conduct, prosecution, professional responsibility, documentation, accountability, and redress. No single instrument decides any case; none is needed to. What the architecture establishes is the field on which the judicial analysis of Chapter 13 operates: the judicial officer stands inside the normative system, addressed by it, and has stood there since before the United States became bound.

[129] Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990, preamble and principles 1–2.

[130] Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 ed.), HR/P/PT/8/Rev. 2, Sales No. E.22.XIV.4, ch. I, ¶¶ 1, 3–4 and 10, and Background Note. The publication notice records that the findings, interpretations and conclusions expressed in the publication are those of the contributors and participants in their individual capacities and do not necessarily reflect the views of OHCHR, the United Nations, its officials or Member States.

[131] Bangalore Principles of Judicial Conduct (2002); Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct; Commentary on the Bangalore Principles of Judicial Conduct (2007).

[132] Committee against Torture, general comment No. 4 (2017), CAT/C/GC/4.

[133] Subcommittee on Prevention of Torture, general comment No. 1 (2024) on article 4 of the Optional Protocol to the Convention against Torture, CAT/OP/GC/1.

CHAPTER 5 — THE COMMITTEE AGAINST TORTURE

Treaty-Body Materials on Institutional Reach and the IAJ's Judicial-Scope Determination

A. CAT/C/USA/CO/3-5: Express Holdings, Institutional Reach, and the IAJ's Domestic-Courts Inference

An evidentiary record developed independently of a cited authority may provide corroboration where the propositions and factual predicates genuinely overlap. The IAJ record and CAT/C/USA/CO/3-5 were developed through different processes and address different questions. The points of convergence identified below strengthen the basis for independent examination, but the IAJ does not claim that the two records reached identical findings or that their convergence establishes the legal classification of any particular judicial act.

The Committee Against Torture's Concluding Observations on the United States (CAT/C/USA/CO/3-5, December 2014) address the U.S. position on the Convention's scope through two analytically distinct provisions. Paragraph 9 of the Observations, under the heading "Definition and criminalization of torture," addresses the U.S.'s restrictive interpretation of the Convention's definitional provisions — specifically the "prolonged mental harm" understanding — and states that "the State party maintains a restrictive interpretation of the provisions of the Convention and does not intend to withdraw any of its interpretative understandings lodged at the time of ratification." The Committee concludes that "under international law, reservations that are contrary to the object and purpose of a treaty are not permissible." This finding establishes the baseline: the U.S. restrictive-interpretation posture is itself a compliance failure, and the Committee does not endorse it.

Paragraph 10, under the heading "Extraterritoriality," addresses the geographic scope of Convention obligations — specifically the U.S. position that obligations apply only to places under "territorial jurisdiction" or "de facto control." The Committee reaffirms that obligations apply to "all places that the State party controls as a governmental authority" and cites General Comment No. 2 ¶16 for the proposition that "any territory" encompasses "military bases, detention facilities, or other areas over which a State party exercises factual or effective control." The full implications of ¶16 for the domestic-courts question — including its operation as an independent analytical route via the Article 2 prevention obligation — are developed in Chapter 5.B below.

The United States' periodic-reporting materials do not appear to address state and federal courts as a distinct setting of Convention implementation. The IAJ characterizes that reporting omission, read together with the domestic implementation record examined in this Standard, as evidence of a functional exclusion of courts from effective Convention implementation. That is the IAJ's characterization of the reporting and implementation record; it is not presented as a verbatim United States statement that courts are excluded.

Paragraph 9 of CAT/C/USA/CO/3-5 criticizes restrictive United States interpretations of the Convention and recalls that reservations contrary to the treaty's object and purpose are impermissible. Paragraph 10 concerns geographic and extraterritorial reach and states that Convention obligations apply in places the State controls as a governmental authority. Neither paragraph expressly decides whether particular conduct by a domestic judge constitutes torture or CIDT. General Comment No. 2 separately requires implementation through legislative, administrative, judicial, and other measures; requires all parts of a State party's Government to adhere to the Convention definition (¶9); and addresses responsibility for official conduct (¶15).

Human Rights Committee General Comment No. 31 expressly identifies all branches of government, including the judiciary, as capable of engaging State responsibility (¶4).

Read together, these materials support the IAJ's independent determination that domestic courts cannot be categorically excluded from the institutional reach of the Convention. That conclusion is an IAJ synthesis from the cited sources, not an express holding of the Committee on the domestic-courts question. Whether any particular judicial act constitutes torture or CIDT remains governed by the separate Article 1 or Article 16 analysis.

Paragraph 20 of the same Concluding Observations addresses solitary confinement (Factor 4), paragraph 19 addresses conditions in immigration detention facilities (Factor 3), and paragraph 9 addresses the United States' incomplete criminalization of torture at the federal level (Factor 24) — establishing that the Committee already has a documented record of concern across multiple categories of the Shadow Report's 24 factors, and supplying relevant treaty-body context for an Article 20 inquiry extending beyond the domestic-courts question addressed in paragraphs 9 and 10.

Doctrinal Objection and Reply 5.1: Reading CAT/C/USA/CO/3-5 as Limited to the Extraterritorial Context

A narrow reading of the Committee against Torture's 2014 Concluding Observations on the United States holds that the document addresses only conduct outside U.S. sovereign territory — Guantánamo Bay, the CIA detention and interrogation programme, and U.S. custody overseas — and therefore lends no support to a claim that the Convention reaches the conduct of U.S. domestic courts. On this reading, paragraph 10 of CAT/C/USA/CO/3-5 (the only paragraph titled "Extraterritoriality") is the document's sole jurisdictional analysis: it negotiates the U.S. reservation to Article 16, records the State party's position on locations of governmental control beyond its sovereign territory, and invokes General Comment No. 2's gloss on "any territory under its jurisdiction." Because that paragraph resolves the territorial question in extraterritorial terms, the objection runs, citations to CAT/C/USA/CO/3-5 in support of a claim about domestic judicial conduct read more into the Concluding Observations than the text supports.

Reply. The narrow reading is incompatible with the structure and content of CAT/C/USA/CO/3-5. Paragraphs 18 through 27 of the Concluding Observations address conduct occurring within the sovereign territory of the United States, attributable to U.S. federal, state, and local actors operating on U.S. soil: asylum protection at the south-western border (paragraph 18); immigration detention in U.S. facilities, county jails, and private prisons (paragraph 19); solitary confinement in U.S. prisons, jails, and other detention centres (paragraph 20); sexual violence in U.S. prisons and the Prison Litigation Reform Act's restrictions on prisoner litigation (paragraph 21); inmate deaths in local jails and state prisons (paragraph 22); juvenile justice (paragraph 23); life-without-parole sentences for juvenile offenders, including the Committee's discussion of *Graham v. Florida* and *Miller v. Alabama* (paragraph 24); death penalty practice in Arizona, Oklahoma, and Ohio (paragraph 25); excessive force and police brutality, including the Jon Burge cases in Chicago (paragraph 26); and electrical-discharge weapons (paragraph 27). These paragraphs are corroborated as live and recurring compliance concerns by the 2026 Physicians for Human Rights / UC Berkeley Human Rights Center investigation Charting the Crackdown, discussed in Chapter 15, Category 3. None of these paragraphs is framed as extraterritorial application of the Convention. Each is framed as the State party's compliance with treaty obligations in respect of conduct by its own actors within its own territory. The premise of the narrow reading — that CAT/C/USA/CO/3-5 is confined to the extraterritorial context — fails on its face.

The narrow reading also conflates two distinct doctrinal questions that paragraph 10 keeps separate. The first is the *territorial* scope of the Convention — at what locations does conduct become attributable to the United States for treaty purposes. Paragraph 10 resolves that question by recording the U.S.'s own position that the Convention applies, in addition to its sovereign territory, to "all places that the State party controls as a governmental authority", and by invoking General Comment No. 2's reading of "any territory" to encompass all areas under de jure or de facto effective control. The second question is the *governmental-authority* scope of the Convention — which actors' conduct, occurring within the territorial scope, triggers obligations under Articles 1 and 2. On that question General Comment No. 2 is explicit at its paragraph 2: Article 2(1) obliges State parties to act through "legislative, administrative, judicial" or other measures, identifying the judiciary as a constituent organ of the State whose conduct must be brought into conformity with the Convention. The Concluding Observations invoke General Comment No. 2 at paragraphs 9, 10, 11, and 12. The narrow reading mistakes paragraph 10's resolution of the first question for an exhaustive treatment of both.

Paragraph 9 of CAT/C/USA/CO/3-5 is independently incompatible with the narrow reading. There the Committee criticizes the United States's federal-level implementation of Article 1 — the absence of a federal torture offence, the "prolonged mental harm" interpretative understanding, and the State party's restrictive interpretation of the Convention generally — and cites General Comment No. 2 for the proposition that definitional discrepancies between the Convention and domestic law produce loopholes for impunity. This is structural critique of domestic implementation, addressed to the United States as a State party operating within its own sovereign territory. An interpretation of CAT/C/USA/CO/3-5 that treats the document as confined to the extraterritorial context cannot account for paragraph 9.

B. General Comment No. 2: All Branches of Government Are Bound

General Comment No. 2 to the Convention against Torture, adopted by the Committee in 2007, establishes the institutional framework through which the Convention's obligations bind a State party. Paragraph 2 of the General Comment provides that Article 2(1) obliges each State party to act through "legislative, administrative, judicial, or other" measures to prevent torture. The same General Comment, in its later treatment of the Article 1 definition, calls upon the State party to ensure that all parts of its government adhere to the Convention's definition of torture. The judiciary is a constituent organ of the State, exercising state power through state-appointed officials operating under state-conferred authority. Read together, these provisions confirm that the judiciary, as one of those parts of government, is within the Convention's institutional reach: it is bound by the Convention's obligations and must implement them in the conduct of its functions.

The institutional binding established by General Comment No. 2 should be distinguished from a separate question that the General Comment does not directly resolve: which specific judicial acts satisfy the five elements of Article 1 or the cruel-inhuman-degrading threshold of Article 16. Institutional binding establishes that the Convention's obligations apply to the judiciary as a state organ — that the judiciary is not categorically exempt from compliance, must enforce the Convention's prevention obligations, and cannot acquiesce in or facilitate prohibited conduct. Conduct coverage establishes that a particular judicial act, on a particular set of facts, meets each of those elements. The first proposition is necessary to the second; both are required to support the IAJ's position that documented judicial conduct in the case archive is conduct the Convention reaches. The institutional binding is supplied by General Comment No. 2 in the manner described above. The conduct-coverage analysis is developed in Chapter 1 of this synthesis through the element-by-element treatment of Article 1, supported by the State responsibility provisions of General Comment No. 2 governing officials' acts and acquiescence, and by the redress obligations of Article 14 as developed in General Comment No. 3. The State responsibility framing of Article 1 is consistent with the treaty's drafting history and the interpretive practice of international bodies: the public official nexus in the Article 1 definition is properly understood as articulating the conditions under which conduct is attributable to the State Party, rather than as a freestanding individualized element disconnected from State responsibility doctrine (Trent Buatte, The Convention Against Torture and Non-Refoulement in U.S. Courts, 35 Geo. Immigr. L.J. 701, 727-45 (2021)).

General Comment No. 2 provides a second and independently sufficient ground for defeating the U.S. domestic-courts exclusion, operating on a different analytical axis than the ¶¶9 and 15 institutional axis. Paragraph 16 of General Comment No. 2 addresses the territorial extension of the Article 2 prevention obligation: "The Committee has recognized that 'any territory' includes all areas where the State party exercises, directly or indirectly, in whole or in part, *de jure* or *de facto* effective control, in accordance with international law." Domestic courts satisfy this standard on every criterion simultaneously and at the maximum of each. They are under direct — not indirect — control. They are under complete — not partial — control. They are under de jure — not merely de facto — control. A domestic court is the paradigmatic example of a place where a state exercises effective control in the fullest possible sense: it is a state institution, funded by the state, staffed by state-appointed officials, operating under state-conferred authority, exercising contempt and sanctions power that no private party possesses. The ¶16 standard was designed to extend Convention obligations to attenuated control situations — foreign military operations, private detention contractors, facilities where factual control exists without formal legal authority. The U.S. position argues that domestic courts — which exceed every element of the ¶16 standard — fall outside it. This argument requires the conclusion that greater, more direct, more complete, more *de jure* control exempts an institution from obligations that lesser, indirect, partial, de facto control would trigger. That is the precise inversion the standard was designed to prevent.

The third analytical consequence of ¶16 is structurally significant for this Standard. Paragraph 16 addresses the Article 2 prevention obligation — not the Article 1 definitional question. These two provisions are analytically independent. A reader who accepted the most cautious reading of Article 1 — that the torture definition requires a detention setting — would still be bound by Article 2's obligation to take effective measures to prevent torture, because that obligation, as interpreted by ¶16, extends to all areas of effective state control. Domestic courts fall squarely within that extension. The IAJ records the precise analytical force of ¶16. Paragraph 16 defeats any institutional or territorial claim that domestic courts are categorically outside the State's Article 2 obligations: courts are State organs operating within the State's territorial jurisdiction and effective control, and the Article 2 prevention obligation applies to them. Paragraph 16 does not independently classify particular judicial conduct as torture — the Article 2 prevention obligation requires prevention of acts of torture, and identifying which specific acts constitute torture remains governed by Article 1's elements. The IAJ's analytical position is therefore: paragraph 16 bypasses the institutional/territorial exemption, not the Article 1 element-by-element analysis. The thesis applies the Article 1 elements to the documented judicial conduct in Chapter 13 on their own terms; what paragraph 16 supplies is the structural premise that the conduct is within the State's Article 2 obligations to begin with, regardless of the institutional setting in which it occurs.

The identification method locates judicial conduct within the evidentiary field, not the substantive conclusion. Conclusion 5 of the International Law Commission's 2018 Conclusions on the identification of customary international law provides that State practice consists of conduct of the State in the exercise of its "executive, legislative, judicial or other functions." Judicial conduct therefore belongs in the survey of State practice from which the customary norm is identified, and, under Article 4 of the Articles on State Responsibility, is conduct through which the State may breach it.[134] What Conclusion 5 supplies is the standing of judicial conduct as evidence to be examined; it does not by itself establish that the prohibition's substantive content reaches any particular judicial conduct. That reach, where it extends beyond the settled core, is the IAJ's reasoned determination, developed below, not a corollary of the sources rule.

The conjunction of ¶¶9 and 15 with ¶16 is doubly foreclosing. General Comment No. 2 ¶9 requires that all parts of a State party's Government adhere to the Convention definition, and ¶15 attaches State responsibility for the acts and omissions of officials across all official conduct — defeating the U.S. domestic-courts exclusion on the institutional axis: courts are organs of government exercising official authority and are therefore bound (the point stated expressly for all branches, including the judiciary, in Human Rights Committee General Comment No. 31 ¶4). General Comment No. 2 ¶16 establishes that the Article 2 prevention obligation extends to all areas of effective state control — defeating the exclusion on the territorial axis: courts are places of direct complete de jure control and therefore covered. The U.S. domestic-courts exclusion fails on both grounds independently, and fails more completely on ¶16 than on the ¶¶9 and 15 institutional axis because ¶16's standard was specifically designed to extend obligations to cases of far more attenuated control than domestic courts exemplify. General Comment No. 2 alone — without any other source, without *jus cogens*, without the UDHR derivation, without the convergent-authority analysis — is sufficient to establish that the U.S. domestic-courts exclusion is not consistent with the Committee's authoritative interpretation of institutional scope; it does not itself classify particular judicial conduct under Article 1 or Article 16 of the Convention's own text.

Critical Examination 5.2: Confusing Institutional Binding with Conduct Coverage

A technically sound critical point — conceded here — is that 'all branches are bound' does not by itself mean 'all branch conduct can constitute torture in the same way.' The judiciary is bound not to facilitate torture, not to admit torture-tainted evidence, and not to violate non-refoulement obligations. This does not automatically extend to all ordinary adjudication. This Standard's position is more precise: specific judicial conduct that meets all five elements of Article 1 — an act, intentional infliction, severity, prohibited purpose, and the complete official nexus — and that survives the separate lawful-sanctions analysis above, is covered. The argument is not that judicial systems are torture machines as such. It is that the Convention covers specific acts by judicial officials that satisfy the definition, wherever they occur.

The material formerly carried in this Chapter as sections C, D and E has been relocated to the chapters whose subject matter it belongs to. Judicial integrity and international scrutiny is now at Chapter 13; the limits of finality, and systemic defect and the voidability of judgments, are now at Chapter 20, in that order. Neither is Committee against Torture material, and no proposition was altered by the move.

Critical Examination 5.3: Treating International Standards as Attempted Domestic Nullifiers

A recurring central counterargument mischaracterizes the IAJ's use of Special Rapporteur

[134] Conclusion 5, Conclusions on identification of customary international law, U.N. Doc. A/73/10 (2018): State practice consists of conduct "in the exercise of its executive, legislative, judicial or other functions." Articles on Responsibility of States for Internationally Wrongful Acts, art. 4 (conduct of a judicial organ is an act of the State).

reports and Committee materials as attempts to domestically nullify U.S. judgments. The IAJ does not argue that a Special Rapporteur report automatically voids a domestic judgment in U.S. court — that would require a domestic legal mechanism that does not currently exist. The materials are cited for their proper purpose: as evidence of the evolving international standard that governs the U.S.'s obligations on the international plane. The conceptual distinction between 'the international standard applies' and 'a domestic court will immediately enforce it' is one the doctrine requires throughout. The inability of U.S. domestic courts to enforce the standard is, itself, part of the foreclosure record: for the Article 20 inquiry, which imposes no exhaustion requirement, it bears on the adequacy of the State's response and the need for independent examination; for regional petition mechanisms, exhaustion operates under those bodies' own admissibility rules. It does not bear on the merits characterization of the conduct. Those remain analytically distinct, as the IAJ's analysis in Chapters 1 through 12 establishes on independent grounds.

CHAPTER 6 — THE ISTANBUL PROTOCOL: EVIDENCE, NOT EXPANSION

The Istanbul Protocol (2022 edition) is the UN's authoritative standard for the investigation and documentation of torture. It is not a treaty amendment. It is not binding domestic U.S. law. The IAJ does not use it as either. Its role in this analysis is: (1) to establish methodological compliance — that the IAJ's medico-legal documentation meets the international standard for the investigation of torture claims; and (2) to supply the operational standard requiring that investigation, disclosure and documentation be conducted so as to avoid retraumatising the person examined. The Protocol addresses retraumatisation in the investigative and clinical setting; the extension of that concern to repeated judicial proceedings — the second-bite problem — is the IAJ's own analogy, drawn on the IAJ's own reasoning, and the Protocol does not determine the treaty classification of the resulting conduct. The Protocol does not define treaty scope. Its function here is narrower and more defensible: it confirms that the conduct documented here has been investigated and described in accordance with the international standard for torture documentation, while the legal question of treaty scope is argued separately in the legal-framework chapters of this Standard.

The Istanbul Protocol analysis has a further consequence for medical expert testimony in proceedings involving disabled litigants. The Protocol sets out authoritative medico-legal standards and professional guidance for medical professionals who participate in legal proceedings involving torture allegations — including the standard that testimony be complete, accurate, and non-misleading, based on objective clinical assessment; it informs the evaluation of expert performance under applicable professional and domestic law and does not itself impose criminal or disciplinary liability. Where the institution whose conduct is under examination controls the appointment, funding, scope, evidence access, or disposition of the examiner's findings, the Protocol's independence requirement is ordinarily not met — an IAJ structural conclusion, with any mechanism carrying enforceable safeguards that remove those controls assessed on its actual structure; the companion IAJ publication Harmonizing the Architecture of Disability Rights (Third Edition) states the full analysis. A medical expert who provides false or deliberately shaded testimony in such proceedings — testifying that the disability is not disabling, that the harm is not foreseeable, or that medically compelled non-compliance is strategic — is not merely violating professional standards. Where those showings are made, the expert operates at the point in the documented mechanism where the coercive output is validated or invalidated: the false testimony corrupts the extraction at its source, converting unreliable coerced-condition information into apparently authoritative medical opinion and enabling harmful orders to issue with manufactured clinical cover. Where the Istanbul Protocol has been applied — as it has been in the IAJ's medico-legal investigations — it generates both a methodological standard for detecting this corruption (through independent medical assessment the Protocol calls for) and a professional accountability framework for the medical actors who produced it. The CAT Committee's consideration of Istanbul Protocol compliance in an Article 20 inquiry may encompass the conduct of medical professionals who provided testimony in the proceedings under investigation, where that conduct falls within the inquiry's scope.

Critical Examination 6.1: Treating Medical Harm as Substituted for Legal Analysis, or the Istanbul Protocol as a Treaty Amender

Two related errors appear here. First, doctrinal objections sometimes read the IAJ's medical evidence as if the publication argues 'severe harm = torture.' That is not the IAJ's argument. Medical evidence goes to the severity element of Article 1, one of five elements. Severe harm without intentional infliction, purpose, and official capacity is not torture under the Convention. The analysis demonstrates all five elements are met; medical evidence establishes one of them. Second, doctrinal objections argue that the Istanbul Protocol 'cannot convert judicial conduct into torture' as if the IAJ claimed it could. The IAJ uses the Protocol for documentation methodology and as evidence of international consensus — not as a substantive source of treaty scope. Both errors attack positions the publication does not hold.

MKUltra illustrates why the Istanbul Protocol's documentation function must be understood independently of custodial form. Covert drugging, non-consensual experimentation, psychological manipulation, medicalized abuse, and institutional concealment may leave evidence very different from the visible injuries associated with prison or interrogation abuse. The Protocol's role is to discipline the investigation of such allegations — consistency, causation, psychological sequelae, medical findings, consent, and context — while the legal classification remains governed by Article 1, Article 16, and the evolved peremptory prohibition.

CHAPTER 7 — REGIONAL HUMAN-RIGHTS JURISPRUDENCE: COMPONENT PRINCIPLES OF THE MINIMUM CONTENT

Chapter 9, Section B identifies the minimum content of the *jus cogens* prohibition from sources independent of the UNCAT's negotiating history. That identification is supplied by *Belgium v. Senegal, Barcelona Traction*, and General Comment No. 2 in conjunction. The minimum content so identified has not been derived in an interpretive vacuum: two regional human-rights courts — the European Court of Human Rights and the Inter-American Court of Human Rights

— have repeatedly adjudicated cases supplying authoritative regional support for the component principles of the proposed minimum content. The IAJ records the precise scope of that support. *Furlan and Family v. Argentina* (IACtHR, 2012) corresponds structurally to the IAJ's core fact pattern on five identifiable axes: disability as the vulnerability trigger; civil judicial proceedings as the locus of harm; judicial delay as the mechanism; heightened-diligence and accommodation duties in judicial process; and personal-integrity engagement under Article 5 of the American Convention. *Furlan* supplies adjudicated regional authority that civil judicial conduct affecting a disabled litigant engages State personal-integrity responsibility and triggers heightened-diligence duties — the precise structural conjunction the IAJ's analysis addresses — without itself classifying the conduct as torture under Article 1 UNCAT, a classification the IAJ's analytical extension proposes on independent grounds. *Bouyid v. Belgium* (ECtHR Grand Chamber, 2015), *Ximenes-Lopes v. Brazil* (IACtHR, 2006), *Jalloh v. Germany* (ECtHR Grand Chamber, 2006), *Kudła v. Poland* (ECtHR Grand Chamber, 2000), *Selmouni v. France* (ECtHR Grand Chamber, 1999), *Tibi v. Ecuador* (IACtHR, 2004), and *Maritza Urrutia v. Guatemala* (IACtHR, 2003) supply adjudicated regional support for the component propositions, and this Standard states the assignment explicitly rather than by order: *Bouyid* — dignity and power asymmetry; *Ximenes-Lopes* — institutional vulnerability and dependency; *Jalloh* — severity-factor analysis; *Kudła* — the inevitability floor; *Selmouni* — threshold evolution; *Tibi* — cumulative effect; and *Maritza Urrutia* — psychological severity and induced powerlessness. The convergence of these cases does not directly adjudicate the precise judicial-accommodation theory the IAJ advances; it supplies adjudicated regional support for the component principles on which the IAJ's theory builds. The IAJ presents this jurisprudence here not as binding on the United States — the United States is party to neither regional system — but as adjudicated regional support for the analytical moves the present synthesis advances and as evidence of the customary-international-law content of the prohibition.

The textual bridge: the regional courts' engagement with the UNCAT framework

The relevance of regional adjudication to the minimum content of the UNCAT prohibition rests on the regional courts' own engagement with the UNCAT framework. In *Selmouni v. France* [GC] (no. 25803/94, ECHR 1999-V), the European Court of Human Rights itself invoked UNCAT Article 1 in the operative part of its Article 3 reasoning, holding at §97 that, in addition to the severity of the treatment, there is a purposive element "as recognised in the United Nations Convention against Torture… which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating." That is the Court's own engagement with the Article 1 elements, and it is the anchor on which this Section relies. *Jalloh v. Germany* [GC] (no. 54810/00, ECHR 2006-IX) is a weaker anchor and is not relied upon for this proposition: the Grand Chamber reproduced UNCAT Articles 1, 15 and 16 among the international materials before it (§48) and invoked Article 15 in its Article 6 reasoning (§105), but its Article 3 assessment (§§67–83) applied the Court's own minimum-severity and forcible-medical-intervention criteria, and it found inhuman and degrading treatment rather than torture (§§82–83, 105–106). The enumerated four-element restatement of Article 1 that is sometimes attributed to *Jalloh* appears in the separate concurring opinion of Judge Zupančič, not in the judgment of the Court. The Inter-American Court has consistently read American Convention Article 5(2) together with UNCAT Article 1 and the Inter-American Convention to Prevent and Punish Torture. The IAJ records the precise scope of this textual relationship. ECHR Article 3 is broader than UNCAT Article 1: Article 3 reaches ill-treatment without requiring the public-official nexus or the prohibited-purpose element that UNCAT Article 1 requires for the torture classification specifically (while UNCAT Article 16 reaches CIDT more broadly). The American Convention Article 5 and Inter-American Convention to Prevent and Punish Torture have distinct language and structure from UNCAT Article 1. The IAJ does not assert that the regional thresholds are textually identical to UNCAT's. The IAJ does assert that the regional courts have authoritatively engaged with the UNCAT framework in interpreting their own provisions, and that their holdings on the component elements — severity, intention, purpose, official capacity, vulnerability, dignity, cumulative effect — are evidence of the customary-international-law content of those same elements as they appear in UNCAT.[135]

The factor framework: Jalloh and the architecture of severity assessment

Jalloh restates the European Court's minimum-severity assessment under Article 3 — the duration of the treatment, its physical and mental effects, and, in some cases, the victim's sex, age, and state of health. *Jalloh* does not supply the purposive component: as the textual bridge above records, its Article 3 assessment applied the Court's own criteria, and the purposive element in the torture/CIDT distinction comes from *Selmouni* §97, where the Court invoked UNCAT Article 1 in the operative part of its reasoning. Other regional judgments supply additional component principles the IAJ relies on separately: vulnerability, dignity, cumulative effect, and power asymmetry. These are adjudicated components drawn from across the regional case law, not a single verbatim Jalloh checklist. These components track the existing IAJ Five-Level Gravity Scale and Six-Move framework not by coincidence but because both formalize what the international community of human-rights adjudicators treats as the relevant assessment criteria. The IAJ frameworks operationalize, in the institutional-conduct setting, the severity factors Jalloh restates, the purposive element supplied by *Selmouni* §97, and the vulnerability, dignity, cumulative-effect and power-asymmetry principles drawn from the wider regional case law. The convergence is itself evidence that the IAJ frameworks are organizing devices applied to documented conduct rather than ad hoc inventions.

[135] Jalloh v. Germany [GC], Application No. 54810/00, ECHR 2006-IX, Judgment of 11 July 2006, §§67–83. — RELEVANCE: Cited for the Court's Article 3 factor architecture, and not for any adoption of the UNCAT Article 1 elements. The judgment reproduces UNCAT Articles 1, 15 and 16 at §48 among the relevant international materials, and the Court invokes Article 15 in its Article 6 reasoning at §105; its Article 3 assessment at §§67–83 applies the Court's own criteria — the minimum level of severity, assessed relatively by reference to the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (§67); the definitions of "inhuman" and "degrading" drawn from Labita, Hurtado, the Greek case and Raninen (§68); and the forcible-medical-intervention factors of necessity, health risks, manner of execution and pain caused, degree of medical supervision, and effects on health (§§69–74 and §76). The Court found inhuman and degrading treatment and expressly not torture (§§82–83; §105: "The Court has not found in the instant case that the applicant was subjected to torture"; §106: the treatment "did not attract the special stigma reserved to acts of torture"). The enumerated four-element restatement of UNCAT Article 1 sometimes attributed to this judgment appears in the separate concurring opinion of Judge Zupančič, who records that it was in Selmouni that the Court "integrated Article 1 of the United Nations Convention against Torture… into our own case-law"; the regional bridge in Chapter 9.B-bis accordingly rests on Selmouni §97, not on Jalloh. The IAJ Five-Level Gravity Scale and Six-Move framework operationalize the Court's adjudicated factor method, not an Article 1 checklist. — AUTHORITY: Grand Chamber of the European Court of Human Rights. The case concerned the forcible administration of emetics to a suspected drug dealer to recover evidence; the Court found the treatment crossed the Article 3 threshold and constituted inhuman and degrading treatment. The judgment's analytical framework has been applied in subsequent Grand Chamber jurisprudence (including Bouyid). The correspondence between the IAJ's analytical structure and the Court's adjudicated factor list is evidence that the IAJ frameworks are organizing devices applied to documented conduct rather than ad hoc inventions; it is correspondence, not adoption, and the instruments retain distinct texts, thresholds, purposes and official-nexus requirements.

The living-instrument principle: Selmouni and the evolution of the threshold

Selmouni v. France [GC] (no. 25803/94, ECHR 1999-V) §101 holds that "the Convention is a living instrument which must be interpreted in the light of present-day conditions" and that "certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in future." The principle is the direct doctrinal expression of what Section A and Section B identify as the structural feature of *jus cogens*: the customary norm's content is defined by the practice and *opinio juris* of the international community, not frozen at any particular drafting moment. *Selmouni* is the adjudicated articulation, at the regional level, of the same proposition the IAJ advances at the *jus cogens* level. The threshold is not contingent on the custodial-paradigm horizon that surrounded UNCAT's 1984 negotiation; it evolves as the international community's recognition of the practice and effects of institutional infliction of severe suffering matures.[136]

That the content is not frozen is a feature of the customary process itself, which "does not stop when a rule has emerged" and whose identification "is never final"; the Commission speaks of the "dynamic nature of customary international law."[137] The evolutionary method is nonetheless disciplined, and the parallel sometimes drawn to United States practice is illustrative rather than doctrinally equivalent. In *Sosa v. Alvarez-Machain*, addressing which law-of-nations norms are cognizable, the Supreme Court required a norm "accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms."[138] That definiteness-and-acceptance threshold echoes the rigour of the two-element method, though the two inquiries are distinct — one asks whether a customary rule exists, the other whether a federal court may recognise a cause of action — and the prohibition of torture is the paradigm norm that satisfies the recognition standard. What remains open on this plane is not whether the norm exists but its reach, resolved by present practice and *opinio juris* and, beyond the settled core, by the IAJ's reasoned determination.

The inevitability floor: Kudła and the principled distinction between ordinary litigation burden and ill-treatment

Kudła v. Poland [GC] (no. 30210/96, ECHR 2000-XI) §§92–94 establish — with the operative formulation at §92 — the doctrinally principled line between ordinary state-activity burden and ill-treatment: "the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate

[136] Selmouni v. France [GC], Application No. 25803/94, ECHR 1999-V, Judgment of 28 July 1999. — RELEVANCE: The single most cited articulation of the living-instrument principle as applied to the torture/CIDT gradient. The Court held, at §101, that "certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in future," because "the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies." This is the adjudicated regional expression of the same structural feature the present synthesis identifies at the *jus cogens* level: the customary content of the prohibition evolves as the international community's recognition matures. — AUTHORITY: Grand Chamber, unanimous judgment. The Court found that police treatment of the applicant during custody met the torture threshold (rather than only inhuman/degrading treatment), explicitly invoking the living-instrument principle to support the upgrade in classification.

[137] M. Wood, First report on identification of customary international law, U.N. Doc. A/CN.4/663 (2013), para. 22 n.41 (the customary process "does not stop when a rule has emerged"; identification "is never final"); A/73/10 (2018), Conclusion 3, Commentary (1) ("the dynamic nature of customary international law").

[138] *Sosa v. Alvarez-Machain*, 542 U.S. 692, 725, 729 (2004) (a claim on "the present-day law of nations" must rest on a norm "accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms"). On the subsequent closure of the ATS cause of action, see *Cisco Systems, Inc. v. Doe I* (2026).

treatment or punishment." This is the direct adjudicated answer to the objection that the present analysis would treat ordinary litigation stress as ill-treatment. It does not. The *Kudła* floor governs every application of the present framework: the analysis reaches only suffering that exceeds the inevitable burden of legitimate adjudication. Ordinary litigation distress, adverse rulings, unwelcome outcomes, and the inherent friction of legal process all lie below the floor. The IAJ framework targets only what lies above it: documented severe suffering inflicted on persons in induced vulnerability by official conduct that exceeds what legitimate adjudication entails. The floor is a feature of the framework, not an objection to it.[139]

The power-asymmetry principle: Bouyid and dignity in the law-enforcement setting

Bouyid v. Belgium [GC] (no. 23380/09, ECHR 2015) held, by 14 votes to 3, that a single non-injurious slap by a police officer to a person under the officer's control violated Article 3. The Court's reasoning is what makes the case load-bearing for the present analysis. The Grand Chamber held, at §100, that "in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3," and clarified, at §101, that the words "in principle" "cannot be taken to mean that there might be situations in which such a finding of a violation is not called for because the above-mentioned severity threshold has not been attained." The operative factors are power asymmetry and dignity rather than physical injury. The IAJ acknowledges that *Bouyid* arose in a setting of physical custody; the analogical transfer to the adjudicative setting rests on the structural correspondence between custodial power asymmetry and the induced powerlessness of a disabled litigant who cannot exit the jurisdictional relationship without catastrophic consequence (Chapter 14). The transfer is not a leap of equivalence but an application of the same dignity principle to the same structural condition: an individual confronted with state actors holding coercive power that the individual cannot escape. *Bouyid* is therefore evidence that, in the relationship the Court adjudicated, the international standard requires neither physical injury nor quantifiable severity: diminution of the dignity of a person confronted with law-enforcement officers sufficed. Whether comparable official conduct in another setting engages Article 3, Article 1, or Article 16 remains governed by the elements of the applicable provision.[140] *Bouyid* did not decide whether non-physical conduct

[139] Kudła v. Poland [GC], Application No. 30210/96, ECHR 2000-XI, Judgment of 26 October 2000, §§92–94. — RELEVANCE: The doctrinally principled line that distinguishes ordinary state-activity burden from ill-treatment. The Court held (§92) that "the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment." This is the operative inevitability floor that governs every application of the IAJ framework and the structural answer to the "trivializes torture" or "litigation is hard" objection. The framework reaches only what lies above the floor. — AUTHORITY: Grand Chamber. The case principally addressed Article 13 effective remedy in relation to the length of criminal proceedings, but the §92 articulation has become the universally-cited Grand Chamber statement of the inevitability floor across Article 3 jurisprudence.

[140] Bouyid v. Belgium [GC], Application No. 23380/09, ECHR 2015, Judgment of 28 September 2015, §§100–101 (the operative formulations; the dignity reasoning at §§89–90, and the general-principles statement of the same rule at §88). — RELEVANCE: The Grand Chamber's power-asymmetry/dignity engine, on which the analogical transfer from custodial to adjudicative-vulnerability settings rests. The Court held (14 votes to 3) that a single slap by a police officer to a person under the officer's control violated Article 3, reasoning that the relevant analytical unit was diminution of dignity in conditions of power asymmetry, not severity of physical injury. The Court's clarification at §101 that "in principle" in this formulation "cannot be taken to mean that there might be situations in which such a finding of a violation is not called for because the above-mentioned severity threshold has not been attained" is the operative regional articulation of the dignity-based threshold the IAJ applies in Chapter 14. — AUTHORITY: Grand Chamber. CAVEAT ON ANALOGICAL TRANSFER: Bouyid arose in physical custody. The transfer to adjudicative-vulnerability rests on the structural correspondence between custodial power asymmetry and the induced powerlessness of a litigant who cannot exit jurisdictional custody without catastrophic consequence — the precise structural condition Chapter 14 identifies. The IAJ relies on Bouyid's analytical engine and acknowledges that the application is the IAJ's.

in civil judicial proceedings satisfies Article 3, UNCAT Article 1, or UNCAT Article 16, and it did not abolish the minimum-severity inquiry for official conduct outside the law-enforcement relationship before the Court. The analogy accordingly requires independent proof of severity, intent or acquiescence, prohibited purpose where Article 1 is invoked, official nexus, causation, and the inapplicability of the lawful-sanctions exclusion.

The non-custodial reach of the European prohibition

The European Court has repeatedly applied Article 3 where no custody, interrogation, or physical force by officials was present. In *M.S.S. v. Belgium and Greece* [GC] (no. 30696/09, 2011), in the living-conditions limb of the judgment, State-attributable destitution — an asylum seeker left by the authorities to live for months on the street, without resources or access to sanitary facilities — violated Article 3 with no detention and no act of force — the Court resting on the applicant's dependence and membership of a particularly vulnerable group within a regulatory regime the State controlled, which is precisely the functional-powerlessness mechanism this Standard applies to the jurisdictionally controlled person. In *O'Keeffe v. Ireland* [GC] (no. 35810/09, 2014), the State's failure to maintain protective mechanisms within its school system engaged Article 3 for abuse committed by a private actor. In *Opuz v. Turkey* (no. 33401/02, 2009) and *Volodina v. Russia* (2019), general and discriminatory judicial and police passivity in the face of repeated, notified private violence violated Article 3 together with Article 14 — institutional tolerance after notice, in the Court's own register. In *97 Members of the Gldani Congregation of Jehovah's Witnesses v. Georgia* (no. 71156/01, 2007) and *Identoba and Others v. Georgia* (2015), official acquiescence in private mob violence engaged the prohibition — the Strasbourg analogue of the Committee's acquiescence finding in *Hajrizi Dzemajl*. And the Court's scope holdings — *D. v. the United Kingdom* (1997), where the Article 3 protection of a terminally ill man against removal did not depend on his prior imprisonment, and *Pretty v. the United Kingdom* (no. 2346/02, 2002), a no-violation judgment whose reasoning states the breadth of "treatment", building on the positive-obligations foundation laid under Article 8 in *X and Y v. the Netherlands* (1985) — establish that "treatment" is not confined to deliberate physical acts. In each of these judgments, the operative responsibility ran through knowledge, control of conditions, or acquiescence — not through imprisonment or interrogation. The setting-unconfined operation of the cognate European prohibition is not a proposal; it is the Court's practice.

Dignity in the courtroom and the psychological register

Three further holdings bear directly on this Standard's subject. In *Svinarenko and Slyadnev v. Russia* [GC] (2014), confining defendants in a metal cage during their trial was degrading treatment in itself — the courtroom does not sanitize an affront to dignity, and judicial proceedings are a setting in which Article 3 operates. In *Gäfgen v. Germany* [GC] (no. 22978/05, 2010), a threat of torture, without any physical act, constituted inhuman treatment — the psychological register alone crosses the threshold. And in *Vinter and Others v. the United Kingdom* [GC] (2013), the dignity foundation reached the structure of a sentence itself. Together with *Bouyid*'s holding that unnecessary force against a person under the control of officials diminishes human dignity whatever its physical consequence, these authorities support the two propositions this Standard develops at Chapters 10 and 14: severity is assessed on the psychological as well as the physical register, and control — not architecture — defines the protective setting.

Systemic causation and structural impunity in the European record

The European system has also addressed the two systemic phenomena this Standard documents. On structural impunity: in *Cestaro v. Italy* (no. 6884/11, 2015) and *Cirino and Renne v. Italy* (2017), a deficient criminal-law architecture — absent offences, limitation periods, sentence remission — itself violated the Convention because it left the legal system incapable of responding to established torture; the Committee of Ministers' Guidelines on Eradicating Impunity for Serious Human Rights Violations (2011) state the same duties system-wide and locate impunity at the legislative, investigative, prosecutorial, and judicial stages alike. On systemic causation: in *L.R. v. North Macedonia*, the Court faulted an investigation for concentrating on whether individual employees intended harm instead of examining the general failure of the institutional system responsible for a profoundly vulnerable disabled child — the precise methodological error this Standard's systemic frame corrects — and in *V.I. v. the Republic of Moldova* (2024) the Court identified a systemic problem in the involuntary psychiatric treatment of a child with an intellectual disability and indicated general measures under Article 46. The European Committee for the Prevention of Torture's published standards complete the record: its Fourteenth General Report addresses combating impunity, its Twenty-Seventh addresses complaints mechanisms, and its factsheet on social-care establishments states that formal "voluntary" labels do not control the factual inquiry into whether a person is in practice unable to leave — functional control, in the European system's own voice. The Registry's Guides on Articles 3 and 13 consolidate the method. Each of these materials is regional corroborative authority within the discipline stated at the close of this Chapter: they support; they do not decide.

Institutional vulnerability in non-punitive custody: Ximenes-Lopes

Ximenes-Lopes v. Brazil (IACtHR, Ser. C No. 149, July 4, 2006), the Inter-American Court's first judgment on the rights of persons with mental disability, held Brazil internationally responsible under American Convention Article 5 for the death and ill-treatment of a man in a public-system psychiatric institution. The Court grounded responsibility on the State's heightened duty to persons in conditions of institutional dependency and vulnerability — expressly including non-punitive custody. The judgment is direct adjudicated authority for two propositions central to the present synthesis: first, that personal-integrity responsibility under Article 5 (and, by the textual bridge above, under the customary content of UNCAT) attaches in institutional settings beyond the custodial-detention paradigm; and second, that the trigger for the heightened duty is the victim's institutional vulnerability, not the institution's punitive purpose. The IAJ jurisdictional-custody framework (Chapter 14) operationalizes that same trigger condition in the adjudicative setting.[141] *Ximenes-Lopes* did not concern civil litigation or

[141] Ximenes-Lopes v. Brazil. Inter-Am. Ct. H.R. (Ser. C) No. 149, Merits Judgment of 4 July 2006, §§101–111 (Section (c) "The Special Care Due to Persons with Mental Disabilities by Reason of their Special Vulnerability") and §§118–150 (Chapter VIII, Violation of Articles 4(1) and 5(1) and 5(2) of the American Convention). — RELEVANCE: The Inter-American Court's first judgment on the rights of persons with mental disability, and direct adjudicated authority that Article 5 personal-integrity responsibility attaches in institutional settings of non-punitive vulnerability. The Court grounded responsibility on the State's heightened duty to persons in institutional vulnerability, expressly including non-punitive custody. The trigger for heightened duty

a person free from institutional confinement, and it did not interpret UNCAT Article 1 or Article 16; the extension of its vulnerability and dependency principles to the adjudicative relationship is the IAJ's additional analytical step, taken in Chapter 14, and not the holding of the judgment.

The closest regional judgment by structural analogy: Furlan and Family v. Argentina

Furlan and Family v. Argentina (IACtHR, Ser. C No. 246, August 31, 2012) is the single regional judgment closest to the structural fact pattern this Standard addresses. The Inter-American Court found Argentina internationally responsible for an excessive delay (approximately twelve years and three months) in a civil damages action upon which a disabled litigant's medical treatment depended. The Court expressly added a fourth element to the "reasonable time" analysis, captioned in the official judgment as "Adverse effect on the judicial situation of the interested party and impact on personal integrity." The Court held that where a person is in a situation of vulnerability such as disability, judicial authorities must act with heightened diligence and, in language directly applicable to the present synthesis, that "if the judicial authorities had taken into account Sebastián Furlan's vulnerable condition, it would have been clear that this case called for a higher degree of diligence." The Court found that the delay "had a significant and real impact on the legal situation of the alleged victim and to date the effect is irreversible." This is the adjudicated regional doctrine closest to the IAJ's core fact pattern: a disabled litigant whose condition deteriorates while protracted judicial proceedings continue, where heightened-diligence and accommodation duties were owed and not discharged.[142]

Furlan: precise dispositif and accurate scope

An accurate reading of *Furlan*'s holding requires precision the IAJ owes the record. The clean Article 5(1) personal-integrity violation in the judgment ran to the next of kin of Sebastián Furlan, not to Sebastián himself. As to Sebastián, the Court's dispositif framed the operative finding as the State's "non-compliance with the obligation to guarantee, without discrimination, the right to a fair trial and right to personal integrity," alongside violations of Articles 8(1) (right

is the victim's institutional vulnerability, not the institution's punitive purpose — the precise analytical move the IAJ's jurisdictional-custody framework operationalizes in the adjudicative setting. — AUTHORITY: Inter-American Court of Human Rights. Damiao Ximenes-Lopes died in a public-system psychiatric institution; the Court found Brazil internationally responsible under Articles 4, 5, 8, and 25 of the American Convention.

[142] Furlan and Family v. Argentina. Inter-Am. Ct. H.R. (Ser. C) No. 246, Preliminary Objections, Merits, Reparations and Costs Judgment of 31 August 2012, §§191–203 (Section VII.C.5, "Adverse effect on the judicial situation of the interested party and impact on personal integrity"). — RELEVANCE: The structurally on-point regional judgment for the IAJ's core fact pattern. The Inter-American Court added a fourth element to the "reasonable time" analysis, captioned in the official judgment as "Adverse effect on the judicial situation of the interested party and impact on personal integrity," and held that judicial authorities must act with heightened diligence in proceedings affecting persons in disability-based vulnerability. At §202, the Court held that "if the judicial authorities had taken into account Sebastián Furlán's vulnerable condition, due to the special circumstances described above, it would have been clear that this case called for a higher degree of diligence on the part of the judicial authorities." At §203, the Court concluded that "the delay in the proceeding in this case had a significant and real impact on the juridical situation of the alleged victim and the effect is, until today, irreversible." — AUTHORITY: Inter-American Court of Human Rights. SCOPE PRECISION: The clean Article 5(1) violation in the judgment ran to the next of kin; as to Sebastián himself, the operative dispositif was framed as the State's "non-compliance with the obligation to guarantee, without discrimination, the right to a fair trial and right to personal integrity," alongside violations of Articles 8(1), 25, and 21. The IAJ draws from Furlan the personal-integrity engagement and the heightened-diligence/accommodation duty — both of which are unambiguous on the face of the judgment — and does not assert that Furlan decided that any judicial delay alone constitutes a stand-alone Article 5 violation as to the litigant himself.

to a hearing within reasonable time), 25 (right to judicial protection), and 21 (right to property). The IAJ's use of *Furlan* does not overstate this nuance. *Furlan* establishes that protracted judicial proceedings affecting a disabled litigant engage State personal-integrity responsibility and a duty of heightened diligence and accommodation; it does not establish a freestanding holding that any judicial delay alone constitutes a stand-alone Article 5 violation as to the litigant himself. The doctrinal force the IAJ draws from *Furlan* is the personal-integrity engagement and the heightened-diligence/accommodation duty — both of which are unambiguous on the face of the judgment and both of which the IAJ applies, by structural analogy, to the adjudicative-vulnerability setting. The transfer from *Furlan*'s American Convention analysis to an Article 1 or Article 16 UNCAT classification is the IAJ's additional jurisprudential step and requires independent proof of every applicable UNCAT element.

Cumulative-effect doctrine: Tibi and the assessment of pattern conduct

Tibi v. Ecuador (IACtHR, Ser. C No. 114, September 7, 2004) establishes that ill-treatment under Article 5 is assessed by the cumulative impact of multiple acts and conditions, not transaction by transaction. The Court analyzed the totality of conditions and proceedings together and held that the cumulative impact engaged personal-integrity responsibility. The IAJ draws on this adjudicated framework when assessing connected acts and conditions affecting a single person; the cross-case pattern documentation and the Article 20 analysis (Chapter 21) rest on a separate footing, as stated below. The pattern is not aggregation of unrelated incidents seeking to manufacture severity through volume; for the individual classification it is the connected course of conduct affecting that person whose cumulative effect, under the adjudicated regional standard, is the operative analytical unit.[143] The IAJ uses cumulative-effect analysis in two distinct ways that are not to be conflated: connected acts and conditions affecting one person may be assessed together when classifying that person's treatment; recurrent mechanisms across different persons and institutions may separately support a pattern or Article 20 inquiry, but never substitute for proof of the elements in any individual case. *Tibi* does not authorize unrelated incidents, different victims, or separate cases to be aggregated in order to manufacture individual severity.

Psychological severity in induced powerlessness: Maritza Urrutia

Maritza Urrutia v. Guatemala (IACtHR, Ser. C No. 103, November 27, 2003) found that conditions of severe fear and induced powerlessness, without physical injury, satisfied the Article 5 ill-treatment threshold and met the criteria for psychological torture. The case is direct adjudicated regional authority for the proposition the Melzer 2020 Special Rapporteur report later articulated thematically: that psychological torture and ill-treatment do not require physical contact and can be inflicted through conditions of induced powerlessness. The

143 Tibi v. Ecuador. Inter-Am. Ct. H.R. (Ser. C) No. 114, Preliminary Objections, Merits, Reparations and Costs Judgment of 7 September 2004, §§142–164. — RELEVANCE: Direct adjudicated authority for the cumulative-effect doctrine applied to ill-treatment under Article 5. The Court assessed the totality of detention conditions and proceedings together and held that the cumulative impact engaged personal-integrity responsibility, rather than analyzing acts transaction-by-transaction. This is the adjudicated regional framework the IAJ's Article 20 systematic-practice analysis and cumulative-pattern documentation across the case archive operate within: the cumulative effect of documented institutional conduct is the operative analytical unit, not aggregation of unrelated incidents. — AUTHORITY: Inter-American Court of Human Rights. Daniel Tibi was held in pre-trial detention in poor conditions; the Court found Ecuador internationally responsible under Articles 5, 7, 8, 21, and 25 of the American Convention, and addressed the State's obligations under the Inter-American Convention to Prevent and Punish Torture.

convergence between *Maritza Urrutia*'s adjudicated holding and Melzer's thematic analysis is the bridge from doctrinal articulation to adjudicated practice that the present synthesis identifies as the structure of the minimum content.[144] The case does not itself decide the classification of conduct in a non-custodial civil judicial setting. The IAJ uses the judgment as authority for the psychological-severity and induced-powerlessness components of its analysis; the transfer to the adjudicative setting, and the resulting UNCAT classification, remain the IAJ's own element-specific determination.

The continuum carried into the peremptory register: the Inter-American formula

The Inter-American Court has repeatedly and expressly stated the peremptory character of the prohibition across the whole continuum. In *Caesar v. Trinidad and Tobago* (Ser. C No. 123, 2005), the Court described Article 5(1) and 5(2) of the American Convention — personal integrity, torture, and cruel, inhuman or degrading punishment or treatment together — as enshrining precepts of *jus cogens*; the formula that the absolute prohibition of torture and of cruel, inhuman or degrading treatment, physical and psychological alike, belongs to the domain of *jus cogens* recurs in the Court's merits jurisprudence, including in *Ximenes-Lopes* itself (¶ 126) — the same judgment this Chapter engages for institutional vulnerability — and in *Bueno Alves v. Argentina* (2007) and *Bayarri v. Argentina* (2008). Advisory Opinion OC-26/20 lists the absolute prohibition of torture and the prohibition of cruel, inhuman or degrading treatment or punishment separately among the norms the Court's jurisprudence recognizes as *jus cogens*, and Advisory Opinion OC-18/03 records the methodological premise: the peremptory domain has grown — equality and non-discrimination entered it — and its content is identified at the current stage of legal evolution. The discipline stated at Chapter 9 governs the use of this line: the regional recognitions are weighty judicial evidence — a standing court stating, as doctrine, the position the severance view says no tribunal holds — and the universal determination that the peremptory character extends across the whole continuum remains the IAJ's own.

The gradient and the evolutionary rule stated in the hemisphere

The single graded category this Standard develops at Chapter 10 is stated at *Loayza Tamayo v. Peru* (Ser. C No. 33, 1997): the violation of the right to physical and psychological integrity "has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects."[145] The evolutionary rule is adopted at *Cantoral Benavides v. Peru* (Ser. C No. 69, 2000): acts classified in the past as inhuman or degrading treatment may be classified

[144] Maritza Urrutia v. Guatemala. Inter-Am. Ct. H.R. (Ser. C) No. 103, Merits, Reparations and Costs Judgment of 27 November 2003, §§84–94. — RELEVANCE: Direct adjudicated regional authority for the proposition that psychological torture and ill-treatment require no physical injury and can be established through conditions of induced powerlessness and severe fear. The Court found that conditions of induced powerlessness, severe fear, and coercive pressure during detention met the Article 5 ill-treatment threshold and satisfied the criteria for psychological torture, even where no physical injury was inflicted. This is the adjudicated regional bridge between Maritza Urrutia's adjudicated holding and the Melzer 2020 Special Rapporteur thematic articulation: the powerlessness/psychological-severity framework is not Special-Rapporteur speculation but adjudicated regional doctrine. — AUTHORITY: Inter-American Court of Human Rights. Maritza Urrutia was abducted by State agents and subjected to coercive interrogation; the Court found Guatemala internationally responsible under Articles 5, 7, 8, 13, and 25 of the American Convention (each in relation to Article 1(1)), and under Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

[145] *Loayza Tamayo v. Peru*, IACtHR, Ser. C No. 33 (17 September 1997), ¶ 57.

differently — as torture — in the future, because the growing demands of human-rights protection require greater firmness; the same judgment carries the Court's psychological-torture analysis.[146] And the regional treaty text does independent work. The Inter-American Convention to Prevent and Punish Torture defines torture without a severity qualifier, with an open "any other purpose" clause, and with a second limb reaching "the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish" (Article 2); Article 3(a) extends liability to the official who, being able to prevent torture, fails to do so; and the preamble declares that "all acts of torture or any other cruel, inhuman, or degrading treatment or punishment constitute an offense against human dignity" — the continuum and its dignity foundation in binding regional treaty text. The United States is not a party; the Convention operates here as regional State practice and corroborative evolutionary evidence, on the terms stated in this Chapter's closing scope paragraph.

The non-custodial holdings of the hemisphere

The Inter-American Court has classified conduct as torture and ill-treatment outside formal detention. In *Fernández Ortega v. Mexico* and *Rosendo Cantú v. Mexico* (both 2010), rape by soldiers — in the victim's home in the one case, in an open field in the other, without formal arrest or detention, under the immediate coercive control of the State agents — was held to be torture: standing-court holdings that the classification follows control and the elements, not the architecture of a cell. *Miguel Castro Castro Prison v. Peru* (2006) carries the gender dimension of the severity analysis; *González et al. ("Cotton Field") v. Mexico* (2009) grounds State responsibility in structural discrimination and official tolerance of private violence after notice; *I.V. v. Bolivia* (2016) classifies non-consensual sterilization — a medical setting, an informed-consent failure — as cruel, inhuman or degrading treatment; and the *"Street Children" (Villagrán Morales) v. Guatemala* judgment (1999) establishes threats and psychological suffering within the integrity analysis. The Commission's Principles and Best Practices on the Protection of Persons Deprived of Liberty define deprivation of liberty functionally — any form of *de facto* custody, by order of or under the control of a judicial, administrative or other authority, which a person is not permitted to leave at will — the hemispheric statement of the same functional concept OPCAT Article 4(2) states, and a bounded analogy from which Chapter 14's jurisdictional-custody analysis proceeds — as this Standard's own extension, and stated there as such. Each authority is used on the terms of the scope paragraph that closes this Chapter: component principles, supporting and not deciding.

The honest scope of the regional-jurisprudence integration

The IAJ's use of regional jurisprudence in this Section is precisely scoped and the limits of its application are stated openly. First, the United States is not party to the European Convention on Human Rights or the American Convention on Human Rights; the regional courts therefore do not bind the United States directly. The cases are presented as evidence of the customary content of the prohibition the present synthesis identifies, and as authoritative confirmation that the analytical moves the IAJ advances are not invented but adjudicated. Second, the regional courts apply textually distinct provisions (Article 3 ECHR, Article 5 ACHR) that the

[146] *Cantoral Benavides v. Peru*, IACtHR, Ser. C No. 69 (18 August 2000), ¶¶ 95–102.

courts themselves read together with UNCAT Articles 1 and 16 (the European Court in *Selmouni* §97, invoking the Article 1 purposive element; the Inter-American Court reading American Convention Article 5(2) together with UNCAT Article 1 and the Inter-American Convention). The IAJ relies on that adjudicated engagement rather than on textual identity, and does not assert that any regional court has adopted the Article 1 elements wholesale as its own test. Third, several of the cases arose in custodial or institutional-care settings; the transfer to the adjudicative setting rests on the structural correspondence the IAJ's jurisdictional-custody framework identifies (Chapter 14), not on factual identity of setting. Fourth, the IAJ does not present any regional judgment as having decided the precise question the present synthesis addresses; the regional jurisprudence supplies the underlying analytical moves — powerlessness, vulnerability, heightened-diligence duty, cumulative effect, dignity-as-asymmetry-engine, living-instrument evolution — while the present synthesis advances the application of those adjudicated moves to the documented institutional conduct of U.S. courts. The regional jurisprudence is load-bearing where it is load-bearing; the application is the IAJ's.

CHAPTER 8 — UNITED NATIONS SPECIAL PROCEDURES

A. External Corroborative Authority: A/HRC/53/36 and the Coercive Parent–Child Separation Pattern

External corroborative authority on one class of non-custodial institutional conduct within the IAJ's Appendix B taxonomy is supplied by the Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem: Custody, violence against women and violence against children, A/HRC/53/36 (13 April 2023). The Special Rapporteur's report is presented to the Human Rights Council under her mandate resolution and documents the misuse of the pseudo-concept of "parental alienation" and functionally equivalent labels ("resist-refuse," "high-conflict," "alienating behaviours") in family-court and child-protection proceedings across a wide range of jurisdictions.

Scope of Alsalem's factual record

The Special Rapporteur received over a thousand submissions and documents the practice across jurisdictions the report catalogues by name, including Australia, Austria, Brazil, Canada, Colombia, Croatia, Denmark, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Mexico, New Zealand, Poland, Portugal, Russia, Spain, Türkiye, Ukraine, the United Kingdom, and the United States (A/HRC/53/36, ¶¶ 3, 20–25, 33, 41–51). The multi-jurisdictional scope of the record is directly relevant to the alternative-explanation assessment the IAJ records openly in the preceding subsection. The IAJ does not claim that the U.S. federal-court disability record and Alsalem's family-court and child-protection record document the same institutional pattern. The two records concern different institutional mechanisms and different vulnerability classes: the IAJ archive documents judicial disability-accommodation denial and related federal-court proceedings, while the Alsalem record documents family-court and child-protection misuse of the "parental alienation" pseudo-concept and analogous constructs. The IAJ claims, instead, that the two records document a structurally analogous institutional pattern: court-centered processes using formally protective legal language to produce or perpetuate severe harm to vulnerable persons while foreclosing effective remedy. The IAJ records this multi-jurisdictional structural convergence as evidence supporting the inference of institutional rather than case-specific character, and as strengthening the convergent-indications case under Article 20; the IAJ does not present it as proof of any specific case's classification.

The Special Rapporteur's controlling characterization

Alsalem records the practice as resting on "the discredited and unscientific pseudo-concept of parental alienation" (A/HRC/53/36, ¶ 73) and documents its removal from the International Classification of Diseases by the World Health Organization in 2020 (¶ 11). The report's operative recommendation at ¶ 74(l) is that States prohibit "the use of 'reunification camps' for children as part of any outcome in legal proceedings." The paragraph documenting the specific practice targeted by that recommendation is ¶ 61, which records "reunification camps and therapies, where children are held against their will and pressured to reject the influence of the parent with whom they are most bonded."

Attribution discipline

The IAJ states the attribution discipline that governs its use of Alsalem's report absolutely and without equivocation. Alsalem's report frames the violations under CRC Articles 3, 12, and 19, under CEDAW due-diligence obligations, under the Istanbul Convention Articles 31 and 45, and under the Belem do Para Convention. Alsalem did not classify the conduct as torture or as cruel, inhuman, or degrading treatment under UNCAT Article 1 or Article 16 — the terms "torture," "cruel, inhuman or degrading," "UNCAT," and "Article 1" do not appear in the operative analysis of A/HRC/53/36. The IAJ's doctrinal extension — that the same factual patterns Alsalem documents engage the UNCAT and *jus cogens* framework where the five Article 1 elements or the Article 16 protective scope are met — is the IAJ's own analytical work, reached by independent investigation of the applicable primary sources (UNCAT text, VCLT customary principles, CAT General Comment No. 2, and the adjudicated jurisprudence developed across this Standard) and applied to the Alsalem factual record. The IAJ notes that it has not individually and independently examined the underlying individual cases catalogued in the Special Rapporteur's report; the IAJ takes the Special Rapporteur's factual record on the trust that attaches to UN Special Procedures mandates as independent, verifiable, and authoritative documentation, consistent with the function the IAJ performs as an independent investigative body applying its doctrinal framework to materials issued by United Nations mechanisms or otherwise contained in the United Nations human-rights record — work analogous to that expected of a Paris Principles–compliant national human rights institution, in the absence of any such institution in the United States. The IAJ does not hold GANHRI accreditation and does not claim national human rights institution status. Formulations circulating in the advocacy literature to the effect that "the Special Rapporteur on violence against women and children concluded that reunification therapy may well amount to torture" are not accurate as attribution and are not used by the IAJ.

Interpretive status of expert-body pronouncements

The IAJ invokes General Comment No. 2 and General Comment No. 3, together with the Special Procedures corpus, as corroborative authority and not as authentic interpretation of Article 1. The International Law Commission has confirmed that a pronouncement of an expert treaty body is not, as such, subsequent practice under Article 31, paragraph 3 (b), of the Vienna Convention and does not bind the States parties; such a body's authority derives from its mandate, and its pronouncement bears on interpretation only insofar as it reflects, gives rise to, or refers to the subsequent agreement or practice of the parties themselves[147]. Silence by a party is not to be presumed acceptance of a treaty-body reading[148]. The IAJ's determination of the peremptory content rests on its own independent investigation and on acceptance and recognition by the international community of States as a whole, not on the treaty-body pronouncement, which corroborates but does not decide. This is without prejudice to the contribution such pronouncements make within their mandates[149], and it is consistent with the source-status discipline this Standard maintains throughout: authorities support; they do not decide.

What the IAJ takes from Alsalem, precisely

The IAJ records the following as the precise use it makes of the Alsalem factual record. First, on the discriminatory-purpose element under UNCAT Article 1: Alsalem documents the highly gendered application of the pseudo-concept — predominantly deployed against mothers — supported by third-party submissions cataloguing quantified gender ratios (A/HRC/53/36, ¶¶ 14, 19). The Brazil study Alsalem cites at ¶ 14 records women accused in 66 percent of cases against 17 percent of the reverse. The U.S. custody-outcome data Alsalem cites at ¶ 19 records custody removal from mothers at 44 percent where fathers alleged alienation, against 28 percent for the reverse; the estimated consequence in Alsalem's cited third-party source is 58,000 children per year placed in dangerous home environments in the United States. The New Zealand survey data at ¶ 19 records mothers accused of parental alienation at 55–62 percent. Second, on the severity element under UNCAT Article 1 and the CIDT threshold under Article 16: Alsalem's cited harm literature — principally Dallam and Silberg (2016) on "foreseeable and lasting psychological harm" from "recommended treatments for 'parental alienation syndrome,'" Mercer (2019) on the safety of intensive parental-alienation treatments, and Chester (2022) on reunification, alienation, or re-traumatization — supplies peer-reviewed external documentation that the mechanism produces severe psychological harm in a significant proportion of documented cases. Third, on the acquiescence element under UNCAT Article 1: Alsalem's catalogue of judicial and administrative practice across jurisdictions supplies documentation that the practice operates through public officials in official capacity or with the consent or acquiescence of such officials.

What the IAJ does not take from Alsalem

The IAJ does not adopt every position advanced in A/HRC/53/36. The IAJ records the following boundary. Alsalem takes the position, throughout the report, that the term "parental alienation" and its equivalents describe a discredited pseudo-concept without empirical basis. A body of adversarial literature contests that position: the Parental Alienation Study Group and the Global

[147] ILC, Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, with commentaries, A/73/10 (2018), Conclusion 3 and commentary (11); Conclusion 13, paragraph 3.

[148] ILC, Draft Conclusions on Subsequent Agreements and Subsequent Practice, A/73/10 (2018), Conclusion 13, paragraph 3.

[149] ILC, Draft Conclusions on Subsequent Agreements and Subsequent Practice, A/73/10 (2018), Conclusion 13, paragraph 4.

Action for Research Integrity in Parental Alienation have published a substantial critique of A/HRC/53/36 (November 2023); the Family Separation Clinic (London) submitted a letter to the President of the Human Rights Council (16 June 2023) challenging aspects of Alsalem's methodology and use of submissions. The IAJ's analytical position does not depend on Alsalem's categorical characterization of the underlying concept as pseudo-science; the IAJ's position depends on facts that are independently established regardless of that characterization: (i) the WHO's removal of "parental alienation syndrome" from ICD-11 in 2020 is a WHO determination independent of Alsalem; (ii) the peer-reviewed harm literature (Dallam and Silberg, Mercer, Chester) is independent of Alsalem; (iii) the multi-jurisdictional pattern is documented in third-party submissions from named organizations (including the Backbone Collective (New Zealand), the SHERA Research Group, the Women's Aid Federation of England, Differenza Donna (Italy), and Autonomous Women's House Zagreb) that Alsalem catalogues rather than authors. The IAJ takes the facts that survive independent verification and applies its own doctrinal framework to them; the IAJ does not adopt Alsalem's characterization of the underlying concept where that characterization is not necessary to the IAJ's analysis.

Mapping to the Article 20 framework

The IAJ's use of the Alsalem factual record for Article 20 purposes is disciplined by the same framework Chapter 21 applies to the IAJ's own evidentiary record. The Special Rapporteur's catalogue supplies convergent indications, drawn from over a thousand submissions across at least twenty-five jurisdictions, warranting the independent examination the Article 20 procedure contemplates. The IAJ does not assert that the Special Rapporteur's catalogue by itself establishes that the systematic-practice threshold is met; that determination remains with the Committee. What the IAJ records is that the Alsalem record, when read together with the IAJ's own multi-complainant investigated case archive (published separately in the IAJ Case Archive) and the multi-factor registered-complainant record in the Shadow Report submitted separately to the Committee, supplies convergent indications warranting Article 20 examination of the coercive parent–child separation pattern as one class of non-custodial institutional conduct engaging UNCAT Articles 1 and 16.

Multi-treaty convergence supplied by the Alsalem record

The Alsalem record engages the Convention on the Rights of the Child (Articles 3, 12, and 19) and the Convention on the Elimination of All Forms of Discrimination against Women. The IAJ records that these frameworks are directly convergent with the UNCAT and *jus cogens* framework this Standard addresses: CRC Article 12 protects the child's right to be heard and to have expressed views given due weight; CRC Article 19 protects the child from all forms of physical and mental violence while in the care of any person having care of the child; CEDAW imposes due-diligence obligations on States to prevent and address gender-based violence. Where the same factual pattern engages all four frameworks — UNCAT/*jus cogens*, CRC, CEDAW, and the regional instruments Alsalem invokes — the convergence supplies the redundant protective architecture the international system is designed to provide. The convergence does not by itself decide any Article 1 or Article 16 classification; the classification requires the substantive analysis Chapter 1 applies to Article 1 and Article 16 in this Standard.

Cross-reference to the paradigm-case application

The paradigm-case application of the Alsalem factual record — the specific subset of coercive residential reunification interventions that engage UNCAT Article 1 or Article 16 where the elements are met — applies the doctrinal architecture of this Standard and of the Human Dignity Standard to the specific residential-programme category the Alsalem ¶ 61 factual predicate identifies, and sits inside the Appendix B Category 1 framework as its paradigm-case application, applying the same attribution discipline stated above.

B. The Extended Set of Special Procedures Authority

Section A of this Chapter recorded the Special Rapporteur on violence against women and girls (Alsalem, A/HRC/53/36) as external corroborative authority on Appendix B Category 1. This Chapter also records four additional UN Special Procedures mandates whose thematic authority speaks to specific doctrinal work at Chapters 1, 11, and 16 of this Standard, each engaged here at short-form summary level — one paragraph per mandate — with the mandate's frame, the applicable doctrinal chapter, and the attribution discipline calibrated to the mandate's frame. The IAJ has not individually and independently examined the underlying individual cases catalogued in the Special Procedures reports engaged under this section; the IAJ takes the Special Procedures' factual records as authoritative UN mandate materials, consistent with the function the IAJ performs as an independent investigative body applying its doctrinal framework to materials issued by United Nations mechanisms or otherwise contained in the United Nations human-rights record — work analogous to that expected of a Paris Principles–compliant national human rights institution, in the absence of any such institution in the United States. The IAJ does not hold GANHRI accreditation and does not claim national human rights institution status. The IAJ does not attribute to any Special Rapporteur, treaty body, or international court a classification of the specific conduct in the IAJ archive as engaging UNCAT Article 1 or Article 16; that classification is the IAJ's own.

B.1 Special Rapporteur on Torture: Persuasive Thematic Analysis for Chapter 1

The Special Rapporteur on torture is the United Nations Special Procedures mandate specifically concerned with torture and other cruel, inhuman or degrading treatment or punishment. Reports issued under the mandate supply expert thematic analysis, findings within the mandate, and recommendations to States and United Nations bodies. They are important and persuasive United Nations materials, but they are not judicial holdings, and they do not carry the institutional status of treaty text, a judgment of an international court, or an interpretation adopted by the Committee against Torture. Melzer A/HRC/43/49 (2020, Psychological Torture) is persuasive thematic analysis bearing on the Chapter 1 severity element, particularly its ¶ 37 analysis stating that "purportedly benevolent purposes cannot, per se, vindicate coercive or discriminatory measures" and that involuntary coercive interventions "may well amount to torture" where the defining elements of Article 1 are given. Edwards A/HRC/61/42 (2026, Charter of Rights of Victims and Survivors of Torture) is persuasive thematic analysis bearing on the Article 14 reparation architecture and on the concurrent-responsibility framework. The reports support concurrent accountability and reparation in substance; the rule that State and individual responsibility run concurrently — never as alternatives — is Article 58 of the ILC Articles on State Responsibility, which this Standard cites independently, and the connection between the reports and that rule is the IAJ's own synthesis. Attribution discipline: the mandate's frame is UNCAT itself, and its reports are persuasive rather than adjudicative or binding; the IAJ does not assert, however, that the SR Torture has classified any specific fact pattern in the IAJ archive under Article 1 or Article 16 — that classification is the IAJ's own doctrinal work reached by independent investigation of the applicable primary sources. Further Melzer and Edwards reports bearing on these topics include A/78/324, A/79/181, A/HRC/58/55, and A/80/137.

B.2 Special Rapporteur on the Independence of Judges and Lawyers: Corroborative Authority for Chapter 13

The Special Rapporteur on the Independence of Judges and Lawyers (Satterthwaite) engages ICCPR Article 14 and the 1985 UN Basic Principles on the Independence of the Judiciary as its mandate frame, not UNCAT. Satterthwaite A/HRC/56/62 (2024, Safeguarding Judicial Independence Amid Challenges to Democracy), A/79/362 (2024, "Justice Is Not for Sale": Improper Influence of Economic Actors), and A/HRC/62/43 (2026, Principles for Judicial Appointments) are external corroborative authority on the Chapter 13 analysis of judicial actors as State-action public officials in official capacity. Attribution discipline: the mandate's frame is adjacent to UNCAT (ICCPR Article 14 and the 1985 Basic Principles); the mandate authority is external corroborative on the institutional-character question and does not classify judicial conduct as torture or CIDT under UNCAT; the extension of the Chapter 13 analysis into the UNCAT public-official element is the IAJ's own doctrinal work reached by independent investigation of the applicable primary sources.

B.3 Special Rapporteur on Extreme Poverty and Human Rights: External U.S.-Compliance Evidence for Chapter 18

The Special Rapporteur on Extreme Poverty and Human Rights (Alston / De Schutter) engages ICESCR economic-social rights and UDHR Articles 22 and 25 as its mandate frame, not UNCAT. Alston A/HRC/38/33/Add.1 (2018, Report of the Mission to the United States of America) — with its finding that 40 million people in the United States live in poverty and 5.3 million in Third World conditions of absolute poverty — and A/74/493 (2019, Digital Welfare States and Human Rights) supply UN-mandate-level documentation of U.S. conditions bearing on the Chapter 18 corroborating equivalence channel. Attribution discipline: the mandate does not classify U.S. conditions as CIDT under UNCAT Article 16; the IAJ's Two-Plane analysis of the United States as the outlier jurisdiction and the extension of Alston's findings to the Chapter 18 equivalence-breach analysis is the IAJ's own analytical work reached by independent investigation of the applicable primary sources. De Schutter's subsequent reports extend the mandate's treatment through 2025.

The figures are recorded as evidence of administered conditions bearing on the equivalence analysis at Chapter 18, and not as a classification of poverty as cruel, inhuman or degrading treatment: poverty is a condition, not an act, and engages Article 16 only where a specific official act or omission, toward a person in a relationship of dependency or control, meets the elements this Standard states — as in the fines-and-fees incarceration analysed at Chapter 11 and the benefits-coercion category at Chapter 15.

B.4 Special Rapporteur on Contemporary Forms of Slavery: External U.S.-Compliance Evidence for Chapter 11

The Special Rapporteur on Contemporary Forms of Slavery (Obokata) engages Article 4 UDHR and the 1926 Slavery Convention with its 1956 Supplementary Convention as its mandate frame, not UNCAT. Obokata A/HRC/57/46 (2024, Contemporary Forms of Slavery Affecting Currently and Formerly Incarcerated People) is external corroborative authority on the Chapter 11 disciplined reading of the UNCAT lawful-sanctions carve-out. The report documents that performance of labour during incarceration remains compulsory in a number of States, including the United States, and cites the Captive Labor study of the American Civil Liberties Union and the University of Chicago Law School Global Human Rights Clinic on United States practice. Attribution discipline: the report does not address the U.S. Thirteenth Amendment or its punishment clause, and does not classify compulsory prison labour as CIDT under UNCAT Article 16; the Thirteenth Amendment punishment-clause analysis is the IAJ's own doctrinal work; the extension of Obokata's findings into the Chapter 11 lawful-sanctions carve-out analysis is the IAJ's own doctrinal work reached by independent investigation of the applicable primary sources.

B.5 Convergent Reading of the Special Procedures Set

The five Special Procedures mandates engaged in this Chapter (Alsalem at Section A; Edwards and Melzer, Satterthwaite, Alston, and Obokata at Sections B.1 through B.4) operate in four different treaty frames but each captures a distinct aspect of the same underlying institutional pattern the IAJ Standard analyzes. None of the mandates has classified any specific fact pattern in the IAJ archive as UNCAT torture or CIDT; the IAJ's doctrinal analysis under UNCAT and *jus cogens* supplies the classification the Special Procedures do not, and the Special Procedures supply the factual and interpretive record the IAJ's classification applies.

PART III — THE 2026 CONTENT OF THE PEREMPTORY PROHIBITION

The concordance identified at the outset holds with particular force for the content stated in this Part. Where commentary perceives a conflict — in the State-immunity decisions of the International Court of Justice and the European Court of Human Rights — the perceived conflict is not about the content of the peremptory norm at all. Those decisions resolve forum questions — whether a foreign State, or in *Jones* a named official of that State, may be impleaded in another sovereign's domestic civil courts; they expressly preserve the substantive prohibition, and they distinguish, rather than disturb, the criminal and individual-responsibility line. They therefore leave untouched everything this Part establishes about what the prohibition reaches and whom it binds. The IAJ states the content of the peremptory prohibition as the substantive authorities concordantly state it, and treats the forum-immunity holdings as operating on a separate plane that does not qualify it.

CHAPTER 9 — EVOLVED JUS COGENS

The Synthesis That Resolves the Original-Scope Question

A. The Jus Cogens Norm: Status, Content, and the Hierarchy Argument

The IAJ's position is that whatever sovereignty horizon may be embedded in the UNCAT's travaux préparatoires, that horizon cannot confine the *jus cogens* prohibition on torture, because *jus cogens* operates on a different legal plane entirely — one above and independent of any treaty architecture. The prohibition on torture is not only a conventional right embodied in UNCAT. It is a peremptory norm of customary international law, defined under VCLT Article 53 as a norm accepted and recognized by the international community as a whole from which no derogation is permitted. The International Law Commission has confirmed both the identification framework and the inclusion of the prohibition of torture among peremptory norms of general international law (Int'l Law Comm'n, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens), with Commentaries, U.N. Doc. A/77/10, conclusions 4–7 (criteria and bases for identification) and conclusion 23 with the annex (non-exhaustive list of norms previously referred to as having peremptory status, which includes the prohibition of torture) (2022)). The General Assembly welcomed the conclusion of that work and took note of the conclusions, their annex, and the commentaries in resolution 78/109 of 7 December 2023, taking note also of the range of comments and observations submitted by Governments in writing and in the Sixth Committee.[150] The annex entry rests on a documented evidentiary record: the Special Rapporteur's fourth report compiles the recognition — the International Court of Justice in *Belgium v. Senegal*, the ICTY trial and appeals chambers in *Delalić* and *Furundžija*, the Inter-American Court's consistent line from *Bámaca-Velásquez* through *Espinoza Gonzáles* and *Mendoza* — stating the prohibition of torture and cruel, inhuman or degrading treatment or punishment as absolute, non-derogable, and part of international *jus cogens* — the European Court in *Al-Adsani* and *Jones*, the African Commission in *al-Asad v. Djibouti*, and the first

[150] G.A. Res. 78/109, Peremptory norms of general international law (*jus cogens*), ¶¶ 1, 3–4 (7 December 2023) (welcoming the conclusion of the Commission's work; taking note of the draft conclusions, annex, and commentaries, and of the range of comments and observations of Governments).

United Nations Special Rapporteur on torture, Kooijmans, in 1986.[151] The framework has been applied in U.S. federal litigation under the Alien Tort Claims Act and the Torture Victim Protection Act since the Second Circuit's decision in *Filártiga v. Peña-Irala*, with subsequent cases recognizing the prohibition of torture as a *jus cogens* norm enforceable independent of any treaty (Pamela J. Stephens, A Categorical Approach to Human Rights Claims: Jus Cogens as a Limitation on Enforcement?, 22 Wis. Int'l L.J. 245, 245-47 (2004)).[152]

Before addressing the IAJ's specific argument, it is necessary to address a precise and technically sound critical point: *jus cogens* elevates the status of a norm; it does not automatically expand its content. That is correct as a general proposition. The question of what conduct falls within the minimum content of the torture prohibition is distinct from the question of whether that norm is peremptory. The IAJ argument engages this distinction directly.

The IAJ's *jus cogens* analysis is a hierarchy argument, not a content-expansion argument. It is this: the UNCAT's travaux préparatoires reflect what the negotiating states intended to limit in the conventional instrument. But *jus cogens* is not a creation of the UNCAT. It is a pre-existing and independent customary norm whose content is defined by the practice and *opinio juris* of the international community as a whole — not by any particular treaty negotiation. When states negotiated what they were and were not willing to accept in a treaty, they could not, by that negotiation, define the lower bound of a peremptory norm that exists independently of the treaty. The negotiating history identifies what states wanted to limit; it cannot accomplish that limitation as against a pre-existing peremptory norm. This is the precise meaning of 'no derogation is permitted' under VCLT Article 53.[153][154]

[151] Dire Tladi (Special Rapporteur), Fourth report on peremptory norms of general international law (*jus cogens*), U.N. Doc. A/CN.4/727 (2019), ¶¶ 69–73, compiling *Belgium v. Senegal*, I.C.J. Reports 2012, p. 422, ¶ 99; *Prosecutor v. Delalić*, IT-96-21-T, Judgment (16 November 1998), ¶ 454, and Appeals Chamber Judgment (20 February 2001), ¶ 172; *Prosecutor v. Furundžija*, IT-95-17/1 (10 December 1998), ¶¶ 153–156; *Bámaca-Velásquez v. Guatemala*, Ser. C No. 70 (2000), Separate Concurring Opinion of Judge García Ramírez, ¶ 25 (recorded as persuasive analysis, not a holding; the judgment's own treatment is at ¶ 209); quoting *Espinoza Gonzáles v. Peru*, Ser. C No. 289 (2014), ¶ 141 ("The prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute and non-derogable ... Nowadays, this prohibition is part of international *jus cogens*") and *Mendoza v. Argentina*, Ser. C No. 260 (2013), ¶ 199; and citing *al-Asad v. Djibouti* (Afr. Comm'n H.P.R.) and Ortiz Hernández v. Venezuela, IACHR Report No. 2/15 (2015), ¶ 212.

[152] ILC Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens), with Commentaries. U.N. Doc. A/77/10, ch. IV (Report of the International Law Commission, 73rd session, 2022); the text of the draft conclusions and annex as adopted by the Drafting Committee appears at A/CN.4/L.967. — RELEVANCE: The most authoritative contemporary confirmation of the prohibition of torture's *jus cogens* status, adopted by the ILC—the UN's principal international law codification body. The Annex explicitly lists prohibition of torture among the non-exhaustive catalogue of *jus cogens* norms. Supports Chapter 9 at the highest possible institutional level. — AUTHORITY: 23 Draft Conclusions and an Annex adopted on second reading after a six-year process (2016–2022) incorporating Government comments. The Annex explicitly lists: prohibition of aggression; prohibition of genocide; prohibition of crimes against humanity; basic rules of IHL; prohibition of racial discrimination and apartheid; prohibition of slavery; and prohibition of torture. Draft Conclusion 2 provides that peremptory norms 'reflect and protect fundamental values of the international community' and 'are universally applicable and hierarchically superior to other rules.' Conclusion 10 provides that treaties conflicting with *jus cogens* 'have no legal force.' The Siderman de Blake court (9th Circuit) held that freedom from torture is 'deserving of the highest status under international law.' PRECISION NOTE: The ILC Annex is explicitly described in ILC Commentary as a 'non-exhaustive illustrative list.' The prohibition of torture appears there as confirmation of established customary practice — not as the source of its peremptory status, which derives from the broader body of state practice and opinio juris. The IAJ cites the Annex as corroborative confirmation, not as the primary basis for the *jus cogens* argument in Chapter 9.

[153] Prosecutor v. Anto Furundzija. ICTY Trial Chamber II Judgment. Case No. IT-95-17/1-T, 10 December 1998. (1999) 38 ILM 317. — RELEVANCE: The most consequential judicial pronouncement on torture as *jus cogens*. Directly establishes the proposition, at ¶155, that the *jus cogens* status of the torture prohibition serves "to internationally de-legitimise any legislative, administrative or judicial act authorising torture." This is the cornerstone of Chapter 9 of this publication's judicial-act analysis. — AUTHORITY: Trial Chamber II (Cassese, Mumba, May), at ¶¶153–157. The Chamber states these consequences in continuous prose rather than as a numbered list; the enumeration below is the IAJ's summary of that passage: (1) no treaty can authorise torture; (2) no customary rule can derogate from the prohibition; (3) legislation authorising or condoning torture is internationally unlawful; (4) no statute of limitations applies; (5) torture must not be excluded from extradition under political offence exemptions; (6) perpetrators acting on national authorisation can still be held individually criminally responsible. The Tribunal also held that aiding and abetting torture — including by persons present during but not participating in the physical acts — constitutes individual criminal responsibility. The Judgment was affirmed on appeal (21 July 2000) and is the primary judicial citation for the *jus cogens* status of the torture prohibition in international courts worldwide. NOTE ON APPLICATION: The Furundzija dictum addresses state-level legislative

The identification method explains the independence without supplying the content. Under Conclusion 11 a treaty rule may codify, crystallize, or generate a rule of customary international law, and the customary rule is identified independently of the treaty formulation; whether its content is broader than the treaty's is a separate question, answered by practice and *opinio juris* and, beyond the settled core, by the IAJ's determination.[155] Article 1 is the UNCAT's formulation of the crime; its negotiation history and principal applications were custody-influenced, but the enacted definition contains no custody element, and it is not the boundary of the peremptory norm.

B. What Is the Minimum Content of the Jus Cogens Torture Prohibition?

MKUltra supplies a historical control for this minimum-content analysis. The reason MKUltra matters is not that every subproject must be classified identically, but that the peremptory prohibition cannot depend on whether the State used a prison cell, a laboratory, a university intermediary, an intelligence contractor, a hospital setting, or a research protocol as the institutional vehicle. *Jus cogens* protects the person against official severe suffering and prohibited state purposes; it does not protect only those persons harmed inside the physical architecture most familiar to the 1984 travaux.

Since the IAJ argument depends on the minimum content of the *jus cogens* norm, that content must be identified from sources independent of the UNCAT's negotiating history. Three authoritative sources converge on the answer.

- **ICJ: *Belgium v. Senegal* (2012).** The International Court of Justice confirmed that the prohibition of torture forms part of customary international law and has become a peremptory norm of general international law. The Court also held that the Convention obligations at issue were obligations *erga omnes partes*: each State party has a legal interest in compliance by every other State party. The Court did not hold that those Convention enforcement obligations are directly "owed to all persons," and it did not decide whether the minimum content of the prohibition is confined to or independent of a particular institutional setting. The setting-unconfined conclusion advanced here is therefore the IAJ's inference from the prohibition's peremptory status, the Convention's enacted elements, the Committee's interpretation of governmental and official reach, and the wider authorities examined in this Standard — not an express holding of *Belgium v. Senegal*.

At the peremptory level the Commission's 2022 Conclusions supply the systemic consequences that attach once the prohibition is engaged: peremptory norms give rise to obligations *erga*

and executive authorisation frameworks (e.g., executive orders purporting to authorise "enhanced interrogation"). The IAJ applies this dictum by analogy to individual judicial acts that authorise, perpetuate, or acquiesce in prohibited conduct — an inferential extension that the IAJ acknowledges is argued doctrine rather than a direct holding of the ICTY.

[154] Bassiouni, M.C. "International Crimes: Jus Cogens and Obligatio Erga Omnes." Law and Contemporary Problems 59(4), 63–74 (Fall 1996). Available: scholarship.law.duke.edu/lcp/vol59/iss4/6. — RELEVANCE: Establishes the five concrete legal consequences of *jus cogens* status: (1) universal criminal jurisdiction; (2) duty to prosecute or extradite; (3) non-applicability of statutes of limitations; (4) non-applicability of political offence exemptions; and (5) prohibition on granting impunity. Supports Chapter 9's erga omnes framework and the IAJ's standing as a civil society monitor. — AUTHORITY: Written by the foremost scholar of international criminal law, former Chairman of the UN Commission of Experts investigating violations of IHL in the former Yugoslavia. Bassiouni argues that *jus cogens* implies obligatio—a genuine legal duty, not merely a right. The threshold question of whether *jus cogens* creates rights or non-derogable binding duties is resolved in favour of the latter: 'otherwise *jus cogens* would not constitute a peremptory norm of international law.' Consequently, these obligations are non-derogable in times of war as well as peace. States bearing the obligatio erga omnes may not grant impunity to violators of such crimes.

[155] Conclusion 11(1), A/73/10 (2018) (a treaty rule may codify, crystallize, or generate a rule of customary international law). The customary rule is identified on its own terms rather than from the treaty formulation; whether its content is broader is a further question, established by practice and opinio juris, not by Conclusion 11.

omnes in which all States have a legal interest, and any State may invoke another State's responsibility in accordance with the law of State responsibility (Conclusion 17); no circumstance precluding wrongfulness may be invoked (Conclusion 18); and a serious breach — a gross or systematic failure to fulfil the obligation — engages the duties of other States to cooperate, through lawful means, to bring it to an end and not to recognise or assist the situation it creates (Conclusion 19). This State-responsibility inquiry is distinct from the treaty inquiry under UNCAT Article 20, which asks whether torture is systematically practised and carries its own confidential procedure; the IAJ records convergent indications relevant to each and claims a completed determination under neither.[156]

- **ICJ: *Barcelona Traction* (1970).** *Barcelona Traction* established that *erga omnes* obligations arise from the basic rights of the human person (¶¶ 33–34). Again, what the case directly holds is the category of obligations from which *erga omnes* duties arise — it does not address the specific setting question of judicial versus custodial torture. What follows by inference, from the combination of this holding with General Comment No. 2's explicit extension of the Convention to all branches of government, is that 'basic rights of the human person' are not confined to persons in custodial settings. The IAJ draws this inference from the combined effect of the three sources cited here rather than from Barcelona Traction alone.
- ***Belgium v. Senegal*** establishes the peremptory status of the prohibition and the *erga omnes partes* character of the Convention obligations examined there. *Barcelona Traction* identifies protection of the basic rights of the human person as a source of obligations *erga omnes*. General Comment No. 2 addresses implementation throughout government (¶9) and responsibility for official conduct (¶15), while Human Rights Committee General Comment No. 31 expressly identifies all governmental branches, including the judiciary (¶4). No one of these sources expressly decides the precise setting question addressed in this Standard. Read together with the enacted text of Articles 1 and 16, however, they provide substantial support for the IAJ's independent determination that institutional setting is not a categorical limitation where the substantive elements are established. The conclusion is an inferential synthesis whose legal basis and limits are stated openly.

> DIGNITY ALIGNMENT TEST — Chapter 9.B *Jus Cogens* Minimum Content (this is a normative check informing object-and-purpose analysis; it does not substitute for treaty elements, evidentiary proof, or the competent body's determination): THESIS POSITION: The minimum content of the *jus cogens* prohibition is setting-unconfined because it derives from the basic rights of the human person — not from any treaty architecture, institutional setting, or physical location. | ADVERSARIAL COUNTER: *Jus cogens* elevates status; it does not automatically expand content beyond what states agreed, and states agreed on a custodial context. | DIGNITY DERIVATION: UNCAT's own Preamble states that "the right to be free from torture... is derived from the inherent dignity of the human person." Human dignity is not a feature of institutions. It is a property of persons. It does not end at the prison cell door and resume outside it. If the prohibition derives from dignity — as UNCAT itself states — then the scope of the prohibition is as wide as the scope of dignity, which

[156] Conclusions 17–19, A/77/10 (2022): peremptory norms give rise to obligations erga omnes in which all States have a legal interest, and any State may invoke another State's responsibility in accordance with the law of State responsibility (Conclusion 17); no circumstance precluding wrongfulness may be invoked (Conclusion 18); a serious breach — a gross or systematic failure to fulfil the obligation — engages the duties of other States to cooperate, through lawful means, to bring it to an end and not to recognise or assist the situation it creates (Conclusion 19).

> is universal and setting-unconfined. The adversarial position would locate the prohibition not in the person but in the building. The dignity foundation cannot sustain that reading. The thesis position is the one consistent with the principle UNCAT expressly invokes as its own foundation.

This is an inferential synthesis, not a combined holding of the cited authorities. Each source contributes a distinct and independently established element: *Belgium v. Senegal* contributes peremptory status and the *erga omnes partes* character of the Convention obligations; *Barcelona Traction* derives obligations *erga omnes* from the basic rights of the human person rather than from the architecture of any particular treaty; General Comment No. 2 contributes the Committee's interpretation that the Convention's obligations extend to all parts of a State party's Government (¶9) and to all officials and others acting in an official capacity (¶15); and General Comment No. 31 states the same proposition expressly as to all branches of government, including the judiciary (¶4). A contrary interpretation may argue that the Convention's architecture and negotiating history reflect a predominantly custodial and interrogation-centered conception, and that the peremptory status of the prohibition does not itself enlarge its content. The IAJ accepts the distinction between status and content but rejects the proposed categorical setting limitation. Its determination rests on the absence of a setting limitation in the enacted elements, the application of those elements to official conduct across governmental institutions, the universal and non-derogable character of the prohibition, and the component principles found in the authorities examined below. No controlling tribunal has directly adjudicated the precise setting-unconfined proposition, and to that extent the gap between the IAJ's determination and its express statement in institutional doctrine is a real one. That gap reflects the compartmentalization the custodial paradigm introduced together with the synthetic step the IAJ takes in reading the component principles together; it is not a claim that the authorities have already decided the question. What the IAJ maintains is that those component principles, correctly read together, are sufficient to support the determination it reaches. The IAJ presents the conclusion as its own jurisprudential determination, and not as the only interpretation that has ever been advanced.

Corroboration from the crimes-against-humanity codification.

A further independent source converges to the same effect. In the International Law Commission's work on crimes against humanity, the Special Rapporteur recorded that the International Court of Justice has treated the prohibition of State-sponsored torture *as jus cogens* and reasoned, *a fortiori*, that its perpetration on a widespread or systematic basis is peremptory as well.[157] This is the same peremptory prohibition, confirmed by a second Commission mandate through the same authorities on which Section B relies, and it is independent of the UNCAT's negotiating history. Where that record routes the status proposition through *Jurisdictional Immunities of the State (Germany v. Italy)*, the IAJ takes only the proposition that the prohibition is peremptory; it records that judgment, consistent with this Standard's treatment throughout, as a documented failure to give the peremptory norm its effect, and not as authority on immunity.

The Rome Statute definition, banked for status and bounded as to scope.

[157] Special Rapporteur on Crimes Against Humanity, First report, A/CN.4/680 (2015), ¶ 39, drawing on *Belgium v. Senegal*, *Furundžija*, and *Almonacid Arellano v. Chile*.

The same codification carries the Rome Statute's definition of torture, which the Commission adopted for the crimes-against-humanity draft articles: the intentional infliction of severe physical or mental pain or suffering upon a person "in the custody or under the control of the accused," subject to the lawful-sanctions carve-out[158]. The IAJ confronts this element directly rather than passing it over, and it does not fix the content of UNCAT Article 1 or of the peremptory norm, for three reasons. First, the definition is expressly scoped to its own instrument and gated by the crimes-against-humanity chapeau — a widespread or systematic attack directed against a civilian population — so it defines a narrower object than Article 1, which reaches the single official act; it cannot lend UNCAT its custody element while withholding that threshold. Second, the same definition omits the two elements UNCAT Article 1 contains — the enumerated-purpose requirement and the public-official nexus — so it diverges from Article 1 on three axes at once; an interpreter who imports its custody element must, on pain of inconsistency, also discard purpose and official capacity. There is no single controlling definition of torture in international law to quarry for a setting limitation, and the divergence among the instruments is itself the demonstration. Third, the operative words are "custody or under the control," and control is not detention. Read accurately, the element points in the same direction as the functional-control analysis in Chapter 14 — toward control, not confinement. Because it comes from a different instrument, it supports that analysis by analogy only; it is not authority on Article 1. The IAJ therefore banks the crimes-against-humanity corpus for the peremptory status it establishes and declines its instrument-specific definition — the ordinary discipline of instrument-specificity, stated openly.

The dignity derivation stated in the Check above rests on more than the treaty preambles. The companion IAJ Law Review The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment records an independent 197-jurisdiction comparative survey of the world's constitutions, carrying row-level sources, operational-status fields, and confidence assessments in its companion workbook, with intensified primary verification for the identified dignity–entrenchment subset: by the most rigorous published count, 162 national constitutions used the term by 2012, roughly sixty per cent deploying it as a fundamental principle (Shulztiner & Carmi, 62 Am. J. Comp. L. 461 (2014)), and the Review's own coding places forty-one jurisdictions in the foundational, inviolable-supreme-norm tier of which Germany's Basic Law Article 1 is the paradigm. The Review claims for that convergence only what the record proves, and this Standard imports it on the same discipline: the near-universal constitutional recognition of dignity is evidence of the content of the Plane A obligation — an obligation that would exist even for a silent constitution — not the source of the obligation, and no freestanding customary rule of dignity is asserted by constitutional convergence alone. So disciplined, the convergence corroborates the derivation: the value from which UNCAT states that the prohibition derives is the value the constitutions of the large majority of States independently recognize, and a prohibition derived from a value of that universality is not plausibly confined to the buildings of any particular institutional setting.

Doctrinal Objection and Reply 9.1: The Jus Cogens Content Question — Status vs. Scope

The most technically precise central counterargument against the IAJ's *jus cogens* analysis is: '*jus cogens* elevates status, not content.' This is correct as an abstract proposition. What it misses is that the IAJ argument is not a content-expansion argument — it is a hierarchy argument. The claim is that the UNCAT's negotiating history cannot define the lower bound of a pre-existing

[158] Rome Statute of the International Criminal Court, art. 7(2)(e); ILC Draft Articles on Prevention and Punishment of Crimes Against Humanity (2019).

peremptory norm because *jus cogens* is non-derogable by definition. The central counterargument, accurately restated, would need to show either: (a) that the minimum content of the *jus cogens* torture prohibition is itself limited to custodial settings — a position that the ICJ (*Belgium v. Senegal; Barcelona Traction*), the CAT Committee (General Comment No. 2), and the weight of customary international law practice do not support; or (b) that the hierarchy argument is conceptually flawed — a position that would require showing that negotiating states can, through treaty compromise, confine a pre-existing peremptory norm below its minimum content, which contradicts the express terms of VCLT Article 53. The critical argument as typically made often attacks a position this Standard does not hold.

The establishment objection and reply. A related objection follows the status/scope objection and is answered with it: that no controlling international judgment, no International Law Commission conclusion, and no Committee against Torture decision has established the setting-unconfined minimum content in the form this Standard states it, and that the position is therefore an institutional one. The IAJ states the reply plainly. The objection restates, with a hostile inflection, what this Standard already declares on its face: the setting-unconfined minimum content in civil judicial settings is the IAJ's synthesis from convergent authorities, recorded as the Institute's own institutional position and not as a proposition already adjudicated in a controlling international judgment. That candor is not a concession of error; it is the method. The IAJ operates in the manner of a Paris-Principles institution, whose function is to examine the law and its application, to determine, and to publish — holding authorities as support and its own independent investigation as the ground of decision. An objection that a determination so labelled is "not yet established law" demands that the document be a different genre — a judgment — and thereby concedes what matters: it identifies no error of text, element, or authority, only the absence of a prior adjudication. The absence of a prior adjudication is where every subsequently settled proposition of human-rights law once stood. The limiting discipline the objection seeks is already in the architecture: the five-element proof structure, the threshold stated in this Standard's treatment of immunity — below the torture/CIDT gateway the conduct is not torture, and the honest or erring judge is protected by the threshold itself — and the Article 16 continuum, whose obligations below the criminal threshold are preventive, not penal. The distinction between the Convention's protective core and the ordinary exercise of State authority is maintained by the elements, where the Convention itself placed it, and not by an unwritten setting rule the parties never enacted.

The circularity objection and reply. A further objection charges circularity: that the IAJ relies on its own investigative record, its own analytical instruments — the Dignity Alignment Tests, the Functional Severity Scale, the jurisdictional-custody category — and then treats those instruments as evidence that the international legal position has evolved. The reply is the evidentiary architecture of this Standard, which the objection has reversed. The case that the prohibition's content has evolved is built exclusively from sources external to the Institute: the enacted treaty text; the Committee's General Comments; the Special Procedures corpus; regional human-rights jurisprudence; the International Law Commission's work on *jus cogens*, on subsequent agreements and practice, and on crimes against humanity; and the ratification records of the States themselves. No IAJ instrument appears anywhere in that evidentiary chain. The Institute's instruments are application tools — they classify facts under a framework whose content is established from the external sources — and stand to this Standard as a court's own multi-factor tests stand to the statutes the court applies: instruments of application, not sources of law, and no more circular for being the institution's own. The IAJ's archive enters the analysis at one point only, and as fact, not law: at the Article 20 systematic-practice stage, where it supplies part of the factual record to which the framework is applied, alongside the independently documented multimandate record. The volume of the Institute's case intake is nowhere offered as evidence that the law has changed, and the internal consistency of the framework is nowhere offered as proof of its external validity. What is offered is the convergent external record, and the determination applied to it is labelled as the IAJ's own — which is attribution discipline, not bootstrapping.

The conceptual-incoherence objection and reply. A more fundamental version of the establishment objection is stated in the academic literature: that no account of *jus cogens* supplies compelling, unambiguous identification criteria; that the doctrine's positivist dress conceals a natural-law foundation; and that its operation has depended on leaving that foundation unexamined — the "noble lie" thesis.[159] The reply is threefold, and two of its limbs postdate the objection. First, the 2022 Conclusions supply the identification criteria whose absence the objection lamented — acceptance and recognition by the international community of States as a whole, assessed against identified forms of evidence — and the General Assembly has since welcomed the completed work. Second, the prohibition this Standard applies does not depend on the contested periphery of the doctrine: it is among the least contested entries in the annex, recognized by the International Court of Justice, both regional human-rights courts, the international criminal tribunals, and the treaty bodies alike, on the documented record compiled above. Third, to the extent the diagnosis is right that the category draws on a moral foundation, the diagnosis is not a defect in this Standard's architecture but a restatement of it: the fiduciary account engaged in the same literature — the State as fiduciary of the human beings subject to its powers — converges with the human-dignity foundation this Standard states, and torture is that trust's terminal breach.[160] The objection, taken at full strength, explains why the norm exists; it does not unsettle what the norm is, and it leaves the identification record untouched.

B-bis. Regional Jurisprudence Support for the Minimum Content

Section B identifies the minimum content of the *jus cogens* prohibition from sources independent of the UNCAT's negotiating history. That identification does not rest on interpretation alone. Two regional human-rights courts — the European Court of Human Rights and the Inter-American Court of Human Rights — have repeatedly adjudicated the component principles from which the minimum content is composed. This subsection records the precise scope of that support and its place in the argument. The full treatment of the regional jurisprudence, including the textual bridge by which the regional courts engage the UNCAT framework, is developed in Chapter 7; this subsection states only what that jurisprudence contributes to the *jus cogens* minimum-content analysis of Section B.

The regional cases supply adjudicated support for the component propositions on which the minimum content rests: vulnerability and induced powerlessness (*Bouyid v. Belgium*, ECtHR Grand Chamber, 2015; *Tibi v. Ecuador*, IACtHR, 2004); dignity as the operative principle in conditions of power asymmetry (*Bouyid*, again; *Ximenes-Lopes v. Brazil*, IACtHR, 2006); cumulative effect and the assessment of severity across the whole of the conduct (*Jalloh v. Germany*, ECtHR Grand Chamber, 2006, §67); the evolution of the threshold over time (*Selmouni v. France*, ECtHR Grand Chamber, 1999); and psychological severity as sufficient (*Maritza Urrutia v. Guatemala*, IACtHR, 2003; *Kudła v. Poland*, ECtHR Grand Chamber, 2000, §92). *Furlan and Family v. Argentina* (IACtHR, 2012) is structurally on point for the IAJ's core fact pattern: disability as the vulnerability

[159] Jens David Ohlin, In Praise of Jus Cogens' Conceptual Incoherence, (2018) 63:3–4 McGill L.J. 701.

[160] The fiduciary account is developed in the literature Ohlin engages — Evan J. Criddle and Evan Fox-Decent, Fiduciaries of Humanity — and its convergence with this Standard's human-dignity foundation is the IAJ's own observation, not a claim those authors make about this Standard.

trigger, civil judicial proceedings as the locus of harm, judicial delay as the mechanism, heightened-diligence and accommodation duties in judicial process, and personal-integrity engagement under Article 5 of the American Convention.

The IAJ records the precise limit of this support. The regional courts interpret the European and American Conventions, not the UNCAT, and the United States is party to neither regional system; these holdings are therefore not binding on the United States, and they do not themselves classify the adjudicated conduct as torture under Article 1 of the UNCAT. The IAJ advances that classification on independent grounds. What the regional jurisprudence supplies is twofold: adjudicated support for the individual component propositions of the minimum content, and evidence of the customary-international-law content of the prohibition, drawn from courts whose interpretation of their own torture and ill-treatment thresholds has engaged the UNCAT framework. The convergence of these cases does not adjudicate the judicial-accommodation theory the IAJ advances; it supplies adjudicated regional support for the component principles on which that theory builds.

This support is grounded in the dignity principle common to every instrument of the international human-rights framework — the Universal Declaration Article 1, and the Preambles of the UNCAT, the ICCPR, the European Convention, and the American Convention alike. Dignity is a property of persons, not a feature of institutions or of treaty memberships. Where regional courts, applying overlapping prohibitions whose interpretation has engaged the UNCAT framework, have adjudicated dignity violations across decades in cases of induced powerlessness, those holdings are evidence of how the shared dignity principle — including as it operates in the instrument binding on the United States — applies to institutional infliction of severe suffering on persons in induced vulnerability, including in adjudicative settings. The adversarial position would make dignity contingent on regional treaty memberships; the dignity foundation common to every instrument cannot sustain that reading.

> DIGNITY ALIGNMENT TEST — **Chapter 9.B-bis Regional Jurisprudence Support (this is a normative check informing object-and-purpose analysis; it does not substitute for treaty elements, evidentiary proof, or the competent body's determination):** THESIS POSITION: The customary content of the *jus cogens* prohibition, as adjudicated by the regional human-rights courts in cases interpreting overlapping protections against torture and ill-treatment whose interpretation has engaged the UNCAT framework, while operating under distinct treaty texts and element structures, reaches institutional infliction of severe suffering on persons in induced vulnerability — including in adjudicative settings — where the suffering exceeds the inevitability floor and where dignity is diminished by official conduct in conditions of power asymmetry. | ADVERSARIAL COUNTER: The regional courts interpret regional conventions, not UNCAT, and the United States is party to neither system; the cases therefore have no binding effect and cannot be used to expand the customary content beyond what the original UNCAT negotiators agreed. | DIGNITY DERIVATION: The dignity principle that grounds every instrument of the international human-rights framework — UDHR Article 1, UNCAT's Preamble, ICCPR's Preamble, the European Convention's Preamble, and the American Convention's Preamble alike — is a property of persons, not a feature of institutions or treaty memberships. Where regional courts, applying overlapping prohibitions whose interpretation has engaged the UNCAT framework, have adjudicated dignity violations across decades in cases of induced powerlessness, those holdings are evidence of how the dignity principle — common to every instrument including the one binding on the United States — applies. The adversarial position would make dignity contingent on regional treaty

memberships; the dignity foundation cannot sustain that reading. The thesis position is consistent with the foundation that every instrument shares.

C. VCLT Articles 53 and 64: Supervening Peremptory Norms

VCLT Article 64 provides that if a new peremptory norm of general international law emerges, any existing treaty in conflict with that norm becomes void to the extent of the conflict. Article 53 addresses treaties that conflict with an existing peremptory norm at the time of their conclusion. Both Article 53 and Article 64 operate on treaties, not on domestic procedural doctrines. The IAJ thesis documents the emergence and progressive crystallization of a norm on systemic denial of access to justice as a form of ill-treatment. This norm, grounded in the convergence of CRPD Article 13, CAT General Comment No. 2's absolute prohibition, and *Belgium v. Senegal*'s *erga omnes* holding, has not yet achieved fully settled peremptory status as recognized by the international community as a whole. The analysis characterizes it as a norm in active development: supported by convergent treaty authority, progressive Committee interpretation, and the trajectory of customary international law, but not yet the subject of the universal recognition that VCLT Article 53 requires for *jus cogens* crystallization. The analysis presents this argument as developmentally necessary rather than settled, and the primary *jus cogens* argument in Chapter 9.A and III.B does not depend on it.

An IAJ-documented federal case record provides a specific documented instance of what the crystallizing access-to-justice norm addresses. A litigant in documented active neurological relapse filed a federal ADA claim against a state court for refusal to accommodate his disability during judicial proceedings. The claim was foreclosed in 52 days — before the defendants were served, before any critical briefing, without engagement with *Tennessee v. Lane*, and with the complaint characterized as "frivolous" despite raising a cause of action directly cognizable under fifteen-year-old Supreme Court authority. The Ninth Circuit confirmed the dismissal as frivolous without independent analysis. No domestic mechanism remained. This is the precise gap the access-to-justice norm addresses: the *erga omnes* obligation is owed to all persons unconditionally; the domestic architecture provided no mechanism through which that obligation could be examined. The gap between the unconditional character of the *jus cogens* obligation and the complete domestic foreclosure of any examination of it is itself evidence of the systemic compliance failure the norm is designed to address.

The federal forum matters independently, and the asymmetry is structural. Title II of the ADA reaches state and local courts as a valid guarantee of the fundamental right of court access under *Tennessee v. Lane*; it does not, by its terms, apply to the federal judiciary, and Section 504 of the Rehabilitation Act is not generally treated as running against the federal courts. In federal court, accommodation rests on the Judiciary's own policy — the Judicial Conference's 1995 resolution, implemented at Guide to Judiciary Policy, vol. 5, ch. 2, § 255, which by its terms addresses communications disabilities — together with due-process guarantees and the court's inherent authority; for many non-communication disabilities, no uniform federal statutory standard, independent review, or enforceable cause of action corresponds to the Title II protection the same litigant would hold in state court. A survivor whose torturer was a federal officer is consigned to precisely the forum where the accommodation architecture is thinnest — and a frivolousness or vexatiousness branding entered against filings produced under the conditions that denial created is a judicially-imposed "sanction" within the United States' own deposited Understanding II(1)(c), which concedes that domestic sanctions cannot defeat the object and purpose of the Convention.

Nor is the foreclosure finding the IAJ's alone. In Report No. 154/20 (Petition 1638-11, Admissibility, *Abou Elkassim Britel, Binyam Mohamed, Bisher Al-Rawi & Mohamed Farag Ahmad Bashmilah* (United States), June 9, 2020), the Inter-American Commission on Human Rights admitted the petition of four survivors of the CIA rendition program — every domestic suit having been dismissed on state-secrets, national-security, or immunity grounds before any merits were reached — and held that "the record is clear that no effective remedy is available to the Petitioners in the U.S." (¶23; procedural history at ¶¶16–18; waiver of the exhaustion defence at ¶22): an independent international finding, by a body outside this corpus, of the same structural foreclosure this Standard documents. The United States answered from inside the door, opposing admissibility on the footing that the American Declaration is "non-binding" and the Commission's recommendations need not be followed (¶ 18). The one external body that can hear an individual's own petition against the United States cannot, on the United States' own insistence, bind it to the answer — a fact that corroborates the closed circuit rather than relieving it. The finding is the Commission's, on its record; it is cited as independent corroboration, not as adjudication of the facts this Standard separately documents.

The affirmative counterpart to this foreclosure is narrower than a general right to a forum, and must be stated precisely. In the same third report the Special Rapporteur located, among the consequences of peremptory status, a duty to exercise domestic criminal jurisdiction over crimes prohibited by a peremptory norm — torture among the crimes — and proposed a draft conclusion to that effect. That is distinct from the Convention's own prosecute-or-extradite machinery, the treaty-specific obligation the International Court of Justice addressed in *Questions Relating to the Obligation to Prosecute or Extradite*, holding the prohibition of torture peremptory and the duty owed *erga omnes partes*. The Commission did not adopt the proposed jurisdiction conclusion, folding it, with the immunity proposal, into the without-prejudice clause.[161] What Tladi proposed was a duty to exercise domestic criminal jurisdiction, not a general obligation to open every civil or judicial forum and not a completed duty to prosecute every alleged offender; the IAJ does not conflate these and does not rest its determination on the proposed conclusion. It records only that whether peremptory status entails a general duty to exercise domestic criminal jurisdiction over *jus cogens* offences was a live proposal, supported by the Special Rapporteur but not adopted or resolved by the Commission — a question adjacent to, not identical with, the civil-remedial foreclosure this Standard documents.

On the domestic plane, an additional remedial route once thought potentially available for law-of-nations violations has been progressively narrowed by the courts and, as to judicial recognition of new causes of action under the Alien Tort Statute, closed. *Sosa* once held that federal courts might recognise a narrow class of causes of action for present-day law-of-nations violations, with the *Filártiga* torture claim as the paradigm — the "door," in the Court's image, left ajar.[162] That door was narrowed step by step — *Kiobel* imposing the presumption against extraterritoriality, *Jesner* foreclosing foreign-corporate defendants, *Nestlé* requiring the statute's focal conduct to occur in the United States[163] — and, on 23 June 2026, closed. In *Cisco*

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[161] Third report, A/CN.4/714 (2018), §II.D.1, paras. 113–120: *jus cogens* crimes include torture (para. 114), and States have a duty to exercise jurisdiction over such crimes; the Special Rapporteur proposed a draft conclusion on a duty to exercise domestic jurisdiction over crimes prohibited by a peremptory norm. See *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, I.C.J. Reports 2012, p. 422, para. 99 (prohibition of torture is peremptory) and the Convention duty to prosecute. The proposal was not adopted; it was folded, with the immunity proposal, into the without-prejudice clause, Conclusion 22 (A/77/10, 2022). Persuasive expert support; the IAJ's determination rests on its own investigation.

[162] *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712–724, 725, 729 (2004): the Alien Tort Statute is jurisdictional and, as the law then stood, federal courts might recognize a narrow class of causes of action for present-day law-of-nations violations meeting the specificity-and-acceptance standard, with the *Filártiga* torture claim as the paradigm. That residual authority was eliminated by *Cisco Systems, Inc. v. Doe I* (2026), which held the class of such causes "a null set."

[163] *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 124–125 (2013) (presumption against extraterritoriality; claims must "touch and concern" United States territory "with sufficient force"; mere corporate presence insufficient); *Jesner v. Arab Bank, PLC*, 138 S.

Systems, Inc. v. Doe I the Supreme Court held that courts may not create new causes of action under the Alien Tort Statute, described the authority *Sosa* had contemplated as "more accurately … described as nonexistent," called the remaining class "a null set," and held that the Torture Victim Protection Act does not reach aiding and abetting; it left undisturbed *Sosa*'s jurisdictional holding and its assumption as to the historical Blackstone causes.[164] The consequence for this Standard is a sharpening, not a weakening: the norm's peremptory status is untouched on Plane A, while one further domestic judicial route once thought potentially available for law-of-nations violations is now, by the Supreme Court's own account, foreclosed. *Cisco* does not itself close a mechanism the ratification record specifically identified under Article 14 — those were the common-law and statutory civil actions this Standard addresses separately — but it removes the residual *Sosa* route and corroborates the foreclosure this Standard documents: responsibility preserved while recognised remedies contract.[165]

The relationship between *jus cogens* and domestic immunity doctrines must be understood within the two-plane framework, and the IAJ now states this relationship with greater doctrinal precision than earlier formulations attempted. The relevant VCLT principle is Article 27, which provides that a State party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Article 27 articulates, in treaty-law form, the broader customary rule that the substantive content of an international obligation cannot be defined or diminished by domestic procedural doctrines, and that the State's nonperformance cannot be excused by reference to such doctrines. The IAJ's position is therefore as follows. Domestic immunity and finality doctrines — absolute judicial immunity, prosecutorial immunity, litigation privilege, abstention, and finality — cannot define or diminish the substantive content of the international prohibition on torture, excuse the State's nonperformance of its UNCAT obligations, or bind an international body's assessment of State responsibility. This position is grounded in the customary international-law principle reflected in VCLT Article 27 — that a State may not invoke the provisions of its internal law as justification for its failure to perform an international obligation — and in the peremptory character of the underlying norm. (The United States is not a party to the VCLT; the IAJ invokes VCLT provisions only as authoritative statements of the customary principles they codify.) The IAJ records the ICJ's Jurisdictional Immunities of the State (*Germany v. Italy*) judgment (2012) as a documented failure of that tribunal to give full effect to the peremptory norm. In that judgment the ICJ declined to give effect to the proposition that the substantive priority of a *jus cogens* norm displaces a procedural rule of State immunity, reasoning that the two rules address different questions and therefore do not necessarily conflict. The IAJ records the specific scope of the Jurisdictional Immunities holding to make plain what that judgment did not decide: it was a case about foreign-State civil immunity from suit in another State's domestic courts for acts of that foreign State (Germany) committed abroad during armed conflict (World War II violations on Italian territory). The judgment did not decide the availability of remedies for UNCAT violations occurring within a State's own territory; it did not decide the constitutional or statutory scope of any State's domestic personal-immunity architecture (judicial immunity, prosecutorial immunity, litigation privilege, expert-witness immunity, executive-officer immunity); it did not decide whether Congress or any national legislature may immunize the State's own officials for *jus cogens* violations; and it did not decide the substantive-content question of what conduct the peremptory prohibition reaches. The judgment rejected a hierarchy-only displacement

Ct. 1386, 1407 (2018) (ATS does not reach foreign corporations); *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931, 1937 (2021) (conduct relevant to the statute's focus must occur in the United States).

164 *Cisco Systems, Inc. v. Doe I*, 609 U.S. ___, No. 24-856 (23 June 2026): courts may not create new causes of action under the Alien Tort Statute — the authority contemplated in *Sosa* "more accurately … described as nonexistent," the remaining class "a null set" — and the Torture Victim Protection Act does not reach aiding and abetting. The Court left undisturbed *Sosa*'s jurisdictional holding and its assumption as to the Blackstone causes.

165 On the equivalence architecture (the ratification-era equivalence representation, S. Exec. Rep. No. 101-30; *Medellín* assigning cure to Congress) and the effective-remedy obligation (UNCAT art. 14; ICCPR art. 2(3)), see the discussion in this Standard.

argument confined to the specific procedural setting of foreign-State civil immunity in an inter-State civil claim, on the reasoning that the two rules address different questions. That reasoning does not control the distinct questions this Standard addresses: whether domestic personal immunities may excuse a State's nonperformance of its own UNCAT obligations on the international plane, whether congressional or statutory immunization of federal officials can override the peremptory character of the prohibition, and whether the substantive content of the international prohibition is defined or diminished by the State's own domestic doctrinal architecture. The specific defect the IAJ records is not that the ICJ decided any of these questions incorrectly; the ICJ did not decide them at all. The IAJ stands by the contrary proposition by independent investigation: where a peremptory norm is at stake, the substantive content of the norm cannot be procedurally insulated by a rule that operates so as to nullify the peremptory character; the ICJ's contrary holding is recorded here as a divergence between the IAJ's position and that tribunal's, flagged for review. The disciplined statement of the IAJ's position is therefore: domestic immunity doctrines cannot redefine the content of the substantive prohibition or excuse the State's nonperformance, and the question of whether and how those doctrines yield in a particular procedural setting is governed by the peremptory character of the underlying norm rather than by a procedural rule that would defeat that character. This proposition is the IAJ's analytical position, stated absolutely by independent investigation; it diverges from the ICJ's holding in Jurisdictional Immunities of the State, and the IAJ flags that divergence rather than concealing it. Whether a U.S. domestic court will give effect to this analysis through existing procedural mechanisms is a domestic enforceability question addressed separately, and the IAJ does not assert that VCLT Article 53 or Article 64 directly voids U.S. domestic procedural doctrines — the IAJ does not make that overclaim.

The proposition that a peremptory prohibition can defeat functional immunity is not the IAJ's invention. In his Third Report the Special Rapporteur, Dire Tladi, engaged the procedural/substantive reasoning of *Jurisdictional Immunities* rather than dismissing it — acknowledging that its logic could be extended by analogy — and argued that State practice and the difference between civil and criminal proceedings supported a different result for functional immunity in criminal matters, proposing that immunity *ratione materiae* not apply to offences prohibited by a peremptory norm, with a companion duty to exercise jurisdiction; torture was among the offences contemplated. He also recorded the countervailing material: that no exception to immunity *ratione personae* obtains as the law stands, that some authorities found no direct conflict between immunity and *jus cogens*, and that the practice is contested. The Commission did not adopt the proposals, adopting instead the "without prejudice" clause now at Conclusion 22, whose commentary treats immunity as a specific consequence the project left unresolved.[166] Two boundaries govern the IAJ's use of this material: it concerned immunity *ratione materiae* of State officials from foreign criminal jurisdiction, not the domestic judicial immunity, civil liability, and judgment-validity questions the IAJ determines; and it is persuasive expert support, not an adopted or controlling rule. The IAJ's determination rests on its own independent investigation.

[166] Tladi, Third report on peremptory norms of general international law (*jus cogens*), U.N. Doc. A/CN.4/714 (2018), §II.D.2 (effects on immunity, paras. 121–132) and §III (proposed draft conclusions, paras. 160–161): the Special Rapporteur, engaging rather than dismissing the procedural/substantive reasoning of *Jurisdictional Immunities*, proposed a duty to exercise jurisdiction over offences prohibited by a peremptory norm and that immunity ratione materiae not apply to such offences. The Commission did not adopt these proposals and adopted instead the "without prejudice" clause, Conclusion 22, A/77/10 (2022), whose commentary treats immunity as a specific consequence left unresolved. The proposal concerned immunity ratione materiae of State officials from foreign criminal jurisdiction; it did not address the domestic judicial immunity, civil liability, or judgment-validity questions the IAJ determines, and is persuasive expert support, not an adopted or controlling rule. The proposals were proposed draft conclusions 22 (duty to exercise domestic jurisdiction over *jus cogens* crimes) and 23 (irrelevance of official position and non-applicability of immunity ratione materiae); the Commission referred draft conclusions 10–23 to the Drafting Committee on the understanding that 22 and 23 would be dealt with by a without-prejudice clause. These proposed numbers are distinct from final Conclusion 22 (the without-prejudice clause) that replaced them.

The Special Rapporteur's analysis rested on distinctions the IAJ keeps in view: immunity *ratione personae* — the personal immunity of incumbent senior officials — he treated as unaffected, while functional immunity *ratione materiae* is what he read the practice as withdrawing for *jus cogens* crimes, and he confined that reading to criminal proceedings. The supporting practice — *Pinochet*, *Eichmann*, *Barbie*, *Bouterse* — is foreign-criminal practice.[167] It is adjacent to, not identical with, the domestic judicial civil immunity the IAJ determines, which is why it enters here as corroboration of a seriously held and unresolved proposition rather than as governing authority.

Two further features confirm how narrow, and how inapposite to the present subject, the Jurisdictional Immunities holding is. First, the conduct at issue — violations committed by the German Reich between 1943 and 1945 — predated the Convention against Torture by four decades; the Convention was neither in force nor in existence at the material time, and the Court's analysis proceeded under the law of armed conflict and customary immunity, not under the UNCAT. The judgment is therefore not an interpretation of the Convention at all, and supplies no rule for conduct occurring within a State's own territory under the Convention now in force. Second, the Court did not hold that the victims had been afforded relief elsewhere; it held only that one particular forum — another sovereign's domestic civil courts — was procedurally barred. The obligations owed to the victims were not thereby discharged. The territorial State remained bound under Article 14 to provide redress, and torture may engage criminal jurisdiction beyond that State on the grounds established by Articles 5 to 7, including the alleged offender's presence where the State does not extradite, together with such further jurisdiction as domestic law permits under Article 5(3). But a continuing obligation is not a functioning remedy, and a jurisdiction that may exist somewhere is not a forum that acted. Whether an accessible, impartial, enforceable and effective avenue of investigation, accountability and reparation actually operated after the forum sought was closed is a question of fact, and one the judgment did not decide. Where no such avenue in fact operated, the procedural bar did not merely allocate the dispute: it completed the foreclosure, and the resulting extinction of every effective avenue is what this Standard identifies as institutionalized impunity.

The European Court of Human Rights decisions in *Al-Adsani v. United Kingdom* (2001) and *Jones v. United Kingdom* (2014) are recorded here on the same and narrower terms. The complete European record considered — every authority, with its verification status — is set out in Appendix E. *Al-Adsani* concerned a civil damages claim against the State of Kuwait alone; *Jones* concerned a civil damages claim by British nationals tortured in Saudi Arabia against the Kingdom and, for the first time before that Court, against named State officials. In each the Court held that State immunity barred the civil suit in that forum. As to the State, it rested on the International Court of Justice's holding in Jurisdictional Immunities that no *jus cogens* exception to State immunity had crystallised; as to the officials, on its conclusion that the grant of immunity *ratione materiae* reflected generally recognised rules of public international law (Jones, ¶¶198, 215). It recorded the argument that Convention against Torture Article 14 supplies universal civil jurisdiction and held the question "far from settled" rather than deciding it against the claim (¶208), and it treated the criminal line of *Pinochet* as distinguishable from the civil context rather than overruling it (¶¶207, 212). The Court stated that State practice is "in a state of flux," that international opinion "may be said to be beginning to evolve," and that the matter "needs to be kept under review by Contracting States" (¶¶213, 215). The *Jones* Court did not present its conclusion as settled law. It recorded "some emerging support in favour of a

[167] Third report, A/CN.4/714 (2018), paras. 121–132: the Special Rapporteur separated immunity ratione personae (of incumbent senior officials, treated as unaffected) from functional immunity ratione materiae, and confined his reading of the practice as withdrawing functional immunity for *jus cogens* crimes to criminal proceedings; the supporting practice includes *Pinochet*, *Eichmann*, *Barbie*, and *Bouterse*. This is foreign-criminal practice, adjacent to but not identical with the domestic judicial civil immunity the IAJ determines.

special rule or exception" for civil torture claims against foreign State officials, closed by directing that "this is a matter which needs to be kept under review by Contracting States" (¶¶213, 215), and had earlier noted that *Al-Adsani* "did not preclude a development in customary international law in the future" (¶191). Judge Bianku, concurring, voted with the majority "with great hesitation" and considered that the case should have been relinquished to the Grand Chamber to consider "whether *Al-Adsani* still remains good law." Judge Kalaydjieva, dissenting, found that the majority's reasoning "appears to suggest that torture is by definition an act exercised on behalf of the State," which is "a far cry from all international standards," and that the views expressed give the impression of "being capable of extending impunity for acts of torture globally." The IAJ records these features prominently because a contrary authority that declares its own question open, and that carries a concurrence doubting the precedent it applies and a dissent naming the global-impunity risk, is not authority for the proposition that the question is closed. *Jones* records, at ¶109, that Article 58 of the Articles on State Responsibility "clarifies the position in respect of simultaneous individual responsibility" — the concurrent-responsibility rule this Standard maintains throughout — and the Court treats the criminal line of *Pinochet* as distinguishable from the civil context rather than overruling it (¶¶207, 212). These holdings decide forum questions — in *Jones*, as to a foreign State and its named officials alike, and in Jurisdictional Immunities as to the State only — and leave the substantive prohibition and the existence of individual responsibility intact while foreclosing the forum in which that responsibility might be enforced. The IAJ records them not as contrary authority on the content of the norm — on which the international authorities concord — but as instances in which a procedural immunity rule, operating in the civil forum against a foreign State and against its officials alike, has been allowed to obscure a remedy and a responsibility that the norm itself preserves.

The margin and the movement inside the European holdings

The narrowness of the European position is itself part of the record. *Al-Adsani* was decided by nine votes to eight, over the joint dissenting opinion of Judges Rozakis and Caflisch, joined by Judges Wildhaber, Costa, Cabral Barreto and Vajić, reasoning that a peremptory norm, being hierarchically superior, deprives the immunity rule of legal effect — the displacement this Standard determines. Two further judges dissented separately; the immunity survived by a single vote.[168] The companion judgments of the same day, *McElhinney v. Ireland* and *Fogarty v. the United Kingdom*, and the enforcement-stage decision in *Kalogeropoulou and Others v. Greece and Germany* (no. 59021/00, dec. 2002), complete the trilogy's record, and *Naït-Liman v. Switzerland* [GC] (2018) shows the Court's own method for testing whether the law has moved — a survey of State practice conducted on the premise that movement is possible. The same Court's anti-impunity line is emphatic in the criminal-accountability context: *Ould Dah v. France* (dec., 2009) denied effect to a foreign amnesty for torture, and *Marguš v. Croatia* [GC] (2014) held amnesties for grave violations incompatible with the Convention's obligations. The forum question divided the Court by a single vote in *Al-Adsani*, and in *Jones* the Court said the question needs to be kept under review by the Contracting States; the peremptory substance of the prohibition divided no judge in either case.

The European conditioned-legitimacy doctrine

[168] *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, ECHR 2001-XI, decided by nine votes to eight on Article 6 § 1; joint dissenting opinion of Judges Rozakis and Caflisch, joined by Judges Wildhaber, Costa, Cabral Barreto and Vajić.

On the domestic plane, the European system states as doctrine the condition this Standard states as the equivalence requirement: no immunity is self-justifying. Under the access-to-court jurisprudence of Article 6 — *Ashingdane v. the United Kingdom* (1985), applied in *Osman v. the United Kingdom* (1998), *Z and Others v. the United Kingdom* [GC] (2001), *Fayed v. the United Kingdom* (1994), *A. v. the United Kingdom* (2002), and *Cordova v. Italy (No. 1)* (2003) — any immunity that restricts access to a court must pursue a legitimate aim and be proportionate, and blanket immunities are suspect. *Waite and Kennedy v. Germany* [GC] (1999) and *Ernst and Others v. Belgium* (no. 33400/96, 2003) make the availability of reasonable alternative means of protecting the right a material factor, and *McFarlane v. Ireland* [GC] (no. 31333/06, 2010) distinguishes the personal immunity of judges from the State's own duty to compensate for blameworthy judicial failure. This is the conditioned legitimacy this Standard states: protection of adjudication is legitimate only inside a functioning architecture of investigation, correction, State responsibility, and remedy. The proportionality and alternative-means core of that condition is binding Article 6 doctrine; the full architecture requirement, as stated here, is this Standard's synthesis of the European access-to-court, investigation, and remedy lines.

The Union's judicial-liability override: Köbler and Traghetti

European Union law goes further, and it is the closest existing analogue to the displacement this Standard determines. In *Köbler v. Austria* (C-224/01, 30 September 2003), the Court of Justice held that a Member State is liable in damages for infringements of Union law committed by its court adjudicating at last instance — and rejected the judicial-independence objection on the express ground that the liability engaged is the State's, not the judge's personal liability. In *Traghetti del Mediterraneo v. Italy* (C-173/03, 13 June 2006), the Court held that Union law precludes national legislation which excludes State liability for damage arising from a court's interpretation of law or assessment of facts and evidence, and equally precludes legislation limiting that liability to intentional fault and serious misconduct where the limitation would exclude liability for manifest infringement; *Commission v. Italy* (C-379/10, 2011) condemned the maintenance of exactly such a shield.[169] A supranational legal order thus already overrides domestic limitations on liability for judicial acts, allocates the answer to the State for its judicial organ — attribution in the structure of Articles 4 and 31 of the ILC Articles on State Responsibility, with individual responsibility preserved alongside under Article 58 — and treats "no accountability for adjudication" not as a universal of ordered legal systems but as a domestic policy choice that a higher norm can and does displace. What Union law does for the internal market, this Standard determines the peremptory prohibition does, a fortiori, for torture and ill-treatment.

The Council of Europe accountability architecture

The standards bodies of the same system state the calibrated model. Committee of Ministers Recommendation CM/Rec(2010)12 protects judicial interpretation and fact-assessment from liability — except in cases such as malice or gross negligence — routes civil recovery ordinarily against the State with recourse where applicable, and preserves criminal liability for intentional offences. Opinion No. 3 (2002) of the Consultative Council of European Judges states that a judge who commits what would be a crime in any circumstances cannot claim immunity from the ordinary criminal process, confines civil protection to good-faith adjudication, and requires

[169] *Köbler v. Austria*, Case C-224/01, ECLI:EU:C:2003:513 (30 September 2003); *Traghetti del Mediterraneo SpA v. Italy*, Case C-173/03, ECLI:EU:C:2006:391 (13 June 2006); *Commission v. Italy*, Case C-379/10 (24 November 2011).

an independent disciplinary avenue; the CCJE's Magna Carta of Judges (2010) restates the model. The Venice Commission's opinions — CDL-AD(2013)008, CDL-AD(2016)015, and CDL-AD(2017)002 — hold that judges should enjoy functional immunity only: protection for lawful, good-faith adjudication, never a shield for intentional wrongdoing. The gap between that architecture — functional, conditioned, coupled to State liability and criminal accountability — and the absolute personal immunity administered under *Stump* and *Mireles* is itself Plane-B evidence for the equivalence analysis of Chapters 17 and 18: the represented equivalence does not exist even as against the standards of the regional system the United States' ratification record invoked as its peer.

The Inter-American anti-foreclosure doctrine

The hemispheric system has no counterpart to *Al-Adsani* — a difference partly structural, since the Court adjudicates State responsibility rather than pleas of foreign-State immunity — and wholly consistent in direction: no located Inter-American authority permits a procedural bar to close the last forum for torture, or adopts the procedural/substantive severance to sustain one. Its doctrine runs the other way, and it is stated as a category, not a list. *Barrios Altos v. Peru* (Ser. C No. 75, 2001) holds that "all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture," all prohibited because they violate non-derogable rights — and the interpretation judgment gives the holding effects general in nature.[170] The category — measures designed to eliminate responsibility — is the closest operative language in any court's jurisprudence to the displacement this Standard determines, and it reaches devices by their function, not their name. *Barrios Altos* spoke to criminal investigation and punishment of grave violations; it did not adjudicate a judge's personal civil immunity or create a damages action against a judge; its category is carried to that immunity by the IAJ's own functional analysis — the device is tested by what it eliminates, not by what it is called. *Bulacio v. Argentina* (2003) holds that no domestic provision or institute may impede the investigation and punishment of grave violations; *Gelman v. Uruguay* (2011) holds that a democratic pedigree — an amnesty twice ratified by popular vote — does not save the shield; *Almonacid Arellano v. Chile* strips sham finality where proceedings were designed to shield the accused; and *Goiburú v. Paraguay* (Ser. C No. 153, 2006) carries access to justice itself into the peremptory register alongside the prohibition. The Commission's admissibility decision in the *Binyam Mohamed* matter (Report No. 154/20), engaged elsewhere in this Standard, records the same foreclosure architecture operating in fact against the United States at the admissibility stage: dismissals on secrecy and immunity grounds before the merits created insurmountable obstacles and left no effective domestic remedy — an admissibility finding, the merits reserved.

Conventionality control: the judge as duty-bearer

The Inter-American system adds a doctrine with no Strasbourg equivalent, and it is the sharpest instrument in this record for Chapter 13. *Almonacid Arellano* (¶ 124) holds that when a State has ratified the American Convention, "its judges, as part of the State, are also bound by such Convention," and that "the Judiciary must exercise a sort of "conventionality control" between the domestic legal provisions which are applied to specific cases" and the Convention as the

[170] *Barrios Altos v. Peru*, IACtHR, Ser. C No. 75 (14 March 2001), ¶ 41; Interpretation of the Judgment on the Merits, Ser. C No. 83 (3 September 2001) (effects general in nature).

Court has interpreted it; *Cabrera García and Montiel Flores v. Mexico* (Ser. C No. 220, 2010) makes the duty *ex officio* and universal across every judicial organ, and *Boyce v. Barbados* (2007) condemns even a constitutional savings clause that prevented domestic courts from conducting the review.[171] The consequence for the immunity analysis is direct, and it is stated with its bounds: in the hemispheric architecture, the judge is not merely the beneficiary of a defective shield — the judge is bound, in the Court's own words, and the judiciary must test the domestic doctrine against the Convention before applying it. The doctrine's enforcement in that jurisprudence runs to the responsibility of the State for its judicial organ; it creates no personal damages action of its own. What it establishes is the duty; the consequence this Standard draws for personal accountability at and above the gateway into torture or CIDT is the IAJ's own determination, stated at Chapter 9, concurrent with — never alternative to — the State's answer. The doctrine binds States parties to the American Convention and not the United States; this Standard records it as the regional architecture's answer to the question Chapter 13 analyzes, and as Plane-B equivalence evidence of what a conforming judicial culture looks like.

The Inter-American calibrated-accountability line

The hemisphere states the same functional-only model of judicial accountability as the Council of Europe, from its own sources. *Ríos Ávalos v. Paraguay* (Ser. C No. 429) protects judges from responsibility for their votes and opinions with an express exception for intentional violations of the law or proven incompetence, recording on the way the comparative standard that adjudication grounds liability only on malice or gross negligence and the Venice Commission's functional-only formula; *Apitz Barbera v. Venezuela* (2008) forbids discipline as a disguised appeal against a contested legal interpretation; *Cordero Bernal v. Peru* (2021) preserves accountability for serious, independently established misconduct while protecting bona-fide error; *López Lone v. Honduras* (2015) governs the rights of judges within discipline; and the Commission's report on Guarantees for the Independence of Justice Operators states the framework: **<u>independence as an institutional guarantee for citizens</u>, never a personal privilege**, with discipline available under legality, proof, proportionality, and due process. These authorities principally concern impeachment, discipline, removal, and tenure; they do not decide a victim's civil damages action. And *Ríos Ávalos* itself invokes Article 70(2) of the American Convention — the treaty's protection of the Inter-American Court's own judges and Commission members from liability for their decisions and opinions — as an interpretive standard, in the same passage that states the exception for intentional violations of the law or proven incompetence. That contrary weight is confronted rather than avoided: Article 70(2) protects the decisional function of the system's own international adjudicators; its text is categorical for decisions and opinions issued in the exercise of their functions, and it does not address, in either direction, conduct outside that function. Whether conduct independently established as torture or CIDT can ever constitute a decision or opinion issued in the exercise of the judicial function is a question the provision does not answer — and the IAJ's determination that it cannot, and that immunity falls away at and above the torture-or-CIDT gateway, is the Institute's own, held concurrently with everything these instruments protect below it and consistent with the accountability principle for intentional violations of the law or proven incompetence that *Ríos Ávalos* separately records — a principle of the domestic-judicial-accountability discussion the judgment sets out, not a term of Article 70(2)'s text. What remains true on both sides of the Atlantic, and decisive for the equivalence analysis of Chapters 17 and 18, is this: absolute personal immunity regardless of malice or corruption — the rule

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[171] *Almonacid Arellano et al. v. Chile*, IACtHR, Ser. C No. 154 (26 September 2006), ¶ 124; *Cabrera García and Montiel Flores v. Mexico*, Ser. C No. 220 (26 November 2010) (conventionality control ex officio by all judicial organs); *Boyce v. Barbados*, Ser. C No. 169 (20 November 2007).

administered under *Stump* and *Mireles* — has no counterpart, for domestic judges, in the articulated standards and jurisprudence of either regional system the United States' ratification record treated as its peers. The complete Inter-American record considered — every authority, with its verification status — is set out in Appendix F.

The Commission's own immunity architecture

The International Law Commission's draft articles on immunity of State officials from foreign criminal jurisdiction complete this comparative record from inside the codification organ itself. Draft article 7 provides that immunity *ratione materiae* "shall not apply" in respect of six crimes under international law — genocide, crimes against humanity, war crimes, apartheid, enforced disappearance, and torture — and the Commission adopted it, unusually, by recorded vote, twenty-one in favour, eight against, one abstention; the division is recorded here with the provision.[172] The first reading of the complete draft articles was finished in 2022, and the General Assembly noted the completion that December; the Drafting Committee's 2025 revision then moved in one direction only, adding the crime of aggression, slavery, and the slave trade to the article 7 list.[173] The provision's scope is stated honestly: it addresses foreign criminal jurisdiction — not domestic proceedings and not civil claims — and its status as existing law is contested in the literature, including by members of the Commission; the IAJ records the contest rather than resolving it by citation.[174] What the article establishes on any reading is the codification organ's institutional position that official function does not shield torture from accountability before foreign criminal courts, adopted over recorded dissent and thereafter broadened, not narrowed. The extension of the same principle to the domestic plane, civil as well as criminal, at and above the torture-or-CIDT gateway, is this Standard's own determination; the direction of codification travel is part of its evidentiary record.

The IAJ's analytical position on domestic immunity doctrines, properly stated, applies across the layered architecture of immunities operating in the documented cases. That architecture comprises absolute judicial immunity (*Bradley v. Fisher; Stump v. Sparkman*), litigation privilege as to attorneys, absolute prosecutorial immunity (*Imbler v. Pachtman*), and expert witness immunity. Each of these is a domestic doctrine; none is a *jus cogens* norm. The IAJ's position is not that VCLT Article 53 directly voids these domestic doctrines — the IAJ does not make that overclaim. The IAJ records the ICJ's Jurisdictional Immunities of the State judgment as a documented failure of that tribunal to give full effect to the peremptory norm, and stands by its contrary position by independent investigation, flagging the divergence between its position and the ICJ's holding rather than treating that holding as a controlling foreclosure. The IAJ's position is that domestic immunity doctrines cannot define or diminish the substantive content of the international prohibition on torture, excuse the State's nonperformance of its UNCAT obligations under VCLT Article 27, or bind an international body's assessment of State responsibility — and that the layered architecture, considered as a whole, operates so as to insulate documented torture from any examination at any level, which raises the State's nonperformance issue at the structural level rather than at the individual-doctrine level. *R v.*

[172] ILC, Immunity of State officials from foreign criminal jurisdiction, draft article 7, provisionally adopted 20 July 2017 by recorded vote (21–8–1), Report of the International Law Commission, Sixty-ninth Session, U.N. Doc. A/72/10 (2017), ¶ 74 and accompanying text and commentary.

[173] G.A. Res. 77/103 (7 December 2022), ¶ 2 (c) (noting the completion of the first reading; U.N. Doc. A/77/10 (2022)); ILC, Seventy-sixth Session, texts and titles of draft articles 7, 8 and 9 as provisionally adopted by the Drafting Committee on 12 May 2025 (adding the crime of aggression, slavery, and the slave trade).

[174] Sean D. Murphy, Immunity Ratione Materiae of State Officials from Foreign Criminal Jurisdiction: Where is the State Practice in Support of Exceptions?, 112 AJIL Unbound (2018); Rosanne van Alebeek, The "International Crime" Exception in the ILC Draft Articles on the Immunity of State Officials from Foreign Criminal Jurisdiction: Two Steps Back?, 112 AJIL Unbound (2018); Qinmin Shen, Methodological Flaws in the ILC's Study on Exceptions to Immunity Ratione Materiae, 112 AJIL Unbound 9 (2018).

Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3) [2000] 1 AC 147 demonstrates that the immunity *ratione materiae* of a former head of State yielded to the substantive content of the torture prohibition, in extradition proceedings founded on the Convention against Torture as implemented domestically by section 134 of the Criminal Justice Act 1988. The scope of that holding must be stated with the House of Lords' own precision: immunity fell away only in respect of torture alleged after 8 December 1988, when section 134 was in force and the requesting State, the requested State and the State of nationality were all parties to the Convention, and the House applied the dual-criminality requirement rather than a freestanding universal jurisdiction. Within those conditions the IAJ records *Pinochet* as supportive of its analytical position, and treats the principle the House articulated — that torture cannot be an official function attracting immunity once the Convention regime binds the States concerned — as the correct expression of how immunity doctrines must yield where a peremptory norm is at stake. The proper analytical conclusion is therefore: the substantive content of the international prohibition remains undiminished by the layered domestic immunity architecture, the State's nonperformance is subject to international assessment notwithstanding domestic doctrine, and where a peremptory norm is engaged, domestic immunity doctrines yield in principle, regardless of how individual tribunals have varied in giving effect to that yielding in specific procedural settings.

A note on the term "documented failure." When the IAJ records a contrary tribunal holding as a documented failure, it does not erase, disregard, or deny the authority of the decision within its own forum. The term records the IAJ's independent determination that, in the specific respect identified, the tribunal failed to give operative effect to the peremptory norm or treaty obligation. The contrary decision is cited, distinguished, and preserved for review; it is not treated as controlling foreclosure on the international plane.

The same divergences are recorded, in expressly flagged form, in the companion IAJ Law Review The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment, which marks each departure from Jurisdictional Immunities of the State, *Jones v. United Kingdom*, and the *Stump–Mireles* line as an IAJ–tribunal divergence held by independent investigation; the two instruments record the same divergences in the same terms. The Review adds a comparative discipline this Standard adopts: a dignity-foundational legal order calibrates immunity, it does not abolish it — the paradigm dignity State protects adjudicative independence below a criminality threshold while withholding protection above it — so that the IAJ's position is not the careless inference that a dignity foundation dissolves all official immunity, but the calibrated threshold rule stated throughout this Standard.

The immunity architecture described above operates at the merits level — it insulates judicial actors from accountability for documented torture once federal jurisdiction is established. Using disability as the litmus to detect a structurally distinct tier operating prior to any merits examination — the access tier that, together with the merits-level tier, forms a two-tier complete barrier — the IAJ draws on one complainant who repeatedly exposed a jurisdictional-access tier obstructing any possible prevention, protection, remedy, relief, or punishment of torture and CIDT by courts. Subjected to discrimination based on disability under jurisdictional custody by the California courts, the litigant could neither prevent nor stop the harm while his bodily integrity remained under the court's control; the IAJ's record documents the resulting severe psychological injury and permanent physical (neurological) injury. On his application to the federal court, the TRO motion framed the federal claim as a request to enjoin the state court across four then-pending state proceedings — triggering Younger abstention foreseeably. The amended complaint moved toward an administrative-accommodation theory but did not fully resolve the framing problem. The framing problem was produced by the same disability the complaint challenged: a litigant in active neurological relapse, without accommodation, cannot construct a procedurally clean pleading of the theory that proceeding without accommodation causes harm.

The IAJ's structural observation — which is this Standard's primary contribution — is that the architecture forecloses ADA merits examination regardless of whether individual judges apply its doctrines correctly or incorrectly. That the architecture produces foreclosure both ways — whether by correct *Younger* application to a problematic framing or by misapplied Rooker-Feldman — is evidence of institutional design rather than individual judicial choice. Together, the two tiers constitute a complete barrier: Tier 1 forecloses federal examination of state court disability discrimination before any merits analysis begins; Tier 2 (absolute judicial immunity, litigation privilege, prosecutorial immunity, expert witness immunity) insulates individual actors from accountability even if federal jurisdiction is established. Each tier is a domestic doctrine; neither is a *jus cogens* norm. The IAJ's analytical position is not that VCLT Article 53 directly voids either tier, but that the State's nonperformance of its UNCAT obligations cannot be excused by reference to either tier under VCLT Article 27, and that the substantive content of the international prohibition remains undiminished regardless of which domestic doctrine operates at which procedural point. The *Pinochet* principle — that the immunity *ratione materiae* of a former head of State yielded to the substantive content of the torture prohibition, in extradition proceedings founded on the Convention regime and its domestic implementation, and subject to the temporal and dual-criminality conditions the House of Lords applied — is the correct expression of how immunity doctrines yield where a peremptory norm is at stake. The IAJ records the ICJ's Jurisdictional Immunities of the State judgment as a documented failure (as defined in Chapter 9) of that tribunal to give full effect to the same principle, and stands by the *Pinochet* expression of the rule by independent investigation. The general principle the IAJ states absolutely is that a State cannot insulate its nonperformance from international assessment by placing its immunity architecture at any particular procedural point.

The judge-made character of the architecture is itself a documented finding. The companion IAJ Investigative Finding The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America traces the civil-immunity tier through its reception, expansion, and entrenchment — *Bradley v. Fisher* (1872), *Pierson v. Ray* (1967), *Stump v. Sparkman* (1978), and *Mireles v. Waco* (1991) — a chain constructed by the judiciary for the judiciary, without express constitutional text and against the "every person" language of 42 U.S.C. § 1983, so that the branch whose conduct is at issue defined the scope of its own insulation. Two consequences follow for this Standard. First, the circularity is itself part of the Plane B record: immunity, recusal, discipline, ethics, and the interpretation of the governing constitutional text are administered largely by the same institutional branch whose conduct is challenged. Second, the scarcity of domestic merits decisions classifying adjudicative conduct as torture or CIDT cannot be treated as evidence that the conduct falls outside Articles 1 and 16: where immunity, merits exclusions, self-administered discipline, remedial restriction, and non-prosecution prevent the substantive classification from receiving merits adjudication at all, the absence of precedent is a product of the architecture, not a finding about the norm.

Measured against the international standard, the architecture fails the condition on which its own legitimacy depends. Principle 16 of the UN Basic Principles on the Independence of the Judiciary preserves personal immunity from civil damages for judicial acts "without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State" — a structure that expressly leaves the disciplinary, appellate, and State-compensation mechanisms unaffected.[175] The IAJ infers from that structure that immunity must not become remedial

[175] Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, principle 16: "Without prejudice to any disciplinary procedure or to any

extinction; the conclusion that the cumulative United States architecture fails where the substitute mechanisms are ineffective is the Structural Foreclosure Finding's own institutional determination; Principle 17 requires complaints against judges to be processed expeditiously and fairly; Principles 18 through 20 require removal only under established standards with independent review — Principle 20 excepting only impeachment-type proceedings, the single mechanism on which the United States almost wholly relies and which the companion Investigative Finding documents as a practical nullity, with eight federal judges removed in more than two hundred thirty-five years. The Finding's conclusion is that the United States supplies the personal immunity the instrument preserves while systematically withholding the substitute remedies Principle 16 expressly leaves unaffected — supplying the protection while withholding the mechanisms that stand beside it. On the IAJ's inference from that structure — the Institute's institutional determination, not a condition enacted by Principle 16 — the below-threshold plane of this Standard's immunity architecture requires the pairing to function: below the gateway into torture or CIDT, personal immunity legitimately shields the honest and the erring judge, with the IAJ treating effective substitute mechanisms — appeal, discipline, and State compensation in actual operation — as a condition of the overall system's remedial legitimacy, and the documented failure of that pairing is a Plane B implementation failure in its own right. At and above the threshold, Principle 16 is not the operative rule: the immunity analysis is governed by Chapter 18.H, whose two-register rule admits no immunity at or above the threshold — for torture on the peremptory norm, for qualifying ill-treatment on the IAJ's institutional determination. The Finding's proposed cure at the below-threshold plane — State compensation adjudicated by a mechanism independent of the challenged judiciary, leaving the judgment formally intact while the violation is formally declared and documented, with constrained recourse against the officer reserved for corruption, intentional discrimination, and gross misconduct — demonstrates that decisional independence and effective remedy are compatible design choices, not competing ones; and its two-tier remedial posture — domestic compensation-and-declaration, international documentation extending no deference to domestic finality — is the Two-Plane discipline of this Standard stated from the immunity side.

An IAJ-documented federal appeal completes the Tier 1 analysis by foreclosing the doctrinal counterargument that appellate review would correct the district court's framing-based dismissal. By the appellate stage, the appellant's response had articulated the theory more precisely: it identified *Tennessee v. Lane* by name, challenged the application of *Younger* to prospective ADA relief, and invoked the pro se liberal construction standard. The Ninth Circuit panel reviewed that response and still found the appeal frivolous, without briefing, without critical process, and without engaging *Lane*. At the appellate level, the framing problem had been substantially corrected in the response itself; what the panel dismissed was the corrected theory, not only the framing problem. The appellate dismissal therefore carries more analytical weight on the intentionality element than the district court dismissals: the panel documented knowledge of both the disability and the substantive legal argument before finding the appeal frivolous. Tier 1 therefore does not operate only at the district court level as a barrier correctable on appeal. It operates as a complete federal-court architecture — district court and circuit court acting in sequence — producing pre-merits foreclosure at both levels. The *jus cogens* hierarchy argument applies to this complete architecture: no combination of domestic legal doctrines, operating at any level of the federal court system, can function as a total shield against the international examination of documented torture without conflicting with the peremptory norm on the international plane.

right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions."

D. The Structure of the Evolved Framework

1. The *jus cogens* prohibition on torture is not a creation of UNCAT. It pre-exists UNCAT in customary international law and survives any reservation to UNCAT.[176]
2. State consent is irrelevant to the *jus cogens* norm. A state cannot, by negotiating a sovereignty-protective horizon into a particular treaty, simultaneously lower the floor of the underlying customary norm, because *jus cogens* is by definition non-derogable by any inter-state agreement.
3. The minimum content of the *jus cogens* norm — as confirmed by the ICJ, CAT Committee, and general customary international law — is defined by the nature of the act and the actor, not the institutional setting.
4. Therefore, even where the UNCAT's conventional text is read with the sovereignty-protective horizon the IAJ identifies, judicial torture is still prohibited under *jus cogens*, and no immunity doctrine can displace that prohibition on the international plane.

Whatever sovereignty horizon may have surrounded the original treaty negotiation, the IAJ's analytical position is that the evolved legal mechanism — *jus cogens* minimum content — extends beyond it. The framework developed in this Standard is the IAJ's own analytical work.[177]

The 2022 Conclusions leave the specific consequences of peremptory status open, without prejudice, at Conclusion 22.[178] The drafting record confirms that the clause preserves a live question rather than answering it. In the Special Rapporteur's fifth report, the recorded division runs in both directions: some States requested deletion of the clause; the United Kingdom questioned the commentary's treatment of immunities; France and Italy regretted that the Commission had opted not to address the consequences of peremptory status for specific norms at all, Italy recording that it "attaches the greatest importance" to the immunities question; and the Special Rapporteur, recommending no change, observed that immunity consequences are by definition confined to those *jus cogens* norms whose breach constitutes crimes under

[176] Meron, T. "On a Hierarchy of International Human Rights." American Journal of International Law 80, 1–23 (1986). DOI: 10.2307/2201958. — RELEVANCE: Seminal 1986 AJIL article establishing torture at the apex of the human rights hierarchy as a non-derogable peremptory norm, written just two years after UNCAT's adoption. Supports this publication's Chapter 9 argument that the prohibition pre-dates and transcends any particular treaty architecture. — AUTHORITY: Judge Theodor Meron (later ICTY President) was the first to systematically articulate why torture sits at the non-derogable apex of the human rights hierarchy. He distinguishes non-derogable rights (from which no derogation is permitted even in emergencies) from peremptory norms (which invalidate contrary treaties and domestic legislation). He identifies the functional basis for peremptory norm identification: universal recognition, conscience-grounded normative foundation, and no legitimate counter-principle. This article is cited by virtually every subsequent foundational *jus cogens* work including Bassiouni, Shelton, de Wet, and Nowak.

[177] Nowak, M. & McArthur, E. The United Nations Convention Against Torture: A Commentary. Oxford Commentaries on International Law. Oxford: OUP, 2008. DOI: 10.1093/law/9780199280001.001.0001. — RELEVANCE: The definitive article-by-article commentary on UNCAT, co-authored by the former UN Special Rapporteur on Torture. Supports this publication's Chapter 1 argument that Article 1's definition is deliberately broad with no setting qualifier, and its Chapter 14 OPCAT jurisdictional custody analysis. — AUTHORITY: Professor Manfred Nowak (Director, Boltzmann Institute; UN Special Rapporteur on Torture 2004–2010) and Elizabeth McArthur provide exhaustive analysis of all UNCAT articles through the travaux préparatoires, two decades of CAT Committee practice, and domestic court decisions including the Pinochet cases. The commentary establishes that Article 1's definition must be interpreted expansively to prevent impunity; that the 'no safe haven for torturers' doctrine requires active universal jurisdiction; and that Article 5(1)(a)'s jurisdictional requirement extends to areas of de facto effective control. The ASIL Newsletter (2009) stated: 'any book or article that fails to rely on this valuable resource is suspect.' DATE NOTE: Published in 2008, this Commentary predates CAT General Comment No. 3 (2012), CAT/C/USA/CO/3-5 (2014), the Istanbul Protocol second edition (2022), and the 2020 Special Rapporteur report on psychological torture. It remains the definitive textual commentary; subsequent CAT Committee General Comments and Concluding Observations have built upon and in some respects extended its analysis, and should be read alongside it.

[178] The 2022 Conclusions: Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), U.N. Doc. A/77/10 (2022), ch. IV, Conclusion 22 ("The present draft conclusions are without prejudice to consequences that specific peremptory norms of general international law (*jus cogens*) may otherwise entail under international law."). The enforcement obligations named in this paragraph are UNCAT arts. 4–7 and 12–14; the Articles on Responsibility of States for Internationally Wrongful Acts (ILC, 2001), arts. 4 and 31; and ICCPR art. 2(3).

international law — the category in which the prohibition of torture sits.[179] Exercising its own determination in that reserved space, the IAJ concludes as follows. A peremptory prohibition cannot be administered consistently with its absolute and non-derogable character if the international and domestic legal architecture permits violations at or above the threshold to be systematically immunized from the distinct consequences the relevant bodies of law prescribe: prompt and impartial investigation and access to complaint (UNCAT arts. 12–13); criminalization and penalties reflecting the offence's gravity (UNCAT art. 4); the establishment and exercise of jurisdiction, preliminary inquiry, and submission to competent prosecuting authorities (UNCAT arts. 5–7); the attribution and consequences of State responsibility where its requirements are met (ILC arts. 4, 31); redress (UNCAT art. 14); and an effective remedy (ICCPR art. 2(3)). The IAJ therefore determines that peremptory status must carry consequences sufficient in practice to prevent the prohibition from becoming merely declaratory.

This determination reaches the systematic foreclosure of that enforcement chain; it does not eliminate the legitimate decisional protection of good-faith judicial conduct that is neither torture nor CIDT and does not otherwise engage individual liability under applicable law — protection that remains legitimate only where the institutional architecture preserves effective investigation, correction of the underlying violation, the enforcement of State responsibility where its requirements are met, an effective remedy and reparation for the injured person, and any individual civil, criminal, disciplinary, or professional consequences independently required by law. That condition is the equivalence condition: where the architecture does not in operation deliver prevention, protection, remedy, relief, and punishment — with zero immunity and zero limitation period once torture or CIDT is shown — its absence is systemic foreclosure, and the threshold is decisive. It reaches across the torture–CIDT continuum the Istanbul Protocol recognises — torture and other ill-treatment interrelated, distinguished by severity and purpose, their definitional threshold, in the Committee against Torture's words, "often not clear," and both absolutely prohibited: torture and cruel, inhuman or degrading treatment remain distinct legal classifications, but the IAJ treats them as a single absolute anti-impunity continuum; the ILC Annex names the prohibition of torture, and the IAJ determines — on its own investigation — that this identifies the continuum's core rather than the limit of the peremptory character. That determination rests on grounds developed in Chapter 10: the absolute and non-derogable character of the whole prohibition, its shared foundation in inherent human dignity, the impossibility of an institutional classification that would license a consequence-free zone of official ill-treatment, and the functional relationship between torture and CIDT that would otherwise permit downgrading and evasion.[180]

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[179] Dire Tladi (Special Rapporteur), Fifth report on peremptory norms of general international law (*jus cogens*), U.N. Doc. A/CN.4/747 (2022), ¶¶ 210–214 (deletion requests; the United Kingdom on the commentary's treatment of immunities; France and Italy regretting the decision not to address consequences for specific norms, Italy stating that it "attaches the greatest importance" to the immunities question; the Special Rapporteur recommending no modification and observing that immunity consequences apply only to *jus cogens* norms whose breach constitutes crimes under international law).

[180] Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. HR/P/PT/8/Rev. 2 (2022), ch. I, paras. 1, 7–8: the prohibition of torture is *jus cogens*, absolute and non-derogable (para. 1); torture and other ill-treatment are interrelated and distinguished by severity and purpose, their "definitional threshold … often not clear" (para. 8, quoting the Committee against Torture), and other ill-treatment is "also absolutely prohibited" (para. 8). The IAJ's further determination — that the peremptory character extends across the whole continuum, and not to the enumerated prohibition of torture alone — rests on its own independent investigation.

CHAPTER 10 — THE CIDT-TO-TORTURE GRADIENT AND THE INCAPACITATION FEEDBACK LOOP

The Istanbul Protocol confirms that the definitional threshold between CIDT and torture is not sharp — the conditions that give rise to CIDT facilitate torture, and preventive measures must address both. The IAJ's documented caseload across multiple institutional settings demonstrates that the same gradient applies wherever the five Article 1 elements converge progressively over time. The following structure, derived from the IAJ's primary evidentiary record, illustrates the gradient as a general analytical model applicable to any category of documented official conduct:[181]

The severity-intent matrix and the CIDT-to-Torture gradient document incapacitation as an outcome of institutional conduct. They do not capture a more fundamental dynamic: the systematic deployment of state-caused incapacitation as the institutional evidence that justifies the continued conduct that caused it. The mechanism is self-completing and self-concealing. An institution that causes incapacitation and then deploys that incapacitation as evidence that no accommodation is needed has structured its record so that the harm it caused disappears into the justification for causing it. The name given here — the Incapacitation Feedback Loop — identifies a structure that exists in the documented record before it is named. The orders demonstrate it sequentially on their face. Four distinct modalities are documented across the case archive. The companion IAJ thesis *Harmonizing the Architecture of Disability Rights* documents the same architecture at finer grain: fifteen named sequential mechanisms of court-mediated disability discrimination, each with its doctrinal antidote, closing on the finding this Chapter states in its own register — the sequence is the discrimination.

The Five-Level Gravity Scale, carried in *Harmonizing the Architecture of Disability Rights* in its domestic-vehicle form — statutory violation, constitutional irrational prejudice, pattern-or-practice, the CIDT threshold, and torture, each level with its own legal standard, mental state, remedial pathway, and proof standard — is aligned with this Standard's severity-intent gradient as a complementary organizing device: the one maps potentially overlapping domestic and international classifications, the other tests the treaty elements — the frameworks do not form a cumulative legal ladder, and satisfaction of one level does not establish the elements of another.

The Incapacitation Feedback Loop is analyzed in Appendix A alongside the Five Structural Mechanisms (Legibility Default, Epistemic Mismatch, Accommodation Splitting, Throughput Pressure, Plausible Neutrality), and so identified by name and number in that Appendix; its presence in the evidentiary record has specific consequences for each of the Article 1 elements, the Article 20 systematic-practice analysis, and the Article 14 reparation obligation that distinguish it analytically from the five mechanisms preceding it.

[181] Meskele, K. "Interpretation of Article One of the Convention against Torture in Light of the Practice and Jurisprudence of International Bodies." Beijing Law Review 5, 49–61 (2014). DOI: 10.4236/blr.2014.51005. — RELEVANCE: Directly supports this publication's Article 1 element-by-element analysis. Establishes that the Article 1 definition is in 'a continual process of evolution' and that the non-custodial interpretation has been progressively recognised by the CAT Committee. The acquiescence framework applies to judicial settings where officials have knowledge of harm and fail to exercise authority to prevent it. — AUTHORITY: Systematic exegesis of all four elements of the UNCAT Article 1 definition through the lens of CAT Committee case law, HRC decisions, and ECtHR judgments. Analyses the evolving non-custodial interpretation: CAT now recognises that torture in family violence, gender-based violence, healthcare settings, and other non-custodial contexts can generate state responsibility under Article 1 where state agents acquiesce. Analyses the acquiescence framework: state responsibility where officials knew or should have known of torture but failed to prevent it. This maps precisely onto the judicial proceedings context: judicial officers who impose compelled harmful proceedings with foreknowledge of severe harm acquiesce to CIDT/torture under Article 1's official character element.

The loop operates through three steps: (1) state action causes documented incapacitation; (2) the institution observes that incapacitation; (3) the institution deploys the observed incapacitation as evidence justifying continued or escalated harmful conduct — framing the victim's injury as evidence of their unfitness, capacity, non-compliance, or instability. The loop is self-reinforcing: each iteration produces more incapacitation that generates more evidence for the next iteration. In IAJ-investigated case records, this loop has operated for years across multiple judicial actors who each inherited both the state-caused harm and the institutional framework that treated that harm as evidence against the person it had harmed. The loop's most precisely documented iteration in the IAJ record: filing activity cited as evidence of litigation capacity was produced during a court-ordered accommodation period — the period in which the loop was interrupted. The institution used the evidence of the loop's interruption to justify resuming it.

The loop states a temporal proposition the enforcement analysis must carry: the remedial process is examined both as a claimed remedy and as a possible continuation mechanism. Where the person enters the process with disability or trauma caused by the alleged violation, inaccessible procedure may aggravate the injury, impair the evidentiary record, produce defaults, and then convert the resulting incapacity into a ground for dismissal or stigmatizing restriction — secondary infliction through the very architecture tendered as the remedy. The proposition is conditional and evidence-specific: an adverse ruling or a denied motion establishes nothing by itself; the category is engaged on the elements, on a documented record. The companion IAJ publication Harmonizing the Architecture of Disability Rights (Third Edition) states the causation discipline in four elements: a documented pre-existing vulnerability; the imposition of processes known, or knowable through reasonable medical inquiry, to trigger or aggravate the condition; onset or exacerbation causally attributable to those processes on medical evidence; and the institution's failure to modify the processes after receiving that evidence. The same discipline separates two cognizable and analytically distinct categories: an existing disability inadequately accommodated, and deterioration the process itself produced or aggravated — the second requiring the causal showing on its own evidence.

The companion publication reaches a consistent conclusion and extends the jurisdictional-custody category this Standard develops at Chapter 14, Section J, from a partly distinct evidentiary record. Its treatment reaches the same structural condition — the litigant under compulsory state authority who cannot withdraw without total forfeiture of rights, cannot decline participation without sanction and non-compliance findings, and cannot exit the injuring system without abandoning claims, property, and, in the documented cases, the custody of children — and joins it to a four-element limiting test of official knowledge, causation, preventability, and severity that answers, in the companion's own adversarial-scrutiny register, the objection that ordinary compulsory litigation would otherwise be swept in: ordinary litigation burdens everyone; jurisdictional custody converts known, preventable, severe harm inflicted on a person who cannot leave into conduct the Convention's categories reach, on the elements each category requires.

The two corpus instruments reach consistent analytical conclusions from partly distinct evidentiary records; that consistency supports corpus coherence, while independent corroborative weight derives from the underlying external records — adjudicated cases, clinical evidence, and governmental materials — not from the existence of two IAJ formulations. The companion also supplies five operational indicators for the category — jurisdictional control, documented medical knowledge, compelled participation, harm compounding, and permanent foreclosure — an IAJ operational screen, expressly not adopted treaty-body doctrine and not a conversion of civil litigation into OPCAT detention.

Special Procedures authority supports this Chapter's analysis by analogy, and the analogy is stated as such. The 2013 report of the Special Rapporteur on Torture (A/HRC/22/53) addresses abuses in health-care settings — defined in the report as "hospitals, public and private clinics, hospices and institutions where health-care is delivered" (n.1) — and states at ¶15 that while the prohibition of torture "may have originally applied primarily in the context of interrogation, punishment or intimidation of a detainee, the international community has begun to recognize that torture may also occur in other contexts." The report's own catalogue of recognized abuse categories reaches beyond intervention to omission and to detention outside any criminal process: compulsory detention for medical conditions — the drug-detention and "rehabilitation" centres whose closure without delay the report demands (¶¶ 40–44, 87(a)) — and the denial of pain treatment, which the report frames expressly as an omission liable to violate the prohibition where the suffering is severe, the State is or should be aware of it, and the government has failed to take all reasonable steps to protect physical and mental integrity, even though the deprivation results from neglect and policy rather than an intention to inflict suffering (¶¶ 51–56). On its own terms the report establishes propositions this Standard applies with its own element discipline: Article 1's intent requirement can be effectively implied where a person has been discriminated against on the basis of disability, while purely negligent conduct lacks Article 1 intent but may constitute ill-treatment if it leads to severe pain and suffering (para. 20); the enumerated purposes are indicative rather than exhaustive, extending to purposes having something in common with those listed (para. 21); punitive and intimidating aims may exist alongside ostensibly therapeutic justifications (para. 22); the prevention obligation runs to all contexts of custody or control, including institutional settings, under General Comment No. 2 (para. 23); and torture presupposes powerlessness — the victim under the total control of another (para. 31). The report itself does not address courts, civil litigation, or legal proceedings; the application of these principles to judicial proceedings conducted after specific medical notice is the IAJ's analogy, so identified, and every Article 1 or Article 16 element must be established independently in the judicial application.

The doctrinal consequences of the Incapacitation Feedback loop are independent of and additional to those generated by the underlying harmful conduct. For the Article 1 intentional infliction element: where the record establishes that the institution knew — through medical evidence, prior findings, direct notice, or other reliable evidence — that the incapacity was caused or materially aggravated by its own prior conduct, and nevertheless relied on that incapacity to continue the harmful process, a claim of neutral evidentiary reliance is substantially weakened, and asserted good faith is tested against that record rather than assumed. Issuing the prior order establishes knowledge of the order; knowledge of the causal relationship is proved through the notice and medical evidence this Standard requires, and knowledge, intent, prohibited purpose, causation, and any asserted good-faith explanation remain independently testable on the full record. For Article 20: a documented self-reinforcing loop is evidence of institutional mechanism and potential systematic character. A pattern of independent violations can be characterized as a series of individual failures; a loop in which each violation generates the institutional instrument for the next evidences an institutional mechanism, not coincidence. It does not, by itself, establish that torture is being systematically practised: that conclusion requires reliable information supporting the Article 1 classification of the underlying conduct, and the frequency, deliberateness, institutional spread, responsible-authority knowledge, and persistence relevant to the Committee's inquiry. For Article 14: an effective mechanism is required to identify and review the proceedings in which materially State-caused incapacity was used to the person's detriment — proceedings in which the institution was simultaneously the origin of the evidence and the adjudicator of its consequences. That structural conflict of interest cannot be cured by good intentions. Effective reparation may require reopening, vacatur, reconsideration, or reconstitution before a neutral decision-maker who did not cause the evidence being weighed, where the prior determination materially relied on State-caused incapacity or was produced through an unaccommodated process; the appropriate measure is determined case by case through a procedure capable of restoring the victim's rights and providing the forms of redress Article 14 requires.

The Incapacitation Feedback loop also resolves an apparent evidentiary paradox that recurs in accommodation litigation: filing activity during periods when courts have stayed proceedings is frequently cited as evidence that the accommodation was unnecessary. The inference fails where the record shows that the stays never provided the clinically required protective intervention — complete rest and isolation from distress — because concurrent litigation in other forums continued throughout the stay periods, and the litigant's participation was mandated without accommodation. The published model identifies complete rest and isolation from distress as the medically necessary protective intervention for distress-induced neurological relapse, treats the absence of effective coping as amplifying the impact of distress on neurological progression, and identifies distress-coping interventions as the primary clinical response where complete rest is unavailable.[182] The association between stressful life events and multiple-sclerosis exacerbation is independently corroborated in the indexed literature (*Buljevac* et al., "Self-reported stressful life events and exacerbations in multiple sclerosis: prospective study," BMJ 2003;327(7416):646). What a partial stay provides is a coping mechanism: hope-based persistent petitioning under a protective accommodation framework mitigates, but does not eliminate, distress that the institutional system continues to inflict. The filing activity therefore does not prove that accommodation was unnecessary; it documents a victim using the only coping mechanism available. The institutional deployment of those filings as anti-accommodation evidence is not a logical error. It is the Incapacitation Feedback loop completing another iteration: the partial interruption of harm that the accommodation framework made possible generates evidence that the institution then uses to resume the harm — with full institutional knowledge of the causal origin of that output and of the medically essential protective intervention that was never provided.

CHAPTER 11 — LAWFUL SANCTIONS IN THE EVOLVED STANDARD

MKUltra also demonstrates the difference between official authorization and lawful treatment. A state programme may be authorized, funded, classified, medically administered, or routed through public and private institutions, yet still fall outside any valid lawful-sanctions analysis if it rests on deception, absence of meaningful consent, severe bodily or mental invasion, and prohibited or abusive state purposes. The lawful-sanctions clause cannot be transformed into a general "official-programme" defense.

Article 1 excludes pain or suffering "arising only from, inherent in or incidental to lawful sanctions." This carve-out requires careful analysis. It is the most technically serious textual obstacle to this analysis, and it is addressed directly here.

Multi-Treaty Convergence: Every Parallel Human-Rights Instrument Prohibits Torture Absolutely. The carve-out's anomalous status within the foundational instrument is confirmed by examining every parallel instrument of international human rights law: ICCPR Article 7 (1966, ratified by U.S. 1992): "No one shall be subjected to torture or to cruel, inhuman or

[182] Benjamin Solomon, Peter Boruta, Dagmar Horvath & John MacKellar, "The Multiple Sclerosis Stress Equation," Journal of Medical Statistics and Informatics, ISSN 2053-7662, vol. 11, art. 1 (2023)

degrading treatment or punishment." No carve-out. ECHR Article 3 (1950): "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." Absolute prohibition. No carve-out. The European Court has confirmed this article admits of no exceptions or derogations whatsoever — including in the context of criminal proceedings. IACHR Article 5(2) (1969): "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment." No carve-out. The Inter-American Court has confirmed the prohibition is non-derogable in all circumstances. CRPD Article 15 (2006, signed but not ratified by U.S.): "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." No carve-out. CRPD explicitly applies to judicial proceedings through Article 13 (access to justice) and Article 14 (liberty and security). African Charter Article 5 (1981): "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." No carve-out. The Rome Statute requires precision distinct from the human-rights treaty framework above. Rome Statute Article 7(1)(f) (1998) lists torture as a crime against humanity when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack. Article 7(2)(e) defines "torture" for this purpose as "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions." The Rome Statute's definition therefore (i) requires that the victim be in the custody or under the control of the accused, and (ii) contains a lawful-sanctions exclusion textually similar to UNCAT Article 1's. The Rome Statute's definitional architecture serves a different function from UNCAT's — defining individual criminal responsibility before an international criminal court for a specific contextual crime — and is not directly comparable to the human-rights-treaty prohibitions surveyed above. The IAJ does not assert that the Rome Statute lacks setting limitation or a lawful-sanctions clause; the Rome Statute is excluded from the "no carve-out" convergence pattern and is presented here only to complete the international instrument survey accurately. The remaining pattern across the human-rights instruments — ICCPR, ECHR, IACHR, CRPD, African Charter — is uniform: the lawful sanctions carve-out appears only in UNCAT Article 1, nowhere else in the human-rights treaty architecture. The common structural element across every instrument — the glue that connects the UDHR's 1948 foundation through the ICCPR, ECHR, IACHR, African Charter, and CRPD — is the foundational principle stated explicitly in UNCAT's own Preamble: "the right to be free from torture... is derived from the inherent dignity of the human person." Dignity cannot be suspended by calling a harmful act a lawful sanction. Every parallel human-rights instrument confirms this by prohibiting torture absolutely, without exception. The UNCAT carve-out, read in this convergent context, is interpretively constrained to its drafting purpose: a narrow shield for ordinary lawful penalties that themselves satisfy applicable international standards (a constraint addressed below), not an architectural escape hatch for official conduct that satisfies every other element of the Article 1 definition. The absence of a lawful-sanctions clause in ICCPR Article 7 strongly supports the need to interpret UNCAT's exclusion narrowly and consistently with the absolute prohibition the ICCPR articulates without qualification. The IAJ records as a controlling proposition: the United States cannot simultaneously honor its ICCPR Article 7 obligations and assert an expansive UNCAT lawful-sanctions carve-out for the same prohibited conduct.[183]

[183] The IAJ records the following as the controlling proposition of this section: the United States cannot simultaneously honor ICCPR Article 7 obligations and assert an expansive UNCAT lawful-sanctions carve-out for the same prohibited conduct. ICCPR Article 7 contains no carve-out and prohibits torture and CIDT absolutely; UNCAT Article 1's lawful-sanctions clause cannot be read so as to license, under UNCAT, conduct that ICCPR Article 7 prohibits. The two instruments bind the United States in parallel. The narrow reading of UNCAT's carve-out is therefore the only reading that preserves coherence between the two binding obligations the United States has accepted. This proposition is stated as a controlling proposition of the IAJ's analysis, not as a contested doctrinal claim. Authorities: ICCPR Art. 7 (1966), ratified by the United States June 8, 1992; UNCAT Art. 1 (1984), ratified by the United

First Principles: The Carve-Out Is Anomalous Within the Foundational Instrument. The interpretive baseline for the carve-out is established by returning to the instrument from which UNCAT derives its authority. Article 5 of the Universal Declaration of Human Rights (1948) states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” It contains no lawful sanctions carve-out. The UDHR is not a treaty and creates no directly binding obligations — but it is the foundational instrument from which UNCAT, the ICCPR, the ICESCR, the CRPD, and every regional human rights instrument derive their normative authority. The UDHR Preamble, UNCAT’s own Preamble, and the Preambles to the ICCPR and ICESCR all share a common foundation: that these rights are “derived from the inherent dignity of the human person.” From that foundation, the prohibition on torture is absolute — not because a drafting compromise in any single treaty makes it so, but because human dignity cannot be suspended by legal form. The lawful sanctions carve-out in UNCAT Article 1 was introduced in negotiation to exclude from the treaty’s scope the ordinary administration of criminal justice — imprisonment following conviction, fines, and ordinary penal consequences — not to create a general license for state actors to cause prohibited harm through the vehicle of court orders. The IAJ records that domestic authorization alone cannot make a sanction “lawful” for international-law purposes: a sanction’s lawfulness for UNCAT purposes must be assessed against applicable international standards, not merely against the law of the State imposing it. A sanction that itself violates the international prohibition on torture or CIDT cannot be insulated by the lawful-sanctions clause on the strength of domestic authorization. Read against its foundational instrument — which contains no carve-out — the UNCAT carve-out cannot be interpreted to do more than its drafting purpose requires. Any interpretation that expands the carve-out beyond that purpose conflicts with the UDHR foundation from which UNCAT’s normative authority is explicitly derived.

The Review that founds the corpus’s comparative-constitutional record states the same point as the relation between the Universal Declaration’s first and fifth articles: the wrong Article 5 forbids is, at bottom, the negation of the dignity Article 1 affirms, and the paradigm dignity orders — of which Germany’s inviolability clause, admitting no balancing, is the anchor — confirm comparatively that a prohibition grounded in dignity admits no carve-out capable of suspending it (see the companion IAJ Law Review The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment).

The IAJ analysis applies three principles to this carve-out, each supported by authoritative sources:

- **The ‘only from’ limitation.** The carve-out applies only where the pain arises exclusively from the lawful sanction itself. Where pain arises from an official’s intentional acts directed at causing harm — in addition to or separate from the sanction — the carve-out does not apply. A court order compelling participation does not torture through its formal issuance; it tortures when issued by a judge who has examined protected medical evidence in the court record predicting severe harm, acknowledges in prior orders that participation will cause severe pain and suffering, and nonetheless orders continued participation for purposes of coercion or case disposition. The intentional infliction of documented harm is not ‘incidental to’ the order; it is its specific predicted and intended consequence. The same analysis applies to Factor 14 (weaponization of court rules and procedures): harm arising from a filing deadline set with knowledge that opposing counsel would serve voluminous materials one day before it does not arise ‘only from’ the deadline itself — it arises from the coordinated

States October 21, 1994; the absence of a lawful-sanctions clause in ICCPR Art. 7 is dispositive against any reading of UNCAT Art. 1 that would license under UNCAT what ICCPR Art. 7 prohibits.

deployment of the deadline as a vehicle for the harm, removing the conduct from the carve-out's protection.

- **The 'lawful' requirement.** The carve-out covers genuinely lawful sanctions. Sanctions issued in bad faith, in corrupt coordination with opposing counsel, through manipulation of procedural mechanisms for purposes other than legitimate case management, or in deliberate disregard of treaty obligations, are not 'lawful' in the relevant sense. The CAT Committee's General Comment No. 2 (2007) confirms that formally legal process used as a vehicle to accomplish what is substantively torture does not qualify for the lawful sanctions carve-out. The label of legal process cannot transform torture into a lawful sanction. The same principle applies to Factor 11 (policy-based refoulement to repeat offenders): routing a case back to an adjudicator previously documented to have denied due process does not itself make the resulting outcome a genuinely lawful sanction.
- **CAT Committee General Comment No. 2 supplies the operative principle the IAJ extends to these categories.** The IAJ's best reading of CAT Committee General Comment No. 2 is that it supports this principle: the carve-out protects the genuine administration of justice, not conduct that exploits judicial form to accomplish prohibited substance. General Comment No. 2 does not specifically address judicial accommodation denials, vexatious-litigant designations, or the precise categories of judicial misconduct in the IAJ record. The IAJ applies its principle to those categories as the most defensible extension of the Committee's reasoning: systematic denial of disability accommodation applied as a coercive instrument, vexatious litigant designations weaponised against disabled pro se litigants, and judicial certification of fitness for conditions known to cause severe physical harm are, on the IAJ's analysis, paradigm cases of the conduct the principle is designed to reach. Adversarial readers may contest this application; the doctrine requires it is the best reading of the Committee's doctrine applied to the documented facts.

Historical confirmation from U.S. jurisprudence: the Justice Case. The principle that legal form cannot insulate criminal substance — the core of the lawful sanctions carve-out analysis — was established as a matter of international law by the United States in *United States v. Altstötter* (the Justice Case, Nuremberg, 1947). The U.S. Military Tribunal held that prohibited acts occurring through legal process and having the form of judicial proceedings were not immunized from criminal accountability. The label of "legal proceeding" does not transform torture into a lawful sanction. The IAJ records the precise analytical force of the Justice Case for this section: the Tribunal's holding is a historical analogical anchor for the proposition that legal form cannot insulate criminal substance, not a direct interpretation of the UNCAT lawful-sanctions clause and not the doctrinal origin of CAT General Comment No. 2. The Tribunal applied a different body of law (the international criminal law of the post-war tribunals) to a factually distinct setting (the systematic instrumentalization of the German judicial system as part of a State-sponsored persecution campaign). The IAJ's use of the Justice Case is therefore analogical: the principle the Tribunal applied — that legal form does not insulate criminal substance — supplies historical support for the IAJ's reading of the UNCAT carve-out, but the IAJ does not assert that the Justice Case directly decided the UNCAT lawful-sanctions question or that it is the source from which CAT General Comment No. 2 derived its doctrine. The CAT Committee's authoritative interpretive practice is the operative source of the principle as applied under UNCAT; the Justice Case is a historical antecedent the IAJ records as supportive of the same underlying proposition.

A word on why a single case is invoked here. As Chapter 12 establishes, this Standard is not a disability-advocacy document; it uses disability accommodation denial as its most sensitive detector — the instrument that externalizes official notice, isolates the discriminatory-purpose element, and makes the causal chain between official conduct and severe harm visible and provable — not as its subject. A single documented instance earns its place for that epistemic reason alone: where the record carries protected medical evidence predicting severe harm, prior judicial orders acknowledging it, and continued compulsion in spite of it, the documentary causation chain is unusually clear, and the lawful-sanctions principle just stated can be tested against a concrete record rather than in the abstract. The case is used to detect and prove a structural condition, not to champion one litigant: the individual instance is examined concurrently with — never as a substitute for — the State's undiminished responsibility, and the finding it supports is about the architecture, not about a person.

That IAJ-investigated federal case record provides a documented instance of this principle, though one requiring precise calibration. The complaint challenged the state court's systematic failure to accommodate disability causing serious physical and psychological injuries to the litigant who was under jurisdictional custody and unable to withdraw — an ADA Title II claim cognizable under *Tennessee v. Lane*, 541 U.S. 509 (2004). The TRO motion, however, expressly requested that the federal court enjoin the state court from denying accommodation across four identified active state proceedings — a framing that predictably triggered *Younger* abstention. The amended complaint moved toward an administrative-accommodation theory but did not fully sever the federal intervention request from the state docket management demand. *Younger* application was therefore a foreseeable district court response to the complaint as framed. *Rooker-Feldman* is more clearly misapplied: it applies to final state court judgments only, and there were none; the claims were prospective. The IAJ's primary structural observation is not that the doctrines were misapplied — it is that the framing problem was itself produced by the disability the complaint sought to vindicate. The litigant, in active neurological relapse, filing an explicitly incomplete complaint at the 0.1 percentile for processing speed, with no accommodation and no ability to engage a lawyer, could not build an adequate procedural vehicle for the theory he was carrying. The disability that produced the inadequate framing was the same disability the complaint challenged. This is the Incapacitation Feedback mechanism at the litigation-vehicle level: the state-caused incapacitation that the complaint sought to vindicate prevented the construction of the procedural vehicle needed to vindicate it. Legal form — here, the framing-triggered application of *Younger* — produced permanent foreclosure of a cognizable ADA claim without any merits examination. The thesis advances this as the federal-court application of the principle the Justice Case established: whether or not the jurisdictional bar was correctly applied on its own terms, its application to a claim whose framing defect was itself produced by disability-caused incapacitation is precisely the use of legal form to insulate prohibited substance from any examination. The same cumulative-pattern principle appears in the IAJ's investigated family-court record: sixteen perpetrator categories across fourteen months cannot be re-described as independent lawful sanctions where the documented pattern establishes coordinated deployment of legal process for a non-lawful purpose (Factors 2 and 14).

> DIGNITY ALIGNMENT TEST — Chapter 11 Lawful Sanctions Carve-Out (this is a normative check informing object-and-purpose analysis; it does not substitute for treaty elements, evidentiary proof, or the competent body's determination): THESIS POSITION: The carve-out protects ordinary lawful penalties; it does not shield official conduct that uses legal form to accomplish documented severe physical or mental harm to a person who cannot exit the proceedings without catastrophic consequence. | ADVERSARIAL COUNTER: Court orders are paradigmatic lawful sanctions; subjecting them to torture analysis would destabilize the judicial system and expose every adverse ruling to human rights challenge. | DIGNITY DERIVATION: The foundational question the dignity principle poses is not whether a document bears a court's seal, but whether the

> human being subject to it retains the inherent dignity recognized in UDHR Article 1. UDHR Article 5 prohibits torture with no carve-out because dignity admits of no carve-out — it does not suspend at the courthouse door. The adversarial position protects the label (court order) rather than the substance (whether dignity was violated). The dignity derivation resolves the test: a system that produces documented permanent physical harm through legal compulsion, with full knowledge of that harm and power to prevent it, violates the dignity principle regardless of what the causing document is called. The thesis position is consistent with the foundation. The adversarial position would make human dignity contingent on institutional form — a result no instrument grounded in dignity supports.

Cross-reference to external interpretive authority

External interpretive authority on the Article 1 severity element (including the psychological-suffering component and the "benevolent purpose" framing of coercive institutional interventions) is developed at Chapter 8 (Special Rapporteur on Torture, Melzer A/HRC/43/49 and Edwards A/HRC/61/42). External evidentiary authority on the lawful-sanctions carve-out disciplined reading at Chapter 11, specifically as applied to the U.S. Thirteenth Amendment punishment-clause exception, is developed at Chapter 8 (Special Rapporteur on Contemporary Forms of Slavery, Obokata A/HRC/57/46). The doctrinal work at Chapter 1 is unaffected by these external authorities; they supply interpretive corroboration and factual documentation of the pattern the doctrinal work applies.

Debtors' prison as a domestic-law control on the carve-out

Poverty-punishment practices supply a concrete domestic-law control example for the lawful-sanctions clause. Where a court imposes incarceration or comparable severe adverse consequences for nonpayment without an ability-to-pay determination, a willfulness finding, procedural safeguards, and consideration of alternatives, the sanction is not merely harsh; it is constitutionally defective under *Bearden v. Georgia*, 461 U.S. 660 (1983), and its antecedents Williams v. Illinois and Tate v. Short. The U.S. Department of Justice's fines-and-fees guidance confirms that poverty-based incarceration and access barriers can violate the Fourteenth Amendment, and that conflicts of interest and discriminatory enforcement may independently violate constitutional and statutory guarantees. The lawful-sanctions clause cannot convert unconstitutional poverty punishment into lawful treatment for international-law purposes: a measure that the forum state's own constitution forbids does not arise "only from" and is not "inherent in or incidental to" lawful sanctions.

The Carve-Out Applied to Judicial Conduct

As analyzed in Chapter 1, the lawful sanctions carve-out does not protect judicial conduct that uses legal process as a vehicle for intentional harm. Conduct satisfying all five elements above does not become protected by the label of 'court order.' The carve-out protects the genuine administration of justice; it does not extend to judicial acts issued in bad faith, in deliberate disregard of documented medical evidence of harm, and for purposes of coercion or discrimination.

PART IV — APPLICATIONS BEYOND THE CUSTODIAL PARADIGM

One qualification frames this Part. The inconsistency that attends non-custodial application is not a contradiction among the international authorities — it is a matter of silence. No tribunal has squarely resolved whether the enacted elements reach the full range of non-custodial institutional conduct, and the resulting gap is filled, forum by forum, with improvisation rather than principle. Nothing in the substantive concordance excludes these settings; the elements are simply stated at a level of generality that the authorities have not yet had occasion to apply to them. The IAJ resolves the gap by applying the five enacted elements uniformly across every institutional setting, custodial or not, rather than leaving their reach to the accident of forum.

It bears emphasis, before the detection methodology is developed, that the settings analyzed in this Part carry independent weight and are not satellites of the judicial case. Each is a domain in which severe physical or mental suffering is inflicted on a person by or with the acquiescence of a public official, for a purpose the Convention enumerates, outside the custodial paradigm — and each stands on the same five enacted elements without dependence on the others.

Coercive parent–child separation, effected through child-protective and family-court machinery, inflicts the severe and often prolonged mental suffering the Special Rapporteur's materials document, on both the separated parent and the child, frequently for a punitive or discriminatory purpose and with the deliberate foreclosure of remedy. The denial of medical care through jurisdictional control — the withholding, conditioning, or removal of treatment by an authority exercising legal power over the person — produces suffering that is the paradigm of Article 16 ill-treatment and, where severity and purpose are established, of Article 1 torture. Administrative, welfare, and benefits coercion imposes, through the ordinary apparatus of the State, the threat of destitution or loss of subsistence as a lever against a dependent person, a form of pressure the enacted elements reach whenever severity and prohibited purpose are shown. State experimentation, behavioral control, neurodata extraction, and surveillance coercion — the domain in which the historical control case of MKUltra is analyzed — engage the prohibition's oldest and most absolute concerns with the instrumentalization of the person. None of these depends on a courtroom for its gravity; each is a full application of the prohibition in its own right, and the disability detector developed in the chapters that follow is the method by which the enacted elements are made visible across all of them, not a claim that the judicial setting is where they principally reside.

CHAPTER 12 — DETECTION METHODOLOGY: DISABILITY AS THE LITMUS TEST

> Central Analytical Instrument — Jurisdictional Custody: This methodology note introduces the analytical instrument that is developed across this Standard and formally defined in Chapter 14, Section J. The concept emerges from the IAJ's investigative record of court-compelled litigation causing documented severe harm to persons unable to withdraw from the court's jurisdiction without greater

> harm. The IAJ investigation identifies and proposes "jurisdictional custody" as a functional category — not as a literal application of OPCAT Article 4(2)'s deprivation-of-liberty definition, which by its terms requires placement in a custodial setting, and which has not been adopted by any treaty body or applied by any court to the litigation-compulsion situation the IAJ describes. The proposed functional category is present when four conditions are satisfied simultaneously: a court has taken jurisdiction and exercises coercive authority — including contempt and sanctions — over a person's participation; the person cannot exit without catastrophic legal consequence; continued compelled participation causes documented severe physical or mental harm that the state actor knows of and imposes anyway; and every available domestic mechanism to exit — stay, disqualification, appeal, mandamus, injunction — has been exhausted without result. The proposed category functions as an analytical instrument for the evolutionary question because it is binary and observable without inference. The question it poses is single and stark: can this person leave without catastrophic consequence? Where the answer is no, the IAJ's analytical position is that the situation engages OPCAT Article 4(2)'s anti-evasion logic by functional analogy: the institutional control exercised by the court is custody-like in the relevant respects (compulsion, inability to leave at will, exercise of authority over the person), even where it does not satisfy OPCAT Article 4(2)'s literal "custodial setting" requirement. The IAJ acknowledges that this analytical move is the IAJ's proposed extension of OPCAT's functional principles to a category of institutional control not yet adopted by any treaty body or applied by any court. It is presented as proposed doctrine supported by evidence, not as established treaty interpretation. The proposed category is deployed across Chapter 13 (judicial actors in official capacity), Chapter 20 (the Incapacitation Feedback Loop's fourth modality), Chapter 14 (functional deprivation of liberty analysis), Chapter 21 (systematic practice evidence). The methodology developed in this note — using disability as the proving ground — is what makes the proposed category documentable with the precision required to evaluate its analytical force in each of those applications.

This Standard is not a disability advocacy document. It is a UNCAT *jus cogens* analysis that uses disability — specifically, judicially-inflicted harm to disabled litigants through accommodation denial — as the most sensitive available instrument for detecting, proving, and establishing the systematic character of non-custodial institutional torture. Thereafter it expands to every other category of non-custodial institutional torture. The choice of disability as the litmus test is methodological, not topical.

The reason disability functions as the litmus is epistemic, not substantive. The term is used here in its diagnostic sense: disability is the detection instrument that makes institutional conduct visible. The interpretive litmus of this Standard — the test every interpretation must satisfy — remains human dignity, and the two uses are distinct. Disability accommodation denial is not privileged as a category of wrong — it takes its place, in Part IV, as one among many categories of non-custodial institutional torture and CIDT. It is privileged as a *detector*: the single scenario in which the elements the Convention requires are most readily rendered visible, documented, and provable. The claim of this chapter is therefore about evidentiary sensitivity, not about doctrinal priority. Disability does not enlarge what Article 1 or Article 16 prohibits; it makes what they already prohibit legible. Three properties give the instrument its sensitivity.

First, it externalizes intent. A documented accommodation request creates a contemporaneous record of official notice: notice of the specific disability, of the foreseeable harm that non-accommodation will cause, and of the accommodation that would prevent it. When the tribunal denies the request and proceeds, the intent-and-knowledge element — ordinarily the hardest of the five to establish — becomes visible on the face of the record. In most non-custodial settings the analyst must infer that officials knew of the harm they were causing; in accommodation denial, the request itself is the notice, and the denial itself is the documented choice to proceed in spite of it.

Second, it isolates the discrimination-clause purpose element cleanly. Article 1's prohibited-purpose element is satisfied, among other ways, by discrimination of any kind. In the disability setting both halves of that element are documented rather than inferred: the protected characteristic is established by the disability record, and the differential treatment is established by the denial of an accommodation granted, or unnecessary, for others similarly situated. The purpose element, elsewhere a matter of argument about motive, is here a matter of record.

Third, it converts medical incapacity into a measurable severity record. Through the Istanbul Protocol documentation method, the physiological consequences of compelled unaccommodated participation can be recorded, measured, and causally analyzed against a baseline — turning the severity element from an impressionistic judgment into a documented gradient. The same institutional act that inconveniences an able-bodied litigant inflicts documented, severe, and sometimes irreversible harm on a litigant with multiple sclerosis, traumatic brain injury, or post-traumatic stress disorder, and that differential is itself measurable.

The consequence is the point that governs the remainder of this Standard. Because the instrument's force is evidentiary, it survives completely once disability accommodation denial is understood as one category among many. Indeed the breadth of the other categories is what secures the instrument's role: were disability the only setting in which these elements appeared, the analysis could be dismissed as a study of a single grievance; because the same five elements recur across every non-custodial category in Part IV, disability accommodation denial functions not as the argument but as the most sensitive diagnostic instrument for detecting those elements — often latent, sometimes deliberately obscured — wherever they occur. The balance of this chapter develops these three properties — and the further sensitivity the instrument gains from the identity of the actor who inflicts the harm.

Disability creates a measurable vulnerability gradient: the same institutional act that causes inconvenience to an able-bodied, neurotypical litigant causes documented, severe, and irreversible physiological harm to a litigant with multiple sclerosis, traumatic brain injury, or PTSD. That differential is the detection instrument. It reveals the institutional act's true character — systematic infliction of harm on those least able to resist it — in a way that the majority-population response alone cannot. The instrument's sensitivity is completed by a second, equally essential property: the identity of the actor inflicting the harm. The harm is not inflicted by rogue individuals at the institutional margins. It is inflicted methodically — through policy, procedure, and institutional mechanics — by the most trusted public officials in the country: judges, duty-sworn to uphold the Constitution, whom every member of society is taught from the earliest age to regard as the most honest, careful, just, and humane individuals in the nation — a corps of approximately 30,000 state judges and fewer than 1,000 Article III federal judges (874 authorized Article III judgeships — 9 on the Supreme Court, 179 on the courts of appeals, 677 in the district courts and 9 on the Court of International Trade; the figure rises to roughly 1,700 if magistrate and bankruptcy judges are counted). Where documented severe harm is produced mechanically by precisely the officials whom the entire society is socialized to trust most, and who hold the strongest institutional presumption of good faith and the most absolute protections from accountability, the detection instrument reaches its maximum possible sensitivity: a violation documented against that presumption is a violation established under the most adverse evidentiary conditions the domestic system can present, and a pattern documented across that corps is institutional in character and cannot be dismissed as aberrational without the independent examination Article 20 exists to provide. Companion proof architectures exist in other settings: for Factor 2 (coercive parent-child separation), removal orders plus separation-trauma documentation perform the same knowledge-and-causation function; for Factor 3 (denial of medical care through jurisdictional control), physician records overridden by judicial or administrative order do the same.

Disability also transforms the Article 1 intentional infliction element from a question about mental states into a question about documented choices. An ADA accommodation request creates a contemporaneous judicial record of the state actor's knowledge of the specific disability, the harm its non-accommodation would cause, and the accommodation needed to prevent it. A Social Security Administration (SSA) determination of disability creates an independent federal confirmation that cannot be plausibly disbelieved. Istanbul Protocol investigation provides the forensic documentation that the harm occurred. Together, these three instruments produce the proof architecture that substantially strengthens the ability to establish knowledge, causal mechanism, and deliberate continuation of harmful official conduct outside custodial settings. They do not eliminate the need to analyze severity, purpose, intent, and the lawful-sanctions issue independently; they provide the strongest available evidentiary platform from which those treaty questions may be argued and assessed under international human rights law. In the paradigm case — where the twelve-year pre-litigation baseline establishes a control condition[184], a peer-reviewed causal model derived from 2,561 days of daily data provides evidence against natural progression as the sole explanation, a within-person accommodation-period comparison supports the causal mechanism, and an anomalous laboratory finding supports exclusion of identified competing explanations present in the baseline period — in the paradigm case, the evidentiary record is argued to materially strengthen evidence of causation, foreseeability, and knowledge through measurement-supported analysis rather than inference alone. The IAJ records that even where the measurement evidence is at its strongest, the legal-intent inquiry and the Article 1 prohibited-purpose inquiry remain formally independent of the causation methodology and must be satisfied on their own terms; measurement strengthens the evidentiary platform for those legal inquiries but does not by itself answer them. The same proof architecture applies elsewhere by substitution of instruments: parental-trauma records and removal orders supply the same knowledge record (Factor 2), and overridden treatment recommendations supply the same causal-mechanism record (Factor 3).

The analytical framework developed through disability cases supplies a transferable structure for examining other categories of non-custodial institutional torture and CIDT, but each category requires its own factual anchor, vulnerability analysis, severity assessment, official-nexus analysis, purpose analysis, lawful-sanctions analysis, domestic-remedy analysis, and

[184] Solomon et al., The Multiple Sclerosis Stress Equation, Journal of Medical Statistics and Informatics, ISSN 2053-7662, vol. 11, art. 1. The IAJ records the precise methodological character of this study. The Solomon study is a single-patient longitudinal analysis built on 2,561 days (approximately 7 years) of granular daily measurement of the patient's clinical, immunological, and stress-correlated variables, conducted under the contemporaneous medical supervision of three physicians located on three different continents over a study period of approximately ten years. The IAJ records that single-patient longitudinal studies of this design have well-recognized limitations: their findings cannot be generalized beyond the subject without independent replication, and they do not by themselves settle general medical causation across the broader MS patient population. The IAJ records, in equal measure, the methodological strengths of this particular study: the data granularity (daily measurement across 2,561 consecutive days) substantially exceeds what conventional MS research subjects produce, because no conventional MS research subject collects data of comparable granularity and extent; the multi-physician supervision over three continents over a decade supplies independent clinical oversight; and the resulting within-patient evidence of mechanism is highly probative within its own evidentiary scope. The IAJ uses Solomon for what it supports: highly probative within-patient evidence of the distress-induced MS progression mechanism in the specific litigant whose data the study analyses (the litigant in the IAJ's primary evidentiary record). The IAJ does not use Solomon to settle general medical causation across all MS patients, and the IAJ's analysis does not depend on such a generalization. Mainstream peer-reviewed MS-and-stress literature provides corroborating support for the underlying mechanism the Solomon data documents in granular within-patient form; the IAJ records that supporting literature where relevant but does not cite it here.

source-specific treaty mapping. The chapters of this Standard rest entirely on treaty text, international jurisprudence, and published domestic authority — none of which is contingent on any finding in any specific case. The IAJ Case Archive illustrates and proves the pattern across 17 documented cases in multiple states and federal circuits; it does not constitute the foundation on which the doctrinal analysis stands. That foundation comprises four distinct international-law sources, each with its own formal status: UNCAT (a treaty binding on the United States as a State party); the peremptory customary prohibition of torture (binding on all States as *jus cogens*); the customary international-law principles reflected in VCLT Articles 27, 31, 53, and 64 (binding on the United States as customary international law — the United States is not a party to the VCLT itself, and the IAJ invokes VCLT provisions only as authoritative statements of the customary principles they codify); and the CAT Committee's General Comments and Concluding Observations (the authoritative interpretive and compliance findings of the treaty body established under UNCAT). For IAJ institutional purposes the CAT Committee's interpretations and Concluding Observations are treated as controlling guidance for assessing UNCAT compliance; this institutional rule does not collapse the distinct formal source-status of treaty text, customary *jus cogens*, codified treaty-law principles, and treaty-body findings.

CHAPTER 13 — JUDICIAL ACTORS AS PUBLIC OFFICIALS

It is with the judiciary that the stakes of this analysis are highest, and the departure of domestic doctrine from the international concordance most consequential. The judiciary is the tier of public officials in whom a society reposes its highest trust — the trustees of the law itself, to whom the vulnerable are told to turn for protection. The doctrine of judicial immunity was built on the premise that this trust is not betrayed. Where it is betrayed to the point of torture or cruel, inhuman or degrading treatment, domestic immunity doctrine and the peremptory norm point in opposite directions, and the contradiction cannot be papered over: either the immunity yields, or the prohibition does. That contradiction, however, is not one among the international authorities — which concord in subjecting the individual perpetrator to responsibility for a *jus cogens* breach — but between that concordance and a domestic immunity doctrine that has failed to track it. Absent resolution, the most trusted officials become the least accountable at precisely the threshold where accountability matters most. The IAJ resolves it without equivocation, and consistently with the concurrent-responsibility principle stated throughout this Standard: international law requires immunity to fall away on Plane A. At and above the gateway into torture or CIDT, immunity falls away absolutely and is never available — for torture on the established *jus cogens* prohibition, for ill-treatment at the defined severity on the IAJ's own institutional determination; below that threshold, the threshold itself — not any immunity from the wrong — protects the honest and erring judge who does not otherwise engage individual liability, while the State concurrently answers in reparation. The honest judge is protected by the threshold, not by a rule that no individual ever answers.

This is also why the judiciary receives the sustained analytical attention it receives in this Standard, and why that attention should not be mistaken for a narrowing of the subject. The prohibition of torture and cruel, inhuman or degrading treatment is addressed to every public official and every institutional setting, and this Standard develops its application across the full range of non-custodial domains — coercive parent–child separation by courts and child protective services, denial of medical care through jurisdictional control, law-enforcement conduct facilitated by legal process, administrative and welfare or benefits coercion, functional custody and dependency-control, and state experimentation and behavioral control. No one of these is privileged over the others; each is governed by the same five enacted elements. The judiciary is treated at length not because it is the only setting in which the elements appear, but because of the distinctive structural position it occupies — and because of an assumption about that position which this Standard does not share.

The judiciary is ordinarily conceived as the last safeguard against torture and cruel, inhuman or degrading treatment: the forum to which the abused are told to turn, the check on the executive and the police, the institution that holds other officials to the peremptory norm. Almost every treatment of the prohibition proceeds on the tacit premise that the judge stands outside the class of possible perpetrators — neutral, uninvolved, and structurally incapable of being the source of the wrong rather than its remedy. That premise is precisely what shields the judiciary through immunity doctrine, and precisely what removes judicial conduct from the ordinary scrutiny applied to every other official. The IAJ does not inherit that premise. Its investigative record contains evidence that judicial process itself can be the instrument through which severe suffering is knowingly inflicted for a prohibited purpose, and that the very trust and immunity built on the assumption of judicial innocence can convert the last safeguard into an unreviewable site of the wrong. Where the last bastion against torture and CIDT is assumed to be incapable of committing it, that assumption is not a neutral starting point but a structural blind spot; and it is the office of this Standard to decline the assumption and to apply to judicial conduct the same enacted elements, and the same evidentiary scrutiny, that it applies to every other public official. The emphasis on the judiciary is therefore not an obsession with judges but a refusal to exempt them by default from a prohibition that, by its terms, exempts no one.

Article 1 Analysis — All Five Elements

The empirical record shows a collapse in public confidence in the judiciary, measured across three distinct Gallup instruments, none of which tests the specific functional assumption examined here.

On the broadest measure, Gallup's World Poll found that confidence in the nation's judicial system and courts fell to a record-low 35 percent in 2024 — a 24-point decline from 59 percent in 2020, which Gallup describes as among the steepest declines it has measured globally on this metric. The resulting 20-point gap between the United States and the median of OECD nations, whose median stood at 55 percent, is the largest in a trend dating to 2006.

On the narrower institutional measure, Gallup's Confidence in Institutions survey recorded confidence in the Supreme Court at 25 percent in June 2022, a new low in a trend running nearly fifty years. On the third measure, trust in the federal judicial branch, Gallup's Governance survey recorded 47 percent in September 2022 — the lowest since the series began in 1972 — and 49 percent in September 2025, with Republicans at 81 percent and Democrats at 23 percent, a 58-point partisan division.

These are three different questions on three different scales, and the figures are not points on a single series. What they establish in common is narrower but sufficient: on every instrument, fewer than half of Americans now affirm confidence or trust in the courts, and on the broadest measure nearly two-thirds decline to do so. That is enough to defeat any claim that confidence in the judiciary's protective and remedial function remains universal. It does not establish why respondents withheld confidence, or which judicial functions they judged to have failed —

questions the surveys do not ask and this Standard does not attribute to them.[185] The IAJ records these figures not as the measure of the violation — public opinion does not establish a treaty breach — but as external confirmation that the assumption the IAJ declines to adopt is empirically contested at its foundation.

From this premise follows a methodological commitment that governs the entire corpus. The IAJ independently investigates *all* sources of human-rights violations, including judges, courts, and the actors who operate within and alongside the judicial process — evaluators, appointed counsel, guardians and conservators, child-protection and administrative officials, and law-enforcement officers acting under judicial authorization. No actor is exempt from investigation by reason of judicial office or judicial proximity. The official-capacity element analyzed in the sections that follow establishes that judicial actors are public officials for Article 1 purposes; it does not — and on the IAJ's method cannot — carry any presumption that those officials acted with the integrity the universal assumption imputes to them. That question is one of fact, to be investigated and proven, never assumed.

This is not hostility to the judiciary. It is the refusal to grant, in advance and by status alone, the presumption of integrity that the honest judge earns on the facts and that the threshold framework already protects: below the gateway into torture or CIDT, judicial immunity legitimately shields the honest and erring judge who does not otherwise engage individual liability, and reparation runs against the State; at or above that threshold, the presumption falls away: torture, established *jus cogens*, is never within the lawful scope of any office, and ill-treatment meeting the defined severity threshold is placed outside it by the IAJ's own institutional determination. The honest judge is protected by the threshold, not by an unexamined assumption. Exposing systemic human-rights violations requires investigating the actors the assumption places beyond suspicion. With that premise stated, the Article 1 analysis proceeds.

A. The Official Capacity Element — Necessary but Not Sufficient

A federal judge appointed under Article III of the U.S. Constitution, exercising the judicial power of the United States, is the paradigmatic example of a person acting in an official capacity. This element presents no interpretive difficulty. However — and this is an important precision — official capacity satisfies only one of the five elements of Article 1. It is the beginning of the analysis, not its conclusion. The IAJ addresses all five elements with respect to the documented judicial conduct.

[185] Sources (Gallup). Confidence in the judicial system and courts: Benedict Vigers, "Americans Pass Judgment on Their Courts," Gallup (World Poll; U.S. confidence at a record-low 35% in 2024, a 24-point decline from 59% in 2020; OECD median 55%, the resulting 20-point gap the largest in a trend dating to 2006; telephone interviews 28 June – 1 August 2024, n = 1,000, ±4.4 points), https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx. Confidence in the Supreme Court: Jeffrey M. Jones, "Confidence in U.S. Supreme Court Sinks to Historic Low," Gallup, 23 June 2022 (25% expressing "a great deal" or "quite a lot" of confidence, a historic low; prior low 30% in 2014; fielded 1–20 June 2022), https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx. Trust in the federal judicial branch: Megan Brenan, "Supreme Court Trust, Job Approval at Historical Lows," Gallup, 29 September 2022 (47% expressing "a great deal" or "fair amount" of trust, the lowest in a trend beginning in 1972), https://news.gallup.com/poll/402044/supreme-court-trust-job-approval-historical-lows.aspx; and "U.S. Trust in Government Depends Upon Party Control," Gallup (49% in 2025; Republicans 81%, Democrats 23%, a 58-point division; fielded 2–16 September 2025), https://news.gallup.com/poll/697421/trust-government-depends-upon-party-control.aspx. The three measures are distinct instruments with different question wording and response scales and are not points on a single series. The IAJ cites them as external confirmation that confidence in the judiciary is contested, not as a measure of treaty compliance.

B. All Five Elements Applied to the IAJ Evidentiary Record

The following analysis applies all five Article 1 elements[186] to the conduct documented in the IAJ record:

Article 1 Element	IAJ Evidentiary Application
(1) Any act	Any official act causing severe suffering: e.g., orders compelling litigation participation; denial of disability accommodations; vexatious litigant designations; terminating sanctions; coercive family separation orders; administrative denial of medical care; withholding of benefits to compel compliance; mandatory participation in harmful procedures without medical safeguards; retaliatory incarceration. The category is exhausted by the phrase "any act" in Article 1 — no institutional form of official conduct is excluded on its face.
(2) Intentional infliction	Intent established by documented prior knowledge of predicted harm in each institutional setting: prior orders or directives acknowledging predicted harm; review of medical, psychological, or social evidence before the conduct continues; continuation of harmful conduct after documented deterioration confirms causation; coordination with other actors amplifying harm. In the judicial/disability context: protected medical records before the court. In the family separation context: documented psychological assessments before CPS officials. In the medical denial context: clinical evidence before the denying authority. Intentionality is not inferred solely from outcome — it is demonstrated by the official's documented knowledge of predicted harm prior to continuing the harmful conduct.
(3) Severe pain or suffering — physical or mental	Medico-legal evidence: permanent nerve damage and nerve death causally linked to litigation stress (independent medical expert report in the IAJ record); severe immunocompromise (IAJ Analysis)[187];

[186] Systematic exegesis of the UNCAT Article 1 definition on Meskele's four-element framing — nature of the act, intention, purpose and involvement of a public official, a framing Meskele records as also adopted by Special Rapporteur Manfred Nowak — whose "nature of the act" category combines the act and severity dimensions that this Standard disaggregates in its five-element analytical structure.

[187] Independent medical expert report (Type A — Independent Expert Report; IAJ evidentiary record, maintained under confidentiality protocols): documents permanent nerve damage and nerve death in the brain and spinal cord causally linked to litigation stress, and severe immunocompromise correlated with coerced court participation; its authority derives from the expert's clinical training, not from any filing. Complemented by IAJ Analysis (Type A — IAJ Institutional Investigation): ongoing IAJ institutional investigation findings, including immunocompromise correlation analysis and progressive harm-gradient assessment, produced by the IAJ as an independent medico-legal body under Istanbul Protocol (2022) standards; preliminary and subject to ongoing verification. Both are maintained in the IAJ evidentiary record and accessible to treaty bodies through IAJ secure-access protocols.

	clinical[188] opinion confirming torture threshold met (IAJ institutional Istanbul Protocol investigation report). Severity is documented, not merely asserted.[189]
(4) Public official in official capacity	Federal judges acting under Article III. State court judges acting under state authority. Both satisfy this element without any interpretive strain.
(5) Enumerated purpose	Coercion (compelling procedural compliance on pain of sanction and dismissal); disability-based discrimination (denial of accommodations on the ground of disability); punishment (vexatious litigant designation for persistence in bringing claims). At least one enumerated purpose is satisfied; multiple are present simultaneously.[190]

[188] IAJ Istanbul Protocol Medico-Legal Investigation Report (2025) (Type A — Independent Expert Report). This is the IAJ's own institutional work product. Concludes: "This medico-legal investigation documents systematic judicial torture of a disabled person by judges and courts over a 7.5-year federal, 8.5-year total period of time, constituting violations of UNCAT." Maintained in the IAJ Case Archive; accessible to treaty bodies through IAJ secure-access protocols.

[189] Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic. ICTY Trial Chamber II Judgment. Case No. IT-96-23-T & IT-96-23/1-T, 22 February 2001; Appeals Chamber Judgment, 12 June 2002. — RELEVANCE (this anchor — severity element): Cited here for the severity element as the Trial Chamber stated it at ¶497: "The infliction, by act or omission, of severe pain or suffering, whether physical or mental," supporting the proposition that severity is an evidentiary showing to be documented against the recognized element, not merely asserted. Cited here only for that legal proposition; the factual documentation itself is supplied by the independent medical expert report and the IAJ Istanbul Protocol medico-legal investigation report cited in the same passage. The same authority is separately anchored at the enumerated-purpose sentence for its purpose-element holdings. — AUTHORITY: The 'Foca rape camp case.' Trial Chamber II (the first ICTY judgment convicting for rape as a crime against humanity and enslavement as a crime against humanity) stated the elements of torture under customary international humanitarian law at ¶497: "(i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental. (ii) The act or omission must be intentional. (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person." The Chamber also held, at ¶496, that the presence of a State official or other authority-wielding person is not required for the offence to be regarded as torture under international humanitarian law — a limit of the humanitarian-law definition that does not carry across to UNCAT Article 1, which requires the official nexus. The Chamber held that the list of torture purposes is illustrative, not exhaustive. The discriminatory-purpose holding directly supports this publication's argument that disability-based judicial harm satisfies the purpose element of Article 1. Sentence: Kunarac 28 years; Kovac 20 years; Vukovic 12 years (all affirmed on appeal).

[190] Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic. ICTY Trial Chamber II Judgment. Case No. IT-96-23-T & IT-96-23/1-T, 22 February 2001; Appeals Chamber Judgment, 12 June 2002. — RELEVANCE: Establishes that a state official is NOT required for torture under international humanitarian law: 'the presence of a state official or of any other authority-wielding person in the torture process is not necessary.' Confirms the purpose element list is illustrative not exhaustive, and that discriminatory purpose satisfies Article 1. Supports this publication's Chapter 13 purpose-element analysis. — AUTHORITY: The 'Foca rape camp case.' Trial Chamber II (the first ICTY judgment convicting for rape as a crime against humanity and enslavement as a crime against humanity) stated the elements of torture under customary international humanitarian law at ¶497: "(i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental. (ii) The act or omission must be intentional. (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person." The Chamber also held, at ¶496, that the presence of a State official or other authority-wielding person is not required for the offence to be regarded as torture under international humanitarian law — a limit of the humanitarian-law definition that does not carry across to UNCAT Article 1, which requires the official nexus. The Chamber held that the list of torture purposes is illustrative, not exhaustive. The discriminatory-purpose holding directly supports this publication's argument that disability-based judicial harm satisfies the purpose element of Article 1. Sentence: Kunarac 28 years; Kovac 20 years; Vukovic 12 years (all affirmed on appeal).

C. The Two-Axis Judicial Taxonomy: International Classification and Domestic or Professional Accountability

A Guide to Domestic Criminal Enforcement of Torture and Cruel, Inhuman, or Degrading Treatment in the United States (the IAJ Prosecutor's Guide) supplies the classification discipline that this Standard's framework presupposes, and this Standard states that discipline as a two-axis taxonomy. The first axis is the international classification of the conduct under the Convention; the second is the domestic or professional accountability classification of the same conduct under the law and professional systems of the forum. The two axes are assessed independently: a classification on one axis neither establishes nor prevents a classification on the other.

> **Axis One — International Classification:** (1) torture under Article 1, where the act, intentional infliction, severity, prohibited purpose, and complete official nexus are each established and the lawful-sanctions exclusion is found inapplicable; (2) cruel, inhuman or degrading treatment under Article 16, assessed on Article 16's own elements; or (3) neither.
>
> **Axis Two — Domestic or Professional Accountability:** (1) ordinary or reversible judicial error, belonging to the universe of appellate correction and ordinarily carrying no further consequence; (2) civil or constitutional violation, remediable where a domestic vehicle exists; (3) ethical or disciplinary violation, addressed through judicial-conduct and professional-responsibility mechanisms; or (4) independently criminal conduct — willful deprivation of rights under color of law, coordinated retaliation, obstruction, concealment, falsification, or knowing exploitation of torture-derived evidence — chargeable under 18 U.S.C. §§ 241 and 242 or another enacted offence only where every element and jurisdictional predicate is established. Judicial office confers no criminal immunity, and public examples such as the Nalley and Cochran prosecutions confirm that prosecution of judges is not theoretical.

The axes do not translate into each other. Conduct may violate Article 16 while remaining, domestically, an uncorrected civil wrong; conduct may be independently criminal — bribery, obstruction, falsification — without engaging Article 1 or Article 16 at all; and ordinary reversible error occupies neither Convention category regardless of how strongly the litigant disagrees with the outcome. Domestic criminality is a legal conclusion, not evidence. The underlying facts and proof that support a domestic offence — the documented knowledge, the falsified record, the coordinated retaliation — may bear on the Article 1 or Article 16 elements, but the offence itself is neither an element of the treaty analysis nor a substitute for it, and no treaty classification is derived from a domestic label. The Prosecutor's Guide's earlier three-category statement (adjudicative error; serious official abuse short of criminality; independently criminal conduct) is carried forward on the second axis as its first, second and third, and fourth classifications respectively; the two-axis statement governs this Standard. The adjudicated cases in the IAJ Case Archive begin at the border of the civil-constitutional and independently-criminal classifications on the second axis, and several present chargeable conduct where the applicable elements are met.

The taxonomy answers a question critics raise: if accommodation denial can constitute CIDT, do all judicial errors become CIDT? No. Article 1's and Article 16's own elements supply the legal classification on the first axis; applicable domestic law supplies the classifications on the second. The IAJ additionally applies four prudential screening features when selecting a matter for full Article 1 investigation: conduct that is willful rather than merely erroneous; severe, documented, and causally connected physical or psychological harm; documented obstruction or foreclosure of remedy; and actual notice to an identified official followed by continuation of the conduct. These screening features are investigative selection criteria — the Institute's own case-selection discipline — and are not elements of Article 1, of Article 16, or of any domestic offence. Exhaustion or remedial foreclosure evidences foreclosure; it does not establish the original actor's knowledge, intent, or prohibited purpose, which are shown only where the record identifies what an identified official knew, when, and how. The case-level record for each investigated matter states which features are established, the evidence supporting each, and the official to whom any knowledge is attributed, and is maintained in the IAJ Case Archive. Conduct satisfying Article 1's elements without the screening features would still be torture, and conduct bearing all four features still fails classification where any Article 1 element is unproved.

The taxonomy applies with equal force outside disability discrimination. The published California appellate finding that a trial judge fabricated the factual basis for a ruling (*Gropen*) is, on the second axis, a documented ethical and disciplinary violation on the face of the appellate record, and it warrants criminal investigation and statute-specific review: knowing falsification of a judicial record is conduct of the character 18 U.S.C. § 1519 addresses, and the fabrication finding justifies examining whether § 1519's own elements — including its federal-nexus and obstructive-intent requirements — or the elements of another enacted offence are satisfied. The appellate finding does not itself establish a completed § 1519 offence, and this Standard does not so classify it; what it establishes is the investigative predicate. On the first axis, the fabrication finding is evidence bearing on knowledge and purpose in any treaty analysis of the underlying conduct; it does not by itself classify that conduct under Article 1 or Article 16. The taxonomy is accordingly category-neutral, not disability-tailored.

D. The Discriminatory Purpose Convergence: UNCAT Article 1, 18 U.S.C. § 249, and 42 U.S.C. § 1985(3)

One of the five enumerated purposes in UNCAT Article 1 is suffering inflicted "for any reason based on discrimination of any kind." This phrase is not rhetorical. The Committee Against Torture has confirmed it encompasses disability-based discrimination. The IAJ submits that the discriminatory purpose element of Article 1, when present in judicial disability discrimination, is simultaneously proved by three convergent legal frameworks that the United States has independently enacted in domestic law. These frameworks do not supplement UNCAT — they supply overlapping, mutually reinforcing proof bearing on the same discriminatory-purpose showing through three independent doctrinal vehicles, each of which retains its own elements — injury, causation, jurisdictional, certification, and *mens rea* requirements among them — that must be established separately. ICCPR Article 26 provides that all persons are equal before the law and entitled to equal protection without discrimination on any ground, making UNCAT Article 1's discriminatory-purpose branch co-extensive with the full non-discrimination guarantee of the ICCPR and extending it to every protected characteristic recognised in international human rights law — race, colour, sex, language, religion, political opinion, national origin, disability, and any other status.

The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, codified at 18 U.S.C. § 249(a)(2), prohibits causing bodily injury to any person "because of the actual or perceived disability" of any person. The bias motivation element — that the offender acted because of disability — is the domestic law translation of UNCAT Article 1's discriminatory purpose element. Where a judicial actor denies accommodation, causes documented physiological harm, and does so in the context of documented disability animus, evidence bearing on both elements is present in the same record; each element remains to be established under the statute's own requirements.

Section 1985(3) of Title 42, as construed in *Griffin v. Breckenridge*, 403 U.S. 88 (1971), requires for a civil rights conspiracy claim that the conspiracy was motivated by "class-based, invidiously discriminatory animus." Courts have progressively extended this to disability. Where multiple judicial actors coordinate to deny accommodation, attack disability evidence, or retaliate for federal complaint-filing, the coordinated conduct supplies evidence relevant simultaneously to §§ 1985(2) and 1985(3) and to the UNCAT discriminatory purpose element — each of which retains its own conspiracy, animus, injury, and remedial requirements. A single piece of evidence — such as a judicial characterization of a disabled litigant as a "serial abuser of disability law" (documented in the IAJ evidentiary record) — bears simultaneously on: (1) the discriminatory purpose element of UNCAT Article 1; (2) the bias motivation element of § 249; (3) the class-based animus requirement of § 1985(3); and (4) the willfulness inquiry under 18 U.S.C. § 242. One sentence in one court filing supplies evidence relevant to all four frameworks; it establishes, by itself, the elements of none, and each framework's remaining requirements must be independently proved.

> **The Unified Discriminatory Purpose Architecture:** evidence of disability-motivated official abuse bears across UNCAT Article 1 (discriminatory purpose), 18 U.S.C. § 249(a)(2) (because of disability), 42 U.S.C. § 1985(3) (class-based animus, *Griffin v. Breckenridge*), 18 U.S.C. § 242 (willfulness), and the Eighth Amendment/Substantive Due Process standard (deliberate indifference, *Farmer v. Brennan*) — one evidentiary record bearing on five frameworks, each of whose elements must be independently proved. This analysis Incorporation Map (April 2026) documents that the evidence establishing any one of these theories is relevant to all — overlapping proof across frameworks whose elements remain independently established. The architecture extends beyond disability: 18 U.S.C. § 249(a)(1) prohibits conduct motivated by race, colour, religion, or national origin — covering the documented racial and indigenous-status dimensions of the IAJ caseload; CERD Article 5(a) independently requires equal access to courts without racial discrimination. For indigenous litigants, UNDRIP Articles 7 and 22 provide a supplementary parallel framework, additional to the core UNCAT / § 249 / § 1985 / ICCPR / CERD convergence.

The convergence is significant for the international bodies to which this Standard is addressed. It demonstrates that the United States maintains, in its own domestic law, partially overlapping analytical routes — criminal statutes, civil causes of action, and constitutional standards — that recognize exactly the category of disability-motivated official abuse that UNCAT prohibits; these are distinct frameworks, not interchangeable charging theories. The failure, as to this category of conduct and these statutes, is therefore not legislative — the statutes exist. As to the criminal statutes actually chargeable, Appendix C.4 records a bounded negative research finding concerning §249(a)(2) specifically: a preliminary, non-exhaustive review located no publicly reported federal prosecution applying that provision to adjudicative conduct by a judicial officer. That finding identifies an issue warranting examination; it does not by itself establish prosecutorial failure, and it makes no negative finding concerning §§241, 242, or any other statute absent a separately documented search. Prosecutorial failure is established only where the transmission, receipt, threshold, and non-examination evidence supports that conclusion; the civil, constitutional, and treaty frameworks operate through their own distinct mechanisms. The expanded architecture — covering disability, race, national origin, and indigenous status simultaneously — positions this submission to reach the CAT Committee, the CERD Committee, the CRPD Committee, and the Expert Mechanism on the Rights of Indigenous Peoples, each of which has independent jurisdiction over at least one branch of the convergence.

E. Consent and Acquiescence

Article 1 also reaches acts inflicted with the consent or acquiescence of public officials.[191][192] When a judge knowingly permits opposing counsel to deploy procedurally abusive tactics against a disabled unrepresented litigant — with knowledge that the tactics will cause severe suffering — and declines to intervene, the judge's acquiescence may satisfy Article 1's official-nexus element even though the judge performs no direct judicial act — provided the underlying private conduct independently establishes the severity, intent, prohibited-purpose, causation, and lawful-sanctions requirements; the court's failure to intervene is evidence bearing on those elements, not a substitute for them. The IAJ's preliminary investigative findings from the documented case record indicate this pattern across a substantial number of judicial officers in the Ninth Circuit (IAJ investigative findings, preliminary and subject to ongoing verification).[193]The same acquiescence analysis is not disability-specific: it applies equally where a court knowingly permits CPS to present assessments unsupported by clinical evidence (Factor 2), or allows an agency to withhold documents required by due process (Factor 9).

[191] Fortin, K. "Rape as torture: An evaluation of the Committee against Torture's attitude to sexual violence." Utrecht Law Review, vol. 4, no. 3, pp. 145–162 (December 2008), DOI 10.18352/ulr.88. Originating as an Utrecht University LLM thesis (prize winner, October 2008) and published in peer-reviewed form in the Utrecht Law Review; the IAJ cites the published Utrecht Law Review version. — RELEVANCE: Supports the acquiescence sub-argument in Chapter 13.D and VII: where a judicial officer has knowledge of documented severe harm and authority to prevent it, deliberate inaction satisfies Article 1's "consent or acquiescence of a public official" element. NOTE ON SCOPE: This footnote supports the acquiescence line of argument specifically — not the direct-actor analysis in Chapter 13.B, where the judicial officer is the primary perpetrator. The a fortiori claim is strongest where the IAJ relies on the acquiescence prong; the direct-actor analysis in V.B is independently grounded in the five-element test. — AUTHORITY: Utrecht LLM prize thesis analysing the CAT Committee's evolution from reluctance to explicit recognition of rape as torture under Article 1. Traces how the Committee addressed the severity and purposive elements, and critically assesses the acquiescence and due diligence framework for violence against women by private actors. Fortin's analysis of the acquiescence doctrine — state responsibility where officials knew or should have known of harm but failed to prevent it — provides the precise doctrinal mechanism linking judicial foreknowledge of documented harm to Article 1 official character liability, even in non-custodial settings.

[192] Nagan, W.P. & Atkins, L. "The International Law of Torture: From Universal Proscription to Effective Application and Enforcement." Harvard Human Rights Journal 14, 87–121 (2001). — RELEVANCE: Primary authority for this publication's Chapter 13 official-character acquiescence analysis. Establishes from the Ortiz v. Gramajo holding that torture does not require direct physical custody — only official consent or acquiescence. Supports the jurisdictional-custody analysis in Chapter 14. — AUTHORITY: Comprehensive review article covering U.S. treaty ratification obstacles and reservations, UN Convention mechanisms, and U.S. domestic case law including Filártiga and Ortiz v. Gramajo. The Ortiz holding is particularly significant: torture does not require that the defendant have direct custody over the victim; it need only be inflicted 'with the consent or acquiescence of a public official.' The article notes that U.S. reservations 'water down compliance' and that torture is not yet a distinct crime under federal law — both findings directly corroborated by the CAT Committee's 2014 Concluding Observations. The acquiescence-without-direct-custody holding is one of the strongest precedential supports for the jurisdictional custody framework in Chapter 14.

[193] Inter-American Court of Human Rights. Velásquez Rodríguez v. Honduras. Merits Judgment. Inter-Am. Ct. H.R. (Ser. C) No. 4, July 29, 1988. — RELEVANCE: Foundational case on state responsibility for torture outside formal custody through acquiescence and tolerance. Establishes the due diligence framework that this publication applies to judicial actors in Chapter 13: state responsibility flows from acquiescence and tolerance, not only from direct action. — AUTHORITY: The most widely cited Inter-American Court judgment. Arising from the systematic practice of forced disappearances by Honduran security forces, the Court established four dimensions of state responsibility: (1) duty to respect rights (negative obligation); (2) duty to ensure rights (positive obligation to prevent, investigate, punish, and remedy); (3) due diligence standard for investigations; and (4) responsibility for acquiescence in violations by private actors. Critical holding: 'subjecting a person to official, repressive bodies that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if that particular person is not tortured.' The IAJ applies this — knowingly maintaining a compulsory legal relationship with documented foreknown harm — to judicial conduct in Chapter 13. See also Fortin, K. "Rape as torture: An evaluation of the Committee against Torture's attitude to sexual violence." Utrecht Law Review, vol. 4, no. 3, pp. 145–162 (Dec. 2008), DOI 10.18352/ulr.88. — RELEVANCE: Supports the acquiescence branch of the Article 1 analysis. Fortin examines the CAT Committee's treatment of sexual violence as torture and the development of State responsibility where officials know or should know of severe harm by private actors and fail to exercise available authority to prevent it. The IAJ cites this source for the acquiescence mechanism only, not for the direct-actor theory.

F. Obstruction of Remedy as Acquiescence: Insertion into the Chain of Causation and Control

Section E established that Article 1 reaches acts inflicted with the consent or acquiescence of a public official, and that a judicial officer who knowingly permits abusive conduct to proceed acquiesces in it independently of any direct act. This Section develops a further, related determination, distinct from acquiescence in the underlying infliction: the obstruction, evasion, or refusal to recognize the criminal or civil vindication of a documented wrong once the machinery of the State has been engaged — analyzed on two tracks: for torture, as potential Article 1 acquiescence; for ill-treatment meeting the defined severity threshold, as the parallel result under Articles 2 and 16 and the IAJ's own institutional determination, not as Article 1 acquiescence. The proposition is that an official who, at the moment the State's structures give that official a say over whether the wrong will be investigated, prosecuted, or remedied, uses that position to foreclose the remedy — with knowledge of the wrong and of the consequence of foreclosure — is not standing outside the wrong as a neutral gatekeeper. That official has been inserted into the chain of causation and control that the State's own structures instituted, and by exercising the state-conferred power to close the forum, adopts and continues the wrong — assessed on the applicable track: under Article 1 where the underlying conduct is torture and the required acquiescence nexus is established; under Articles 2 and 16, together with Articles 12 through 14 where their separate predicates are met, where it is qualifying ill-treatment.

Four tiers of judicial involvement are kept distinct throughout this analysis, in ascending order of directness: direct judicial infliction, in which the court's own order or conduct inflicts the severe pain or suffering; the court process as instrument of harm, in which the process is knowingly maintained, after notice, in a condition that inflicts or compounds it; judicial acquiescence, in which the court has notice of torture, ill-treatment, or severe foreseeable harm, possesses authority to act, and fails to prevent, investigate, exclude, or remedy it; and systemic acquiescence joined to equivalence failure, in which the judicial organ as a whole, repeatedly presented with credible documented allegations, neither ensures the represented equivalent nor adjudicates the Convention proper — the tier at which the finding is the State's, attributable under ILC Article 4, while any given officer's own conduct remains an element-specific determination on a particular record. The ladder keeps the systemic finding and the individual finding from borrowing each other's proof (see the companion IAJ Law Review How to Personally Enforce the Torture Convention, Analytical Note 16).

The analysis proceeds from the structure of the acquiescence element rather than from any novel premise. Article 1 does not confine official responsibility to the actor whose hands inflict the suffering. It reaches the official who consents and the official who acquiesces — concepts the Convention includes precisely because torture and ill-treatment are characteristically produced through distributed institutional conduct in which the infliction, the toleration, and the concealment are spread across several hands — Article 1 supplying the official-nexus framework for torture, Article 16 the corresponding framework for other ill-treatment. The Inter-American Court's foundational articulation in *Velásquez Rodríguez* that the State's duty to prevent, investigate, and punish is engaged by its failure to act on a violation within its control supplies the international-plane counterpart: where the apparatus of the State is positioned to respond to a violation and does not, the omission is itself attributable conduct. What this Section adds is the identification of the specific officials through whom that omission is worked in the setting this Standard investigates — the prosecutor with charging authority, the judge with jurisdiction over the claim, the disciplinary or oversight officer with the power to act on the complaint, and the administrative official with control over the record — and the observation that each becomes, at the moment of decision, a link in the chain of control the State has instituted.

The insertion is not metaphorical. When the State confers upon an official the authority to decide whether a torture or CIDT allegation proceeds — the prosecutor's charging discretion, the court's jurisdiction, the oversight body's mandate — it places that official within the causal chain that determines whether the wrong is met with the vindication the Convention requires or is instead rendered unredressable — a separate remedial deprivation that may facilitate, perpetuate, conceal, or encourage continuing or recurring prohibited conduct, and that bears on Article 1 acquiescence only where the required connection to the infliction is established. An official who exercises that authority to obstruct — by declining to charge conduct the official knows to satisfy the elements, by dismissing a claim on a ground the official knows to be foreclosed under the rule stated in Chapter 18.H, by withholding or falsifying the record on which vindication depends,[194] or by refusing to recognize the characterization of the conduct as torture or CIDT at all — does not merely fail to supply a remedy: the wrong that might have been redressed is, by the official's act, rendered permanent, and the permanence is the official's own contribution. On the IAJ's determination, such obstruction is not a separate administrative failing only — it may violate Article 12, Article 13, and/or Article 14 where the distinct institutional, factual, and remedial predicates of the particular provision are established, and, where the underlying conduct is torture, it bears on, and may with the required nexus constitute, the acquiescence Article 1 names: where the obstruction is connected to continuing or recurring infliction, to prior or contemporaneous official knowledge and participation, to concealment or assistance facilitating continuation, or to encouragement or de facto permission of the perpetrators. A purely post-hoc failure to remedy a completed act, without that connection, is assessed under Articles 12 through 14, not as personal Article 1 acquiescence.

The requisite mental element disciplines the proposition and confines it to the culpable case. This is the IAJ's extended-acquiescence determination, stated as a two-track rule. Where the underlying conduct is torture, connected obstruction constitutes acquiescence within Article 1 only where four conditions are met, tracking the threshold conditions this Standard applies throughout: the underlying torture is documented, not merely alleged; the official possesses actual knowledge of the wrong and of the foreclosing effect of the official's decision; the ground of foreclosure is one the governing rule does not permit — an immunity inapplicable under the rule stated in Chapter 18.H, a knowingly false or bad-faith invocation of a limitation rule or use of a procedural bar to conceal, facilitate, or perpetuate the prohibited conduct, a characterization the official knows to be false, or a procedural closure deployed to avoid the merits; and the official's decision in fact forecloses the remedy rather than routing it to another available forum. Good-faith application of an operative domestic limitation rule exposes, where it precludes required accountability or redress, a legislative implementation gap recorded under the limitations discipline of Chapter 18.H; it is not personal acquiescence.

Where the underlying conduct constitutes ill-treatment meeting the defined severity threshold but not torture, the same conditions, applied with the necessary changes, ground the parallel accountability result under Articles 2 and 16 — together with Articles 12 through 14 where their separate predicates are met — by the IAJ's own institutional determination; that parallel result is not Article 1 acquiescence.

An official who declines a matter for want of evidence, who applies a bar in good faith on a contested question, or who refers the matter properly onward, is discharging the gatekeeping function the State legitimately confers, and does not thereby acquiesce in the wrong. It is the knowing exercise of state-conferred control to foreclose a remedy the official knows to be owed

[194] Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Bernard Duhaime, Documentation of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law, A/HRC/60/32 (2025) (submitted pursuant to Human Rights Council resolution 54/8). — RELEVANCE: External corroborative authority on the documentation obligation — the integrity, preservation, and accessibility of the record of grave violations as a component of investigation and remedy. The mandate's frame is the transitional-justice pillars, not UNCAT; the acquiescence classification in this Section is the IAJ's own.

— not the ordinary exercise of discretion — that inserts the official into the chain of causation and satisfies the IAJ's culpable-foreclosure condition on the applicable legal track. In the United States, the combined state–federal execution architecture gives the routing condition concrete content: until the competent authority has tested, referred to, or documented the other sovereign's available role, another available forum exists as a matter of architecture, and a unilateral closure that omits that step is the culpable foreclosure this Section describes, not the discharge of the legitimate gatekeeping function (see the IAJ Collaborative Prosecution Framework).

Referral itself is subject to the same discipline: it transfers work, never responsibility. A declined or unactioned referral defaults the matter to the referring office; serial re-referral without a coordinated determination forecloses the remedy as effectively as unilateral closure; and the routing condition is therefore satisfied only where the forum routed to is, in fact and in record, available and engaged — an official who knowingly relies on a referral into a void to close the matter routes nothing, and closure by referral is closure (see the IAJ Memorandum and Record of Notice On the Duty of the Prosecutors in the United States under the Convention against Torture).

Functional independence under Article 12. Separately from whether any individual official satisfies the Article 1 acquiescence element, the IAJ concludes that an investigation is not functionally impartial where specific, credible information implicates the reviewing prosecutor, office, supervisory chain, or evidence custodian in the underlying conduct, its concealment, connected retaliation, or its evidence handling. The minimum safeguards are conflict screening at intake, immediate preservation of the implicated office's own records, review outside the implicated chain of command, and a contemporaneous record of the conflict and referral disposition. This institutional safeguard presupposes no finding of personal liability (see the IAJ Standard Prosecutorial Misconduct and UNCAT Accountability).

The concurrent-responsibility discipline of this Standard governs the consequence. Where an official's knowing obstruction satisfies the acquiescence element, two responsibilities arise together and neither displaces the other: the State bears responsibility and owes reparation for the foreclosure of the effective remedy the Convention guarantees, under ICCPR Article 2(3) and UNCAT Article 14; and the official bears personal responsibility for the acquiescence, concurrently and complementarily — responsibility that ILC Article 58 preserves and does not displace, arising under the independently applicable international and domestic law, exactly as it does for the direct infliction. The State's answering does not absolve the obstructing official, and the official's answering does not absolve the State. Nor does the obstructing official's own institutional immunity alter the analysis: as this Standard holds, immunity is never available for conduct at or above the threshold, under the two-register rule stated in Chapter 18.H, and the acquiescence worked through obstruction is conduct of that character. The official who forecloses the remedy for a wrong governed by that rule, and who would then invoke a self-conferred immunity to foreclose the remedy for the foreclosure, illustrates in a single sequence the structural inversion this Standard documents: the doctrine erected against the norm, deployed twice over, to insulate the norm's violation from every level of review.

G. Private Actors Under Color of Judicial Authority: Instigation, Participation, and the Limits of Litigation Privilege

Article 1's coverage extends beyond judicial officers acting in direct official capacity. Article 1 and the Convention's architecture supply distinct routes that reach private actors who operate within the judicial system, each with its own elements. First, the official-infliction route:

suffering directly inflicted by the judicial officer — the harmful order itself — falls within Article 1 even where a private participant requested, encouraged, or facilitated the official act; the private filing is evidence bearing on causation, purpose, agreement, and assistance. Second, the acquiescence route: "with the consent or acquiescence of" a public official reaches private infliction — attorneys whose litigation conduct causes harm that the presiding judge observes and does not prevent. Third, the official-capacity route: a private person may independently satisfy the official-nexus element where proved to have acted in an official capacity. Fourth, separate from Article 1's definitional routes, Article 4 requires the State Party's criminal law to reach complicity and participation in torture by any person; whether an attorney, prosecutor, or medical expert is individually liable for substantial contribution to the prohibited act depends on the offence and liability mode actually applicable in the relevant jurisdiction. On Article 1's enacted grammar, the "at the instigation of" limb reaches private infliction instigated by a public official; the private actor who sets the official machinery in motion is reached not through Article 1's nexus element but through the participation register — the official-capacity, complicity, conspiracy, solicitation, aiding, obstruction, and professional-accountability regimes stated below with their supporting authority, no one of which is load-bearing alone. These routes operate independently and cumulatively: that a private actor is not the judicial official who issues the harmful order does not remove the conduct from the Convention's accountability architecture where an applicable route's elements are established.

1. *Attorney participation through separate liability regimes — first of five complementary bodies of authority*

No single body of authority in this analysis is load-bearing alone. Five distinct bodies of authority bear on the analysis — the Convention's official-nexus rules, historical accountability precedent, jurisdiction-dependent international criminal law, enacted domestic criminal law, and jurisdiction-specific professional discipline — as complementary sources of analysis, not interchangeable or independently sufficient liability bases. In the participation register the IAJ applies — supported by analogy to the historical precedent of *United States v. Altstötter* (the Justice Case, Nuremberg, 1947) — an attorney who files a motion requesting a harmful judicial order, knowing the court will issue it and knowing from the medical record that compliance will cause the disabled litigant severe physiological harm, supplies a factual, but-for contribution to that coercive order — without the filing, the order does not issue. Whether that contribution establishes proximate or legal causation depends on the applicable offence or liability mode, including the significance of the judge's intervening adjudicative decision, the required mental state, substantial contribution, foreseeability where relevant, and fair warning; Appendix C.6 states the governing discipline, and but-for contribution does not by itself establish criminal proximate causation. This is not vicarious liability, and it is not an Article 1 nexus claim: on the enacted grammar, Article 1's instigation limb reaches private infliction instigated by a public official, not the private instigator of an official act. The attorney who activates the judicial mechanism with proved knowledge of the harm it will produce is answerable in the participation register — instigation, solicitation, aiding, conspiracy, or another applicable liability mode under the Article 4 architecture and independently applicable domestic and international law — while the judge's resulting order may itself satisfy Article 1 as official infliction where all elements are established. A completed IAJ Istanbul Protocol investigation documents this pattern with specificity: counsel filed the motions that produced the sanctions, the vexatious designation, and the accommodation denials — each request made with contemporaneous knowledge from the medical record of the accumulating physiological harm those orders were causing. The IAJ investigation characterized this as active accomplice conduct in judicial torture rather than ordinary adversarial advocacy.

2. *The "consent or acquiescence" clause — secondary basis confirming judicial complicity in attorney conduct*

When a judge observes an attorney serve 550 pages of new materials on a disabled litigant inside the courtroom on the day of hearing, then sanctions that litigant $25,600 for being unprepared — as documented in an IAJ investigation record — the court is not merely issuing its own independent order. It is acquiescing in the attorney's conduct and converting that conduct into a judicial sanction. Article 1's acquiescence clause frames this scenario: where the attorney's conduct directly causes the severe suffering and the presiding official knowingly consents or acquiesces, the official-nexus requirement may be satisfied for classification of the conduct and for State responsibility. The attorney's personal liability is not established by the official's acquiescence; it must arise under an applicable official-capacity, complicity, participation, conspiracy, solicitation, aiding, obstruction, or professional rule. **Advocacy timed to exploit a party's documented inability to respond, where the court's awareness of that incapacity is on the record (Factors 2 and 14), is analyzed under the same elements — severity, intent, prohibited purpose, causation, official nexus, and the lawful-sanctions inquiry — not as a per se category.**

3. *Litigation privilege and international accountability*

Litigation privilege — whose scope and exceptions vary by jurisdiction and by claim — immunizes attorneys, where and as adopted, from civil liability for statements and conduct in judicial proceedings. Its rationale is that critical advocacy requires that attorneys advance their client's position without fear of personal civil liability. The IAJ does not contest this rationale in its proper domain. What litigation privilege cannot do — under the same analytical framework that governs judicial immunity and State immunity in Chapter 9 — is define or diminish the substantive content of the international prohibition on torture, or excuse the State's nonperformance of its UNCAT obligations by reference to its internal law (VCLT Article 27). Litigation privilege is a domestic doctrine; the State's UNCAT obligations operate at the international level. *R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte* (No. 3) [2000] 1 AC 147 demonstrates that domestic immunity doctrines yield to the substantive content of the torture prohibition where a peremptory norm is at stake. The IAJ records the ICJ's Jurisdictional Immunities of the State judgment as a documented failure (as defined in Chapter 9) of that tribunal to give full effect to the same principle, and stands by the *Pinochet* expression of the rule by independent investigation. Litigation privilege is a lesser domestic doctrine; if sovereign immunity yields, litigation privilege yields *a fortiori*. On the international plane — the plane on which this Standard is primarily addressed — litigation privilege provides no shield for attorneys who instigate or participate in torture. The domestic civil immunity remains intact on the domestic plane; the international accountability remains intact on the international plane. The two-plane framework that governs the analysis of judicial immunity governs the analysis of litigation privilege identically.

4. *Prosecutors: three analytically distinct exposures under the Convention*

The prosecutorial problem under the Convention has three analytically distinct forms that must not be collapsed into a single proposition.

First — direct prosecutorial conduct as an Article 1 or Article 16 violation. Where a prosecutor personally deploys criminal process as a vehicle for severe physical or mental suffering — by compelling testimony, attendance, or compliance from a person whose documented medical or psychological condition makes safe participation impossible; by using process to extract information from a person whose physiological response to that process produces severe suffering; or by participating in or directing investigative conduct that itself satisfies Article 1's elements — the prosecutor's own conduct may satisfy the treaty's torture or CIDT definitions on the same element-by-element analysis applied elsewhere in this Standard. The Article 1 inquiry attaches to the specific conduct, on the specific facts, by the specific actor. The fact that the conduct occurs within a criminal proceeding does not insulate it from analysis. The criminal-proceeding setting is where Article 1's information-extraction purpose element is most paradigmatically present; the other Article 1 purpose elements may also be engaged on the specific facts of a particular case.

The U.S. Supreme Court's prosecutorial-immunity framework is functional, not categorical. Absolute immunity attaches only to conduct intimately associated with the judicial phase of the criminal process — the advocacy function recognized in *Imbler v. Pachtman*, 424 U.S. 409 (1976). Conduct outside the advocacy function receives only qualified immunity: investigative work (*Buckley v. Fitzsimmons*, 509 U.S. 259 (1993)), advice to police (*Burns v. Reed*, 500 U.S. 478 (1991)), and witness-like attestation to facts (*Kalina v. Fletcher*, 522 U.S. 118 (1997)) all fall outside absolute immunity's scope. The functional line matters because the conduct most likely to satisfy Article 1 directly — fabrication, coercive deployment of process outside the advocacy phase, witness-like attestation, investigative misconduct — is precisely the conduct that absolute immunity does not reach. A prosecutor whose direct conduct satisfies Article 1 or Article 16 will, in the ordinary case, be acting outside the function that absolute immunity protects.

Second — State Party breach under Articles 2, 12, 13, and 14, each on its own predicates, attributable through the prosecutor as state agent for the provisions whose distinct institutional, factual, and remedial predicates are established. Where there is reasonable ground to believe that torture or CIDT has occurred, Article 12 obligates the State Party to ensure that its competent authorities proceed to a prompt and impartial investigation. Article 13 obligates the State Party to ensure that any individual alleging torture has the right to complain to and have the case promptly and impartially examined by competent authorities, and to ensure that complainants and witnesses are protected against ill-treatment or intimidation. Article 14 obligates the State Party to ensure redress, including the means for as full rehabilitation as possible. Article 2(1) imposes a free-standing prevention obligation: each State Party shall take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction. The Committee against Torture's General Comment No. 3 (2012) treats failure to investigate or prosecute as capable of amounting to a de facto denial of redress and identifies combatting impunity as part of the guarantees of non-repetition required under Article 14.

These obligations run to the State Party. They do not run to the individual prosecutor as a personal treaty obligation. That distinction does not relieve the prosecutor of operational responsibility: where a prosecutor with institutional authority to act knows that the reasonable-ground threshold is met and declines to ensure a prompt and impartial investigation, the State's Article 12 breach is attributable through that office; Article 13 is additionally engaged where complaint-examination or protection duties are implicated, Article 14 where the omission defeats effective redress, and Article 2 where the omission bears on prevention of continuing or foreseeable torture — attribution following only for the provisions whose distinct predicates are established. The conduct in question is the State Party's, performed through its institutional structure; the prosecutor's office is the organ or agent through which it is attributed. Where domestic statutes criminalize torture-equivalent conduct and prosecutorial discretion is exercised systematically against bringing such charges, that pattern raises an operational question under Article 12 and, where the Articles 5 through 8 conditions apply, Article 7; Article 4 is implicated only where the enacted offences, liability modes, or penalties are themselves inadequate.

Third — current U.S. domestic doctrine foreclosing private personal-civil remedies for non-prosecution. Two independently sufficient doctrinal bars block private suits seeking to compel a prosecutor to investigate or charge documented torture. *Imbler v. Pachtman* grants absolute immunity from §1983 damages for charging and prosecution decisions made within the advocacy function; the charging decision is the paradigm case. *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973), and the cases applying it — *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375 (2d Cir. 1973); *Wayte v. United States*, 470 U.S. 598 (1985) — hold that a private complainant lacks judicially cognizable standing to compel prosecution of another. Together these doctrines produce a domestic structure in which a torture victim cannot use civil litigation to force the prosecutor's hand. That structural insulation is not a weakness in the IAJ's position; it is precisely the State Party compliance defect this Standard documents — a system in which the United States's Article 2, 12, 13, and 14 obligations can be defeated through institutional non-enforcement while the responsible prosecutorial agents remain beyond effective domestic civil challenge.

The IAJ's further position, developed in Chapter 9, is that on the international plane domestic immunity doctrines cannot define the content of *jus cogens* prohibitions or extinguish State Party obligations under Articles 2, 12, and 14. The override claim is jurisdictional in scope: it operates in the analysis applied by treaty bodies, Special Rapporteurs, and international forums — not as a directive to U.S. domestic courts to disregard *Imbler*. The IAJ does not contend that domestic courts will or should ignore prosecutorial immunity in §1983 actions; it contends that the Committee against Torture, in evaluating State Party compliance, and other international bodies, in evaluating *jus cogens* obligations, are not bound to accept a domestic immunity doctrine as defining the treaty's reach or the prohibition's content. That extension is presented as the IAJ's argued international-law position, not as settled current U.S. domestic doctrine.

Surviving exposures. The domestic civil immunity that shields core charging decisions is narrower than its surface suggests. Three grouped categories of exposure remain available, sorted along two axes: the conduct the prosecutor engages in — non-prosecution alone, or non-prosecution accompanied by affirmative misconduct — and the forum in which exposure attaches. The two-column distinction is not a stylistic device. The consequences that follow from non-prosecution alone are substantially narrower than the consequences that follow when non-prosecution is accompanied by affirmative misconduct, and conflating them produces both legal error and rhetorical overreach.

The controlling limitation across all three exposures is relevance without automatic conversion. A constitutional, ethical, evidentiary, or professional violation by a prosecutor does not by itself establish severe suffering, causation, an Article 1 purpose, the required mental element, conspiracy, obstruction, or criminal liability; each legal category retains its own elements. The relevance of the misconduct is that it may cause, prolong, conceal, aggravate, or prevent the investigation of prohibited suffering, and it must then be assessed under the same elements-based framework this Standard applies to all official conduct. Two settings are kept analytically distinct: underlying-case misconduct, occurring in the prosecution of a defendant, and review-stage misconduct, occurring when an office receives or reviews a torture or CIDT allegation — the latter of which may compromise the State Party's response under Articles 12 and 13 and may convert one substantive failure into a second institutional failure. Both may occur in the same matter; their legal consequences are not identical (see the IAJ Standard Prosecutorial Misconduct and UNCAT Accountability).

Non-advocacy domestic exposure. For non-prosecution alone, this category is largely unavailable because the conduct is, by definition, within the advocacy function that *Imbler* protects. *Linda R.S.* standing doctrine independently bars a private complainant from suing to compel the charging decision. The conventional civil and criminal liability framework does not reach pure non-prosecution. For non-prosecution accompanied by affirmative misconduct — investigative work, evidence fabrication, witness-like attestation, advice to police, coercive process deployment outside the advocacy phase, suppression of exculpatory material, or other administrative conduct — this category opens substantially. Section 1983 damages under qualified immunity become available where the affirmative conduct violated clearly established law (*Buckley*, *Kalina*). State tort claims become available where state immunity rules differ from federal *Imbler* immunity. *Monell* municipal liability becomes available where office policy, training failure, or custom independently caused the constitutional violation. Federal criminal liability under 18 U.S.C. § 242 becomes available where the affirmative conduct meets the statute's willful-deprivation-of-rights elements. Section 242 reaches affirmative conduct, not pure omission; the statute is therefore available for affirmative misconduct alongside non-prosecution but unavailable for non-prosecution standing alone.

Professional discipline. Bar disciplinary proceedings apply standards independent of *Imbler* immunity and reach prosecutorial conduct that civil litigation cannot. The reach of bar discipline differs sharply along the two axes. For affirmative prosecutorial misconduct, bar discipline is robust: the rules of professional conduct maintained in every U.S. jurisdiction — most substantially influenced by or modeled on the ABA Model Rules, the adopted jurisdictional text governing — impose duties of candor to the tribunal (Rule 3.3), fairness to opposing parties and counsel (Rule 3.4), and special prosecutorial responsibilities (Rule 3.8) that include refraining from prosecuting charges not supported by probable cause (3.8(a)), ensuring the accused has been advised of the right to counsel (3.8(b)), and disclosing exculpatory information (3.8(d)). Affirmative misconduct — *Brady* violations, fabrication, witness coercion, charging abuse, candor breaches — falls within the heartland of these rules, and bar sanctions including suspension and disbarment have been imposed against prosecutors in jurisdictions across the United States for such conduct. For pure non-prosecution of torture allegations, bar discipline is more contingent. No Model Rule directly imposes a duty to prosecute torture, and Rule 3.8 itself is calibrated to the risks of prosecutorial overreach, not to compelling charging decisions. General duties — Rule 1.3's diligence obligation, Rule 8.4(d)'s prohibition on conduct prejudicial to the administration of justice — may apply where non-prosecution is systematic, retaliatory, corrupt, or part of a pattern of concealment, but the disciplinary path for pure non-enforcement of torture is fact-specific and unevenly available across jurisdictions. The robust-versus-contingent distinction maps onto the two-column structure: discipline is available with greatest reach when affirmative misconduct is present and with reduced reach when only non-prosecution is alleged.

State Party attribution and international scrutiny. International forums do not punish individual prosecutors in the ordinary sense. They attribute breach to the State Party, scrutinize the office and the institutional system, and produce State-level compliance and reputational consequences. The Committee against Torture's review of the State Party's compliance record under Articles 2, 12, 13, and 14 — each provision on its own predicates — attaches to prosecutorial non-enforcement as a State Party compliance concern for the provisions whose requirements the record engages, regardless of domestic civil immunity. The Special Rapporteur on Torture's communications mandate enables formal inquiry directed to the State Party concerning patterns of non-investigation and non-prosecution; communications may identify officials within the system but they operate as State-directed scrutiny, not as personal proceedings against the named officials.

Article 20 systematic-practice inquiries are available where the pattern of non-enforcement meets the systematic-practice threshold; the inquiry investigates the State Party's practice, not individual officials as personal respondents. The Committee's General Comment No. 3 treatment of failure to investigate or prosecute as a *de facto* denial of redress means that the State Party carries international compliance consequences for the same conduct that domestic immunity insulates. This category attaches to both axes — non-prosecution alone and non-prosecution accompanied by affirmative misconduct — and operates without regard to domestic immunity doctrine. What domestic immunity does not block, on the international plane, is attribution, exposure, and scrutiny of the State Party and its institutional structures; what international forums do not provide, in the ordinary case, is direct personal punishment of the individual prosecutor.

The structural insulation of the prosecutorial corps from civil-damages liability for non-prosecution is documented in this Standard as a State Party compliance defect under Article 12 and, where their distinct predicates are established, Articles 2(1), 13, and 14. It is not a license for individual prosecutors to ignore allegations of torture. Two warnings follow. Where prosecutorial conduct is or includes affirmative misconduct — fabrication, coercive process, witness-like attestation, or the concealment that often accompanies non-prosecution — the functional limits on absolute immunity, the robust reach of bar discipline, and the surviving §1983 and §242 paths all attach; the doctrine here described provides no personal protection. Where prosecutorial conduct is pure non-enforcement, personal domestic exposure is narrow; on the international plane, the conduct may produce State Party breach under Article 12 and, to the extent their separate predicates are established, under Articles 2(1), 13, and 14 — with attribution through the prosecutor's office and exposure of the institutional pattern to international scrutiny on the State Party plane. Personal civil insulation for non-prosecution is not immunity from either set of consequences.

5. *The Justice Case (United States v. Altstötter et al., 1947) — historical analogical anchor*

The clearest historical analogue for attorney and judicial accountability in an instrumentalized judicial system was established by the United States itself. In the Justice Case (Nuremberg Subsequent Proceedings, Case No. 3, also termed the Nazi Lawyers' Trial), a U.S. Military Tribunal convicted sixteen German lawyers, judges, and prosecutors for using the German judicial system as a vehicle for systematic persecution. The Tribunal established four principles of analytical relevance: (i) judges who knowingly issued unlawful orders causing severe harm bore personal criminal liability — judicial form did not insulate the judicial actor; (ii) lawyers who created legal frameworks enabling a criminal judicial system bore individual criminal liability — legal reasoning justifying criminal conduct was itself criminal conduct; (iii) legal process and judicial form do not immunize acts from criminal accountability — legal form cannot insulate criminal substance; (iv) complicity of lawyers in the judicial mechanism itself — not only in discrete acts of harm — sufficed for criminal conviction.

The IAJ records that the Justice Case applied the international criminal law of the post-war tribunals to a factually distinct setting (the systematic instrumentalization of the German judicial system as part of a State-sponsored persecution campaign), and that its application to the documented conduct in the IAJ archive is analogical rather than direct: the Tribunal's holding does not by itself decide that the documented modern conduct constitutes torture under UNCAT or that any U.S. judge or attorney is presently criminally liable on Justice Case grounds.

The IAJ's use of the Justice Case is to record the principle the U.S. itself enforced as international law — that legal form cannot insulate criminal substance — as a historical analogical anchor for the IAJ's analysis of the lawful-sanctions carve-out and the private-actor accountability framework. The U.S. government that prosecuted and convicted the defendants in the Justice Case cannot, consistent with that historical position, maintain that its own judicial system is categorically exempt from the same accountability principles it enforced against others; the IAJ records this as the historical consistency proposition supporting its analysis without asserting that the Justice Case directly applies as controlling law to the documented modern conduct.

6. *Rome Statute Article 25(3)(c) and (d) — comparative accountability principles and proposed analogical application*

The IAJ investigation and analysis proposes the following analogical use of Rome Statute Article 25 modes of liability, and acknowledges expressly that this is an analogical application rather than a claim of direct international criminal liability under the Rome Statute. Article 25(3)(c) of the Rome Statute holds a person criminally responsible who "for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission." The IAJ's analogical position is that an attorney who provides the legal pleadings — the "means" — by which the court issues harmful orders, and does so for the purpose of facilitating harm, for example to a disabled litigant, satisfies the structural pattern Article 25(3)(c) addresses. Article 25(3)(d) holds a person criminally responsible who contributes to a group crime "in the knowledge of the intention of the group to commit the crime." Using disability as an example, the IAJ's analogical position is that an attorney who coordinates filings with a judicial officer known to deny disability accommodations systematically — with knowledge of that officer's pattern of harming the disabled litigant — satisfies the structural pattern Article 25(3)(d)(ii) addresses.

The IAJ acknowledges that direct application of Rome Statute Article 25 to attorneys in ordinary domestic litigation would require establishing the predicates of an underlying international crime within ICC jurisdiction, including the contextual elements for torture as a crime against humanity (a widespread or systematic attack directed against a civilian population, with knowledge of the attack), the actor's *mens rea* as to the contextual elements, substantial contribution or assistance, and the relevant jurisdictional basis. Article 25 is therefore used here for its comparative accountability framework and as a proposed analogical structure for evaluating attorney conduct that contributes to documented institutional harm, not as a present source of direct individual criminal liability. The Rome Statute's value to this analysis is the framework of complicity it articulates — aid, abetment, facilitation, knowledge of group conduct — which the IAJ proposes as a useful analytical lens for evaluating attorney conduct in the documented cases, alongside the domestic complicity frameworks (18 U.S.C. §§241, 242, §2 aiding and abetting; MPC §§2.06 and 5.03) and the professional-ethics framework (ABA Model Rules), each of which operates independently on its own plane.

7. *Krstić command responsibility standard for senior attorneys.*

The ICTY in *Prosecutor v. Krstić* established the three-element command responsibility standard applicable to attorneys in supervisory roles: (1) superior-subordinate relationship with effective control — senior attorneys who direct associates, supervise ADA Coordinators, or oversee staff implementing accommodation denial procedures exercise the requisite control; (2) knowledge or reason to know — legal supervisors who know or should know that subordinates are developing legal frameworks enabling CIDT, or implementing accommodation denial procedures known to cause documented harm, meet the knowledge requirement; (3) failure to prevent or punish — senior attorneys who fail to stop subordinates from providing legal justifications for harmful conduct, or who fail to correct harmful procedures after becoming aware of resulting harm, incur liability. Actors such as law firm partners, ADA Coordinators with supervisory authority over the accommodation process, court administrators with oversight responsibility over disability procedures, and government attorneys supervising litigation strategy each may satisfy the *Krstić* three-element standard depending on their specific supervisory relationship, knowledge, and response to documented harm.

H. Executing, Delegated, and Ancillary Actors

The Convention's official nexus is not confined to the actor who directs or authorizes the conduct. An executing actor may be a public official, another person acting in an official capacity, or a private actor whose conduct engages Article 1 or Article 16 through official instigation, consent, or acquiescence. The applicable nexus must be established for each actor and function; execution of an order does not, by itself, convert every executor into a public official. This Section observes the two-plane discipline stated in the Methodology: Article 1 official capacity on Plane A is ultimately a question of international law; it neither depends upon nor is governed by the domestic state-action doctrine administered under 42 U.S.C. § 1983 on Plane B, although domestic law may supply relevant evidence concerning an actor's legal status, authority, and function.

The classes considered. The following are material to the conduct this Standard documents, and the enumeration is illustrative rather than exhaustive. Law-enforcement officers effect court-ordered removal, detention, transport, and compelled attendance; related law-enforcement conduct is analysed at Chapter 15, Category 3. Child-protective investigators and caseworkers occupy a hybrid position: they execute orders, but they also investigate, form findings, and initiate the proceeding in which the order issues, so that the agency determination may precede and materially influence the judicial act. Court-appointed intermediaries—guardians ad litem, custody evaluators, and appointed experts—may supply findings that materially influence the court's determination. Probation, court-security, and custodial-escort personnel act within the proceeding itself. Clerks, court administrators, and disability-accommodation decision personnel exercise gatekeeping functions that can determine whether a proceeding is accessible at all. Contracted service providers, transport operators, and residential-programme staff may perform delegated functions under public authority; whether they acted under public authority must be determined in the particular instance. Supervisors, policymakers, municipalities, State agencies, and employing entities form a distinct responsibility tier, considered below.

Official nexus on Plane A. For a law-enforcement officer or government child-protection employee acting through the authority of that office, the official nexus ordinarily presents little difficulty. For every actor, however, the inquiry remains conduct-specific: an officer's purely private conduct is not brought within Article 1 by occupational title alone. A private delegate or contractor must be shown to have acted in the governmental capacity concerned, or the required nexus must arise through official instigation, consent, or acquiescence. The sources supply the rule: General Comment No. 2 reaches agents, contractors, and others acting for or under colour of the State;[195] in *Černáková v. Slovakia* the Committee addressed the Article 16 claim on the

[195] Committee against Torture, General Comment No. 2, ¶¶ 15, 17 (2008) (the obligation to prevent extends to conduct by agents, contractors, and others acting in an official capacity or under colour of law).

footing that the staff of a privately operated social-care facility acted in their public capacity on behalf of the State.[196] On attribution, ARSIWA Article 4 governs persons and entities possessing the status of State organs; Article 5 governs a person or entity not an organ but empowered by law to exercise elements of governmental authority, and attributes the conduct only where that person or entity is acting in that capacity in the particular instance; Articles 7 and 8 apply on their own predicates, concerning excess of authority and conduct under instructions, direction or control, and are not general anti-outsourcing clauses.[197] ARSIWA supplies rules for attributing conduct to the State; it does not by itself establish the actor's personal responsibility under the Convention, customary international law, or domestic law—a limit ARSIWA Article 58 makes express.[198] The IAJ determines that execution, delegation, appointment, and contractual interposition do not, without more, sever an official nexus otherwise established. The precise nexus and the conduct attributable to each actor must nevertheless be determined independently under the applicable Article 1 or Article 16 criteria.

The domestic immunity position on Plane B is functional, not hierarchical. The following discussion uses Ninth Circuit doctrine illustratively; the precise immunity and state-action rules vary by jurisdiction, function, cause of action, and relief sought, and no national uniformity is asserted beyond the general functional character of the inquiry. The contrast between an absolutely immune ordering tier and a qualifiedly immune executing tier is inaccurate. An official who strictly implements a facially valid court order, acting within its authority, may receive absolute quasi-judicial immunity;[199] independent discretionary conduct, force exceeding the order, investigative misconduct, or acts the order does not prescribe may attract qualified immunity or none.[200] Child-protection personnel are analysed by function rather than by office: initiating dependency proceedings and closely analogous quasi-prosecutorial decisions may attract absolute immunity, while investigation, the making of false or fabricated statements, defective notice, and placement recommendations are not automatically so protected.[201] Appointment does not by itself establish either state action or immunity: under *Kirtley v. Rainey*, a guardian ad litem performing the independent functions there examined was not a state actor for § 1983 purposes; the result remains dependent on the actor's particular function, relationship with the State, and alleged conduct.[202] An evaluator receives absolute immunity only where the function performed is genuinely comparable to a historically immune judicial or advocative function; information-gathering or advisory assistance alone is insufficient.[203] Damages claims based on testimony may be barred by

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[196] *Černáková v. Slovakia*, CAT/C/72/D/890/2018, ¶ 9.3 (Comm. against Torture, decision adopted 19 Nov. 2021) (in addressing the Article 16(1) claim the Committee proceeded on the complainant's submission that the social-care-facility staff acted in their public capacity, and recalled its jurisprudence and General Comment No. 2 concerning ill-treatment involving non-State actors and the State's due-diligence duty).

[197] ILC Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) arts. 4, 5, 7, 8 (2001).

[198] ARSIWA art. 58 ("These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.").

[199] *Engebretson v. Mahoney*, 724 F.3d 1034, 1041 (9th Cir. 2013) (an official who enforces a facially valid court order issued by a court with jurisdiction is entitled to absolute quasi-judicial immunity, provided the official acts in strict compliance with the order's terms).

[200] *Brooks v. Clark County*, 828 F.3d 910, 917–18 (9th Cir. 2016) (absolute quasi-judicial immunity did not protect conduct outside the function the court commanded); *Garcia v. County of Riverside*, 817 F.3d 635, 643–44 (9th Cir. 2016) (absolute quasi-judicial immunity did not apply where officials failed to comply strictly with the warrant by detaining a person it did not command them to detain).

[201] *Miller v. Gammie*, 335 F.3d 889, 896–98 (9th Cir. 2003) (en banc) (social workers entitled to absolute immunity only for quasi-prosecutorial functions, not for investigative or other functions); *Beltran v. Santa Clara County*, 514 F.3d 906, 908–09 (9th Cir. 2008) (en banc) (no absolute immunity for fabrication of evidence); *Rieman v. Vazquez*, 96 F.4th 1085, 1091–92 (9th Cir. 2024) (social workers not absolutely immune for fabrication and investigative misconduct).

[202] *Kirtley v. Rainey*, 326 F.3d 1088, 1093–96 (9th Cir. 2003) (a guardian ad litem performing the independent functions there examined was not a state actor for § 1983 purposes; the analysis turns on the actor's particular function, relationship to the State, and alleged conduct).

[203] *Gay v. Parsons*, 61 F.4th 1088, 1093–97 (9th Cir. 2023) (parole-board psychologists preparing risk-assessment reports are not entitled to absolute quasi-judicial immunity because they exercise no adjudicative decisional authority; absolute immunity attaches only where the function is genuinely comparable to a judicial or advocative one).

absolute testimonial immunity; that immunity does not necessarily protect distinct pre-testimonial investigative, administrative, evaluative, or fabricative conduct not inextricably tied to the testimony.[204] The consequence this Standard records is that immunity may extend beyond the issuing tier and independently protect particular acts in the executing tier, depending on the actor, function, order, jurisdiction, and cause of action.

The entity and supervisory tier. On Plane B, an individual official's immunity does not automatically extend to the employing entity. Municipal liability under § 1983 instead requires the applicable *Monell* policy, custom, final-policymaker, and causation predicates; municipalities do not receive qualified immunity; and States and state agencies encounter distinct sovereign-immunity, statutory-personhood, and remedial rules.[205] A supervisor is not vicariously liable merely because of the supervisory relationship; § 1983 liability requires personal involvement in the constitutional deprivation or a sufficient causal connection between the supervisor's own wrongful conduct and the violation.[206] On Plane A, the conduct of State and local organs remains attributable to the State irrespective of the domestic allocation of responsibility among them, and the Convention's obligations are owed by the State as a whole.

Official acquiescence, participation, and superior responsibility. On Plane A, domestic immunity does not prevent the international inquiry from determining whether the Article 1 or Article 16 official nexus exists through conduct by a public official or another person acting in an official capacity, or through official instigation, consent, or acquiescence. An actor's participation or contribution, the State's failure of due diligence, and a superior's responsibility for subordinates present related but analytically distinct questions. General Comment No. 2, paragraph 18, addresses State knowledge and inaction regarding conduct by non-State or private actors; paragraph 26 separately addresses superior responsibility for conduct by subordinates where the superior knew or should have known and failed to take reasonable preventive measures.[207] These international classifications do not themselves create a domestic cause of action or eliminate any separate immunity claimed by the supervising official on Plane B. A failure to investigate after a completed event is not, without more, prior acquiescence in that event; it may establish a separate investigative breach, evidence tolerance, or facilitate continuing or repeated conduct.

Superior orders. Article 2(3) provides that an order from a superior officer or a public authority may not be invoked as a justification of torture, and General Comment No. 2 states that subordinates may not take refuge in superior authority and should be held to account individually.[208] Receipt or execution of an order does not by itself establish torture, ill-treatment, or complicity; but where the person's own conduct and mental state independently satisfy the applicable standard, the order neither justifies that conduct nor extinguishes responsibility for it. For conduct falling under Article 16, the analysis proceeds on that Article and on the Committee's determination that the prevention obligations are indivisible and largely congruent, rather than on the text of Article 2(3).[209]

[204] *Briscoe v. LaHue*, 460 U.S. 325, 329–46 (1983) (absolute immunity for trial witnesses, including police officers, as to their testimony); *Rehberg v. Paulk*, 566 U.S. 356, 367–70 & n.1 (2012) (grand-jury witness testimonial immunity does not extend to non-testimonial acts such as fabricating evidence); *Lisker v. City of Los Angeles*, 780 F.3d 1237, 1241–42 (9th Cir. 2015) (testimonial immunity does not bar a claim founded on distinct pre-testimonial fabrication of evidence).

[205] *Monell v. Department of Social Services*, 436 U.S. 658, 690–95, 701 (1978) (municipalities are § 1983 "persons," but liable only where the deprivation is caused by an official policy or custom); *Owen v. City of Independence*, 445 U.S. 622, 638, 650–57 (1980) (municipalities do not enjoy qualified immunity); *Will v. Michigan Department of State Police*, 491 U.S. 58, 64–71 & n.10 (1989) (neither a State nor a state agency is a § 1983 "person").

[206] *Ashcroft v. Iqbal*, 556 U.S. 662, 676–77 (2009) (no respondeat-superior liability under § 1983; each official is answerable only for his own conduct); *Starr v. Baca*, 652 F.3d 1202, 1207–08 (9th Cir. 2011) (a supervisor is liable only for personal involvement in the constitutional deprivation or a sufficient causal connection between the supervisor's own wrongful conduct and the violation).

[207] General Comment No. 2, ¶¶ 18, 26 (2008).

[208] Convention against Torture art. 2(3); General Comment No. 2, ¶ 26 (2008).

[209] Convention against Torture art. 16; General Comment No. 2, ¶ 3 (2008).

The architectural risk. The IAJ records the following as a structural risk the actor architecture presents, and not as an adjudicated finding: where an order is issued by an absolutely immune actor, executed by an actor who may be immune for strict compliance, investigated by personnel immune for some functions and not others, and informed by an intermediary who may fall outside § 1983 state-action doctrine or possess function-specific immunity against the particular damages claim asserted, each tier is capable of locating responsibility in another, and the tier so identified may be the one the domestic architecture most completely insulates. Where the documented actor chain supplies no effective examination or protection, the formal existence of procedures does not discharge the State's Article 13 obligation, which Article 16 expressly extends to CIDT.[210] Where no effective redress results, the same architecture may also fail Article 14 with respect to torture and, for CIDT, Article 14 as interpreted by the Committee in General Comment No. 3.[211] Establishing that the risk has materialised in any given record requires, for each documented claim, identification of the actor, the function performed, and the rule that defeated the claim; whether municipal, supervisory, injunctive, administrative, disciplinary, criminal, and State-law routes were examined; whether they were pursued; what disposition resulted; and, where they were not pursued, whether the record establishes that they were unavailable, inadequate, ineffective, or incapable of providing the investigation, accountability, protection, or redress required. That showing is the work of the investigative record, and this Standard does not assert it here.

Limits. Nothing here lowers any element. A facially lawful removal, proportionate execution of an order, or honestly prepared evaluation does not, without additional evidence, establish torture, CIDT, complicity, consent, or acquiescence. Domestic validity, proportionality, honesty, good faith, and reasonable care are relevant evidence, but none substitutes for independent assessment against the applicable Article 1 or Article 16 criteria. Once conduct is attributable to the State, ARSIWA Article 3 confirms that its characterization as internationally wrongful is not affected by its characterization as lawful under internal law.[212] *Černáková*, paragraph 9.3, separately confirms that Article 16 ill-treatment may be committed through acts or omissions and that negligence may suffice where the remaining Article 16 predicates are established.[213]

I. Judicial Integrity and International Scrutiny

The 2023 Special Rapporteur on the Independence of Judges and Lawyers[214], in A/HRC/53/31 of 13 April 2023, records that judicial conduct is subject to international scrutiny against standards of judicial integrity and identifies the Bangalore Principles of Judicial Conduct as the framework for that analysis (¶¶40–42). The report states the mandate holder's vision and work priorities. It does not address *res judicata*, the reopening of completed proceedings, or the legal finality of judgments. The finality analysis that follows therefore rests on other authority.

[210] Convention against Torture arts. 13, 16.
[211] Convention against Torture art. 14; Committee against Torture, General Comment No. 3, ¶¶ 1–2 (2012).
[212] ARSIWA art. 3.
[213] *Černáková v. Slovakia*, CAT/C/72/D/890/2018, ¶ 9.3 (Comm. against Torture, adopted 19 Nov. 2021).
[214] Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite, Reimagining Justice: Confronting Contemporary Challenges to the Independence of Judges and Lawyers, A/HRC/53/31 (13 April 2023); Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite, Safeguarding Judicial Independence Amid Challenges to Democracy, A/HRC/56/62 (2024); Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite, "Justice Is Not for Sale": Improper Influence of Economic Actors on the Judiciary, A/79/362 (2024); Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite, Principles for Judicial Appointments, A/HRC/62/43 (2026); Basic Principles on the Independence of the Judiciary, endorsed by G.A. Res. 40/32 and 40/146 (1985). — RELEVANCE: Cited as external corroborative authority that judicial actors are State actors bound by international standards of independence, impartiality, integrity, and accountability. These materials are not cited as UNCAT classifications and do not themselves create a domestic self-executing rule voiding judgments.

One authority bearing on that analysis is the interpretive principle the Commission states at Conclusion 20: where a peremptory norm may conflict with another rule of international law, that other rule is, as far as possible, to be interpreted and applied so as to be consistent with the peremptory norm. Conclusion 20 speaks to conflict with another rule of international law, not directly to domestic doctrine; the IAJ carries the same posture to the domestic rules of finality, res judicata, and immunity through the distinct and settled principle that a State's internal law cannot excuse the breach of an international obligation.[215] So read, those doctrines are to be applied, so far as their own terms permit, without sheltering conduct at the peremptory threshold — the principle requiring the conflict to be identified and consistency pursued, not that any doctrine disappears.

J. The Judicial Reset

This Chapter's examination of judicial conduct proceeds from a reset this section states and grounds. Four assumptions operate in domestic practice as if they were rules of law: that judicial integrity may be assumed; that impartiality may be assumed; that judicial candour may be assumed; and that judicial conduct is presumptively non-culpable. The IAJ determines — as its own jurisprudential determination, supported but not decided by the authorities below — that each of these operates legitimately only as a rebuttable evidentiary default, never as a rule of decision, and that where evidence puts judicial conduct in issue, the conduct is assessed on the evidence like any other official conduct within the prohibition's reach.

The reset is not a novelty; its foundation was laid in April 1978. In *Tyrer*, the treatment held to violate Article 3 was judicially ordered, procedurally regular, and executed exactly as the court directed — and the judgment located the violation precisely in the institutionalized character of the violence[216]. *Tyrer* establishes that judicial authorization and procedural regularity do not immunize treatment whose substance crosses the threshold; it does not itself decide the IAJ's further determinations concerning adjudicative conduct, and the IAJ does not cite it as though it did. The institutional principle generalized: the powerlessness typical of persons confined in institutions calls for increased vigilance[217], and treaty-body interpretation carried Article 7's protection expressly to judicial and other measures and to persons in teaching and medical institutions[218].

Judicial complicity is on the adjudicated record, not merely in theory. The *Siderman* record — courts receiving and acting on the machinery of persecution, the allegations and evidence

[215] Conclusion 20, A/77/10 (2022): "Where it appears that there may be a conflict between a peremptory norm of general international law (*jus cogens*) and another rule of international law, the latter is, as far as possible, to be interpreted and applied so as to be consistent with the former." The rule governs conflict with another rule of international law; its extension to domestic doctrine runs through the distinct principle that internal law does not excuse an international breach. Interpretive practice constraining reading by peremptory norms: *Oil Platforms (Islamic Republic of Iran v. United States)*, I.C.J. Reports 2003, p. 161, para. 41; separate opinion of Judge Simma ("a legally insurmountable limit to permissible treaty interpretation"); *Council of the European Union v. Front Polisario*, Case C-104/16 P (2016).

[216] *Tyrer v. the United Kingdom*, App. No. 5856/72, Series A no. 26 (ECtHR, 25 April 1978), ¶ 33. The sentence was non-custodial, but it was executed at a police station while the applicant was physically held by police officers; the judgment therefore does not decide the application of Article 3 in the complete absence of custody or physical control, and is not cited here as doing so.

[217] *Herczegfalvy v. Austria*, App. No. 10533/83, Series A no. 244 (ECtHR, 24 September 1992), ¶ 82. The Court found no violation of Article 3 on the treatment facts at ¶ 84; the vigilance principle at ¶ 82 is cited for the institutional proposition only. The text relied upon is OCR-derived from the official binary and is recorded as such in the source ledger.

[218] Human Rights Committee, general comment No. 20 (1992) on article 7 of the International Covenant on Civil and Political Rights, ¶¶ 2 and 5. The general comment interprets ICCPR article 7, which combines torture and cruel, inhuman or degrading treatment; it is not the UNCAT article 1 enumerated-purpose definition.

describing a judiciary employed as an instrument of the regime[219] — and *Filártiga*'s rejection of act-of-state deference for official torture[220] establish that United States courts have themselves adjudicated matters in which foreign judicial process formed part of the wrong. And the State-responsibility architecture attributes judicial-organ conduct to the State on ordinary attribution principles[221], with the due-diligence obligations — prevent, investigate, punish, compensate — running to the State for the acts of all its organs[222]. Concurrency governs throughout: the State's responsibility and the individual officer's responsibility are cumulative tracks, never alternatives, and the State's answering never absolves the individual any more than the individual's answering absolves the State.

The jurisdictional discipline is strict, and this section restates it as a limit on its own reach. Judicial jurisdiction over a person, without more, does not constitute the powerlessness or equivalent control on which the prohibition's non-custodial application rests. The governing ruling — confirmed in Chapter 2 and applied here without reopening — requires powerlessness or equivalent control established on defined, case-specific criteria: the detention anchors and limits of the Special Rapporteur's analysis[223] mark both what the concept includes and what it does not. A litigant is not rendered powerless by the fact of litigation. The captive-litigant application examined in Chapter 14 turns on defined criteria — the practical capacity to exit, the presence of coercive compulsion, the dependence of vital interests on the forum, the availability of effective alternatives — assessed on evidence, case by case; the presumption of innocence and the ordinary allocation of the burden of proof are preserved in full, and nothing in this section shifts either.

Within those limits, the reset operates. Where the evidence establishes judicial conduct meeting the threshold, the torture/CIDT distinction is maintained as Part I fixed it; the anti-impunity continuum is absolute across both; and the IAJ's determination that the peremptory norm displaces immunity at and above the threshold — the Institute's own jurisprudential determination, resting on its independent legal analysis — applies with the contrary authority recorded as this publication records it: as documented divergence of the tribunals concerned from the peremptory norm's requirements, never as a carve-out from the IAJ's standard. Below the threshold, immunity legitimately shields the honest and the erring judge who does not otherwise engage individual liability, and reparation runs against the State; the honest judge is protected by the threshold, not by an assumption.

The reset, stated in full: integrity, impartiality, candour, and non-culpability are assessments to be made, not premises to be granted. The associated-standards architecture of Part II (Chapter 4) addresses the judicial officer directly; the authorities above establish that judicial office has never placed its holder outside the prohibition; and this Chapter and Chapter 14 proceed on that footing.

[219] *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 703 n.18 (9th Cir. 1992). The material at footnote 18 is evidence presented by the Sidermans, recounted by the court; it is not a judicial finding, and is cited here only as recounted evidence.

[220] *Filártiga v. Peña-Irala*, 630 F.2d 876, 889–90 (2d Cir. 1980). The holding is jurisdictional under 28 U.S.C. § 1350 and is not a merits or damages determination.

[221] *Velásquez Rodríguez v. Honduras*, Merits, Judgment of 29 July 1988, Series C No. 4 (IACtHR), ¶¶ 164 and 170. The judgment construes the American Convention and supports attribution and due-diligence architecture; it does not extend UNCAT article 1 acquiescence to legislative or reporting inaction.

[222] Id. ¶¶ 172–174.

[223] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, A/HRC/43/49 (20 March 2020), ¶¶ 61–67. The analysis carries a detention anchor at ¶¶ 64–67 and describes its scope at ¶ 63 as of "particular, but not exclusive," relevance to arbitrary detention and related judicial or administrative arbitrariness. Special Rapporteur reports are persuasive thematic interpretation, not adjudication.

Critical Examination 13.1: Official Capacity as Sufficient or as Dispositive in Either Direction

Two opposite errors appear in doctrinal objections. The first treats the IAJ's Article 1 analysis as if it argued that 'judges are public officials, therefore their acts are torture.' The IAJ makes no such argument. Official capacity is one of five elements that all must be satisfied. The second error treats the 'harder question' of whether adjudication can constitute torture as if the IAJ has no answer to it. The element-by-element analysis above is that answer. The question is not whether adjudication in general can constitute torture — it cannot in its ordinary form. The question is whether specific documented acts, satisfying all five elements including specific intent, severe documented physical harm, enumerated purpose, and official capacity, constitute torture. The IAJ's position is that the better reading, on a rigorous application of the Convention's five elements to the documented conduct, is yes — for the reasons given in the element-by-element analysis above and in Chapter 14 below.

The equivalence question the ratification record poses can be put at its narrowest, and answered from the peers the United States itself named. Absolute personal immunity for judicial acts however malicious or corrupt — the rule administered under *Stump v. Sparkman*, 435 U.S. 349 (1978), and *Mireles v. Waco*, 502 U.S. 9 (1991) — has no counterpart in any of the three systems against which the United States' own conduct must be measured.

The Council of Europe states a functional-only model, in which criminal process for conduct criminal in any circumstances is never barred and civil answer runs through the State: Committee of Ministers Recommendation CM/Rec(2010)12 (¶¶ 66–71), CCJE Opinion No. 3 (2002) (¶¶ 51–58, 75–77), and the Venice Commission's settled formula that judges enjoy "functional (but only functional) immunity … with the exception of intentional crime" (CDL-AD(2013)008, ¶ 18; to the same effect CDL-AD(2016)015, ¶ 69, and CDL-AD(2017)002, ¶ 17).

The Inter-American system states the same calibrated model from its own sources and adds an anti-foreclosure doctrine with no Strasbourg equivalent, holding "measures designed to eliminate responsibility" inadmissible by their function and binding the judge, as duty-bearer, to test the domestic shield before applying it (*Barrios Altos v. Peru*, Ser. C No. 75 (2001), ¶ 41; *Almonacid Arellano v. Chile*, Ser. C No. 154 (2006), ¶ 124; *Ríos Ávalos v. Paraguay*, Ser. C No. 429, ¶¶ 101–107). And the codification organ itself completes the record from the inside: the International Law Commission's draft article 7 provides that immunity *ratione materiae* "shall not apply" in respect of torture and the other core crimes, adopted over recorded dissent and thereafter broadened, not narrowed. Three systems, three routes, one direction — and in none of them the categorical shield the United States alone maintains.

The finding is capped by the oldest and least deniable of these authorities, because the United States wrote it. The international rejection of official-capacity immunity for officials who instrumentalize the law is not a doctrine imported against the United States; it is a doctrine the United States enforced. The Charter of the International Military Tribunal provided that "[t]he official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment" (art. 7), and Control Council Law No. 10 — the law an American tribunal applied in the Justice Case, *United States v. Altstötter et al.* (Nuremberg, 1947) — provided in identical substance that "[t]he official position of any person … does not free him from responsibility for a crime or entitle him to mitigation of punishment" (art. II(4)(a)).

The Tribunal stated the charge against the judge-defendants in its own words: “conscious participation in a nation-wide governmentally-organized system of cruelty and injustice, in violation of the laws of war and of humanity, and perpetrated in the name of law by the authority of the Ministry of Justice, and through the instrumentality of the courts. The dagger of the assassin was concealed beneath the robe of the jurist.”

The same principle is now settled treaty law binding the international community: the Rome Statute of the International Criminal Court declares that official capacity “shall in no case exempt a person from criminal responsibility” and that immunities attaching to official capacity “shall not bar the Court from exercising its jurisdiction” (art. 27(1)–(2)); and the Convention against Torture itself forecloses the official-order defence at the threshold (“[a]n order from a superior officer or a public authority may not be invoked as a justification of torture,” art. 2(3)), requires that all acts of torture and complicity in them be criminal offences and be prosecuted or extradited (arts. 4–7), and guarantees redress to the victim (art. 14). The United States that prosecuted the Justice Case cannot, consistent with that historical position, maintain that its own judicial officers are categorically exempt from the accountability principle it enforced against others — precisely where the conduct at issue is the instrumentalization of judicial power to inflict the very harm the peremptory norm prohibits absolutely.

This is stated as Plane-A content and within the discipline this Standard maintains throughout. It operates only at and above the gateway into torture or ill-treatment meeting the defined severity threshold; below it, immunity legitimately shields the honest or merely-erring judge, and the continuum is not broken by pretending that cruel, inhuman, or degrading treatment stands outside the prohibition’s absolute character. The individual answer is concurrent with — never alternative to — the State’s undiminished responsibility. And where an international tribunal has given the peremptory norm less than full effect at the immunity stage — as in the International Court of Justice’s Jurisdictional Immunities of the State judgment — this Standard records that outcome as a documented failure to give the norm operative effect, not as a carve-out from it, and stands by its contrary position by independent investigation.

DIGNITY ALIGNMENT TEST — Chapter 13 Judicial Actors as Public Officials (this is a normative check informing object-and-purpose analysis; it does not substitute for treaty elements, evidentiary proof, or the competent body’s determination): THESIS POSITION: Judges satisfy the Article 1 public official element, and absolute judicial immunity cannot insulate documented torture from international accountability — the immunity is an instrumental value that cannot override the foundational value it was conferred to protect. | ADVERSARIAL COUNTER: Absolute judicial immunity is structurally necessary for independent courts; subjecting judges to torture accountability would chill lawful decision-making and compromise judicial independence. | DIGNITY DERIVATION: Judicial independence is an instrumental value — it serves the administration of justice. Human dignity is a foundational value — it constitutes the basis from which all rights derive their authority. The UDHR Preamble reaffirms “faith in fundamental human rights, in the dignity and worth of the human person.” An immunity that operates to insulate documented violation of human dignity has inverted its own purpose: the independence conferred to protect justice is being deployed to protect its violation. No instrument grounded in dignity creates a dignity-exception for persons who hold judicial title. The thesis position is consistent with the foundation. The adversarial position would make dignity contingent on the perpetrator’s professional category — a result the foundational principle forecloses.

CHAPTER 14 — JURISDICTIONAL CUSTODY AND THE CAPTIVE LITIGANT

Court-Compelled Participation as a Functional-Custody Analogy Within the UNCAT/OPCAT Framework

A. The Argument That Reframes the Architectural Objection

The preceding chapters establish the IAJ's position through convergent lines of analysis: textual, institutional, *jus cogens*, equivalence, element-by-element, and evidentiary. Chapter 14 addresses the deepest structural objection in the doctrinal challenge — that UNCAT's architecture is fundamentally custodial — not by arguing above or around it, but by demonstrating that the original custodial paradigm already encompasses jurisdictional custody. The argument is this: court-compelled participation in litigation is a form of deprivation of liberty as that concept is understood in the international human rights framework that UNCAT inhabits. The IAJ determines that the framework's own functional definition of custody, correctly read, includes it. That determination is the Institute's own: no treaty body or court has yet adopted court-compelled process as a deprivation of liberty under OPCAT Article 4(2), and this Standard advances the reading as the IAJ's doctrinal contribution.

B. OPCAT Article 4(2) and the Functional Reading of Deprivation of Liberty

The Optional Protocol to the Convention Against Torture (OPCAT), Article 4(2), defines "deprivation of liberty" as "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."[224] This definition was drafted as an authoritative elaboration of what UNCAT's protective framework encompasses. It applies the word "any" three times — "any form of detention or imprisonment," "any… custodial setting," and "any judicial, administrative or other authority." It defines the relevant state not by the physical architecture of the setting — whether it has walls or bars — but by the functional reality: a person who is not permitted to leave at will by order of any authority.

A litigant subject to court orders compelling participation in proceedings satisfies each element of this definition. First, the mechanism of compulsion is judicial authority — specifically court orders backed by the full coercive power of the state, including contempt of court, terminating

[224] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 4(2) ("deprivation of liberty" means "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority"); Naylor, B., Santow, E., Farthing, S., Weller, P. & Winford, S. "Foreword to the Special Issue on the Optional Protocol to the Convention Against Torture." Australian Journal of Human Rights 25(1), 1–3 (2019). DOI: 10.1080/1323238X.2019.1590117. — RELEVANCE: Directly supports Chapter 14's OPCAT Article 4(2) jurisdictional custody analysis. The Foreword's definition of OPCAT's scope explicitly covers 'all places where people are deprived of their liberty' using the functional standard of OPCAT Article 4(2), which encompasses court-ordered compulsion. — AUTHORITY: Foreword to the Australian Journal of Human Rights special issue on OPCAT implementation, following Australia's ratification in December 2017. Explains OPCAT's core requirement: systematic monitoring of all places of detention by an independent National Preventive Mechanism (NPM). Emphasises that transparency is not OPCAT's end goal — prevention of ill-treatment is. The Foreword's analysis of 'places where people are deprived of their liberty' using the functional Article 4(2) standard informs this publication's argument that judicial proceedings constitute functional custody under OPCAT's own authoritative operational framework. The absence of a U.S. NHRI/NPM is directly relevant to this publication's exhaustion analysis.

sanctions, monetary penalties, and imprisonment for non-compliance. Second, the litigant is not permitted to leave the proceedings at will: withdrawal without court permission results in default judgment, loss of all accumulated legal claims, and potential contempt. Third, the authority maintaining the compulsion is a judicial authority — the paradigmatic actor within OPCAT's express definition. OPCAT Article 4(2) names judicial orders as the compulsion mechanism. The analysis is not that this is the definition's paradigmatic case. It is that OPCAT Article 4(2) supplies the strongest treaty-text analogue for treating certain extreme forms of court-compelled participation as functionally custody-like rather than as categorically outside the anti-torture framework. The provision's breadth — "any form," "any public or private place," compulsion by "judicial... authority" — shows that the anti-torture framework does not reduce restraint to a closed list of physical institutions.

C. The Dual Mechanism: Legal Compulsion and Socialized Trust

Section B establishes the legal mechanism of jurisdictional custody: court orders backed by contempt, terminating sanctions, and default judgment, for example, that prevent the litigant from exiting at will. But legal compulsion is only one of the two mechanisms through which judicial custody operates. The second mechanism is socialized trust — and unlike legal compulsion, it is not a product of the court in the individual case. It is a product of the state across the litigant's entire lifetime. Its exploitation by the judicial actor is therefore more structurally comprehensive than the exploitation by any individual private perpetrator, and it supplies an independent basis for the intentional infliction element of Article 1.

Every person in a functioning legal society is systematically conditioned — through civic education, cultural representation, institutional architecture, and procedural ritual — to trust courts as the terminal source of justice, remedy, protection, and punishment for wrongdoers. This conditioning is not incidental. It is actively maintained by design. The physical architecture of courtrooms — the elevated bench, judicial robes, the requirement to stand, formal modes of address — functions as a deliberate system of authority signals. Legal legitimacy doctrine is the theoretical infrastructure of that system: its purpose is to secure public compliance with judicial decisions, including unfavorable ones, by sustaining the belief that courts deserve deference. Law enforcement, government agencies, and all social institutions direct aggrieved persons toward courts as the mechanism of last resort. A person who has exhausted every other avenue has been specifically funneled there by the state's own institutional architecture.

This conditioning operates on disabled persons with amplified intensity, for the same reason that mate crime operates on disabled persons with amplified intensity: fewer alternative relationships and support structures, greater need for institutional assistance, less access to countervailing information or external validation, and therefore a lower threshold for investing total trust in whoever presents as the designated protector. A disabled person who has already been failed by employers (ADA violations), healthcare systems (coverage denials), housing authorities (accommodation refusals), and administrative agencies (benefit denials) arrives at court carrying not ordinary trust but desperate trust — the last-resort investment of a person for whom society has systematically presented courts as the place where everything else's failures are finally corrected. The socialization did not create a character flaw. It created a disposable dependency that the judicial institution is positioned to harvest.

The parallel to mate crime is analytically precise. The mate crime perpetrator does not overpower the victim. They harvest a pre-existing trust disposition that society created and that the victim's particular conditions of isolation and need have concentrated. The judicial torturer operates by the same mechanism — with one structural difference that makes the situation categorically worse. In mate crime, the perpetrator is a parasite on social trust that some third party created. In judicial torture, the state simultaneously created the trust disposition through systematic civic indoctrination and institutional design, maintains that disposition through the ongoing ritual and legitimacy architecture of the courts, exploits it through the judicial actor's conduct, and forecloses all remedy through absolute immunity, non-self-execution, and the structural absence of any independent complaint mechanism. The state grew the crop, harvests it, and grants immunity to the harvester. The private mate crime perpetrator has no equivalent structural position.

For UNCAT purposes, the socialized trust dimension has three independent analytical consequences. First, it sharpens the intentional infliction element. A judicial actor who exploits the litigant's court-directed trust — accepting the court's characterizations over their own physician's evidence, continuing to comply because withdrawal means accepting that the entire societal promise of law was false — does not encounter a victim who is simply present. The actor encounters a victim whose compliance has been pre-secured by the state's own indoctrination infrastructure. The exploitation of that pre-secured compliance is itself a deliberate act: the judicial actor knows that the litigant cannot easily reframe the institution as their captor rather than their protector, and conducts accordingly. Second, it illuminates the psychological impossibility of exit that the OPCAT Article 4(2) analysis establishes by legal mechanism. A person in a prison cell knows they are being held against their will. A person in a courtroom has been taught by the state to experience their captivity as participation in justice. That internalized false framing — that compliance is civic virtue, that the institution is protecting them even as it harms them, that persisting through harm will eventually produce the relief they were promised — is itself a form of harm, and one the state deliberately cultivated through a lifetime of conditioning. Third, it establishes the state's direct implication at the systemic level relevant to Article 20's "systematically practised" threshold. The exploitation of socialized trust is not the conduct of an aberrant individual judicial officer. It is the systematic consequence of an institutional design in which the state actively builds trust disposition into every citizen and then deploys it as a control mechanism over persons it simultaneously harms and forecloses from remedy.

The dual mechanism — legal compulsion through OPCAT Article 4(2) jurisdictional custody, and psychological compulsion through state-cultivated trust dependency — makes judicial custody more total than conventional physical custody in one specific dimension: it operates on both the body and the mind of the captive, and the mental dimension is a product of the captor's own design. This does not diminish the physical custody analysis. It augments it. The two mechanisms are independent grounds; their convergence in the judicial torture scenario is evidence of a systematically practiced condition, not an accumulation of coincidences.

A third dimension of judicial custody is what Alison Kafer terms "crip time" — the temporal rhythms of disabled persons that resist standardization. Legal time appears neutral: deadlines are logistical constraints, not normative impositions. But for disabled persons, procedural time becomes an instrument of exclusion. California Rule of Court Standard 2.2 mandates 75% of unlimited civil cases disposed within 12 months. This institutional tempo predictably excludes disabled temporality: the person who cannot keep pace is declared perpetually suspect; the disability that requires different time is read as evidence of bad faith. Temporal coercion operates alongside legal compulsion and socialized trust conditioning to complete the architecture of captivity from which no survivable exit exists. What disability studies describes as 'crip time' captures a broader treaty-relevant phenomenon: coercive institutional time, in which procedural deadlines and exit-cost structures operate differently across vulnerable categories of persons. In family-separation proceedings, the same phenomenon operates as 'separation time' — every hearing is a deadline, every delay risks permanent termination, and the institutional clock produces the same exit-or-catastrophe coercive structure (Factor 2).

D. Medically Compelled Refusal as Juridical Act: The Jurisprudence of Withdrawal

Sections B and C establish two mechanisms of judicial custody: legal compulsion through OPCAT Article 4(2) (the litigant cannot exit without catastrophic legal consequences) and socialized trust conditioning (the litigant has been taught to experience captivity as participation in justice). A third analytical dimension — distinct from both — is developed in this Standard as follows: using disability as the detector, when a disabled person is medically unable to participate, or medically compelled to refuse participation, that refusal is not an absence from law. It is a juridical act — a rights-generating form of legal presence that indicts the system's procedural legitimacy from within.

Using disability as the detector, the argument, termed "jurisprudence-by-withdrawal," draws on J.L. Austin's speech act theory[225] to establish that not all legally meaningful utterances are verbal. A disabled person who, under physician's orders, refrains from procedural participation to prevent neurological relapse is not escaping the law. They are issuing a claim: that the law's demands are incompatible with their survival. Building on Judith Butler's account of resignification[226] — by which an injurious foreclosure of speech can be reoccupied and turned — and on Miranda Fricker's account of testimonial injustice,[227] which this Article extends to the disabled speaker whose credibility is discounted through structural disbelief,[228] their frameworks converge to demand that courts recognize medically necessitated silence not as absence but as overdetermined presence — pressure-tested by constraint and made legible through jurisprudence. The disabled litigant's refusal to proceed is not a void in the legal record. It is testimony about the structure of the system that produced the conditions making participation lethal. The same principle is not limited to medical incapacity: it applies equally where an indigenous parent withdraws from CPS proceedings on the advice of a tribal advocate acting under UNDRIP Article 18 — a legally meaningful assertion, not an abandonment (Factor 2 / UNDRIP).

For UNCAT analysis, this framework has two distinct and independent doctrinal consequences. First, it strengthens the Article 15 analysis documented in Appendix C.5. Where a court draws adverse inferences from a disabled person's non-appearance — as occurred in completed IAJ investigation records — it is not merely presenting what the IAJ identifies, on its own interpretive construction, as a potential Article 15 application — the coerced non-appearance operating as a juridical statement in substance used against its maker, a violation established only where the statement construction, the torture nexus, and the evidentiary use are each independently proved — with the conduct bearing independently on Articles 2, 12, 13, and 14 where their distinct predicates are established. It is doing something worse: it is converting the litigant's juridical act of survival into evidence of bad faith. The court takes what is in substance a legal statement — "this proceeding will kill me" — and reads it as an admission of guilt. That inversion of meaning is the most acute form of what Miranda Fricker calls hermeneutical injustice: the system applies categories (abandonment, laches, bad faith) that structurally cannot receive what the disabled litigant is actually communicating.

[225] J.L. AUSTIN, HOW TO DO THINGS WITH WORDS 4–7 (J.O. Urmson & Marina Sbisà eds., 2d ed. 1975)
[226] JUDITH BUTLER, EXCITABLE SPEECH: A POLITICS OF THE PERFORMATIVE (1997)
[227] MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING 1 (2007) (epistemic injustice as "a wrong … done to someone specifically in their capacity as a knower"); id. at 28 (central case of testimonial injustice: "identity-prejudicial credibility deficit")
[228] Havi Carel & Ian James Kidd, *Epistemic Injustice in Healthcare: A Philosophical Analysis*, 17 MED. HEALTH CARE & PHIL. 529, 529–33 (2014)

Second, jurisprudence-by-withdrawal reveals a dimension of the jurisdictional custody analysis that the OPCAT Article 4(2) functional definition does not fully capture. OPCAT establishes that the litigant cannot exit at will because of legal compulsion. Jurisprudence-by-withdrawal establishes that even when the litigant does exit — through medically necessary withdrawal — the exit itself is a legal act with legal consequences. The person is never fully outside the law's reach. Withdrawal does not terminate the proceeding; it generates sanctions, adverse inferences, and default judgments. The jurisdictional custody therefore operates in both directions simultaneously: the law punishes presence (through compelled participation causing harm) and punishes absence (through adverse inferences from medically necessary withdrawal). There is no survivable position available to the disabled litigant within the existing procedural architecture. That total absence of survivable position — which is what "epistemic compression" describes at the institutional level — is itself the clearest evidence of the systematic character of the prohibited practice.

The protection this claims is conditional, and the condition is what earns the parallel that follows: it reaches only withdrawal that is medically compelled and — because the accommodation that would have made participation survivable was denied — the sole remaining means of avoiding severe pain or suffering, not an election among options. On that predicate, the domestic institutional parallel is *Miranda v. Arizona*. Just as *Miranda* elevated silence under custodial interrogation to a constitutional protection — recognizing that silence in that context was not non-cooperation but an invocation of fundamental rights — jurisprudence-by-withdrawal reframes medically necessitated silence in civil procedure as a declarative act that ought to trigger judicial restraint rather than procedural punishment. The structural logic is identical: a person held in a position of vulnerability by state authority, unable to exit without catastrophic consequences, exercising a form of refusal that the state's own legal framework should recognize as protected. Miranda established this protection for criminal interrogation in 1966. The question for the CAT Committee is why the same logic does not require equivalent protection for disabled litigants held in jurisdictional custody by civil courts in 2025.

Practical operationalization of jurisprudence-by-withdrawal is proposed here in two model procedural rules — one tolling the proceeding for medically necessary abstention, the other requiring observance of ratified human-rights treaties in the conduct of the proceeding. Those rules would convert the framework from a doctrinal argument into a procedural reality. They also supply the specific domestic legal reforms that UNCAT Article 2 requires the United States to implement — the "effective measures" to prevent torture in the judicial accommodation context. The same tolling logic may apply in non-medical settings where compelled participation would itself produce coerced or fundamentally unreliable process (Factors 2 and 7).

E. Functional Proximity and the Limits of Architectural Categories

UNCAT's drafters thought primarily about the interrogation room and the prison cell because those were the most visible paradigms of 1984. But the functional reality they were prohibiting was more precisely described than any particular physical setting: a state actor holding unchecked coercive authority over a person who cannot escape, using that authority to inflict severe suffering, with no effective domestic remedy available. Architecture — walls, locks, physical confinement — was the typical mechanism of that reality, not its essence.

In the IAJ record, the functional reality is reproduced with precision. A federal judge, clothed in absolute immunity under *Stump v. Sparkman*, 435 U.S. 349 (1978), for judicial acts however malicious or corrupt, holds a disabled litigant in proceedings from which the litigant cannot exit without losing all claims accumulated over years of litigation. The judge has reviewed protected medical evidence in the court record documenting that continued participation will cause permanent physical harm. The judge has acknowledged in prior orders that severe pain and suffering will result. The court and judge continue to issue orders compelling participation. Contempt sanctions are available for non-compliance. No appeal mechanism remains available — the Supreme Court declined to intervene; the DOJ deferred; no independent human rights mechanism exists. The judge's immunity is absolute. There is no remedy, no recourse, no punishment. This victim was not a citizen who happens to dislike a court ruling. This was a person held by the compulsive force of judicial authority, causing documented severe physical or mental harm, with zero recourse — the precise functional architecture that UNCAT was designed to reach.

F. Absolute Immunity, Absence of Recourse, and the Captive-Litigant Analogy

The central counterargument — that UNCAT was designed only for detention, interrogation, and prison settings — rests implicitly on a premise that the treaty's drafters assumed some other mechanism of accountability would exist outside those settings. Courts, presumably, would provide remedy. The judicial system was the safeguard, not the perpetrator. That assumption collapses entirely under the documented U.S. regime of absolute judicial immunity.

Under U.S. law as currently constituted: judges have absolute immunity for judicial acts under *Stump v. Sparkman*, regardless of malice, corruption, or deliberate intent to harm; ethics disqualification procedures exist but are in practice unenforceable, with no mechanism for removal before the litigant is destroyed; no private right of action against judges exists under UNCAT's non-self-executing declaration; no independent human rights mechanism exists at the federal level to provide a remedy, relief, or punishment; and the Supreme Court has systematically declined to intervene. The result is the precise structural reality that UNCAT was designed to address: a category of state actor with coercive power over persons, using that power to cause severe documented physical harm, with no possibility of accountability through any domestic mechanism. The physical coercion of the prison cell and the legal coercion of compulsory litigation are not identical in institutional form. The IAJ's argument is narrower: in an extreme case, they may become sufficiently analogous in the relevant respects — inescapable state control, foreknown severe suffering, and absence of effective domestic remedy — that a rigid architectural distinction becomes increasingly difficult to maintain.

OPCAT Article 4(2)'s functional definition of deprivation of liberty does not require a cell, a cage, or a detention facility. It requires a state actor maintaining legal authority over a person who cannot exit without catastrophic consequence. That functional structure exists in extreme forms of court-compelled litigation. The treaty text, read without the architectural assumption the custodial paradigm introduced, reaches the documented case on its own terms. The persistent objection that UNCAT is about detention settings proves too much, because it implies that UNCAT was designed to protect only those persons whose captors operated in specifically identified buildings. On this logic, a regime could immunize its torture apparatus entirely by relocating its operations from a named detention facility to an administrative tribunal. That conclusion is inconsistent with the Convention's object and purpose under VCLT Article 31.

G. Why Chapter 14 Is Independent of the Jus Cogens Analysis

Chapter 9 advances the IAJ's position through the *jus cogens* hierarchy: the peremptory norm operates above the treaty architecture, and its minimum content is not limited by the original sovereignty horizon. Chapter 14 makes a different argument. It does not depend on *jus cogens* and does not require the reader to accept the full hierarchy analysis. It argues instead that OPCAT Article 4(2) and related human-rights materials support a serious functional analogy between certain extreme forms of court-compelled participation and recognized forms of deprivation of liberty. A reader who finds the *jus cogens* analysis too ambitious may still conclude that the custodial paradigm is functionally broader than the central counterargument allows, by reference to the analogy developed in this Chapter. The two arguments are therefore independent but mutually reinforcing: Chapter 9 operates above the treaty architecture; Chapter 14 operates within it, by analogy and functional reading. Together, they provide mutually reinforcing analytical pathways: Chapter 9 resolves the custodial-paradigm question through *jus cogens* hierarchy; Chapter 14 resolves it through functional analogy and interpretive breadth within the treaty framework itself. Defeat of one pathway leaves the other intact.

Doctrinal Objection and Reply 14.1: "OPCAT Applies Only to Places of Detention — Not to Courts"

The strongest doctrinal counterargument to Chapter 14 is that OPCAT's definition of deprivation of liberty was crafted for the preventive-visit mechanism and is principally directed to prisons, detention facilities, and custodial institutions, so that extending it to ordinary litigation risks overreading both text and purpose. This is a serious objection. The IAJ's answer is narrower than simple equivalence. Article 4(2)'s breadth — "any form," "any... custodial setting," and compulsion by "judicial, administrative or other authority" — shows that the anti-torture framework does not reduce restraint to a closed list of physical institutions. The provision is therefore relevant as an interpretive analogue when a state argues that a coercive arrangement falls outside the framework merely because it occurs in a courtroom rather than a jail. Interpretive practice has read Article 4(2) broadly: applying VCLT Articles 31 and 32, the Subcommittee on Prevention of Torture and National Preventive Mechanisms have understood the provision to reach non-traditional custodial settings beyond prisons and police cells, including social care homes, psychiatric institutions, and children's homes (Human Rights Implementation Centre, University of Bristol, "'Deprivation of liberty' as per Article 4 of OPCAT: the scope" 3-4 (Oct. 2011)). The IAJ does not contend that this interpretive practice has already squarely held that a courtroom is itself a place of deprivation of liberty under Article 4(2); it cites the practice for the narrower proposition that Article 4(2) accommodates broad readings consistent with the treaty's object and purpose, and is not confined to the architectural categories its drafters had immediately in mind. The Subcommittee on Prevention of Torture's General Comment No. 1 (2024) on Article 4 substantially confirms the functional rather than architectural reading. The Subcommittee states that the deciding factor for qualification of any place, facility, or setting as a place of deprivation of liberty is not the name or title given to it or its categorization in national legislation but whether individuals are free to leave it at will (Subcomm. on Prevention of Torture, General Comment No. 1 (2024) on Article 4 of the Optional Protocol, U.N. Doc. CAT/OP/GC/1, ¶ 42 (4 July 2024)). The Subcommittee further addresses the gap between *de jure* and *de facto* freedom to leave: an individual may be free to leave at will but unable to exercise that freedom for physical, medical, economic, or other reasons, and is therefore compelled to remain; in such cases, where the ability to leave would expose a person to serious human rights violations, the place, facility, or setting is to be understood as a place of deprivation of liberty within the meaning of Article 4 (id. ¶¶ 44-45). The Subcommittee also recognizes judicial authority among the categories of public authority whose orders may produce Article 4 deprivation of liberty (id. ¶ 47). The Subcommittee declines to provide an exhaustive list of qualifying places (id. ¶ 51) and confirms that the concept of places of deprivation of liberty is not fixed but evolves with time, allowing for the inclusion of novel situations and circumstances of deprivation of liberty that may arise in new contexts (id. ¶ 59). Related ICCPR Article 9 materials support a functional rather than purely architectural understanding of restraint, but the IAJ does not claim that those materials have already squarely held that court-compelled litigation as such constitutes deprivation of liberty. The narrower point is that the best functional reading of the anti-torture framework leaves room for that conclusion in an extreme case of the kind documented here — where inescapable judicial compulsion, foreknown severe suffering, no effective exit, and the documented Incapacitation Feedback loop together produce the functional reality the anti-torture framework was designed to address.

H. Multi-Treaty Convergence: Jurisdictional Custody Beyond OPCAT

Chapter 14.B grounds the functional-custody analogy primarily in OPCAT Article 4(2). This section develops the independent convergent support from four additional treaty frameworks, each of which, on its own terms, supports the conclusion that court-compelled participation in proceedings that cause severe harm constitutes a form of restraint cognizable within the international anti-torture framework. The convergence across these frameworks is not mere repetition: each treaty addresses the concept from a different institutional angle, and together they demonstrate that the functional-custody analysis is not an isolated reading of one optional protocol but the most coherent interpretation of a coordinated body of international human rights law.

ICCPR Article 9 — Liberty and Security of Person: The International Covenant on Civil and Political Rights, Article 9(1), guarantees that "no one shall be subjected to arbitrary arrest or detention." The Human Rights Committee, in its General Comment No. 35 (2014), interpreted "detention" and "deprivation of liberty" in functional rather than purely architectural terms: what matters is the degree and nature of state-imposed restraint on the individual's freedom of movement and legal position, not the physical environment in which that restraint is imposed. The Committee has found Article 9 violations in contexts beyond physical confinement, including compelled house arrest and mandatory reporting conditions. The IAJ's position — that compulsory court participation from which a litigant cannot exit without catastrophic legal consequences constitutes a cognizable form of restraint — is consistent with the functional reading the Human Rights Committee has endorsed under ICCPR Article 9.

CRPD Article 14 — Liberty and Security of Disabled Persons: The Convention on the Rights of Persons with Disabilities, Article 14, prohibits the deprivation of liberty of persons with disabilities on the basis of disability. CRPD Article 14(2) extends this obligation to guarantee that persons with disabilities who are deprived of their liberty through any process are entitled to reasonable accommodation. The CRPD Committee has recognized in its Guidelines on Article 14 that deprivation of liberty encompasses any state-imposed situation in which a person with a disability cannot exercise genuine and effective freedom of movement because of legal, institutional, or practical barriers erected by state actors. A disabled litigant compelled to participate in proceedings under threat of contempt, default, and financial ruin, whose disability prevents effective participation but who cannot exit the proceedings without losing all accumulated legal claims, is in a situation this definition encompasses. The simultaneous denial of disability accommodation, required by CRPD Article 14(2), transforms the jurisdictional custody from mere restraint into discriminatory restraint — satisfying the discrimination purpose element of UNCAT Article 1.

CRPD Article 17 — Protection of the Integrity of the Person: Article 17 of the CRPD provides that every person with a disability has a right to respect for his or her physical and mental integrity on an equal basis with others. Judicial orders compelling participation in proceedings that the presiding judge knows will cause permanent neurological damage constitute, on the IAJ's analysis, a violation of Article 17 independently of the UNCAT analysis. The significance of CRPD Article 17 for the jurisdictional-custody concept is structural: it confirms that international human rights law does not require physical confinement before recognizing that a state actor has violated a person's bodily integrity. Bodily integrity — the right to one's own physical person, free of state-imposed harm — is protected wherever a state actor holds coercive authority over a person and exercises that authority in ways that harm the person's body. A court that compels participation causing permanent physical injury, or severe psychological injury, has violated bodily integrity in exactly this sense. For indigenous litigants, UNDRIP Article 10 supplies parallel treaty support for the functional-custody finding: state-controlled proceedings may operate coercively where exit without catastrophic consequence is not meaningfully available. CERD Article 5(a) adds the equality-of-access dimension: racially discriminatory court treatment cannot be insulated from this analysis merely because it occurs through judicial process.

CRC Article 37 — Children Deprived of Liberty: The Convention on the Rights of the Child, Article 37(b), provides that the arrest, detention, or imprisonment of a child shall be a measure of last resort. Article 37(d) guarantees every child deprived of liberty prompt access to legal assistance and the ability to challenge the deprivation before a court. Children in family court and CPS proceedings are frequently in a position that satisfies CRC Article 37's functional definition: they are held in state-controlled settings by order of a judicial authority, cannot leave that setting at will, and have no effective mechanism to challenge the deprivation. The parents of children in such proceedings are simultaneously in a position of coercive compulsion: they cannot withdraw from the proceedings without losing custody permanently. The CRC framework therefore independently supports the jurisdictional-custody analysis as applied to the family court and CPS context, which represents the majority of the IAJ's caseload.

Jus Cogens and the Bodily Autonomy Component: The *jus cogens* prohibition on torture extends, at its minimum content, to any intentional infliction of severe physical suffering by a state actor in official capacity for a prohibited purpose. The concept of jurisdictional custody adds a necessary structural observation: where a state actor holds a person in a compulsory relationship characterized by inescapability, documented foreknown harm, and absence of remedy, the person is in precisely the kind of captive position that the *jus cogens* prohibition was designed to protect against. The *jus cogens* minimum content does not require physical walls; it requires state-imposed captivity and intentional severe harm. Jurisdictional custody supplies the captivity element by legal mechanism rather than physical mechanism. The *jus cogens* prohibition, operating above treaty architecture, reaches both.

I. The Spectrum of Jurisdictional Custody: Settings Beyond Federal Civil Litigation

The jurisdictional custody analysis was developed in the context of state and federal civil litigation — specifically, the IAJ's primary evidentiary record of court-compelled participation by disabled litigants whose medical records documenting predicted severe harm were before the court. But the concept is not limited to that context. Jurisdictional custody is a structural condition, not a case-specific one. It arises wherever four elements converge: (1) a state authority with coercive legal power over a person; (2) a compulsory legal relationship from which the person cannot exit without catastrophic consequences; (3) documented foreknown severe harm from continued participation; and (4) absence of any effective domestic remedy. This structure arises across multiple institutional settings documented in the IAJ's caseload.

Family Court Proceedings: A parent subject to a family court order controlling contact with their child is in a compulsory legal relationship maintained by judicial authority. The parent cannot withdraw from the proceedings without risking permanent termination of parental rights. The child is in the physical custody of the state or state-supervised placement. Neither the parent nor the child can exit the relationship with the court at will. Where those proceedings cause documented psychological harm — to parent, child, or both — and the court continues them despite that documented harm, the functional-custody analysis applies directly: the court is a judicial authority maintaining a compulsory relationship causing documented severe suffering with no effective mechanism of exit or remedy.

Child Protective Services Proceedings: CPS agencies exercise jurisdictional custody over children in foster care and over parents subject to agency-mandated service plans. Children in CPS custody are physically held by state agents and cannot leave that custody at will — this is direct custody in the conventional sense. Parents subject to service plans are compelled to participate under threat of permanent parental termination, cannot exit the agency relationship without catastrophic legal consequences, and have limited remedial mechanisms. Where CPS conduct causes documented severe psychological harm to parent and child — as it does in documented cases of coercive, prolonged, and due-process-deficient separation — the jurisdictional-custody analysis applies to both the child (direct physical custody) and the parent (coercive compulsory relationship).

Administrative Proceedings: Persons subject to administrative proceedings — benefit termination hearings, immigration court, disciplinary proceedings as conditions of employment or benefits — are frequently in compulsory legal relationships from which they cannot exit without suffering catastrophic consequences to their livelihood, immigration status, or liberty. Where those proceedings impose conditions causing documented severe harm, and where no effective remedy exists, the jurisdictional-custody analysis applies. The administrative context is particularly significant because it encompasses the largest number of people subjected to compulsory interaction with state authority outside the criminal justice system.

Law Enforcement Conduct Facilitated by Judicial Authority: Law enforcement officers acting under judicial authority — executing court orders, enforcing judicial determinations, carrying out court-mandated processes — are acting as extensions of the jurisdictional custody that the court has established. Where a court order establishes the compulsory relationship, and law enforcement conduct within that order causes documented severe harm, both the court and the law enforcement actor are acting within the jurisdictional custody framework. This analysis is particularly relevant to the execution of family separation orders, mandatory participation in medical or psychological evaluation under court mandate, and law enforcement activity under court-issued protective orders whose design or execution causes harm to the person they purport to protect.

J. The IAJ's Doctrinal Contribution: Jurisdictional Custody as a Defined Category

Prior international human rights doctrine has proceeded almost entirely from a binary distinction: a person is either in custody (in the conventional physical sense) or free (and therefore outside the custody-specific provisions of the anti-torture framework). This binary, adequate for the paradigm cases the drafters had in mind, is insufficient for the institutional settings the IAJ investigates. Courts, administrative agencies, CPS systems, and family courts hold persons in relationships of coercive compulsion that are neither physical custody in the traditional sense nor genuine freedom.

The IAJ proposes, as a doctrinal contribution to international human rights law, a defined middle category: **jurisdictional custody** — a state-imposed compulsory legal relationship characterized by: (a) legal authority maintained by a state actor; (b) inescapability without catastrophic legal consequences; (c) documented foreknown severe harm from continued participation; and (d) absence of any effective domestic remedy or mechanism of exit.

This definition is the IAJ's own functional reading of the anti-torture framework, advanced as the Institute's doctrinal contribution. It is a clarification of what the framework has always encompassed, made necessary by the emergence of institutional settings that reproduce the functional reality of custody without its conventional physical form. The four-element definition maps precisely onto the OPCAT Article 4(2) functional definition, the ICCPR Article 9 functional restraint doctrine, the CRPD Articles 14 and 17 bodily integrity and liberty protections, and the *jus cogens* minimum content of the torture prohibition. The convergence is not coincidental: each of these frameworks is addressing the same underlying reality — state power used to impose severe harm on persons who cannot escape it — from different institutional and treaty angles.[229]

The IAJ acknowledges that this contribution is argued doctrine, not settled law. No treaty body has expressly adopted the jurisdictional custody category. No court has applied it. The analysis establishes it as the most coherent synthesis of the convergent treaty authority, as a framework capable of application by the CAT Committee in its Article 20 inquiry, and as a contribution to the academic and practitioner literature that the international human rights community is

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[229] Morawska, E.H. "The Complex Structure of the Absolute Prohibition of Torture: Comments in the Light of the Regulation of Article 3 of the European Convention on Human Rights." Espaço Jurídico Journal of Law, vol. 17, no. 3, pp. 767–778 (Sept./Dec. 2016), DOI 10.18593/ejjl.v17i3.12769. Author affiliation: Faculty of Law and Administration, Cardinal Stefan Wyszyński University, Warsaw. — RELEVANCE: Directly maps onto this publication's breadth argument. Establishes that the prohibition has a three-part obligation structure (negative, positive, procedural) and that the procedural obligation to investigate effectively is increasingly treated as a free-standing obligation. Failure to investigate is itself a Convention violation — directly supporting the IAJ's Article 20 inquiry request. — AUTHORITY: Bilingual (English/Portuguese) scholarly article arguing that the prohibition of torture under ECHR Article 3 has a complex three-part structure: (1) negative obligations (state must refrain from torture); (2) positive obligations (state must take protective measures, including against private actors, in horizontal and vertical relations); and (3) procedural obligations (state must effectively investigate alleged violations). The autonomous procedural obligation — now treated as a free-standing violation independent of the substantive finding — directly corresponds to the IAJ's argument that U.S. courts have failed all three dimensions: they have committed prohibited conduct, failed to protect complainants, and failed to investigate or provide remedy. Each dimension independently triggers accountability under the Convention's absolute prohibition framework.

developing in response to forms of official conduct that the custody-or-free binary cannot adequately address.[230][231]

> DIGNITY ALIGNMENT TEST — Chapter 14.J Jurisdictional Custody (this is a normative check informing object-and-purpose analysis; it does not substitute for treaty elements, evidentiary proof, or the competent body's determination): THESIS POSITION: A person subject to court-compelled litigation from which exit in either direction produces catastrophic consequence — and for whom every domestic exit mechanism has been exhausted — is held under jurisdictional custody satisfying the functional definition of deprivation of liberty. | ADVERSARIAL COUNTER: Litigation is a voluntary act; legal obligations do not constitute custody; the physical element of restraint is absent. | DIGNITY DERIVATION: The dignity principle requires not formal freedom but meaningful freedom — the actual capacity to determine one's own course without facing choices that no person of inherent dignity should be forced to make. UDHR Article 3 guarantees the right to "liberty and security of person." A person who must choose between destroying their health through continued participation and destroying their legal rights through withdrawal is not exercising liberty — they are trapped between two forms of institutional harm. The adversarial position protects the form of liberty (no physical restraint) while ignoring its substance (meaningful capacity for self-determination). Dignity requires substance. The thesis position — functional custody tested by whether exit without catastrophic consequence is possible — is the only formulation consistent with dignity as a substantive guarantee.

[230] Fortin, K. "Rape as torture: An evaluation of the Committee against Torture's attitude to sexual violence." Utrecht Law Review, vol. 4, no. 3, pp. 145–162 (December 2008), DOI 10.18352/ulr.88. Originating as an Utrecht University LLM thesis (prize winner, October 2008) and published in peer-reviewed form in the Utrecht Law Review; the IAJ cites the published Utrecht Law Review version. — RELEVANCE (this anchor — literature development): Cited here as a principal exemplar of the peer-reviewed academic and practitioner literature developing the international human rights response to official conduct outside the paradigm custodial setting — the precise proposition of the anchoring sentence. Fortin's study traces the CAT Committee's evolution toward recognizing non-paradigm harms (rape as torture) within Article 1. Fortin is cited as an exemplar of that developing literature only; it is not cited as authority adopting the IAJ's jurisdictional-custody synthesis, which is the IAJ's own analytical work. The same authority is separately anchored in the Chapter 13 acquiescence discussion for its acquiescence-mechanism analysis. NOTE ON SCOPE: This footnote supports the acquiescence line of argument specifically — not the direct-actor analysis in Chapter 13.B, where the judicial officer is the primary perpetrator. The a fortiori claim is strongest where the IAJ relies on the acquiescence prong; the direct-actor analysis in V.B is independently grounded in the five-element test. — AUTHORITY: Utrecht LLM prize thesis analysing the CAT Committee's evolution from reluctance to explicit recognition of rape as torture under Article 1. Traces how the Committee addressed the severity and purposive elements, and critically assesses the acquiescence and due diligence framework for violence against women by private actors. Fortin's analysis of the acquiescence doctrine — state responsibility where officials knew or should have known of harm but failed to prevent it — provides the precise doctrinal mechanism linking judicial foreknowledge of documented harm to Article 1 official character liability, even in non-custodial settings.

[231] UN Committee Against Torture. Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America. CAT/C/USA/CO/3-5, 19 December 2014. — RELEVANCE (this anchor — authority beyond the custody paradigm): Cited here as treaty-body documentation that the Committee's U.S. review addresses official conduct and compliance failures that the custody-or-free binary cannot adequately capture — including definitional loopholes ('prolonged mental harm') that operate independently of custodial status. It is cited for that compliance documentation only; it is not cited as Committee adoption of the jurisdictional-custody category, which is the IAJ's own synthesis. The same authority is separately anchored in the Chapter 17 discussion, which it directly supports: the Committee found the 'prolonged mental harm' understanding excessively narrow; recommended withdrawal of the Article 16 reservation; and urged federal-level criminalization of torture in conformity with Article 1. Also cited in the existing body text of this publication. — AUTHORITY: Adopted at the Committee's 53rd session after reviewing the U.S.'s combined 3rd–5th periodic reports and hearing civil society testimony. Key findings: The U.S. has not criminalized torture at the federal level in full conformity with Article 1; the 'prolonged mental harm' understanding creates actual or potential loopholes for impunity; the Article 16 reservation was invoked in OLC memoranda as 'deeply flawed legal arguments' to advise that torture could be lawfully authorized; the CIA rendition and secret detention program violated multiple Convention provisions and has not been adequately investigated. The Committee recommended re-introduction of the Law Enforcement Torture Prevention Act and withdrawal of the Article 16 reservation.

Doctrinal Objection and Reply 14.2: "The Multi-Treaty Convergence Overstates Each Treaty's Reach"

A sophisticated doctrinal counterargument to Chapter 14.H is that the multi-treaty convergence overstates the reach of each individual treaty: ICCPR Article 9 concerns criminal detention, not civil litigation; CRPD Article 14 concerns institutional confinement, not court proceedings; CRC Article 37 concerns children in the criminal justice context, not family courts; and CRPD Article 17 is a non-discrimination provision, not a prohibition on harm. The record establishes that this response applies precisely the kind of architectural limitation it is responding to: each treaty is being read narrowly by reference to its paradigm cases rather than broadly by reference to its functional language and purpose.

The IAJ's response is threefold. First, none of the treaty provisions cited contains an express limitation to the paradigm case the doctrinal counterargument identifies. ICCPR Article 9(1) uses the phrase "arbitrary arrest or detention" without limiting it to criminal contexts; the Human Rights Committee's General Comment No. 35 confirms this explicitly. CRPD Article 14 uses "deprivation of liberty" without limiting it to institutional confinement; the CRPD Committee's Guidelines confirm a functional reading. CRC Article 37 protects children from deprivation of liberty in any context, not only criminal. Second, the convergence argument does not require any single treaty to extend to an extreme position: it argues only that each treaty, on its most coherent reading, supports a functional rather than architectural understanding of the relevant concept. Third, the central counterargument proves too much: a reading of international human rights law that excludes from all protection persons held by judicial authority in compulsory legal relationships causing documented severe harm, simply because the mechanism of compulsion is legal rather than physical, produces consequences incompatible with the purpose of every one of the cited instruments. That result provides an independent interpretive reason against the narrow reading.

CHAPTER 15 — CONTEMPORARY APPLICATION DOMAINS BEYOND THE CUSTODIAL PARADIGM

This Chapter maps the contemporary application domains of the evolved prohibition. Each domain is presented in a controlled analytical form: the conduct pattern; why the travaux did not contemplate it; the Article 1 and Article 16 paths; the lawful-sanctions question; the evidentiary proof architecture; and the limiting principle that separates violation from ordinary institutional friction. This Chapter sets out the IAJ taxonomy of non-custodial application domains. The six principal categories are: (1) coercive parent–child separation by courts and CPS; (2) denial of medical care through jurisdictional control; (3) law-enforcement conduct facilitated by judicial process, including debtors' prison and fines-and-fees coercion; (4) administrative agencies and welfare/benefits coercion; (5) functional custody, dependency-control, and non-criminal institutional confinement; and (6) state experimentation, behavioral control, neurodata, and surveillance coercion. Category 2A (exploitation through proximity, or "mate crime") is a subcategory of Category 2, not a seventh principal category. The categories are not labels that automatically classify conduct as torture or CIDT; each requires element-by-element proof under Article 1 or Article 16, applying the six-Move framework of Appendix A beyond disability accommodation.[232]

This Chapter demonstrates the application of this analysis to categories of official conduct beyond the disability/judiciary context that forms the primary subject of Appendix A. It is structured as a parallel reference for IAJ and IRCT investigators, practitioners before treaty bodies, and advocates confronting family court abuse, child protective services misconduct, and law enforcement conduct facilitated by judicial process. The six-Move framework from Appendix A supplies the transferable analytical structure across all categories; the factual anchor, severity evidence, official-nexus proof, purpose analysis, and lawful-sanctions assessment are category-specific.

These domains are included because they test the central thesis: each involves official or officially acquiesced severe harm in institutional settings not reducible to the custody/interrogation paradigm. The composition of the IAJ's intake, and the pattern evidence it supplies, are recorded in Part V and the IAJ Case Archive.

A terminological precision adopted by the UK Crown Prosecution Service's 2022 Public Statement on Prosecuting Disability Hate Crime is directly applicable to the categories below. The CPS explicitly rejects labeling disabled persons as "inherently vulnerable" — a label that in criminal justice contexts undermines perceived competence, credibility, and reliability as a witness. The CPS substitutes "situational risk": disabled persons experience situational risks arising from particular circumstances — including their disability, gender, or other characteristics — which may be exploited by offenders or provide the opportunity for officials to act on hostility toward them. This distinction is analytically precise for Article 1 purposes: the intentional infliction and discriminatory purpose elements are established by the official's exploitation of a disabled person's situated conditions — not by inherent vulnerability. International prosecutorial best practice thus supports the IAJ's five-element enacted-text analysis over any vulnerability-based framework.

The IAJ's investigated Texas family-court record introduces a dimension absent from every other case in the IAJ archive: the intersection of UNCAT violations with the rights of indigenous persons. The complainant is an indigenous person whose rights under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) apply concurrently with her UNCAT rights. UNDRIP Articles 7 (right to life, integrity, and security of indigenous persons), 22 (heightened protection for indigenous women and children), and 43 (minimum standards) provide an independent international law basis for accountability for the family court's permanent parental separation. The intersection is analytically significant: indigenous disabled mothers face a compounded vulnerability structure in which disability-based situational risk converges with the documented over-representation of indigenous parents in coercive family court and CPS proceedings. The IAJ will develop the UNDRIP analysis in a supplementary investigation report. For present purposes, practitioners before treaty bodies should note that such a case creates concurrent jurisdiction for both the CAT Committee (UNCAT) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and that the two frameworks reinforce rather than duplicate each other.

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[232] The IAJ has reviewed, and declines to classify in this Standard as free-standing Article 1 or Article 16 categories, a set of structural or emerging patterns identified in the Special Procedures record: working-poor wage structures; climate-stressed social-protection collapse; informal-settlement and engineered-housing deprivation; Indigenous non-recognition; caste and inherited-status discrimination; and civic-space administrative harassment. These are recorded and analyzed as structural-vulnerability and Article 16 / discriminatory-purpose research candidates in the companion IAJ derivation register (Derived Catalog of Non-Custodial Torture and CIDT Scenarios from UN Special Procedures Authority), not in the main body, because each becomes cognizable under the Convention only when tied to a concrete state mechanism, official nexus, severity, and prohibited purpose — and premature categorization would invite the very over-inclusiveness this chapter's limiting architecture is designed to prevent. School-based restraint, seclusion, exclusionary discipline, and disability segregation are flagged as the strongest future candidate for a dedicated module, pending CRPD inclusive-education, CRC Article 19, and Special Rapporteur on education source development.

Category 1: Coercive Parent–Child Separation by Courts and CPS

Conduct pattern. Forced removal of children from parents by family courts, child protective services, or law enforcement acting under judicial authority — including deliberate prolongation of separation, obstruction of reunification, and systematic frustration of review. This is the category of official conduct most widely reported to the IAJ and the most directly implicating UNCAT Articles 1 and 16.

Travaux gap. The 1984 paradigm did not contemplate family courts or child-welfare agencies as torture actors. Yet separation orders are issued by judges, and removal is recommended and executed by CPS workers and law-enforcement officers — public officials acting in official capacity — and Article 1 creates no exemption for family courts or child-welfare agencies. There is no analytical threshold obstacle; only the setting is novel.

Article 1 path. Coercive separation satisfies multiple Article 1 purposes simultaneously: punishment (imposed where parents challenge CPS decisions or court authority); coercion (compelling parents to comply with agency demands under threat of permanent separation); and discrimination (systematic over-representation of disabled parents, parents of colour, and pro se litigants in coercive separation orders). The Human Rights Committee has recognized under ICCPR Article 7 that state-imposed family separation constitutes CIDT where it causes severe psychological harm; CRPD Article 23 protects family life for disabled persons, and separation imposed because of a parent's disability is disability-based discrimination on its face. Severity is established medically, not asserted: the psychiatric literature documents that forced parent–child separation causes severe psychological harm to both parent and child — PTSD, attachment disorders, clinical depression, and in documented extreme cases physical deterioration — and the 2018 U.S.–Mexico border separation crisis generated specific CIDT characterizations by multiple UN Special Rapporteurs and the Human Rights Committee. Where documented through Istanbul Protocol-compliant methodology, the same analysis applies to domestic family-court and CPS separations. The *jus cogens* prohibition independently covers the conduct: intentional, severe where documented, official, and purposive — no treaty compromise can shield it.

Article 16 path. Where an enumerated Article 1 purpose is not established on a particular record, officially inflicted separation causing documented severe suffering remains analyzable as cruel, inhuman or degrading treatment under Article 16, which does not reproduce Article 1's enumerated-purpose element.

Lawful-sanctions issue. Three principles defeat the carve-out. (1) 'Only from': separation that causes severe psychological harm through deliberate procedural manipulation, without psychosocial safeguards, and calculated to cause maximum distress does not arise 'only from' the court or agency order. (2) 'Lawful': separation imposed without due process — without notice, hearing, or psychosocial assessment — is not a lawful sanction in the relevant sense. (3) Cumulative: deliberate prolongation of separation, obstruction of reunification, and systematic frustration of review convert each successive order into a link in a chain that cannot be characterized as a series of independent lawful sanctions.

Proof architecture and limiting principle. Proof proceeds through Istanbul Protocol-compliant psychological documentation of parent and child, the procedural record establishing absence of due process and safeguards, and the longitudinal record of prolongation and obstruction. Functional custody supplies an additional independent frame: a parent subject to a CPS order controlling contact with their child is in a compulsory relationship with a state authority from which they cannot exit without catastrophic legal consequences; the child is in physical state custody; both are, in the OPCAT Article 4(2) functional sense, under the authority of a state actor. The limiting principle: due-process-compliant removals grounded in genuine, evidence-based child-safety findings, accompanied by psychosocial safeguards and a genuine reunification process, are outside the category. The category reaches separations effected or prolonged without due process, without safeguards, or for punitive, coercive, or discriminatory purposes, with documented severe harm.

Doctrinal Objection and Reply 15.1: "CPS Proceedings Are Administrative, Not Custodial"

The standard doctrinal counterargument is that CPS proceedings are administrative processes, not custodial settings, and that the parents and children involved are not in 'detention.' This objection fails on three grounds. First, children placed in CPS custody are physically detained — they are in the direct custody of a state agency and cannot leave that custody at will. Second, for parents subject to compulsory participation in CPS proceedings under threat of permanent parental termination, the functional-custody analysis applies: they cannot exit the compulsory relationship with the agency without catastrophic legal consequences, satisfying the OPCAT Article 4(2) functional criterion. Third, even setting aside the functional-custody analysis, the Article 1 five-element test does not require any custody element — it requires only that a public official inflict severe suffering intentionally for an enumerated purpose. CPS officials are public officials; deliberate separation without due process satisfies the remaining elements on their own terms.

External corroborative authority and paradigm-case application. External corroborative authority on Category 1 is supplied by A/HRC/53/36 (Special Rapporteur on violence against women and girls, 13 April 2023), which documents the multi-jurisdictional pattern of coercive parent–child separation facilitated by the "parental alienation" pseudo-concept and functionally equivalent labels. The Special Rapporteur's frame is the CRC, CEDAW, and the regional violence-against-women instruments; the UNCAT and *jus cogens* classification is the IAJ's own analytical work under this Standard, reached by independent investigation. Chapter 8 records the scope of the Alsalem factual record the IAJ takes, the attribution discipline that governs its use, and the material the IAJ does not take. The paradigm-case application within Category 1 — the specific residential-programme subset that engages UNCAT Article 1 or Article 16 where the elements are met — is the Category 1 paradigm-case application of the framework the present Standard supplies.

Category 2: Denial of Medical Care Through Jurisdictional Control

Conduct pattern. Denial or obstruction of necessary medical care by CPS agencies and family courts exercising jurisdictional control over persons with disabilities, medically fragile parents, and children in foster care — including unlicensed clinical determinations by CPS workers that override medical recommendations, refuse treatment authorizations, or certify fitness for conditions known to be medically harmful.

Travaux gap. The travaux contemplated medical-care denial as torture in detention settings. Here the control is jurisdictional rather than carceral: a person whose medical care is controlled by a state agency under whose jurisdiction they cannot exit is as effectively under medical custody as a person in a detention facility whose care is controlled by prison administrators.

Article 1 path. The five Article 1 elements are satisfied where a CPS worker or family-court judge has knowledge of a documented medical need; denies or delays access to treatment; does so for purposes of coercion (to induce compliance with agency demands), punishment (for challenging agency authority), or case management; and the resulting deprivation causes severe documented physical harm (Factor 3 of the 24-factor analysis).

Article 16 path. Where a prohibited purpose is not established on a particular record, official denial of needed care causing documented severe harm remains analyzable under Article 16.

Lawful-sanctions issue. 'Case management,' agency convenience, and administrative authority do not make harm-causing denial a lawful sanction; the three-part analysis in Chapter 11 and Appendix A Move 3 applies, and unlicensed clinical determinations cannot be characterized as sanctions at all.

Proof architecture and limiting principle. Proof: the medical record establishing need; the order and decision record establishing official knowledge and denial; and clinical-escalation documentation linking the denial to harm. The limiting principle: good-faith care decisions made on medical grounds with clinical authorization are outside the category; it reaches denials made against documented medical need, for non-medical purposes, with documented severe harm.

Category 2 subentry — Coercive reproductive and bodily-autonomy interventions.

Conduct pattern and paths. Coercive reproductive interventions — forced sterilization, involuntary abortion, coercive contraception, state-imposed pregnancy-related control, and, where severe suffering, official nexus, and a prohibited purpose are independently established on the record, the denial of meaningful consent in reproductive healthcare — or court or agency decisions overriding bodily autonomy, may engage Article 1 where official actors intentionally impose severe physical or mental suffering for coercive, punitive, discriminatory, or controlling purposes, and Article 16 where official bodily-autonomy control is degrading or autonomy-destroying but the Article 1 purpose element is contested. The Special Rapporteur on Torture's psychological-torture framework (A/HRC/43/49, 2020, esp. ¶37) is directly relevant: it identifies involuntary sterilization, coercive psychiatric intervention, and related practices as capable of amounting to torture where the Article 1 elements are met, and it rejects "benevolent," "medical," or "best-interests" labels as automatic shields. The limiting principle preserves genuinely consensual, clinically indicated care with independent safeguards; the category reaches state control of the body used to inflict severe suffering for a prohibited purpose.

Category 2 subentry — Conversion therapy and identity-corrective interventions.

Conduct pattern and paths. State-licensed, court-ordered, school-imposed, medicalized, religiously framed, or child-welfare-approved interventions designed to change, suppress, or "correct" sexual orientation, gender identity or expression, disability identity, or neurodivergence illustrate the evolved prohibition's rejection of benevolent-form defenses. The Special Rapporteur on Torture's psychological-torture report names conversion therapy among practices that may amount to torture where the Article 1 elements are met. The analytically relevant question is not whether the intervention is labeled therapy, treatment, family restoration, or moral education, but whether severe physical or mental suffering is intentionally inflicted or acquiesced in by public officials for a prohibited purpose. These practices are frequently non-custodial and privatized, with the official nexus supplied by licensing, court order, or acquiescence.

Category 2A: "Mate Crime" — Exploitation Through Proximity and Befriending

Conduct pattern. "Mate crime" (befriending crime), as identified by the UK Crown Prosecution Service: a disabled person is groomed or befriended and then subjected to financial or sexual exploitation, made to commit minor criminal offences, or has their accommodation taken over by the perpetrator ("cuckooing") for further offences including drug handling and under-age exploitation. The perpetrator may be a carer, family member, neighbour, or self-appointed "friend." The pattern is documented across the IAJ's 500-complainant caseload and directly implicated in multiple complaints involving judicial and CPS failure to recognize or prosecute.

Travaux gap. The travaux did not contemplate private-perpetrator exploitation outside custody as a Convention concern. Article 1's consent-or-acquiescence clause supplies the official nexus: where courts or CPS agencies with jurisdictional control have knowledge of ongoing exploitation and decline to intervene, the state's involvement is not a passive omission but conduct by an official in official capacity.

Article 1 path. (1) Any act — financial exploitation, compelled criminal conduct, or physical control of accommodation; (2) intentional infliction — the befriending relationship is deliberately constructed to access and exploit; (3) severe pain or suffering — financial ruin, loss of housing, compelled criminality, psychological harm from deliberate betrayal of a trust relationship; (4) public-official acquiescence — where courts or CPS agencies have knowledge of ongoing exploitation and decline to intervene, their acquiescence satisfies Article 1's consent-or-acquiescence clause independently of the private perpetrator's acts; (5) enumerated purpose — exploitation targeting disability as the mechanism of access satisfies the discrimination clause; coercion of the disabled person to comply satisfies the coercion clause.

Article 16 path. Official acquiescence in ongoing degrading exploitation of a disabled person is analyzable under Article 16 even where the Article 1 torture threshold requires further case-specific proof.

Lawful-sanctions issue. No lawful-sanctions question arises for the private exploitation itself; and the state's control of the disabled person's living situation through CPS or family-court jurisdiction cannot convert knowing non-intervention into lawful case administration.

Proof architecture and limiting principle. Proof: the exploitation record; the record establishing official knowledge; and the record of declination to intervene or prosecute. The failure to prosecute the perpetrator is separately cognizable as a UNCAT Article 4 and Article 7 compliance failure, applying the prosecutorial framework analyzed in Appendix C.4. The limiting principle: mere non-detection is not acquiescence; the category requires official knowledge and declination while the state holds the person in a compulsory relationship from which they cannot exit without catastrophic consequences.

Category 3: Law Enforcement Conduct Facilitated by Judicial Process

Conduct pattern. Law-enforcement conduct that is itself non-custodial but is enabled, directed, or protected by judicial process: court-ordered enforcement of separation orders that violate due process and cause severe psychological harm to parents and children; judicial authorization of harmful investigative techniques — compelled medical examinations, psychological evaluations, or other procedures causing documented harm; judicial protection of law-enforcement perpetrators through immunity doctrines, qualified immunity, or non-reviewability; and judicial suppression of law-enforcement accountability through procedural weaponization (Factor 14).

Travaux gap. The travaux placed law-enforcement violence inside arrest, detention, and interrogation. This category arises outside those settings: the judicial process creates the occasion or the protection; law enforcement delivers the harm.

Article 1 path. In each sub-pattern the judicial actor's involvement satisfies the public-official element directly, and the law-enforcement actor's conduct satisfies it with or without judicial involvement. Article 1's consent-or-acquiescence clause means that judicial protection of law-enforcement perpetrators may satisfy the official-nexus element where the conditions stated in Chapter 13.F are met.

Article 16 path. Documented degrading treatment in the execution of judicially created occasions — shackling, strip-searching, and degrading conditions without procedural justification — is analyzable under Article 16 where the Article 1 purpose element is contested.

Lawful-sanctions issue. A court order creating the occasion for enforcement does not make the delivered harm a lawful sanction: where the underlying process lacked due process, or the enforcement was pretextual, the 'lawful' and 'only from' requirements both fail.

Proof architecture and limiting principle. Proof: the order record; the enforcement record; contemporaneous evidence of pretext; and the medical or psychological documentation of harm. The limiting principle: lawful arrests and lawful order enforcement executed with due process are outside the category; it reaches enforcement operating as a coordinated mechanism of intimidation or punishment.

A documented instance of Category 3 in the IAJ archive: the arrest of a parent inside a Texas courthouse following the conclusion of her permanency hearing (January 2025). The arrest occurred for alleged traffic fines of $4,000 — reduced to $97 the following day — without an ability-to-pay hearing as required by Texas Code of Criminal Procedure Art. 45.046 and without notice or opportunity to resolve any underlying citation. The parent was shackled, strip-searched, and subjected to degrading conditions. The courthouse arrest, following a judicial proceeding in which she was denied meaningful participation, supports the IAJ analysis that law enforcement and judicial processes can operate as a coordinated mechanism producing intimidation and punishment. The judicial process creates the occasion; law enforcement delivers the harm; the same-day reduction of the alleged liability from $4,000 to $97 supports the IAJ investigation finding of pretextual purpose. The acquiescence clause of Article 1 is satisfied if the court — which presided over the preceding hearing — observed the arrest and did not intervene.

External corroborative authority: non-custodial crowd-control force at immigration-enforcement protests (2025–2026). A second, independently compiled evidentiary record corroborates the Category 3 pattern of severe official force delivered outside the arrest–detention–interrogation paradigm. In Charting the Crackdown (released 14 July 2026), Physicians for Human Rights and the Human Rights Center at the University of California, Berkeley documented 412 verified incidents of crowd-control-weapon misuse by federal, state, and local law-enforcement agencies during protests against federal immigration-enforcement operations across 16 U.S. cities between June 2025 and May 2026. Of those incidents, 119 involved people with visible or self-reported injuries, who sustained 203 documented injuries in total, including head injuries and blindness; the investigators record the figures as an undercount because chemical-exposure and hearing harms cannot be assessed from visual evidence alone. More than ninety percent of the documented incidents occurred in five metropolitan areas (Chicago, Los Angeles, Minneapolis, Newark, and Portland), and the incident curve tracked named federal enforcement operations.

Relevance to the IAJ analysis. The record supplies external corroboration for three propositions the thesis advances. First, on the setting question (Chapters 1–2): the conduct is non-custodial official violence — force delivered in the street, against people exercising the right of assembly, wholly outside custody or interrogation — yet it produces exactly the severe physical harm the enacted text reaches. Second, on the severity and foreseeability elements (Chapters 6 and 10): the investigators find the harms “almost always foreseeable,” documenting projectiles fired at people’s heads, chemical irritants deployed in enclosed spaces, and canisters fired directly at individuals — conduct that violated manufacturer guidance, agency policy, accepted policing norms, or international use-of-force standards. Foreseeable infliction of severe harm in defiance of the governing use-of-force standard is the intent structure the IAJ severity analysis identifies, not accidental or *de minimis* injury. Third, on the official-nexus element (Chapter 13): the perpetrators are public officials acting in official capacity, and the pattern implicates the consent-or-acquiescence clause of Article 1 where supervising authorities deployed or tolerated the practice.

Framing and limiting principle. The IAJ records this dataset as external corroborative authority, not as an IAJ determination: PHR and the Human Rights Center compiled and verified it by open-source methods consistent with the Berkeley Protocol, and the IAJ adopts their documented findings while reserving its own element-by-element characterization to the framework in Parts I–IV. The relevance is evidentiary and structural — the report demonstrates, on a large and independently verified record, that severe official force outside the custodial paradigm is neither hypothetical nor isolated. Individual incidents would require the same element-by-element proof the thesis demands throughout; the dataset establishes the pattern, not the legal characterization of any single incident. It also maps directly onto the United States’ own treaty-compliance record: the Committee Against Torture’s concerns at paragraph 26 (excessive force and police brutality) and paragraph 27 (electrical-discharge and other crowd-control weapons) of CAT/C/USA/CO/3-5 (2014) are, on this record, live and recurring rather than historical.

Category 3 subentry — Debtors’ Prison, Fines-and-Fees Coercion, and Poverty Punishment.

Conduct pattern. Courts and court-controlled actors impose fines, fees, costs, supervision charges, payment plans, warrants, contempt threats, license suspensions, extended probation, access barriers, or incarceration against persons unable to pay. The coercive system operates through judges, clerks, probation officers, private-probation companies, prosecutors, police, collection contractors, or juvenile-justice agencies. The custodial moment, where it occurs, is one point in a broader jurisdictional-control system; the coercive mechanism — debt, threat of warrant or contempt, license suspension, employment loss, escalating fees, extended supervision, and denial of court access — begins and operates before any cell appears.

Travaux gap. The 1984 custodial/interrogation paradigm did not contemplate poverty-punishment systems in which severe suffering is produced through debt, procedural exclusion, and jurisdictional control rather than interrogation-room violence. The harm may culminate in jail, but the coercive machinery is non-custodial at its core, and the setting — the fines-and-fees apparatus of ordinary courts — is precisely the institutional setting the enacted text does not exempt.

Article 1 path. Article 1 may be engaged where officials intentionally impose or knowingly continue severe physical or mental suffering through court debt, warrants, supervision, license suspension, access barriers, or incarceration threats, for purposes of punishment (of poverty or nonpayment), coercion (of payment), intimidation (of compliance), or discrimination (on protected grounds), and where no valid lawful-sanctions exclusion applies. The prohibited-purpose element is satisfied by coercing payment, punishing nonpayment, intimidating compliance, or discriminating on protected grounds — each an enumerated Article 1 purpose.

Article 16 path. Even where Article 1 severity or purpose is contested, poverty-punishment systems may constitute cruel, inhuman, or degrading treatment where courts impose unaffordable debt, threaten or impose jail for inability to pay, deny access to judicial process, or impose cascading consequences that foreseeably deprive persons and families of basic necessities. Article 16, which does not reproduce Article 1's enumerated-purpose element, is frequently the first pathway.

Lawful-sanctions issue. Domestic legal form does not end the analysis. The U.S. Department of Justice, in its fines-and-fees guidance, states the governing domestic constitutional principles: excessive fines are barred by the Eighth Amendment; incarceration for nonpayment requires an ability-to-pay determination and a willfulness finding; courts must consider alternatives before jailing a person unable to pay; access to judicial process cannot be conditioned on fees an indigent person cannot pay; fines-and-fees systems may create unconstitutional conflicts of interest; due process requires notice and counsel where appropriate; and fines and fees may not be imposed in an intentionally discriminatory manner. These principles rest on binding Supreme Court authority — *Bearden v. Georgia*, 461 U.S. 660 (1983), holding that a court may not revoke probation and imprison for nonpayment without first inquiring into the reasons for nonpayment, finding willful refusal or insufficient bona fide efforts, and considering alternatives to imprisonment; and its antecedents *Williams v. Illinois*, 399 U.S. 235 (1970), and *Tate v. Short*, 401 U.S. 395 (1971). A poverty-based sanction imposed without ability-to-pay inquiry, willfulness finding, procedural safeguards, and consideration of alternatives is not "lawful" in the relevant domestic sense and cannot be treated as automatically protected by UNCAT's lawful-sanctions clause. The DOJ guidance is advisory as to the Department's enforcement posture, but the constitutional principles it recites are binding law.

Proof architecture and limiting principle. Proof proceeds through court orders, payment records, warrants, the presence or absence of ability-to-pay findings, notices, supervision records, license-suspension records, jail records, private-contractor agreements, revenue-dependence evidence, disability, poverty, and race data, and documented effects on housing, employment, family stability, health, and access to court. The limiting principle is that fines and fees are not torture or CIDT merely because they are burdensome; the category is triggered only where official debt enforcement produces severe or degrading suffering through poverty punishment, coercion, discrimination, denial of remedy, or unlawful incarceration. The Texas courthouse arrest recorded above in this category — a $4,000 alleged liability reduced to $97 the following day, with no ability-to-pay hearing under Texas Code of Criminal Procedure Article 45.046 — is a documented instance of the fines-and-fees mechanism operating at the arrest endpoint.

Category 4: Administrative Agencies and Welfare/Benefits Coercion

Conduct pattern. Administrative agencies — welfare agencies, housing authorities, immigration enforcement, disability-benefit administrators — using coercive authority over persons who cannot exit their jurisdiction without severe consequences: withdrawal of welfare benefits as retaliation for assertion of legal rights or human-rights claims; denial of disability accommodations in administrative proceedings; compelled participation in harmful administrative processes under threat of benefit termination; and administrative procedures deliberately designed to exhaust claimants through attrition.

Travaux gap. The travaux did not contemplate welfare offices or benefits administrators. But the structural position is the custodial one: the person cannot exit the agency's jurisdiction without severe consequences, and the agency controls conditions essential to life and health.

Article 1 path. Retaliatory benefit withdrawal satisfies the punishment and coercion purposes; accommodation denial in administrative proceedings is analytically identical to the judicial analysis in Appendix A; where that authority is used to cause severe suffering for prohibited purposes, the five-element Article 1 analysis applies. The most significant administrative context is immigration enforcement: where detention and removal proceedings are combined with denial of medical care, coercive interrogation, or deliberate psychological harm for purposes of deterrence, all six Moves of the Appendix A analysis apply simultaneously — often with an additional direct-custody element that makes the analysis even more direct.

Article 16 path. Attrition-designed procedures and degrading administrative treatment causing documented severe suffering are analyzable under Article 16 where a specific Article 1 purpose is contested.

Lawful-sanctions issue. Eligibility rules and program administration are not lawful-sanction shields for retaliatory or punitive deployment of agency power; the carve-out protects genuinely lawful measures, not the use of lawful forms for prohibited purposes.

Proof architecture and limiting principle. Proof: the benefits and decision record; the timing correlation between protected activity and adverse action; and the documented harm. The limiting principle: lawful eligibility determinations and good-faith administration are outside the category; it reaches the use of administrative authority to cause severe documented suffering for prohibited purposes.

Category 5: Functional Custody, Dependency-Control, and Non-Criminal Institutional Confinement

Conduct pattern. A person is not in ordinary criminal custody, yet is functionally trapped by dependency, legal incapacity, institutional placement, residential-programme control, guardianship, conservatorship, immigration- or domestic-work servitude, or care-setting dependence, and cannot leave without catastrophic consequence. Settings include nursing homes, assisted-living facilities, disability institutions, orphanages, psychiatric or residential programmes, guardianships, conservatorships, residential reunification programs, and private-household servitude where documented state knowledge and acquiescence supply the official nexus. The practice record inside these settings is documented at the United Nations level. The Special Rapporteur's 2008 disability report records children and adults with disabilities tied to beds, cribs or chairs for prolonged periods, locked in "cage" or "net beds," and overmedicated as a form of chemical restraint, and states that there can be no therapeutic justification for the prolonged use of restraints, which may amount to torture or ill-treatment (A/63/175, ¶ 55). The

Subcommittee on Prevention holds that restraints, physical or pharmacological, are themselves forms of deprivation of liberty, and that confinement is voluntary only where the person concerned decided on it upon informed consent and retains the ability to exit the institution (CAT/OP/27/2 (2016), ¶¶ 6, 9). And the Committee against Torture has adjudicated the pattern: in *Černáková v. Slovakia* (CAT/C/72/D/890/2018, decision of 19 November 2021), concerning a woman with intellectual disabilities and autism confined in a cage bed and subjected to repeated forced sedation in a social care facility, the Committee held that the facility's staff acted in their public capacity, on behalf of the State; found that the restraint reached the intensity and harmful consequences of ill-treatment within Article 16(1); found violations of Articles 2(1), 4(1), 11, 12, and 14(1); and held that the civil remedy was not available to her in practice for lack of reasonable and procedural accommodations to assist her in meeting the burden of proof — the accommodation failure operating inside the remedial architecture itself.

The Committee held the Article 1 torture claim insufficiently substantiated as to intent and discriminatory purpose; the decision is recorded here precisely as the Article 16 holding it is, within the single continuum this Standard maintains throughout. The decision's doctrinal recall deserves emphasis in its own right: the Committee restated that ill-treatment "can be committed through acts or omissions, not requiring intent, as negligence may suffice" (¶ 9.3), and again at the Article 4 stage that "ill-treatment differs from torture in the severity of pain and suffering, without requiring a proof of purpose," and that ill-treatment "may be caused by negligence" (¶ 9.5) — treaty-body holdings, rendered in an adjudicated non-custodial social-care case, that the Article 16 limb of the continuum reaches negligent official conduct. For this Standard's element discipline the consequence is direct: the culpability floor of the prohibition's Article 16 limb sits at negligence, and an intent requirement imposed at that limb — as in the criminal provision the Committee found deficient in the same decision (¶ 9.5) — is itself an implementation defect.

External corroborative authority for this category is supplied by the Independent Expert on the enjoyment of all human rights by older persons (abuse and neglect in care settings; legal capacity and informed consent), the CRPD framework on legal capacity and de-institutionalization, and, where domestic-servitude patterns are engaged, the trafficking and contemporary-forms-of-slavery mandates; the UNCAT classification remains the IAJ's own.

Travaux gap. The 1984 paradigm addressed the prison and the interrogation room. It did not contemplate settings that reproduce the functional reality of custody — inability to exit at will, subjection to another's authority, dependence for the necessities of life — without the criminal-custodial form. Yet these settings produce the same severe harm to persons least able to resist it, and Article 1 supplies no exemption for the nursing home, the conservatorship, or the residential programme.

Article 1 path. Article 1 may be engaged where severe suffering is intentionally inflicted or knowingly permitted for coercion, punishment, intimidation, discrimination, information control, or exploitation, and where public officials instigate, consent to, authorize, appoint, fund, rely on, or acquiesce in the private or institutional actor's conduct. The consent-or-acquiescence clause is central: the state's appointment of a guardian or conservator, its licensing and funding of an institution, and its knowledge of and failure to interrupt documented harm each supply the official nexus independently of the private actor's status.

Article 16 path. Article 16 applies where official or officially acquiesced dependency-control produces degrading or inhuman treatment but the Article 1 purpose element remains contested — for example, documented neglect in a licensed facility, or isolation and autonomy-stripping under a conservatorship, causing severe suffering without a fully established prohibited purpose.

Relation to jurisdictional custody. This category is the practical extension of the Chapter 14 functional analysis. OPCAT Article 4(2) by its terms addresses custodial settings; the IAJ deploys its anti-evasion logic by functional analogy. The decisive question is not the label of the institution but the person's ability to leave, refuse, complain, obtain remedy, or protect bodily and mental integrity. The category includes exploitation-through-proximity patterns — including the "mate crime" and "cuckooing" dynamics analyzed at Category 2A — where official knowledge and refusal to intervene convert private exploitation into state acquiescence; mere non-detection is not enough.

Proof architecture and limiting principle. Proof proceeds through placement and appointment orders, guardianship and conservatorship instruments, institutional and care records, funding and licensing chains, records of official notice, and Istanbul Protocol-compliant documentation of the resulting harm. The limiting principle preserves good-faith, safeguarded, exit-respecting care arrangements with genuine oversight and withdrawal rights; the category reaches dependency-control used or knowingly allowed to inflict severe suffering on a person who cannot leave without catastrophic consequence.

Category 6: State Experimentation, Behavioral Control, Neurodata, and Surveillance Coercion

Conduct pattern. Covert or deceptive state human experimentation, including non-consensual administration of psychoactive substances, behavioral-control research, psychological manipulation, and use of public or private institutional intermediaries to conduct, conceal, or legitimize the programme.

Travaux gap. The 1984 paradigm centered on custody, interrogation, detention, prison abuse, security-force violence, and military or police mistreatment. Non-consensual state experimentation may occur outside those settings while producing comparable or greater bodily and psychological invasion. MKUltra illustrates the gap: its wrongfulness cannot be fully explained by formal custody or interrogation, even though some subprojects had intelligence, interrogation, military, or detention-adjacent objectives.

Article 1 path. Where severe physical or mental suffering is intentionally inflicted by, at the instigation of, or with the consent or acquiescence of public officials for purposes including coercion, intimidation, punishment, discrimination, information extraction, or a comparable prohibited purpose, the Article 1 analysis proceeds without a setting exclusion. The state's use of scientific, medical, intelligence, university, hospital, contractor, or research form does not remove official responsibility where the public-official or official-capacity nexus is established.

Article 16 path. Where Article 1 purpose, intent, or severity is disputed in a particular subproject, non-consensual state experimentation involving bodily invasion, mental manipulation, psychological degradation, or serious interference with autonomy may still constitute cruel, inhuman, or degrading treatment or punishment. Article 16 is especially important where official involvement, lack of meaningful consent, and degrading or harmful treatment are established, but the Article 1 torture threshold requires further case-specific proof.

Lawful-sanctions issue. "Research," "national security," "medical necessity," "program authorization," "scientific purpose," or "intelligence purpose" cannot operate as a lawful-sanctions shield for covert non-consensual human experimentation. The lawful-sanctions carve-out protects genuinely lawful penalties or measures; it does not convert secret experimentation, deception, or non-consensual bodily or mental invasion into lawful treatment.

Proof architecture and limiting principle. The proof architecture consists of official programme records, declassified documents, congressional investigations, testimony, institutional funding chains, medical and psychological evidence, and records of concealment or destruction. The limiting principle is meaningful consent, severity, official involvement, and abusive or prohibited purpose. The category does not include ethically approved research conducted with informed consent, independent oversight, withdrawal rights, and genuine safeguards. It reaches state experimentation or behavioral-control practices where official authority, deception or coercion, lack of meaningful consent, severe bodily or mental suffering, and Article 1 or Article 16 elements are established.

Contemporary extension — neurodata, biometric data, and surveillance coercion. The same analysis reaches the contemporary successors of MKUltra. Where state or state-contracted programmes compel or exploit neurodata extraction, biometric or health-data extraction, cognitive monitoring, algorithmic risk classification, or surveillance-enabled targeting in a manner causing severe suffering, loss of autonomy, coercion, intimidation, discrimination, or degrading treatment, the Article 1 and Article 16 analysis proceeds without a setting exclusion. A state cannot avoid the torture and CIDT analysis by translating bodily or psychological invasion into digital, medical, or data-processing form. “Research,” “national security,” “data protection,” “public safety,” or “risk assessment” cannot operate as lawful-sanctions shields where meaningful consent, independent oversight, and the ability to withdraw are absent. The privacy mandate’s neurotechnology and neurodata report (A/HRC/58/58, 2025) supplies external corroborative authority on the emerging mechanism; the UNCAT classification remains the IAJ’s own.

Cross-Cutting Mechanisms: How Non-Custodial Torture and CIDT Are Produced

These mechanisms recur across all six categories. They are not themselves separate categories; they are the tools through which official or officially acquiesced severe suffering is produced in the settings above, and each is included because it appears repeatedly across the IAJ record.

Impossible-compliance regimes. Officials impose conditions known to be practically impossible for the person to satisfy — because of poverty, disability, language, trauma, homelessness, transportation, childcare, immigration status, or health — then convert predictable noncompliance into adverse legal findings, sanctions, family separation, benefit termination, detention, or denial of remedy. The analysis turns on knowledge, foreseeability, severity, purpose, and official use of the person’s induced failure.

Institutional labyrinth. Procedural complexity, conflicting requirements, unanswered filings, repeated remands, duplicative proof demands, and inaccessible processes become coercive where they are knowingly used to exhaust, silence, or force waiver rather than to serve any genuine administrative function. This supports Article 16 where the effect is degrading, and Article 1 where severe suffering is intentionally inflicted or knowingly continued for a prohibited purpose.

Human-rights-defender retaliation. Protective parents, treating clinicians, complainants, disability advocates, health workers, journalists, and community advocates may each be human-rights defenders within the 1998 Declaration on the IAJ’s reading, where they act to promote or protect human rights. Retaliation against them for protected advocacy — through licensure proceedings, subpoena-based intimidation, benefit withdrawal, or adverse legal findings — is a recurring non-custodial mechanism running through every category.

Language-access deprivation. Where officials knowingly proceed against a person who cannot understand or participate, and the resulting exclusion foreseeably causes severe suffering, loss of liberty, family separation, medical deprivation, or denial of remedy, the deprivation is a purpose-and-knowledge amplifier and a procedural-coercion mechanism. It is especially probative where language exclusion interacts with race, national origin, migration status, poverty, or disability.

Medical-evidence suppression. Officials rely on captured or non-examining evaluators, override treating clinicians, mischaracterize disability as malingering, or treat medical incapacity as noncompliance. This is not mere evidentiary error where it is used to override known medical risk, compel participation, or deny treatment; it supports knowledge, foreseeability, intent, and acquiescence within the Article 1 or Article 16 conduct pattern.

State-acquiesced private violence. Officials who know of a serious risk of private harm — domestic violence, honour-based violence, elder abuse, trafficking, caregiver exploitation, disability abuse — and possess authority to prevent or interrupt it, yet return, expose, or abandon the person to the danger, engage the consent-or-acquiescence clause. For honour-based violence the Special Rapporteur's gender report states the rule directly: the State's failure to prevent honour-based violence contravenes its obligations to combat and prevent torture and ill-treatment (A/HRC/31/57 (2016), ¶¶ 59–60). The analysis does not require the private actor to become a state official; it depends on official consent, acquiescence, instigation, or deliberate non-protection.

Private-contractor anti-evasion. Public officials cannot escape responsibility by routing coercive interventions through private evaluators, residential programmes, probation companies, technology vendors, medical contractors, or care providers. Where the state authorizes, funds, relies on, or acquiesces in the contractor's conduct, the official nexus is preserved through the intermediary.

Remedy foreclosure. Across every category, the deliberate closing of the domestic remedial pathways that would expose or correct the harm — through immunity doctrines, procedural weaponization, access barriers, or attrition — both compounds the underlying suffering and supplies the exhaustion and structural-foreclosure record analyzed in Chapter 20.

These mechanisms explain why disability remains the litmus without becoming the whole thesis. As Chapter 12 establishes, disability accommodation denial is privileged as a detector, not as a category: it externalizes official notice, isolates the discriminatory-purpose element, and converts severity into a measurable medical record. The same evidentiary structure appears by substitution across the domains above — removal orders and separation-trauma records in family cases; ability-to-pay records and warrants in debtors' prison cases; treatment orders and informed-consent records in medical-control cases; placement and appointment orders in functional-custody cases; and programme, consent, and data records in experimentation, neurodata, and surveillance cases. Disability is the most sensitive instrument for detecting the elements; it is one category among the many in which those elements appear.

Application Synthesis: The Transferable Six-Move Framework

The six-Move framework supplies a transferable analytical structure, not a category-erasing template. The same treaty questions recur across each domain — official nexus, severe physical or mental suffering, intent or acquiescence, prohibited purpose where Article 1 is invoked, Article 16 where the torture threshold is not fully established, and the lawful-sanctions analysis.

But each domain requires its own factual anchor, vulnerability analysis, severity evidence, official-nexus proof, purpose analysis, lawful-sanctions assessment, and source-specific treaty mapping. The framework transfers because the Convention's elements transfer; the evidentiary pathway changes because the institutional mechanism changes.

The diagnostic questions for any case are: (1) Is a public official, official-capacity actor, instigator, consenting official, or acquiescing official involved? (2) Is severe physical or mental suffering, or cruel, inhuman, or degrading treatment, documented? (3) Is intentional infliction, consent, acquiescence, or deliberate continuation after notice supported? (4) Where Article 1 torture is alleged, does a prohibited purpose apply? (5) Does the lawful-sanctions analysis fail to exclude the conduct? Where the relevant answers are supported by evidence, the conduct proceeds to Article 1 or Article 16 classification without categorical exclusion based on setting — and the functional-custody and *jus cogens* analyses provide additional and independent grounds of confirmation.

This Chapter should be read together with the treaty analysis in the preceding chapters, Appendix A's six-Move framework, and the 24-factor evidence architecture in Chapter 21.

CHAPTER 16 — THE THREE-LEVEL ARCHITECTURE OF SYSTEMIC VIOLATION

The 24 factors[233] do not describe 24 independent violations. They describe an interlocking institutional architecture operating at three levels. Understanding this architecture is essential to the Article 20 "systematically practiced" threshold analysis.

Level	Category	Factors and Their Function
Level 1	Direct Harm Factors	Factors 2, 3, 4, 6, 7, 8, 14: describe specific prohibited acts that satisfy the Article 1 five-element test or the Article 16 CIDT threshold where documented. These are the acts from which severe suffering flows directly.
Level 2	Facilitation and Mechanism Factors	Factors 1, 5, 9, 10, 11, 12, 13, 15, 16, 17, 23: describe the institutional mechanisms by which direct harm occurs, is perpetuated, and is made inescapable. They support the findings of functional custody, of the defeat of the lawful-sanctions carve-out, and of the captive-litigant analysis; each finding still requires element-by-element proof in the particular case.
Level 3	Systemic Impunity Factors	Factors 18, 19, 20, 21, 22, 24: describe the institutional architecture of impunity — absence of investigation, prosecution, training, prevention, and remedy. These supply convergent indications warranting independent

233 See IAJ's shadow report to the CAT Committee, September 2025

examination under Article 20.

The convergence of all three levels — direct harm, facilitation, and impunity — across multiple institutional settings simultaneously is what distinguishes the IAJ's Article 20 submission from a collection of individual complaints. It describes the institutional pattern that the Article 20 framework treats as warranting independent inquiry into whether the conduct meets the systematic-practice criterion. The Committee, not the IAJ, ultimately determines whether the criterion is met; the IAJ's submission supplies the convergent indications that warrant the inquiry.

PART V — UNITED STATES COMPLIANCE: EQUIVALENCE, DIVERGENCE, AND CONSEQUENCE

On the domestic plane addressed in this Part, the divergence from the international concordance takes its characteristic form. The United States ratified the Convention on a represented equivalence of domestic remedies; its own courts have since narrowed or barred each named mechanism; and *Medellín* assigns the cure to a Congress that has not acted. The obligation is thus affirmed at ratification and defeated in implementation — not because the international authorities are divided about it, but because domestic application has fallen out of step with the obligation the United States concordantly undertook. The IAJ resolves the divergence by holding both sovereigns to the enacted obligation and documenting the equivalence failure, rather than treating domestic non-implementation as though it repealed the international undertaking.

Part V is not the foundation of the norm; Parts I through IV establish that foundation on international authority alone. Part V is the principal worked compliance study: what happens when a State ratifies on a representation of domestic equivalence and its domestic mechanisms then fail to deliver protection, investigation, remedy, and accountability. The United States is examined not because the evolved prohibition is about the United States, but because the U.S. record supplies the most fully documented modern instance of the equivalence premise meeting institutional non-performance.

Attribution across these levels remains layered. Individual misconduct, supervisory failure, office custom or practice, and State Party responsibility are analytically distinct, and a single violation does not establish an institutional policy. Repeated substantially similar violations, however, when accompanied by notice, failure to correct or discipline, concealment, conflicted review, or standardized closure practices, may support the inference of institutional tolerance or implementation failure relevant to State responsibility and to examination under Article 20 (see the IAJ Standard Prosecutorial Misconduct and UNCAT Accountability).

At the prosecutorial plane, the Level 3 impunity factors operate through three recognizable mechanisms, stated in the companion IAJ Memorandum and Record of Notice On the Duty of the Prosecutors in the United States under the Convention against Torture. Intake avoidance is the pre-merits form: the credible allegation disappears before any responsible merits determination — returned to the implicated agency, diverted into a collateral grievance channel, rejected for format, or expired without an assigned deciding officer. Silent declination is the post-merits form: the matter is disposed of without a record of what was alleged, examined, preserved, considered, or referred, or of why it was closed. Active discretionary shielding is the affirmative form: the use of intake, charging, immunity, referral, classification, or evidence-handling powers in a manner that insulates conduct otherwise reachable by law. Each suppresses the evidentiary visibility on which Articles 12, 13, and 19 — and, where systematic torture is indicated, Article 20 — depend. Consistent with the discipline this Standard maintains, none of these mechanisms automatically establishes torture, complicity, obstruction, or personal liability; each is evaluated under its independent elements, and attribution remains layered as stated above. The companion IAJ Investigative Finding The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America adds the judicial form of the same Level 3 mechanism: self-administered accountability. A review mechanism is not functionally independent merely because it is formally distinct from the challenged individual where the same institutional branch controls the governing standard, evidence access, merits exclusions, disposition, publication, and review; the inquiry is functional — whether an institution external to the implicated chain can recognize the alleged violation, investigate it, publish findings, and secure remedy.

CHAPTER 17 — THE U.S. RUDs

Equivalence, Country Objections, and the Two-Plane Analysis

A. The RUDs and the Two-Plane Framework

After the United States Senate gave its advice and consent in 1990, the United States ratified UNCAT in 1994, attaching Reservations, Understandings, and Declarations (RUDs). The most significant for present purposes are: (1) a declaration that Articles 1–16 are not self-executing; (2) a reservation limiting Article 16 CIDT obligations to the Fifth, Eighth, and Fourteenth Amendment standard; and (3) an understanding that mental pain or suffering requires prolonged harm from specific predicate acts. The IAJ addresses these on both planes.[234]

A fourth instrument completes the architecture the record represents. Deposited as Understanding (5), the federal–state understanding allocated implementation between the federal government, to the extent of its legislative and judicial jurisdiction over the matters covered by the Convention, and the state and local governments otherwise. The Senate report was explicit about its effect: the understanding "would not exempt State or local officials from the prohibitions against torture" (S. Exec. Rep. No. 101-30, at 8) and "would not exclude state or local officials" (id. at 13). The equivalence representation examined in Section D below was therefore, in substantial part, a representation about the criminal law of the States: the reach the United States claimed for existing law was the combined reach of two sovereigns, and the performance obligation runs through both.

The record's own concession bounds the represented equivalence, and the boundary matters. Apart from the specifically identified Article 5 jurisdictional gaps, the substantive treatment-scope delta the ratification record conceded as broader than then-existing law was Article 16 treatment: "Article 16 is arguably broader than existing U.S. law" (S. Exec. Rep. No. 101-30, at 25), a point the record resolved by the reservation confining CIDT to the Fifth, Eighth, and Fourteenth Amendment standard. The parallel United States reservation to ICCPR Article 7

[234] United Nations Treaty Collection, Chapter IV.9, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: United States of America — Reservations, Understandings and Declarations made upon ratification (instrument of ratification deposited 21 October 1994) (setting out verbatim the non-self-execution declaration, the Article 16 reservation keyed to the Fifth, Eighth, and Fourteenth Amendment standard, and the 'prolonged mental harm' understanding); S. Exec. Rep. No. 101-30 (1990) (Senate Committee on Foreign Relations report recommending advice and consent subject to the RUDs). — RELEVANCE (this anchor): primary depositary and ratification-record sources for the RUDs enumerated in the anchoring paragraph. The final-domestic-review petition record formerly noted here is maintained at the Chapter 20 exhaustion discussion, where it belongs. The two-plane treatment of these RUDs is developed in Chapters 17 and 18.

limits the phrase "cruel, inhuman or degrading treatment or punishment" to the same Fifth, Eighth, and Fourteenth Amendment standard — the same CIDT-scope boundary recurring in both instruments (the reservation does not by its terms reach Article 7's prohibition of torture) — with the two depositary objection records kept distinct. By the record's own terms, therefore, the admitted delta is CIDT-scope, not core torture; and the criminal-law representation did not, of itself, establish a complete, independently enforceable Article 14 civil-remedy architecture — the equivalence claimed was strongest as to the criminal reach of existing law over core torture.

B. On the Domestic Plane: Non-Self-Execution and Medellín

The declaration that Articles 1–16 are not self-executing means that UNCAT's provisions cannot be directly invoked as a cause of action in U.S. domestic courts absent implementing legislation. *Medellín v. Texas*, 552 U.S. 491 (2008), confirms this. The IAJ accepts this principle for what it is: a domestic enforceability rule. It bars direct domestic enforcement in U.S. courts. It does not affect the U.S.'s international law obligations.

Medellín itself is explicit on this point: the Court held that the non-self-executing character of a treaty does not affect the treaty's binding nature under international law. The domestic non-enforceability of a treaty obligation is not the same as the non-existence of that obligation. To treat *Medellín* as resolving the international law question — as central counterarguments frequently do — is to misread the decision. This Standard is primarily addressed to the international plane; *Medellín* governs the domestic plane; the two do not conflict.

Medellín delimits domestic judicial enforceability; it does not extinguish the international obligation. From that delimitation, within the Two-Plane Framework, the IAJ derives a concurrent allocation of responsibility: Congress and the state legislatures supply prospective statutory cures where a genuine domestic gap exists; courts and prosecutors remain responsible for construing and applying the domestic law already in force; and the international characterization of the conduct, State responsibility, and treaty compliance remain questions on Plane A, assessed by the treaty bodies independently of domestic non-self-execution. The cure and the characterization are different objects, and these functions are concurrent: none of them collapses into the proposition that every aspect of compliance must await a new Act of Congress (see the IAJ companion thesis The Equivalence Representation and the Ex Post Facto Lockout).

The consignment, and its return. In practical effect, the reservations rested the Nation's compliance upon existing, largely judge-administered law: equivalence was promised in the coin of domestic constitutional law, whose construction is the judiciary's own province, and the courts became the custodians of that equivalence — bound to construe Acts of Congress consistently with the Convention, to give faithful effect to such implementing law as exists, and to administer the constitutional guarantees the reservation invoked to a measure consonant with the absolute, non-derogable prohibition to which those guarantees were equated. That this custodianship is no abstraction is shown by its documented inversion: the same Article 16 reservation was pressed, in the legal memoranda of 2001 to 2009, to advise that conduct amounting to torture might be authorized — the equivalence device turned against its own promise. And the consignment was not to the judiciary alone: the ratification record rested domestic compliance equally on the unlegislated coordination of two sovereigns' prosecutors. The judiciary, however, correctly holds that only legislation can enact the conforming offence, the limitation rules, and the enforceable Article 14 right; the consignment therefore fails on its own terms, and the responsibility it sought to transfer returns to the legislatures with redoubled force. The closed circuit confirms, and the IAJ records as its own analysis, the legislative component of the Committee's 2014 conclusions: the specified statutory deficiencies — the conforming offence, the limitation rules, the enforceable Article 14 right — are curable only by domestic legislation, and for those cures every avenue but the legislative one has been shown, by the Nation's own arrangements, to be foreclosed. Nothing in that demonstration displaces the present duties of courts, prosecutors, and the other competent authorities under law already in force (see the IAJ Memorandum and Record of Notice On the Duty of the Legislatures of the United States to Complete the Nation's Compliance with the Convention against Torture).

The equivalence representation was mechanism-specific, and the mechanisms can be named. The Senate report's Article 14 analysis assured the Senate that "Existing U.S. law already establishes private rights of suit sufficient to implement Article 14" — identifying a common law tort action, a civil action under 42 U.S.C. §§ 1981–1992, and the *Bivens/Carlson* constitutional tort, and adding that where individual federal defendants "could claim immunity from civil suit, an action could be brought against the United States" under 28 U.S.C. § 1346(b) and § 2674 (S. Exec. Rep. No. 101-30, at 24 (Summary and Analysis, Article 14)). Every named mechanism has since been narrowed, substituted, or barred at its decisive point. The implied damages action against federal officers has been confined for four and a half decades as a "disfavored" judicial activity: *Ziglar v. Abbasi*, 582 U.S. 120 (2017); *Egbert v. Boule*, 596 U.S. 482 (2022); and *Goldey v. Fields*, 606 U.S. 942 (2025) (per curiam), which held no *Bivens* remedy available even for an Eighth Amendment excessive-force claim against federal officials, placing that claim outside Carlson's inadequate-medical-care context. The governing test asks whether the claim differs meaningfully from the three inherited contexts, not whether the facts are grave enough to be called torture; after these decisions, virtually any meaningful difference defeats extension. And the fallback the report named for the immunity case runs only against the United States, only after administrative exhaustion, and subject to the discretionary-function and other statutory bars — never for the treaty wrong as such. The equivalence-as-operation failure this Part documents is therefore not a characterization but a ledger: the specific mechanisms represented to the Senate as the Convention's domestic equivalent, set against the decisions that have since closed them (see the companion IAJ Law Review How to Personally Enforce the Torture Convention, whose Analytical Notes carry the mechanism-by-mechanism record).

The same page of the same report carries a contrary passage, and the IAJ records it rather than leaving it for an adversary to discover: "There is no indication in the legislative history that Article 14 was intended to affect the immunities from civil jurisdiction and liability that States and certain individuals enjoy" (S. Exec. Rep. No. 101-30, at 24 (Summary and Analysis, Article 14)). Recorded, the passage is answered and classified. It is contrary ratification history, not the deposited international commitment, and it adjudicates nothing — least of all whether an immunity survives an established finding of torture. It predates the Committee's interpretation of Article 14 in General Comment No. 3, which identifies immunities among the impermissible obstacles to redress. It cannot enlarge the deposited Understanding II(1)(c), under which domestic sanctions cannot defeat the object and purpose of the Convention. And it does not displace the IAJ's independent determination, stated at Chapter 18.H, which is set and held by the Institute's own investigation. Recorded and answered, the passage leaves the determination standing.

Three commitments in the deposited instrument itself bear on the record this Standard documents, and each is engaged here by its designation. Understanding II(1)(c) defines "sanctions" to include judicially-imposed sanctions and enforcement actions authorized by law or by judicial interpretation, and then concedes that a State Party "could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture": vexatious-litigant declarations and pre-filing restrictions are within the definition, and the United States' own deposited understanding marks the line such measures cross when they are deployed to foreclose the torture claim itself. Understanding II(1)(d) defines acquiescence as prior awareness of the activity and breach of the legal responsibility to intervene; it is not the source of the IAJ's controlling acquiescence standard, which is aligned with the Committee's interpretation, but it is the United States' own concession, and it supplies an alternative minimum route that the custodianship record set out above satisfies — awareness through the repeated presentation of credible, documented allegations, breach through the closure of both the represented equivalent and the Convention proper. Understanding II(5) commits implementation of Articles 10 through 14 and 16 to the "competent authorities of the constituent units" wherever federal jurisdiction does not reach — the courts among them: the deposited instrument itself performs the consignment on which the custodianship analysis rests, so that the doctrine stands on two legs — the coin in which equivalence was promised, and the designation the instrument deposited (see the companion IAJ Law Review How to Personally Enforce the Torture Convention).

The mechanism ledger discloses a further pattern the companion Review names: the translation tax. A survivor may be able to litigate only by translating torture into another legally recognized category — excessive force, assault, intentional infliction of emotional distress, due-process deprivation, disability discrimination, denial of medical care, false imprisonment, a civil-rights conspiracy. Translation is not itself improper; domestic systems routinely implement treaty obligations through existing offences and causes of action. It becomes an implementation failure where the substitute vehicle omits decisive elements of the wrong, narrows responsibility below the command and complicity modes the criminal-accountability analysis requires, excludes necessary defendants, provides incomplete redress, or — as the IAJ's own operational and reporting criterion — prevents the conduct from being identified and tracked as torture — where, in short, the system can process the injury only at the price of the prohibition's substance. Functional equivalence does not require every domestic pleading to bear the treaty's label; it requires the available vehicles, individually or in combination, to preserve the prohibition's substantive elements and required outcomes.

The equivalence-representation pattern this Chapter documents is not unique to this Convention. The companion IAJ publication Harmonizing the Architecture of Disability Rights (Third Edition) records the same structure in the CRPD ratification record: the Senate committees' finding that no new legislation is necessary because existing law already meets or exceeds the treaty's requirements — tendered as reassurance, and operating, on the companion's analysis, as an indictment, because a judiciary that denies what the treaty requires is, on the Senate's own record, failing to apply law the United States certified it already possessed. Two treaties, two decades apart, carry the same representation; the equivalence architecture this Standard tests is a recurring instrument of United States treaty practice, not an artifact of one ratification.

The companion publication supplies the implementation record's institutional counterpart in its proposed Institutional Adjustment Obligation — the IAJ's conclusion that three distinct legal developments should each have triggered documented reconsideration of federal judicial accommodation policy, and that the IAJ has not located a documented comprehensive reassessment in the sources and institutional records identified in the companion publication — a bounded research finding that does not exclude unlocated, unpublished, or internal review. The three developments differ in legal status and are kept distinct: UNCAT ratification in 1994 created binding international obligations for the United States, the Convention taking its place among the treaties Article VI names as the supreme Law of the Land while the non-self-execution declaration affects its direct domestic judicial enforceability (*Medellín*); the ADA Amendments Act effective January 2009 is domestic legislation that materially altered disability-law interpretation; and the Senate's CRPD proceedings, which did not produce ratification, supply persuasive evidence of the standards a substantial Senate majority regarded as already met by existing law. No discrete, established Article VI duty of formal policy re-examination is asserted; the IAJ's conclusion is that the cumulative significance of the three developments lies in the absence of any located documented institutional reassessment despite repeated legal notice that the existing framework may be inadequate — a dated, institution-specific record of non-implementation of exactly the kind the equivalence-as-operation analysis requires.

Critical Examination 17.1: Using Medellín to Extinguish International Obligations

The most frequently committed error in doctrinal objections to this Standard is the deployment of Medellín as if it answers the question of what the United States' UNCAT obligations are under international law. *Medellín* does not answer that question. It answers the question of whether those obligations can be directly enforced by domestic courts in the absence of implementing legislation. *Medellín* explicitly preserves the international obligation while denying domestic judicial enforcement. Using *Medellín* to argue that the U.S. has no international law obligation to comply with UNCAT in its domestic judicial system is not supported by the decision and reflects a conflation of domestic enforceability with international legal obligation — the two-plane distinction that this Standard maintains throughout. Readers who encounter this argument in critical contexts will find it, on careful examination of Medellín itself, to be a misreading of the decision's scope and effect.

C. On the International Plane: Country Objections to the U.S. RUDs

The U.S. RUDs carry legal consequences at the international level that domestic analysis frequently ignores. Three States Parties — Finland (27 February 1996), the Netherlands (26 February 1996), and Sweden (27 February 1996) — lodged formal objections to the U.S. RUDs upon ratification, asserting that the Article 16 reservation was incompatible with the Convention's object and purpose under the customary principle reflected in VCLT Article 19(c). The Federal Republic of Germany separately filed a communication (Note 23, 26 February 1996) treating the U.S. RUDs as "not touch[ing] upon the obligations of the United States of America as State Party to the Convention." The Bayefsky compilation and the UN Treaty Collection depositary record are the authoritative sources; the objections that France and Spain lodged against the U.S. RUDs concern the ICCPR, not UNCAT, and do not enter the UNCAT tally.

These objections carry three legal consequences under international treaty law. First, under VCLT Article 19(c), a reservation incompatible with a treaty's object and purpose is impermissible. The objecting states' collective position is that the Article 16 reservation narrows the Convention's CIDT prohibition below its minimum protective content. Under the ILC's Guide to Practice on Reservations to Treaties (2011) and the ICJ's jurisprudence on reservation validity, an impermissible reservation may not take effect, and — applying the severability principle — the reserving state remains bound by the treaty as written.

At the peremptory level a reservation cannot narrow the prohibition at all, and the persistent-objector escape is unavailable. The Commission's 2022 Conclusions provide that a reservation to a provision reflecting a peremptory norm "does not affect the binding nature of that norm" (Conclusion 13) and that "the persistent objector rule does not apply to peremptory norms of general international law (*jus cogens*)" (Conclusion 14(3)); the ILC annex names the prohibition of torture as such a norm.[235] Neither the United States' reservation nor any objection can carve it

[235] Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), U.N. Doc. A/77/10 (2022) (Special Rapporteur Dire Tladi): Conclusion 13 (a reservation to a provision reflecting a peremptory norm "does not affect the binding nature of that norm" and "cannot exclude or modify" a treaty's effect contrary to it); Conclusion 14(3)

out of the norm or its reach. That reach is the torture–CIDT continuum the Istanbul Protocol recognises — torture and other ill-treatment interrelated and both absolutely prohibited, their definitional threshold "often not clear" —[236] across which the IAJ determines, on its own investigation, that the peremptory character extends — the ILC annex names the prohibition of torture, which the IAJ reads, on its own determination, as the continuum's core rather than a confinement of the character to it. The separate treaty-law question of the Article 16 reservation's effect on the conventional text does not disturb that determination, and no reservation can lower the peremptory floor beneath it.[237]

The Commission's Special Rapporteur reached that closure on reasoning and practice, not by fiat. Because non-derogability is the defining quality of a peremptory norm, a persistent-objector exception would presuppose the very derogation the norm forbids; and the Special Rapporteur, surveying the field, found no practice supporting such an exception and practice pointing the other way. In *Michael Domingues* the Inter-American Commission on Human Rights, answering a direct invocation of persistent objection, held that peremptory norms bind the international community "irrespective of protest, recognition or acquiescence."[238] The objection route is therefore closed on the merits, not merely by assertion.

Second, the equivalence promise embedded in the RUDs is not merely a domestic constitutional arrangement. It is a representation made to all States Parties at ratification, accepted by those parties as the basis for entering treaty relations with the United States. When the U.S. asserted that domestic constitutional protections provide 'equivalent or greater protection,' it made that assertion to the treaty community as a whole. The objecting states' refusal to accept that assurance as adequate is itself a record of the treaty community's understanding that equivalence was not achieved. The breach of the equivalence promise is therefore not only a domestic constitutional deficiency — it is an international law breach visible to all States Parties.

Third, the non-self-execution declaration does not affect U.S. international law obligations. *Medellín*, as noted, confirms this directly. The declaration addresses domestic judicial enforcement; it does not relieve the United States of its international obligations under the Convention.

IAJ Finding 17: The RUDs on Both Planes

On the domestic plane: Articles 1–16 are not self-executing; *Medellín* bars direct domestic enforcement absent implementing legislation. The IAJ accepts this. On the international plane: the equivalence promise is a representation to all States Parties; three States Parties (Finland, the Netherlands, and Sweden) have formally objected to the Article 16 reservation as incompatible with the Convention's object and purpose, and Germany filed a Note 23

("the persistent objector rule does not apply to peremptory norms of general international law (*jus cogens*)"); Conclusion 5(1) (customary international law "the most common basis" for peremptory norms); Conclusions 2, 3 (universally applicable; no derogation); Conclusion 23 and Annex (g) (prohibition of torture).

236 Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. HR/P/PT/8/Rev. 2 (2022), ch. I, paras. 1, 7–8 (discussed in Chapter 6): the interrelated relationship of torture and other ill-treatment, their "often not clear" definitional threshold, and the absolute prohibition of both. The extension of the peremptory character across the whole continuum is the IAJ's own determination.

237 A/77/10 (2022), Conclusion 22 (the conclusions are "without prejudice to consequences that specific peremptory norms … may otherwise entail") — the clause under which the immunity consequence is left open, distinct from Conclusion 14(3). The IAJ's immunity position rests on its own independent investigation.

238 Third report on peremptory norms of general international law (*jus cogens*), U.N. Doc. A/CN.4/714 (2018), paras. 142–144: because non-derogability is the defining quality of a peremptory norm, a persistent-objector exception would presuppose the derogation the norm forbids, and the Special Rapporteur found no practice supporting such an exception. In *Michael Domingues* the Inter-American Commission on Human Rights, answering a direct invocation of persistent objection, held that peremptory norms bind the international community "irrespective of protest, recognition or acquiescence." See also *Nada*; *Belhas v. Ya'alon*; *Committee of United States Citizens Living in Nicaragua v. Reagan*; *Siderman de Blake v. Republic of Argentina*.

communication treating the U.S. RUDs as not touching the U.S.'s Convention obligations; and non-self-execution does not extinguish the U.S.'s international obligations. The IAJ's primary position operates on the international plane, where domestic enforcement doctrines are irrelevant.

D. The Implementing Statute: §2340A

18 U.S.C. §2340A criminalizes torture committed outside the United States.[239] It is the principal CAT-implementing criminal statute. Adversarial arguments cite §2340A as evidence that the U.S. understood UNCAT to be limited to extraterritorial custodial settings. The IAJ responds that this inference is unjustified. §2340A fills the jurisdictional gap for torture occurring outside the United States; it does not displace the domestic architecture represented in the ratification record, which combined state criminal law, federal civil-rights crimes such as 18 U.S.C. §§ 241 and 242, and civil remedial vehicles where independently available. The statute's extraterritorial jurisdiction is not evidence that UNCAT's international scope excludes domestic conduct — it is evidence of how Congress chose to supplement domestic coverage for overseas acts. Reading a jurisdictional implementing choice as a limitation on the treaty's substantive international scope confuses the mechanism of domestic implementation with the content of the international obligation.

The enactment sequence of §2340A is itself part of the ratification record's meaning. The Senate's 1990 advice and consent carried the declaration that the instrument of ratification would not be deposited until the implementing legislation had been enacted (S. Exec. Rep. No. 101-30, at 20); the record identified the needed legislation as confined to the two extraterritorial heads of Article 5 jurisdiction, because "[e]xisting law is therefore sufficient to implement Article 4, except to reach torture occurring outside U.S. jurisdiction" (id. at 19), and the non-self-execution declaration itself rested on the stated ground that "the majority of the obligations to be undertaken by the United States pursuant to the Convention are already covered by existing law" (id. at 10). Congress enacted §2340A on April 30, 1994 (Pub. L. No. 103-236, § 506) to fill exactly and only the admitted Article 5 gaps, and the Executive deposited the instrument of ratification on October 21, 1994.

The surgical character of that gap-filling is a construction by conduct of everything Congress did not touch: the domestic coverage the record represented as existing was left in place because it was represented to exist. The full ratification-record analysis, quoted and verified against page images of the Senate report, is developed in the IAJ companion thesis The Equivalence Representation and the Ex Post Facto Lockout. The representation was made directly against the legality objection: answering the concern that no person may be tried without a statute

[239] 18 U.S.C. §§ 2340–2340A (torture-implementation provisions enacted by the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. No. 103-236, § 506, 108 Stat. 382, 463 (1994)); S. Exec. Rep. No. 101-30 (1990); Rouillard, L.-P.F. "Misinterpreting the Prohibition of Torture Under International Law: The Office of Legal Counsel Memorandum." American University International Law Review 21(1), 9–41 (2005). — RELEVANCE: Directly supports this publication's Chapter 17 analysis of U.S. reservations and domestic statutory implementation (§2340A). Provides exhaustive treaty, case law, and travaux-based refutation of each Bybee/OLC Memorandum claim, demonstrating that the prohibition extends to psychological methods and that intent need not produce extreme physical injury. — AUTHORITY: Law review article demonstrating that the OLC Memorandum's narrow interpretation misreads UNCAT, the ICCPR, customary international law, and U.S. treaty obligations. The 'severe pain equivalent to organ failure' standard is unsupported by any authority, domestic or international. The article analyses: the 'prolonged mental harm' understanding as creating impunity loopholes (directly corresponding to the CAT Committee's 2014 finding regarding the U.S.); the non-self-executing declaration as not precluding customary law obligations; and the failure to incorporate psychological methods as required by Article 1's plain text. Mental suffering without physical contact satisfies the 'severe pain or suffering' element on proper international interpretation.

defining the crime, the Department of State replied that "[a]ny prosecution (or civil action) in the United States for torture will necessarily be pursuant to existing or subsequently enacted Federal or State law," existing federal and state law appearing sufficient to implement the Convention (id. at 41, letter of Janet G. Mullins, Assistant Secretary, Legislative Affairs, to Senator Helms, June 13, 1990). Non-self-execution was therefore not non-execution: it was a channeling rule, directing domestic enforcement through existing and specifically supplemented federal and state law rather than through a freestanding treaty cause of action (see the IAJ Memorandum and Record of Notice On the Duty of the Prosecutors in the United States under the Convention against Torture).

The execution architecture must also be kept chronologically disciplined. Statutes in force before the October 21, 1994 deposit — 18 U.S.C. §§ 241 and 242, §§ 1512 and 1513, § 1001, and the criminal law of the States — may support the ratification-era equivalence representation and may be applied to conduct committed while they were in force. Later enactments — § 1519 (2002), § 249 (2009), § 3286(b) (post-2001) — reinforce the present charging architecture but form no part of the 1990–1994 representation and are never cited as evidence of the ratification-era construction. § 2340A occupies the intermediate and distinctive position: enacted before deposit to complete the specifically identified extraterritorial gap. For the pre-existing core, application of law in force when the conduct occurred raises no *ex post facto* question at all, provided the conduct, when committed, fairly satisfied the statute's then-existing elements, *mens rea*, jurisdictional and fair-warning requirements, and all applicable evidentiary and limitation rules.

This Standard reads the ratification record conjunctively with the Committee against Torture's 2014 findings (CAT/C/USA/CO/3-5, para. 9), and records the conjunctive reading as its institutional interpretation. The equivalence representation established reach: the United States represented that core torture within domestic jurisdiction was already reachable through existing federal and state criminal law. The Committee's finding that no general federal offence of torture, defined in conformity with Article 1, reaches domestic conduct records a failure of operation: fragmentation across two sovereigns' codes under other names, non-coordination, the absence of a named offence, and non-enforcement. Both are true at once, and the Committee's own doctrine supplies the rationale — naming torture as a crime in its own right alerts every actor to the special gravity of the crime, strengthens deterrence, permits the conduct to be tracked as itself, and forecloses definitional slippage (General Comment No. 2, paras. 8–11) — a clarify-and-concentrate rationale that presupposes the conduct is otherwise reachable. The failure of operation does not erase the international obligation, and it forecloses the political-question posture from both directions: if the representation was true, existing supreme law was always available for application (U.S. Const. art. VI; *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)); if it was false, the misrepresentation and the impunity that followed are themselves the breach, which the inadequacy of internal law cannot justify (VCLT art. 27, invoked as customary international law). A prospective congressional enactment cannot criminally punish pre-enactment conduct under its new offence; what it can lawfully do — preserve the pre-existing architecture, direct its administration toward functionally equivalent outcomes, support investigation and truth-finding, provide civil redress where enacted with the requisite clarity, and record every remaining shortfall as an implementation gap — is developed, together with the anti-lockout drafting rule that prevents the cure from being read as a certification of impunity, in The Equivalence Representation and the Ex Post Facto Lockout.

The companion IAJ Advisory Opinion Quia Timet and the Prevention of Threatened Torture and Cruel, Inhuman or Degrading Treatment by Domestic Authorities extends the conjunctive reading to the preventive track through its own operational-equivalence analysis: applying that inquiry to the domestic preventive remedy, it concludes that the operational equivalence promised at ratification is absent on the prevention track — the same reach-without-operation structure this Section records for the criminal track. The represented equivalence is accordingly assessed in three dimensions: equivalence as reach — whether domestic law prohibits or otherwise reaches the conduct; equivalence as operation — whether the competent institutions receive, investigate, prosecute, remedy, and record it in practice; and equivalence as timely prevention — whether a person facing a concrete and imminent risk can obtain protection before irreparable infliction. A system that reaches the conduct only after the injury has occurred satisfies neither the preventive purpose of Article 2 nor the full operational substance of the equivalence representation.

To reach, operation, and timely prevention the corpus adds a fourth dimension, contributed by the companion IAJ Law Review How to Personally Enforce the Torture Convention: individual accessibility. Where the Convention frames the obligation as a complaint or redress entitlement — Article 13's right to complain and to a prompt and impartial examination, Article 14's right to redress and fair compensation — the represented equivalence must also be tested for whether the person protected can exercise what the treaty text expressly gives — the Article 13 complaint with its prompt and impartial examination and its protection against complaint-related ill-treatment or intimidation, and the Article 14 redress — through a channel that person can actually use. The IAJ treats acknowledgment, appropriate participation, a reasoned disposition, and review of complete institutional non-performance as operational safeguards demonstrating effective implementation: the Institute's implementation design, not additional words enacted in Articles 13 and 14. The dimension is bounded as the companion Review bounds it: individual accessibility confers no control over criminal charging, no command of the Article 20 or inter-State procedures, and does not transform every State duty into a private cause of action; it asks whether the rights and remedies that run to the individual are operationally usable by that individual. A system does not achieve operational equivalence merely because officials hold discretionary powers the victim can neither trigger, review, nor obtain a disposition from.

The companion publication's National Evidentiary Record adds the structural explanation for why this dimension is decisive. Its documented search of the Department of Justice enforcement archive — 1996 through 2024, every quarterly status report and every entry in the formal disability-rights cases database — located no enforcement action for denial of accommodation to a civil litigant with invisible progressive neurological or psychiatric disability in civil proceedings, while every located action concerned communication or physical access. The finding is expressly bounded — zero enforcement is not evidence that the violations do not occur — and the companion's explanation is structural: the accommodation denial that extinguishes the proceeding also extinguishes the complainant, terminating in a single act the case, the domestic remedy, and the practical capacity to invoke any enforcement mechanism requiring sustained institutional engagement. The enforcement gap and the accommodation gap are the same gap. Individual accessibility is therefore not a refinement of the equivalence test; it is the dimension whose failure renders the other failures invisible to the enforcement architecture.

The IAJ names this the Self-Concealing Violation Principle: where the alleged violation disables, excludes, impoverishes, or procedurally terminates the person who must invoke enforcement, low complaint and enforcement rates cannot be treated as reliable evidence of low incidence without examining the mechanism's suppressive effect. The companion states the operational-availability rule this dimension enforces: a remedy is not operationally available merely because a rule authorizes it — availability is assessed against the claimant's disability-affected functional capacity, the procedural demands imposed, the harm generated by invocation, the time required, and whether the alleged violation itself has impaired the capacity necessary to use the remedy — with four compounding mechanisms named: compelled performance at the point of maximum disability, serial failure converting disability-caused noncompliance into further sanction, remedies whose invocation itself causes deterioration, and permanent foreclosure through attrition.

Within that architecture, §2340A is the extraterritorial completion statute — not the domestic master statute, not a displacement of state responsibility, and not the boundary of federal domestic responsibility. The ratification record itself anchored domestic reach in the general civil-rights statutes, citing the coerced-confession prosecution in *Williams v. United States*, 341 U.S. 97 (1951), and in the ordinary criminal law of the States, including, where retained, their common law. The IAJ's Collaborative Prosecution Framework states the operational consequence — as an IAJ institutional determination derived from that ratification architecture, not as a rule any court or treaty body has adopted: no single sovereign may declare a domestic implementation gap alone. Before non-reach may be recorded, the competent authorities must test the state statutory and common-law vehicles, the federal constitutional-rights and obstruction statutes, and the referral of the matter to the other sovereign, documenting any residual gap element by element. A closure that omits that analysis is not a completed UNCAT response; it is evidence of execution-architecture abandonment, and it enters the Article 20 record as such.

And the coordination itself is unlegislated: no Act of Congress and no statute of any State commands the combined screening the ratification record presupposed, requires cross-sovereign referral of credible allegations, or forbids either sovereign's unilateral closure of a matter the other might reach — the represented architecture was combined, the legislated architecture is fragmented, and the fragmentation is itself a documented deficiency of implementation. The companion IAJ Memorandum and Record of Notice On the Duty of the Prosecutors in the United States under the Convention against Torture states the sequencing that legitimates any documented gap: the execution-architecture construction analysis must be completed and recorded before any declination; where reach is contested and a good-faith charge is reasonably available under ordinary lawful charging standards, the UNCAT-consistent construction must be pleaded and preserved and the court confronted for a ruling on it; where no such charge is reasonably available, the record must identify the specific legal, evidentiary, jurisdictional, fair-warning, or ethical impediment; a documented gap is legitimate only after that analysis has been discharged. A prosecutor may document a true implementation gap; a prosecutor may not create one by failing to invoke, plead, and preserve the execution architecture the United States represented as sufficient — and a gap declared without that analysis is not a documented gap but evidence of execution-architecture abandonment.

The same Notice records the domestic-doctrine confirmation of the state side of the combined architecture: the Supreme Court's federal-narrowing public-integrity trajectory, and the federalism canon it applies, leave substantial official-misconduct enforcement to state law and state prosecutors while leaving the federal civil-rights statutes — where Congress has clearly supplied the federal interest — untouched; the enforcement responsibility Understanding (5) assigned to the States is, in the Nation's own domestic doctrine, real, recognized, and presently held. Those cases do not interpret the Convention and do not decide the competent-authorities question; they support, at the level of domestic allocation, the conclusion the IAJ draws from the ratification record itself. The conclusion that question yields is stated by the IAJ as its own treaty-compliance synthesis: within the implementation allocation the United States itself deposited, the State prosecuting authorities are among the competent authorities through whom Articles 12 and 13 must be performed where State or local jurisdiction reaches the conduct.

Two further disciplines complete the gap-declaration analysis. The equivalence inquiry is operational as well as textual: the existence of statutes, disclosure rules, professional duties, disciplinary systems, and appellate remedies does not establish equivalence where those mechanisms repeatedly fail to prevent, expose, correct, punish, and redress the prohibited conduct. And a residual implementation gap may not be attributed to statutory impossibility unless the competent authority has completed and recorded a reasoned construction analysis addressing the statutes the ratification record identified, the equivalence assurances, *Charming*

Betsy, *jus cogens*, fair-warning doctrine, lenity, and *ex post facto* constraints. Where probable cause, admissible evidence, fair-warning principles, and the other lawful conditions of prosecution make a good-faith charge reasonably available, the competent prosecutor should plead or preserve the UNCAT-consistent construction issue and record the court's disposition; where litigation is not reasonably available, the memorandum must identify the specific legal or evidentiary impediment. An unexplained omission records prosecutorial non-analysis, not statutory impossibility (see the IAJ Standard Prosecutorial Misconduct and UNCAT Accountability).

The IAJ concludes that a complete anti-lockout legislative cure requires four coordinated elements: a prospective named offence; an express preservation clause for pre-existing law; declaratory findings preventing any negative inference of prior legality or impunity; and a functional-equivalence direction requiring the preserved pre-existing architecture to deliver the closest lawful equivalent of the Convention's remedies and accountability outcomes, with every remaining shortfall documented as an implementation gap. The model clauses are stated in The Equivalence Representation and the Ex Post Facto Lockout.

The same instrument closed the external doors. Reservation I(2), made under Article 30(2), declares that the United States does not consider itself bound by Article 30(1), so that an inter-State dispute under the Convention cannot be taken to arbitration or referred to the International Court of Justice without case-by-case United States consent. The Article 22 individual-communication competence was never accepted: the United States declared only the inter-State competence under Article 21, whose procedure is confidential communication, negotiation, and good offices, culminating — only with both States' consent — in an *ad hoc* conciliation commission that reports, orders nothing, and awards the individual nothing. The advisory function of the International Court is requestable only by United Nations organs, never by an individual, and does not bind. And *Medellín* closes the loop even at the far end: a judgment of the International Court, binding between the States though it would be, is not automatically domestic law and supplies no enforceable rule of decision absent implementing action by the political branches.

The RUD architecture is therefore one architecture, with a domestic face and an external face cut from the same instrument: the declaration that withheld direct domestic enforcement on a representation of equivalence, and the reservations and non-declarations that foreclosed every external avenue by which the representation could be tested against the United States — leaving the survivor's right, in administered fact, individually unenforceable at every tier, and the cure, as *Medellín* assigns it, with a Congress that has not acted (see the companion IAJ Law Review How to Personally Enforce the Torture Convention, which walks the entire enforcement architecture step by step and records the closed circuit in its Analytical Notes).

One qualification is carried with the closure record, from the companion Review's own discipline: the Convention permits these choices. The Article 22 non-declaration and the Article 30(2) reservation are cited as the absence of external redundancy that completes the closed circuit — the practical-consequence architecture of domestic non-implementation — not as independent treaty breaches; the breach lies in the binding domestic duties of investigation, complaint examination, redress, and compensation that remain unimplemented. The structural condition the closed circuit documents carries a name in the companion publication Harmonizing the Architecture of Disability Rights (Third Edition): Forum Nullus — the IAJ's proposed structural doctrine, derived by analogy from *Caperton*'s institutional-conflict principle and extended from the individual adjudicator to the system, engaged wherever the forum whose conduct is challenged also controls the adjudication of the challenge; a proposal of the Institute, not a presently recognized rule of domestic or international law — joined to the companion's finding that uniform systemic discrimination is self-immunizing, since every internal route runs through the institution whose conduct is at issue.

E. The Executive-Branch Custodial Statement in the Ratification Record

The ratification record contains one further executive-branch statement that bears directly on the custody question, and this Standard records it in full rather than leave it out of account. In a letter of 4 April 1990 to Senator Pressler, printed at appendix B of the Committee's report, the Assistant Secretary of State for Legislative Affairs wrote that "[b]ecause the Convention applies only to custodial situations, i.e., when the person is actually under the control of a public official, the legitimate right of self-defense is not affected by the Convention."[240] It is the most direct statement in the ratification record of the reading this publication does not adopt, and the IAJ neither suppresses it nor treats it as decisive.

Its classification comes first. This is a United States executive-branch statement of position, made in correspondence explaining the ratification package to a Senator. It is domestic ratification-record material and belongs on Plane B. It is not the treaty text; it is not an agreement or subsequent practice establishing the agreement of the parties as to interpretation; and it is not an authoritative international construction of Article 1. It evidences what the United States represented and understood; it does not fix what the Convention means.

Read in its own setting, the sentence was doing narrower work than its wording suggests. It appears in the response explaining why the Reagan-era understanding preserving common-law defences had been withdrawn as unnecessary, and the proposition the Department needed for that purpose was only that the Convention does not reach a person defending himself against an assailant. That conclusion follows independently from the specific-intent requirement, which the same letter invokes in the following sentence. The custodial characterization was the route taken to a conclusion that did not require it.

The enacted text answers the characterization directly. Article 1 contains no custody or physical-control element. The United States itself lodged that element separately, as understanding II(1)(b), stating that the definition "is intended to apply only to acts directed against persons in the offender's custody or physical control"[241] — a condition that would have been superfluous had the Convention "appl[ied] only to custodial situations" as a matter of its own terms. The understanding is the instrument by which the narrowing was accomplished domestically. This Standard documents it as such, on Plane B, and does not read it into the treaty's meaning on Plane A.

The statement therefore takes its place, on the equivalence analysis, as further evidence of the representation the United States made at ratification — a representation of existing-law coverage measured against a corpus the Committee itself described as evolved. And it joins the contrary interpretive line this Standard has recorded and answered throughout: the control gloss of Burgers and Danelius, its adoption in the Nowak commentary, and the Special Rapporteur's powerlessness formulation. Recorded, classified and answered, it does not displace the determination stated in Chapter 2. Powerlessness and equivalent control remain major and often decisive factual and classificatory considerations; they are not a sixth express legal element of Article 1, and an executive-branch letter explaining a withdrawn understanding does not make them one.

The consent-and-contract objection and reply. The IAJ states the objection in its strongest form and answers it. The objection treats the Convention as a multilateral bargain and holds the United States to its terms: the United States negotiated the definition, ratified on the strength of its package of reservations, understandings and declarations, and may insist that it agreed to the negotiated definition and nothing more; whatever a treaty body, a rapporteur, or

[240] Letter from Janet G. Mullins, Assistant Secretary of State for Legislative Affairs, to Senator Larry Pressler (4 Apr. 1990), printed in S. Exec. Rep. No. 101-30, app. B (1990).

[241] S. Exec. Rep. No. 101-30, at 30 (1990) (Resolution of Ratification, understanding II(1)(b): the definition of torture in article 1 "is intended to apply only to acts directed against persons in the offender's custody or physical control").

an evolved corpus later says, consent is the measure of the obligation. The IAJ's answer proceeds in two steps, and the first is a concession: for ordinary conventional obligations, consent is indeed the measure. That is true on the treaty plane, where the international effect of the United States' reservations, understandings and declarations is itself a question of treaty law — whether each is a genuine interpretation or a reservation in substance, whether it is compatible with the Convention's object and purpose, and how other States parties have reacted. It is equally true on Plane B, where domestic enforceability is governed by domestic law. The Two-Plane discipline this Standard maintains throughout already gives the objection everything it legitimately claims. The second step is the limit: the peremptory prohibition is not a bargained term, and it is the one region of international law expressly closed to the consent mechanism. A treaty conflicting with a peremptory norm is void[242]; a reservation cannot exclude or modify the legal effect of a peremptory norm or affect its binding character[243]; and the persistent-objector rule does not apply to peremptory norms[244]. A State can no more contract for a smaller peremptory prohibition than it can contract out of the prohibition altogether. The consent argument therefore reaches the plane this Standard concedes and stops at the edge of the plane on which its determination rests.

The objection turned: what the United States actually contracted to

Pressed on its own terms, the contract characterization disarms the custody limitation rather than delivering it. The definition the United States describes itself as having negotiated is the Swedish draft's Article 1(1), carried into the adopted Article 1: severity, intention, an enumerated purpose, the public-official nexus, and the lawful-sanctions carve-out. The Swedish draft's Article 1(2) stated the continuum — "Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment"[245] — and although that sentence was not retained in the adopted text, the United States itself invokes it as authoritative negotiating history confirming the severity gradient. In its 2006 Written Response to the Committee against Torture, the United States, speaking as a framer, grounds the torture/CIDT distinction in that severity gradient — torture as the extreme end of a single spectrum of prohibited official mistreatment — and in the negotiating emphasis it and the United Kingdom placed on intensity and severity. Nothing in that negotiated definition, and nothing in the adopted Article 1, contains a custody or setting element; the custody limitation entered only through understanding II(1)(b), a unilateral instrument lodged at ratification, which this Standard documents on Plane B and which the preceding paragraphs have already classified. A State insisting that it agreed to "the negotiated definition and nothing more" is insisting on a setting-unconfined, continuum-based, severity-graded definition — the definition this Standard applies.

The IAJ adds one supporting consideration, ranked deliberately as support and not as the spine of the reply: the Convention's obligations run to the protection of persons and are owed *erga omnes partes* (*Belgium v. Senegal*), so the reciprocity logic of a commercial bargain transfers imperfectly to it; but the reply does not depend on that structural characterization, and rests on the non-contractibility of the peremptory norm and on the content of the bargained text itself.

[242] Vienna Convention on the Law of Treaties, Article 53, invoked as customary international law.

[243] ILC, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens) (2022), Conclusion 13.

[244] ILC, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens) (2022), Conclusion 14, paragraph 3.

[245] Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted by Sweden, E/CN.4/1285 (18 January 1978), art. 1(1)–1(2).

CHAPTER 18 — THE UNITED STATES' OWN DOMESTIC LAW OF CIDT

How SCOTUS Independently Reaches the UNCAT Analysis

The most powerful argument available to international bodies assessing U.S. compliance with UNCAT is not that the United States has failed to meet an external international standard. It is that the United States has failed to meet its own internal constitutional standard — a standard that the Supreme Court has developed over seventy years and that independently reaches the same threshold as UNCAT Articles 1 and 16. The domestic law of CIDT exists in the United States through the Eighth Amendment, substantive due process, and the deliberate indifference jurisprudence. This is the American legal system's own analysis of when official conduct inflicting severe suffering becomes constitutionally cognizable. The conduct documented in the IAJ evidentiary record and Case Archive meets this domestic standard. The United States cannot simultaneously maintain that UNCAT is inapplicable to the conduct while its own Supreme Court has established that the conduct is unconstitutional under domestic law.

This Chapter identifies five lines of SCOTUS doctrine that function as the domestic law of CIDT, maps each to three principal doctrinal objections addressed in earlier chapters — the culpability gradient, the comparative slippery-slope, and the official-purpose objection, and demonstrates that the IAJ evidentiary record satisfies each domestic threshold. For international bodies, this section establishes that the US compliance failure is doubly documented: by UNCAT's international obligations and by the US Supreme Court's own constitutional standards. These standards are drawn from the IAJ Prosecutor's Guide.

A. The "Shocks the Conscience" Threshold (Rochin / Lewis)

Rochin v. California, 342 U.S. 165 (1952), established the foundational domestic threshold: official conduct that "shocks the conscience" of a civilized legal system violates substantive due process regardless of its procedural form. Justice Frankfurter held the test asks not whether the conduct is merely wrong, but whether it is "too close to the rack and the screw to be permitted in a constitutional order." For international bodies: this is the United States' own constitutional test for CIDT-equivalence.

County of Sacramento v. Lewis, 523 U.S. 833 (1998), elaborated the gradient: where official action is NOT predicated on deliberation, only conduct "intended to injure in some way unjustifiable by any government interest" shocks the conscience. Where there IS time to deliberate — as in a judicial setting where orders are considered over weeks and months — deliberate indifference may suffice. This gradient directly answers the culpability-gradient objection: the threshold is not any process failure (negligence), but deliberate indifference or worse. Judicial accommodation denial over years, after repeated notice, with documented knowledge of medical harm, falls in the deliberate indifference category at minimum under the United States' own constitutional doctrine.

> **The culpability-gradient objection answered by SCOTUS:** *County of Sacramento v. Lewis* establishes that where a court has time to deliberate, the constitutional threshold is deliberate indifference — not malice. The cases in the IAJ Case Archive satisfy this standard: all involve courts with full knowledge of disability, repeated requests, documented harm, and continued non-accommodation over months or years. The comparative slippery-slope objection also fails here: Rochin's test is INTERNAL to American constitutional conscience, not comparative to other systems. The question is never whether Africa is worse; it is whether THIS conduct shocks THIS constitutional system's conscience.

B. Deliberate Indifference: The Knowledge-Plus-Disregard Standard

Farmer v. Brennan, 511 U.S. 825 (1994), established that a prison official violates the Eighth Amendment when: (1) the deprivation is "sufficiently serious" — posing a risk of serious harm; and (2) the official has a "sufficiently culpable state of mind" — subjective awareness of the serious risk plus disregard of that risk. Actual knowledge plus disregard. The official does not need to announce a harmful purpose; it is proved by the combination of knowledge and continued conduct. This answers the official-purpose objection: purpose is evidenced by the official's subjective awareness. A judicial actor shown year after year that orders are causing life-threatening harm, who issues those orders anyway, demonstrates deliberate indifference. Under *Farmer*, that combination of knowledge and disregard establishes the culpable state of mind domestic doctrine requires; for UNCAT purposes it bears on the intent element, while Article 1's prohibited-purpose element remains a distinct showing to be independently established.

Estelle v. Gamble, 429 U.S. 97 (1976), established that deliberate indifference to a prisoner's serious medical needs constitutes "unnecessary and wanton infliction of pain" proscribed by the Eighth Amendment, whether the indifference manifests in refusing to provide care, intentionally delaying access to care, or intentionally interfering with treatment once prescribed. For the IAJ Case Archive cases and the primary IAJ evidentiary record: when a court compels participation that the medical record documents as blocking essential treatment — e.g. immune-system suppression, neurological relapse, documented biological consequences — the court is intentionally interfering with treatment once prescribed. This is directly within Estelle even before UNCAT is invoked.

Hope v. Pelzer, 536 U.S. 730 (2002), held that continuation of cruel treatment AFTER actual notice of its unconstitutionality violates clearly established law, even without a prior case on identical facts. The "fair warning" requirement is satisfied when the official knows the conduct is wrong from the constitutional principle itself. In the judicial disability context: years of medical filings, physician letters, and physician testimony constitute actual notice. Continuation after actual notice satisfies *Hope* and eliminates any qualified-immunity defense — which directly implicates the U.S.'s Article 12 obligation to investigate where there is reasonable ground to believe the conduct has occurred.

> **The Farmer-Estelle-Hope Triangle applied to the IAJ Record:** *Farmer*: court had actual knowledge (medical filings over years) + disregard (orders ignoring unrebutted evidence) = deliberate indifference — the culpable state of mind domestic doctrine requires, bearing on Article 1 intent without substituting for the distinct prohibited-purpose element. Estelle: compelled participation blocked prescribed medical treatment = wanton infliction of pain. *Hope*: continuation after notice of harm = clearly established

> violation without requiring prior identical case. All three SCOTUS standards are met. The conduct is unconstitutional under U.S. domestic law independently of UNCAT. The same Triangle applies to *Popovich* (court had actual knowledge from repeated accommodation requests + deliberate disregard of unrebutted clinical evidence + retaliatory cancellation of all proceedings immediately following the DOJ complaint, satisfying escalation-after-notice, confirmed by federal jury verdict on intentional discrimination) and to an IAJ-investigated family-court record (preliminary Istanbul Protocol investigation establishing institutional knowledge of documented psychological harm from permanency proceedings + continuation without required psychosocial safeguards + escalation documented through a subsequent courthouse arrest).

C. Purpose Inferred from Absence of Legitimate Alternative

Hudson v. McMillian, 503 U.S. 1 (1992), held that the Eighth Amendment prohibits “wanton” infliction of pain; the test is whether force was applied in a good-faith effort to maintain a legitimate objective or was applied maliciously and sadistically. Critically: “the absence of serious injury is relevant but does not end the inquiry.” Purpose and wantonness matter more than injury severity. This directly answers the official-purpose objection. The judicial acts at issue — compelling in-person appearance during documented immune crisis when remote options were available; dismissing for “failure to prosecute” while omitting unrebutted medical evidence — serve no legitimate objective that could not have been served by accommodation. The absence of a plausible legitimate alternative is itself evidence of wanton purpose under Hudson.

Whitley v. Albers, 475 U.S. 312 (1986), provides the five-factor wantonness test that maps directly onto judicial-process CIDT analysis: (1) Was there legitimate need for the harmful procedure? (2) Was the harm proportionate to any legitimate need? (3) Was the extent of suffering considered? (4) Were efforts made to minimize harm (offer accommodation)? (5) Was the threat reasonably perceived by the official? These factors translate to the judicial disability context. Applied to any of the IAJ Case Archive cases: (1) No unresolvable need required in-person participation; (2) the physical harm (convulsion, immune deterioration, five-year family separation) is grossly disproportionate to any scheduling objective; (3) suffering was documented and unrebutted; (4) no accommodation was offered; (5) no threat was posed by accommodation. All five factors confirm wanton purpose.

> **The official-purpose objection answered by SCOTUS:** *Hudson* and *Whitley* establish that official purpose need not be declared. It is inferred from the absence of a legitimate alternative that could have achieved the same objective with less harm. Where a court orders in-person appearance when remote means exist (or denies accommodation when it is available at negligible cost), and the in-person order causes documented severe harm, there is no legitimate objective served by the more harmful option. The wantonness inference follows under U.S. constitutional law without requiring any UNCAT analysis.

D. Systemic Institutional CIDT and the Pattern Evidence Standard

Brown v. Plata, 563 U.S. 493 (2011), held that systemic prison overcrowding that foreseeably produced unconstitutional medical neglect and preventable deaths constituted an Eighth Amendment violation addressable by structural injunctive relief. The Court confirmed that CIDT-equivalent conditions can arise from institutional policy rather than any single identifiable act, and that where a pattern of constitutional violation is established, structural remedy is appropriate. For international bodies: *Brown* confirms that the United States' own Supreme Court recognizes systemic institutional CIDT as a category. The judicial disability discrimination documented in the IAJ record and Case Archive constitutes systemic institutional conduct meeting the Brown threshold: not individual bad actors but institutional policies producing foreseeable constitutional harm.

Mehinovic v. Vuckovic, 198 F. Supp. 2d 1322 (N.D. Ga. 2002), established that cumulative harm satisfies the CIDT threshold even if individual acts would be insufficient in isolation. The cumulative record across 8+ years of documented immune deterioration, multiple organ-system damage, and progressive disability exacerbation in the primary IAJ evidentiary record satisfies the CIDT threshold under *Mehinovic* even if any single order would be insufficient standing alone. This is the cumulative harm principle that the IAJ's CIDT-to-torture gradient (Chapter 10) relies upon.

Trop v. Dulles, 356 U.S. 86 (1958), established that the constitutional standard "draws its meaning from the evolving standards of decency that mark the progress of a maturing society" and that foreign legal developments are "instructive, though not necessarily controlling." This answers the comparative slippery-slope objection definitively: the standard is not comparative. The question is what American constitutional conscience prohibits, measured by evolving U.S. standards. Where SCOTUS, in developing the Eighth Amendment, looks to international comparators as instructive but not controlling (*Atkins v. Virginia*, *Roper v. Simmons*), the Africa objection fails on its own terms. The relevant benchmark is American constitutional tradition, not the worst-performing system in the world.

> **The comparative slippery-slope objection answered by SCOTUS:** *Trop* and the Eighth Amendment's "evolving standards of decency" test establish that the analysis is internal to American constitutional tradition. The Africa objection asks: if this is CIDT, then all imperfect judiciaries commit CIDT. The SCOTUS answer: the test is whether THIS conduct shocks THIS constitutional conscience under THIS nation's evolving standards. African judiciaries are irrelevant to what American law prohibits. The analytical framework is therefore self-limiting by design: it applies the *Rochin-Lewis-Farmer-Estelle* threshold, which is the United States' own internal constitutional floor, not an externally imposed international standard that would sweep in every procedural deficiency in the world.

The domestic doctrine surveyed in this Chapter operates within a constitutional structure whose comparative character the companion IAJ Law Review The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment documents at length. Compared with established constitutional democracies whose orders were adopted or comprehensively reconstructed after 1945, the United States is the prominent textual outlier: its federal constitution contains no dignity clause, and dignity operates only as an interpretive gloss on other guarantees — the Eighth Amendment, whose "basic concept" *Trop* identified as "nothing less than the dignity of man," and the Fourteenth, on which *Obergefell v. Hodges*, 576 U.S. 644 (2015), layered the "equal dignity" of the marriage right. The Review records that an evolving standard is, by construction, a balanceable one:

dignity in the United States is not inviolable but weighed, and security, finality, and institutional comity may be weighed against the person and prevail. Where inviolable dignity is entrenched in the United States at all, it is entrenched sub-federally and unevenly — Montana Constitution Article II, § 4 ("The dignity of the human being is inviolable"), tracking Puerto Rico Constitution Article II, § 1, with Louisiana Constitution Article I, § 3 and Illinois Constitution Article I, § 20 constitutionally recognizing individual dignity — not in the federal charter. State constitutional dignity provisions of this kind may supply additional interpretive, declaratory, remedial, or legislative foundations for testing whether severe institutional treatment is constitutionally permissible; their text, justiciability, available causes of action, sovereign-immunity rules, and remedies must be examined separately in each jurisdiction, and they do not of themselves create torture causes of action. The other textless systems — the United Kingdom, Canada, Australia, and New Zealand — form a coherent common-law sub-pattern in which dignity operates through statute and jurisprudence; the United States is distinctive within and beyond that group for pairing the textual absence with expansive personal and sovereign immunities and with the absence of any GANHRI-accredited national human rights institution meeting the Paris Principles.

The comparative significance of that absence is the distinction between a trumping order and a balancing order. The German Federal Constitutional Court's Aviation Security Act judgment (*BVerfG*, 1 BvR 357/05 (2006)) — striking down statutory authority to shoot down a hijacked aircraft because killing innocent passengers to save others would treat them as mere objects — shows what a dignity-foundational order does that a balancing order cannot: it forecloses the instrumental sacrifice of the person even where the arithmetic of consequences would favor it. A balancing order holds that question open. Paired with the immunity architecture recorded in this Chapter and with the absence of any GANHRI-accredited national human rights institution recorded in Chapter 20, the structural result the Review records — and this Standard adopts as the structural condition of the Plane A–Plane B gap documented in Part V — is a pathway by which dignity-violating conduct meeting the severity of CIDT may be balanced away: against finality, against comity, against the self-conferred immunities of the officials involved. The Article 16 reservation examined in Chapter 17 completes the circuit: the United States equated its CIDT obligation to the very constitutional standards in which dignity operates as balanceable gloss, so that the equivalence was promised in the coin of a balancing order.

The two uses of *Trop v. Dulles* in this Standard are distinct and compatible, and the distinction is stated expressly so that neither is mistaken for the other. Earlier in this Section, *Trop* supplies the United States' own internal constitutional floor — the domestic doctrine that already reaches the documented conduct and that the United States fails to apply, which is the Plane B enforcement failure this Chapter records. Here, Trop is diagnostic: the same evolving-standards formulation shows that dignity entered American constitutional law as a judicially administered, balanceable gloss rather than an inviolable command, which is the structural feature that permits the balancing to occur. The first use measures conduct against the floor; the second explains why the floor is not a ceiling that trumps. Both are true; they operate on different questions.

E. The Central Implication for International Bodies: Domestic Doctrine as Compliance Baseline

The analysis in A–D generates a specific and concrete argument for the CAT Committee, the Special Rapporteur on Torture, the CRPD Committee, and the Human Rights Council: the

United States has failed to comply with UNCAT not merely by failing an external international standard, but by failing its own Supreme Court's internal constitutional doctrine. The conduct documented in the IAJ evidentiary record and Case Archive satisfies the *Rochin* "shocks the conscience" test; the *Farmer-Estelle* deliberate indifference standard; the *Hudson-Whitley* wantonness criteria; and the *Brown* systemic institutional standard. All are SCOTUS holdings. None have been applied to the documented judicial disability discrimination in the IAJ record by any domestic authority.

The compliance failure has three layers. The first layer is failure to investigate: UNCAT Article 12 requires prompt and impartial investigation wherever there is reasonable ground to believe torture has occurred. The domestic constitutional threshold (deliberate indifference causing documented severe harm) is met in the IAJ record; no Article 12 investigation has been opened. The second layer is failure to criminalize and enforce: UNCAT Article 4 requires the State Party to ensure that all acts of torture — together with attempt and complicity or participation — are offences under its criminal law; Article 16 extends the Convention's prevention, investigation, complaint, and protection obligations to CIDT without textually reproducing Article 4's criminalization requirement, though qualifying conduct may fall within independently applicable domestic offences. The federal criminal vehicles potentially applicable to qualifying conduct — 18 U.S.C. §§ 241, 242, and 249, subject in each case to their independent elements and jurisdictional limits — exist but have not been applied; 42 U.S.C. §§ 1985(2) and 1985(3) are civil remedial vehicles where independently available, not criminal charging statutes. The third layer is failure to protect complainants: UNCAT Article 13 requires that complainants not be subjected to intimidation or retaliation. The vexatious-litigant designation used to silence the complainant in the primary IAJ record, and the judicial pattern of cancelling proceedings in response to federal complaints (Popovich), constitute documented Article 13 violations.

The international community should understand this compliance architecture: the United States has the law (SCOTUS doctrine, domestic statutes, treaty obligations) and has failed to apply it. This is not, as to the conduct that law already reaches, a case of inadequate law; it is a case of institutional non-enforcement. The IAJ's position before treaty bodies is therefore that UNCAT Articles 2, 4, 7, 12, 13, and 16 require the United States to apply the domestic tools it has to the conduct those tools already reach, while Congress supplies what only legislation can. For conduct existing law already fairly reaches — the conduct this Chapter examines — the gap is enforcement, not legislation; the distinct statutory deficiencies only legislation can cure are recorded in Chapter 17, and neither failure excuses the other.

F. King v. Marion Circuit Court, 868 F.3d 589 (7th Cir. 2017): confronting the contrary U.S. authority

The IAJ records and confronts the most relevant contrary U.S. authority to the access-to-justice proposition this Standard develops. In *King v. Marion Circuit Court*, 868 F.3d 589 (7th Cir. 2017) (Easterbrook, J.), the Seventh Circuit held at 593 that where the state court had in fact offered a cost-free path to accommodation — specifically, an offer to provide a no-cost interpreter if the litigant returned to court — "this case has no constitutional dimension at all. Title II therefore does not abrogate sovereign immunity here, and the Marion Circuit Court remains immune from this suit in federal court." The court rejected the proposition that *Tennessee v. Lane* recognized a freestanding "fundamental right of access to the courts" as a substantive constitutional right; in the Seventh Circuit's reading, Lane denoted a cluster of due-process rights protected against state interference, not a freestanding access right that would support Title II abrogation independent of the underlying due-process claim. The IAJ's position with respect to *King* is as follows. First, the IAJ does not contest *King*'s holding on its own terms: where the court in fact offered a cost-free accommodation that the litigant could have used, the case for a freestanding access-to-courts constitutional violation is materially weaker than where no accommodation was offered, and the Seventh Circuit's narrow reading of *Lane* in that procedural posture is a reading the court was entitled to take. The IAJ records that the documented cases in the IAJ archive are factually distinguishable from *King* on this dispositive point: in the IAJ's cases, accommodation was repeatedly requested and denied, not offered and unused. Second, the IAJ's analysis does not depend on Lane's freestanding-access-right reading at the U.S. domestic-constitutional level. The IAJ's analysis is pitched at the international-law level: it rests on the substantive content of the UNCAT and *jus cogens* prohibitions, on the regional jurisprudence supplying adjudicated support for the component principles (Chapter 7), and on the State's nonperformance obligations under VCLT Article 27. None of these depend on the access-to-courts clause that *King* construed. Third, the IAJ records that the doctrinal narrowness *Easterbrook* applied in *King* illustrates rather than refutes the IAJ's central proposition: where domestic doctrines are narrowed such that no remedy reaches even systematic accommodation denial that causes documented severe harm, the resulting domestic architecture is precisely the architecture the international examination addresses. The IAJ records *King* as a documented narrowing of U.S. domestic doctrine, flagged for review under the standing rule that contrary holdings are documented as such and the IAJ stands by its analytical position by independent investigation. The IAJ does not assert that a U.S. federal court applying *King* will reach the international-law conclusion the IAJ advances; that is a question of domestic enforceability addressed separately. The IAJ does assert that *King* does not foreclose the international-law analysis, because the international-law analysis operates on different propositions than the access-to-courts-clause reading that *King* narrowed.

G. Saleh v. Bush, 848 F.3d 880 (9th Cir. 2017): a documented instance of systemic judicial failure

The IAJ records *Saleh v. Bush*, 848 F.3d 880 (9th Cir. 2017), as a documented instance of systemic judicial failure regarding United States compliance with its UNCAT and *jus cogens* obligations.[246] In *Saleh*, the Ninth Circuit affirmed dismissal of claims against senior former officials by operation of the Westfall Act (28 U.S.C. § 2679), holding that the officials were entitled to immunity because they were acting within the scope of their employment, and that a plaintiff seeking to hold such officials personally liable for conduct alleged to violate international law must plead something akin to a personal or financial interest of the official. The panel did not reason from first principles. It rested expressly on *Siderman de Blake v.*

[246] Bianchi, A. "Immunity versus Human Rights: The Pinochet Case." European Journal of International Law 10(2), 237–277 (1999). DOI: 10.1093/ejil/10.2.237. — RELEVANCE: Supports the anti-impunity principle — developed in the Pinochet context — that grave human-rights violations resist immunity-based foreclosure; cited for that principle, not as a holding on U.S. domestic judicial immunity. Establishes that 'human rights atrocities cannot be qualified as sovereign acts: international law cannot regard as sovereign those acts which are not merely a violation of it, but constitute an attack against its very foundation and predominant values.' Municipal courts have both the right and duty to complement international tribunals. — AUTHORITY: Bianchi (Graduate Institute, Geneva) analysed the three Pinochet decisions of the UK House of Lords. For the first time in international history, a former head of state was held accountable before a municipal court for torture allegedly committed in office. Bianchi argues the divide within the Lords revealed a fundamental tension: if torture on a large scale is a *jus cogens* norm, no treaty or customary rule including immunity can derogate from it. His critical argument: acts violating *jus cogens* cannot be shielded by immunity because they do not constitute legitimate exercises of sovereign authority. The IAJ applies Bianchi's anti-impunity reasoning by analogy to domestic judicial-immunity architecture. Bianchi does not decide U.S. judicial immunity; it supports the broader proposition that official-form doctrines cannot define away peremptory-norm violations on the international plane.

Argentina, 965 F.2d 699 (9th Cir. 1992), which the *Saleh* panel described as "holding that Congress can provide immunity to a foreign government for its *jus cogens* violations, even when such immunity is inconsistent with principles of international law," and held on that reasoning that "Congress can also provide immunity for federal officers for *jus cogens* violations." The Ninth Circuit had therefore already articulated, in 1992, a rule of congressional immunity expressly indifferent to consistency with international law, and *Saleh* extended that rule from foreign governments to federal officers. The court identified no limiting principle that would withhold scope-of-employment immunity from conduct alleged to breach a peremptory norm of international law — there including the crime of aggression, described at Nuremberg as the supreme international crime — so long as the official acted within the scope of federal employment.

On the identification method's own terms, and taking the prohibition of torture as the established norm it is, a holding of this kind is a breach of that norm, not evidence of a narrower one. Conclusion 8's commentary adopts the *Nicaragua* principle that State conduct inconsistent with a rule is "treated as breaches of that rule, not as … recognition of a new rule," and that a State professing the rule while acting against it "confirm[s] rather than … weaken[s] the rule."[247] *Saleh* withholds forum and remedy; it is an enforcement and immunity foreclosure — a matter on the procedural plane — not a redefinition of the substantive prohibition, which is why the IAJ records it as a documented failure rather than as authority contracting the norm. The principle is applied to the established prohibition; it is not used to assume the contested reach and then reclassify contrary decisions as breaches.

The IAJ records the absence of any such limiting principle as the defect. Under Article VI, the Convention against Torture is part of the supreme Law of the Land, and neither the peremptory prohibition of torture nor the absolute, non-derogable prohibition of cruel, inhuman or degrading treatment admits derogation. The United States secured advice and consent to ratification on the representation, made to the Senate, that existing domestic mechanisms were adequate to give effect to the Convention's obligations. A no-limiting-principle reading of scope-of-employment immunity — one on which no violation, however grave, and no peremptory norm, however absolute, can be reached so long as the official acted within the scope of federal employment — cannot be reconciled with that representation, and it leaves the enacted obligation without a domestic forum in precisely the class of case for which the obligation exists.

On the premise stated in *Marbury v. Madison*, that a right without a remedy is not a right the law secures, a construction that forecloses every remedy for the gravest internationally prohibited conduct does not vindicate the immunity so much as expose the gap. The IAJ records *Saleh*, on its no-limiting-principle reasoning, as an instance of that failure, and flags the divergence for review; it does not deny the authority of the decision within the domestic legal system, and the question whether the Westfall Act bars a particular suit in a particular forum remains a separate, source-specific enforceability question that does not define or diminish the substantive content of the international prohibition or excuse the State's nonperformance on the international plane.

The IAJ does not deny *Saleh*'s authority within the domestic legal system. It records *Saleh*'s no-limiting-principle reasoning as a documented failure to give operative effect to the peremptory norm on the international plane. Whether the Westfall Act bars a particular domestic suit does not define or diminish the substantive content of the international prohibition or excuse the State's nonperformance of its UNCAT obligations.

[247] Conclusion 8, Commentary (8), A/73/10 (2018), quoting *Military and Paramilitary Activities (Nicaragua v. United States)*, I.C.J. Reports 1986, p. 14, para. 186 (inconsistent State conduct is "treated as breaches of that rule, not as … recognition of a new rule"; a State professing the rule while acting against it "confirm[s] rather than … weaken[s] the rule").

H. The Non-Availability of Immunity and the Imprescriptibility of the Peremptory Wrong

Two consequences follow from the peremptory character of the prohibition that the domestic doctrine surveyed in this Chapter has not absorbed, and that this Standard states without qualification: the wrong is not subject to immunity, and it is not subject to extinction by the passage of time. The two propositions share a single root. A norm from which no derogation is permitted cannot be derogated from indirectly — by a domestic doctrine that removes the actor from suit, or by a domestic rule that removes the claim from the calendar — any more than it can be derogated from directly by a statute purporting to authorize the conduct. What may not be done by open authorization may not be accomplished by procedural attrition.

On immunity, this Standard has stated the governing rule throughout. The rule states Plane A content — the obligation as the IAJ determines it to be — and not a description of what domestic courts presently administer on Plane B: at and above the gateway into torture or CIDT, immunity falls away absolutely and is never available — for torture, because the established *jus cogens* prohibition admits no shield; for ill-treatment meeting the defined severity threshold, by the IAJ's own institutional determination, grounded in the prohibition's absolute and non-derogable character. The outcomes are identical; their foundations are distinct. The point requires emphasis in the domestic setting because of the manner in which the immunities at issue arose. Absolute judicial immunity, absolute prosecutorial immunity, qualified immunity, sovereign and Eleventh Amendment immunity, litigation privilege, and the scope-of-employment substitution of the Westfall Act are not enactments of the political branches responding to the treaty obligation; they are, in the main, doctrines the courts conferred upon themselves and upon the officials most closely associated with the judicial function. *Stump v. Sparkman* and *Mireles v. Waco* extended absolute immunity to judicial officers by judicial decision; *Imbler v. Pachtman* did the same for prosecutors*; Pierson, Harlow*, and their progeny built qualified immunity around a text — 42 U.S.C. § 1983 — that contains no immunity at all. The result is a body of self-conferred immunity that has, in operation, acquired the practical force of the law of the land: it decides, before any merits are reached, who may never be called to answer.

This Standard records the displacement that has occurred. Article VI provides that treaties made under the authority of the United States are, together with the Constitution and the laws made in pursuance of it, the supreme Law of the Land, and that the judges in every State are bound thereby. The Convention against Torture is such a treaty. The peremptory prohibition it carries is not merely supreme over inconsistent state law; it is a norm that the United States has represented, in the instrument by which it acceded, that its existing law was adequate to honor. When a self-conferred immunity operates to foreclose every forum in which a torture or CIDT claim against an official might be heard, the practical supremacy has been inverted: the judge-made immunity, not the treaty, functions as the supreme Law of the Land, and the "supreme Law of the Land" the Constitution names has been deprecated to a norm that yields, in every concrete case, to the doctrine erected against it. The IAJ does not assert that any court has announced this inversion; it records that the aggregate operation of the immunities produces it, and that a peremptory norm cannot be lawfully displaced by a doctrine of lower rank, still less by a doctrine the displacing institution conferred upon itself. The honest judge is protected, as this Standard holds throughout, by the threshold — not by an immunity available for conduct at or above it.

That calibrated structure is not a construct without a working example. The companion IAJ Law Review The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment records that the paradigm dignity State operates a criminality-conditioned limit within a State-liability architecture of that calibrated structure: Article 34 of the German Basic Law ordinarily channels liability for official wrongdoing to the State, while § 839(2) of the Civil Code — the Spruchrichterprivileg — makes a judge personally liable for an adjudicative breach of duty only where the breach constitutes a criminal offence. The German model does not exempt the judge from accountability; it ties personal exposure to a criminality threshold, protecting the honest and the erring judge below it and withholding protection once the conduct crosses into the criminal — of which torture, as established *jus cogens*, is the paradigm. A major legal order thus demonstrates that a criminality-conditioned threshold within a State-liability architecture is workable in operation; the Review records it as a worked example of the calibrated structure, not as proof that Germany has adopted the IAJ's threshold rule.

The Review states the corpus's fuller two-register articulation of the same immunity rule this Section states, and states with it the record on which the rule rests. Torture as defined in UNCAT Article 1 and cruel, inhuman, or degrading treatment under Article 16 remain distinct classifications with distinct element tests, but the convergent international record establishes them as a single interrelated continuum under one absolute, non-derogable prohibition: the Istanbul Protocol records that the prohibition of ill-treatment is "similarly absolute under both treaty and customary international law," that torture and other ill-treatment are interrelated with a definitional threshold, in the Committee against Torture's words, "often not clear," and that both are absolutely prohibited; ICCPR Article 7 states both prohibitions in a single non-derogable article, as do ECHR Article 3, ACHR Article 5(2), and CRPD Article 15 — the multi-treaty convergence Chapter 11 documents; and the Special Procedures record (A/HRC/22/53) carries the interrelated prohibition beyond the custodial paradigm.

On that convergent treaty, customary, and institutional record — and because no coherent intermediate category exists of law that is absolute, universally binding, and non-derogable yet hierarchically below *jus cogens* — the IAJ determines, on its own investigation, that the peremptory character extends throughout the continuum; the ILC annex names the prohibition of torture, which the IAJ reads, on its own determination, as the continuum's core rather than a confinement of the character to it. The two registers are registers of attribution, not of protection: for torture, established *jus cogens*, immunity can never lawfully shield the wrong — stated absolutely; for cruel, inhuman, or degrading treatment meeting the severity threshold, the same no-immunity standard applies on the IAJ's determination, grounded in the convergent record above and in the duties of prevention, investigation, remedy, and non-repetition. The rule is one rule across the continuum, and the classifications are kept distinct.

The criminal register of the rule is also conceded in the United States' own voice, on Plane B and in that State's own characterization of its domestic law. Asked in 2006 whether any person was immune from the crime of torture, the United States delegation told the Committee, at the review of the State party's second periodic report, that "There was no 'penal immunity' for any person for the crime of torture under United States law" (CAT/C/SR.703, ¶43, answering question 22, summary record of the 703rd meeting held 5 May 2006). The delegation's written responses in the same proceeding state the identical proposition in the present tense in answer to question 22: "[T]here is no 'penal immunity' for any person for the crime of torture under U.S. law." The internal quotation marks are the officials' own and are preserved. The concession is exact and is held to its terms: it speaks to criminal prosecution for the crime of torture — any person, the judicial officer included — and it concedes nothing as to civil immunity or as to ill-treatment under Article 16, which remain governed by the determinations stated in this Section. What it does establish, in the government's own words, is that the criminal track this Section describes is one the United States itself professes to hold open for every person without exception; the Committee's finding that the criminal review of the CIA program closed without a single prosecution (CAT/C/USA/CO/3-5, ¶¶ 11–12) records what the profession has been worth in administration, and the pairing — verbatim commitment against administered reality — is catalogued as a self-contained evidentiary reference in Appendix A of the companion IAJ Law Review How to Personally Enforce the Torture Convention.

One clarification protects the concurrency rule from misreading, and the corpus states it uniformly. It operates in the register of responsibility — who answers for which wrong — and not in the register of immunity or of available domestic routes: the duty-bearers are split by wrong. For the underlying torture or ill-treatment, the State and the individual answer concurrently, neither absolving the other. For the remedial wrongs this Standard documents — the missing conforming offence, the absent Article 14 action, the failed examination architecture — the duty-bearer is the United States alone, through its legislative and judicial organs; the individual officer answers for the individual's own conduct at or above the threshold, never for the legislative gap. The split assigns each wrong to its actual duty-bearer and narrows nothing.

One discipline completes the immunity analysis, stated in the companion Review and adopted here. It speaks to Plane B remedial architecture and qualifies nothing in the Plane A rule stated above: the rejection of immunity removes a defence to an otherwise valid route; it does not itself supply the route. A complete remedial architecture must separately identify the claimant, the defendant, the jurisdiction, the cause of action, the waiver where the State is sued, the limitation rule, the available relief, and the enforcement mechanism — which is why the fall-away of immunity at the threshold and the missing Article 14 action are recorded as distinct defects: the first a rule of law the IAJ states, the second a gap only Congress can close.

A further discipline, stated in the companion publication and adopted here, prevents immunity from swallowing the institutional inquiry: even where an individual ruling is classified as judicial for immunity purposes, the absence of a lawful accommodation system, of training, of independent review, of data collection, and of preventive protocols remains a separate institutional act or omission attributable to the State — analyzed on the institutional track, unaffected by the individual classification, and assessed independently against the applicable preventive, investigative, and remedial duties; where a separate breach, resulting injury, and causal nexus are established, reparation is not defeated merely because an individual adjudicator is immune from a particular domestic action.

On limitation, the same peremptory character carries a consequence the domestic law of limitations does not accommodate: the wrong is imprescriptible — for torture on the peremptory prohibition's own character, for ill-treatment meeting the defined severity threshold by the IAJ's institutional determination. From the peremptory prohibition's non-derogable character the IAJ derives, as its own normative implementation standard — broader than the express holdings of the instruments cited below, and not presented as a universally settled consequence of *jus cogens* — the complete rule: a prohibition that admits no derogation should admit no rule by which the obligations to prevent, investigate, prosecute, and remedy expire by lapse of time. The imprescriptibility of the international crimes closest to the core of the peremptory category is settled — it is expressed in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, reflected in Article 29 of the Rome Statute's exclusion of any statute of limitations for the crimes within its jurisdiction, and articulated in the reasoning by which international and regional tribunals have refused to permit domestic limitation, amnesty, or prescription to defeat accountability for torture. *Barrios Altos v. Peru*, Inter-Am. Ct. H.R. (Ser. C) No. 75, Judgment of March 14, 2001, ¶41, held that all amnesty provisions, provisions on prescription, and measures designed to eliminate responsibility are inadmissible because they are intended to prevent the investigation and punishment of those responsible for serious human-rights violations such as torture; the reasoning applies with equal force to a limitations bar, which achieves by the calendar what an amnesty achieves by decree.

The components of the rule carry different pedigrees, and this Standard states them in rank: the enduring international characterization of the wrong and the State's undiminished responsibility are settled; the durability of Article 14 redress against limitation bars is the Committee's stated position; the inadmissibility of impunity-producing time bars is the anti-impunity interpretation of the Committee and the regional courts; the complete expiration rule, and its extension to ill-treatment meeting the defined severity threshold, are the Institute's own. The IAJ records the principle with the same care for planes it maintains throughout.

The passage of time does not extinguish the wrong: on the international plane, conduct at or above the threshold remains subject to the State's undiminished responsibility, its duty to investigate, and the reparation, truth, rehabilitation, and non-repetition obligations the Convention requires — no statute of limitations, laches doctrine, or repose bar operates there, and the duties of investigation and accountability operate within the Convention's jurisdictional architecture (arts. 5–8) and, in any domestic proceeding, within lawful charging and legality requirements. On the domestic plane, proceedings remain governed by applicable constitutional and statutory limitation and legality rules, and every preclusive result those rules produce upon such conduct is recorded by this Standard — as the IAJ's own implementation-gap determination, applying the normative standard stated above — as a documented implementation failure, never as a narrowing of the prohibition. For torture, the imprescriptibility principle rests on the established peremptory status of the prohibition; for ill-treatment short of torture, the same conclusion is the IAJ's institutional determination, supported by the Committee's holding that impediments precluding prompt and fair prosecution of perpetrators of torture or ill-treatment violate the principle of non-derogability (General Comment No. 2, ¶ 5).[248]

Below the threshold, ordinary limitations doctrine operates as it does for ordinary civil wrongs; at and above it, time works no cure. For torture, that conclusion rests on the established *jus cogens* status of the prohibition — the passage of time no more cures the wrong than it cures an act of genocide; for ill-treatment meeting the IAJ's separately defined severity threshold, the same remedial and anti-impunity conclusion is the Institute's own institutional determination, grounded in the prohibition's absolute and non-derogable character. The outcomes are aligned; their legal foundations are distinct. The Commission's crimes-against-humanity articles state the core of the rule as codified text: draft article 6 requires each State to ensure that the offences "shall not be subject to any statute of limitations" — addressed to crimes against humanity, and corroborative here on the terms of the ranking stated above.[249]

Two clarifications preserve the two-plane discipline this Standard maintains throughout. First, the non-availability of immunity and the imprescriptibility of the wrong are propositions of the content of the international obligation — Plane A. That a particular domestic court has applied an immunity, or dismissed a claim as time-barred, is a fact about domestic enforcement — Plane B — and this Standard records each such instance as a documented failure to give operative effect to the peremptory norm, not as a qualification of it. Neither the immunity nor the limitation bar defines or diminishes the substantive content of the prohibition or excuses the State's nonperformance of its UNCAT obligations under VCLT Article 27. Second, nothing in this Section disturbs the protection of the honest or merely-erring judge. Immunity legitimately

[248] Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli, Practical Experiences of Domestic Reparation Programmes, A/HRC/42/45 (11 July 2019); Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli, Financing of Reparation for Victims of Serious Violations of Human Rights and Humanitarian Law, A/78/181 (2023). — RELEVANCE: External corroborative authority that the reparation obligation for grave violations is durable, programmatic, and financeable, and does not lapse with time. The mandate's frame is the transitional-justice pillars and UDHR Article 8, not UNCAT; the imprescriptibility classification stated in this Section is the IAJ's own.

[249] ILC, Draft articles on prevention and punishment of crimes against humanity, Report of the International Law Commission, Seventy-first Session, U.N. Doc. A/74/10 (2019), draft article 6 (offences "shall not be subject to any statute of limitations").

shields the judicial officer below the threshold, and ordinary limitations legitimately order ordinary litigation; the propositions stated here operate only where the conduct crosses the threshold this Standard states — torture, established *jus cogens*; ill-treatment at the defined severity, by the IAJ's own institutional determination — at which point — and only at which point — the immunity falls away and the clock ceases to run on the international plane, where the State's responsibility and its reparation duties are untouched by time; on the domestic plane, the legality discipline stated in this Section governs, and every preclusive result it produces is recorded by this Standard — as the IAJ's own implementation-gap determination — as a gap in performance, not as a narrowing of the norm.

The legality principle that disciplines this Section on the domestic plane is consistent, on the international plane, with treaty text the United States has accepted. The United States' reservation to ICCPR Article 15 declined only the *lex mitior* clause of paragraph 1; Article 15(2) — preserving the trial and punishment of any person for an act that was criminal, when committed, according to the general principles of law recognized by the community of nations — was not reserved and is non-derogable (ICCPR art. 4(2)). Article 15(2) operates as a savings clause: it preserves the possibility of trial and punishment where independent legal analysis establishes that the act was criminal, when committed, under general principles of law recognized by the community of nations; it is not itself the source of the conduct's substantive criminality or of the IAJ's grave-CIDT classification.

The Plane A characterization of the wrong — torture on the peremptory norm, qualifying ill-treatment on the IAJ's institutional determination — therefore rests on the customary and general-principles foundations established in this Standard, with Article 15(2) preventing paragraph 1 from barring prosecution only to the extent independent analysis establishes that the conduct was already criminal under recognized general principles when committed — leaving notice, jurisdiction, evidentiary, and domestic *ex post facto* requirements to their own analyses.

On Plane B the same discipline runs in the accused's favour and only there: the *Ex Post Facto* Clauses are honored as a legality protection of the accused — never as an immunity of the State or its officers — and a limitation period that has lapsed may not be revived (*Stogner v. California*, 539 U.S. 607 (2003)), though an unexpired period may be extended; every shortfall the domestic time-bar or legality rule produces is recorded as a documented gap in performance, while the reparation obligation — restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (CAT General Comment No. 3) — runs against the State across the entire period, untouched by any *ex post facto* constraint. The companion thesis The Equivalence Representation and the Ex Post Facto Lockout states the full analysis.

On redress, the Committee against Torture has stated the limitation consequence for Article 14 in terms: on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable, for they deprive victims of the redress, compensation, and rehabilitation due to them, and limitation periods are listed among the obstacles to Article 14 redress (General Comment No. 3, paras. 40 and 38). That authority directly supports the continuing obligation of remedy and reparation across the entire period; it does not, of itself, decide every question concerning domestic criminal limitation periods, which the following proposition addresses on its own terms.

On the criminal track, in defined aggravated cases the asserted limitation obstacle may not exist even on Plane B: prosecutions under 18 U.S.C. §§ 241 and 242 may be commenced at any time where the offense is punishable by death, as both are where death results (18 U.S.C. § 3281); the eight-year period governing § 2340A falls away where the offense resulted in, or created a foreseeable risk of, death or serious bodily injury (18 U.S.C. § 3286(b); *United States v. Correa*, No. 1:20-cr-00148-CMA, ECF No. 182 (D. Colo. Sept. 23, 2024) (Arguello, Sr. J.)). *Correa* is directly in point and its holding is broader than the bare limitation rule: the court held §3286(b) unambiguous, and held that an offence need only be LISTED at §2332b(g)(5)(B) — where §2340A appears expressly, "relating to torture" — without also satisfying the "Federal crime of terrorism" definitional element at §2332b(g)(5)(A). A torture prosecution therefore carries no limitation period in aggravated cases without any terrorism characterisation of the conduct, notwithstanding the five-year default for non-capital offences under 18 U.S.C. §3282(a). The motion to dismiss an indictment filed more than fourteen years after the alleged acts was denied; and § 249 prosecutions may be commenced at any time where death results (18 U.S.C. § 249(d)). Whether a particular case satisfies an exception's causation and injury requirements is a distinct evidentiary question; a declination resting on a lapsed limitation period without applying these provisions to the facts is an inaccurate statutory analysis and a false gap (see the IAJ Standard Prosecutorial Misconduct and UNCAT Accountability). And throughout, characterization is distinguished from charging: international characterization of conduct as torture or CIDT, State responsibility, investigation, truth-finding, and reparation do not require a retroactive domestic offence; a domestic prosecution must rest on an offence, jurisdiction, penalty, and limitation rule lawfully in force for the conduct; and the inability to prosecute a residual category retroactively records a domestic implementation failure — it does not alter the international characterization or extinguish the State's continuing obligations. The Committee's own record supplies the documented illustration: the torture committed under Commander Jon Burge and others in Chicago between 1972 and 1991 went unpunished as torture because, by the time the truth was established, the ordinary limitation periods had run — Burge was convicted of perjury and obstruction of justice, and no officer was convicted for the torture itself (CAT/C/USA/CO/3-5, paras. 11–12, 26). The IAJ records that impunity as, in substantial part, a state-legislative gap — a limitation architecture unequal to the gravity of the offence, within the competence of a legislature to close — and it stands as the documented paradigm of the time-bar failure this Section records. Article 16 conduct is subject to the same charging discipline: CIDT may not be treated as a non-criminal category by default — a charging rule about existing vehicles, not an extension of Article 4's criminalization obligation to CIDT — so that where culpable official CIDT is reachable through an existing criminal vehicle and ordinary charging standards are met, it must be charged through the most adequate available vehicle, and where no vehicle fully reaches it, the absence of criminal accountability is documented as an Article 16 implementation gap (see the IAJ Memorandum and Record of Notice On the Duty of the Prosecutors in the United States under the Convention against Torture). The reach of that track against judicial actors is established — *Ex parte Virginia*, 100 U.S. 339 (1880), upheld the criminal prosecution of a judge, and the Department of Justice expressly lists judges among § 242's covered actors — but its operation is not: the companion IAJ Investigative Finding The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America records that the IAJ's documented search found, within the searched record, no example of a judge convicted under § 242 or § 241 for the adjudicative content of a ruling itself; the known prosecutions of judges concern bribery, fraud, racketeering, obstruction, and other non-adjudicative conduct. That is reach without operation in its purest judicial-actor form, and it enters the Article 20 record as such.

CHAPTER 19 — THE IAJ INVESTIGATIVE RECORD

Istanbul Protocol Documentation and Domestic Remedies Exhaustion

Note on the relationship between this Chapter and the treaty framework: *The legal framework in the preceding chapters stands entirely on independent treaty authorities and does not depend on the accuracy of any factual finding, legal analysis, or legal conclusion in the evidentiary record described in this Chapter. Chapter 19 illustrates how the independent framework applies to one documented case. Evidence cited here falls into two categories: (A) independent expert reports whose authority derives from the producing expert or institution, not from the filing that contains them; and (B) case record filings that illustrate factual patterns to which the framework applies, but which are not legal authority for any treaty proposition. The legal authority for every proposition in this Chapter is located in the corresponding cross-referenced chapter. Any reader who finds any aspect of the case record contestable should evaluate the treaty-framework chapters on the independent authorities cited there, which are unaffected by the case record. Descriptions of all cited filings, with source-authority statements, are maintained in the IAJ evidentiary record.*

Framework Independence Notice. The evidentiary record described in this Chapter illustrates and tests the analytical framework through one maximally-documented paradigm case together with additional investigated and adjudicated records. The legal analysis in the framework chapters, and the treaty-law conclusions of this Standard, rest entirely on UNCAT text, *jus cogens*, VCLT, CAT Committee authority, and published domestic jurisprudence — none of which is contingent on any finding made or to be made in any specific litigation. The twenty-four-factor Shadow Report record (IAJ-CAT-20250919-002-PUB), the 16 additional documented cases in the IAJ Case Archive, the investigated case complexes, and the registered-complainant intake occupy different evidentiary levels. Taken together, they may supply reliable information and convergent indications warranting independent examination under Article 20; they do not, without the Committee's examination and determination, establish that a systematic practice of torture exists. Every individual torture or CIDT classification remains element-specific, and every broader pattern conclusion remains subject to examination of selection effects, alternative explanations, institutional causation, and the quality and independence of the underlying evidence. The CIDT-to-Torture gradient below is supported by independent case authority at each stage, as noted.

Cross-reference to external corroborative authority. External corroborative authority on the Chapter 13 analysis of judicial actors as public officials in official capacity is developed at Chapter 8 (Special Rapporteur on the Independence of Judges and Lawyers, Satterthwaite A/HRC/56/62, A/79/362, and A/HRC/62/43). The Satterthwaite mandate's frame is ICCPR Article 14 and the 1985 UN Basic Principles on the Independence of the Judiciary; the UNCAT public-official-element extension remains the IAJ's own doctrinal work.

A. The Medico-Legal Investigation

The IAJ record includes a medico-legal investigation informed by Istanbul Protocol documentation principles spanning 2018 to 2026 — 7+ years of federal litigation and 8+ years total. The investigation was conducted by the IAJ as an independent institutional investigation under its Istanbul Protocol methodology. That investigation concluded:

> *"This medico-legal investigation documents systematic judicial torture of a disabled person by judges and courts over a 7.5-year federal, 8.5-year total (state + federal) period of time, constituting violations of UNCAT." — IAJ Istanbul Protocol Medico-Legal Investigation Report (2025). The significance of that conclusion for present purposes is evidentiary and methodological: it reflects the IAJ's Istanbul-Protocol-*

> *based evaluation of the record. The treaty-law analysis establishing or contesting that characterization remains the task of the legal-framework chapters of this Standard.*
>
> *For avoidance of ambiguity, the quoted language is an IAJ investigative conclusion concerning the longitudinal treatment documented in that investigation. It is not a finding of the Committee against Torture, a court, or another external adjudicative body. Its use of "systematic" describes the alleged repeated and organized course of conduct within the investigated record; it does not itself establish the separate Article 20 concept of a systematic practice of torture within the territory of the State party.*

The medical evidence includes:

- **Permanent nerve damage and nerve death** in the brain and spinal cord causally linked to stress from unaccommodated litigation — independent medical expert report (IAJ record)
- **Severe immunocompromise** directly correlated with the psychological stress of coerced court participation — IAJ institutional investigation finding
- **Expert clinical opinion** confirming the conduct meets the criteria for torture under UNCAT — IAJ institutional Istanbul Protocol investigation report
- **Continuing progressive harm** documented in real time, with each accommodation denial constituting a further incremental act of CIDT graduating to torture — IAJ institutional investigation finding

The perishability of this class of evidence is itself a finding with investigative consequences. Where the infliction is wholly or partly psychological, the psychological record — contemporaneous affect, the time-locked interval between the official act and the onset of symptoms, and the functional impairment that follows — is not a secondary supplement to the physical case; where the infliction is touchless, it is the case, and it is the evidence that vanishes first: it fades from memory, loses its temporal precision as the interval lengthens, and becomes far harder to reconstruct once the coercive environment is removed. Contemporaneous documentation to the standard of the 2022 Istanbul Protocol, while recollection remains contemporaneous, is therefore a preservation duty at parity with — and often more urgent than — the preservation of physical evidence. The five-step forensic method for establishing that a documented coercive institutional act triggered physiological deterioration through a published biological pathway, anchored to the statistically established temporal window between stressor and onset, is stated in the IAJ Psychological Investigation Standard; the corresponding prosecutorial preservation duty is stated in the IAJ Memorandum and Record of Notice On the Duty of the Prosecutors in the United States under the Convention against Torture. Causation in the individual case remains a matter for expert evaluation under the Istanbul Protocol, never a presumption.

CHAPTER 20 — EXHAUSTION OF DOMESTIC REMEDIES AND STRUCTURAL FORECLOSURE

The IAJ record establishes that every available domestic mechanism has been exhausted:

- Final domestic judicial review was repeatedly sought and denied without merits engagement; the detailed petition record is maintained in the IAJ Case Archive[250]
- **Ninth Circuit appellate correction** — declared unavailable for victims of judicial torture[251] (documented in the IAJ record)
- **Declaratory relief** — inaccessible in the Ninth Circuit for this category of claim (documented in the IAJ record)
- **DOJ referral** — DOJ deferred to the Supreme Court, which declined, leaving no federal enforcement mechanism
- **State court remedies** — affected by the same systematic pattern of accommodation denial

Direct federal appeal (Ninth Circuit): an ADA Title II prospective-relief appeal dismissed as frivolous by a three-judge panel without briefing, without adversarial process, and without engaging *Tennessee v. Lane*, 541 U.S. 509 (2004); the accommodation request (stay pending remission) was denied as moot in the same order.

Exhaustion of domestic remedies is significant for two purposes: (1) although exhaustion is not an admissibility or jurisdictional prerequisite to the Article 20 inquiry procedure — which is authorized when the Committee has received reliable information containing well-founded indications of systematic torture in a State Party, subject to the Committee's own discretionary procedural assessment — the exhaustion record bears directly on the reliability of the submitted information, on the institutional character of the alleged practice, and on the demonstrated unavailability of domestic correction; and (2) it confirms that the absence of domestic enforcement is not the result of procedural failures by the complainant, but of a systematic gap between the international obligation and domestic implementation, which is itself relevant to the Committee's assessment of whether the threshold for inquiry is met.

Critical Examination 20.1: Treating Exhaustion as Proof of the Substantive Theory, or as Irrelevant to It

Two opposite errors appear. Some doctrinal counterarguments argue that the IAJ uses exhaustion to validate its substantive theory — that 'domestic remedies are blocked, therefore the conduct is torture.' The IAJ makes no such argument. Exhaustion is not an admissibility, jurisdictional, or threshold requirement of the Article 20 inquiry; the domestic-remedy record bears instead on the reliability of the information submitted, the persistence and institutional character of the alleged practice, the adequacy of the State Party's response, and the practical need for independent examination — and, where a regional petition mechanism is invoked, exhaustion operates under that body's own admissibility rules. It does not bear on the substantive characterization of the conduct. The substantive characterization follows from the five-element analysis in Chapter 13. The foreclosure record confirms that accountability, if it is to occur, must occur at the international level — the very finding the Inter-American Commission reached at the admissibility stage in Report No. 154/20. The opposite error is to treat exhaustion as wholly irrelevant to the international accountability framework. Exhaustion is relevant to the international accountability framework because it bears on admissibility, forum, and the practical assessment of whether domestic mechanisms have failed. It does not

[250] Petition and docket record (Type B — Case Record Filing; IAJ evidentiary record). Final domestic judicial review was sought and denied without merits engagement; the record includes the Supreme Court petition, docket numbers, filing dates, and dispositions, together with the underlying Court of Appeals and District Court filings. The complete petition record is maintained in the IAJ Case Archive and is accessible to treaty bodies through IAJ secure-access protocols.

[251] Case record filing (Type B — Case Record Filing; IAJ evidentiary record) in the Ninth Circuit Court of Appeals establishing that mandamus relief was sought and declared unavailable for victims of judicial torture in this context. Mandamus unavailability is independently verifiable from Ninth Circuit case law. Maintained in the IAJ Case Archive.

itself compel an Article 20 inquiry, which remains subject to the Committee's own procedural judgment; but it satisfies a threshold condition that the Committee's procedural requirements contemplate.

The five structural mechanisms documented in the severity-intent matrix (Chapter 10) and in Appendix A — Legibility Default, Epistemic Mismatch, Accommodation Splitting, Throughput Pressure, and Incapacitation Feedback — are not disability-specific pathologies. They are features of institutional design that the disability archive makes visible with the greatest documentary precision because disability produces the most traceable contemporaneous-knowledge record. The Shadow Report submitted separately to the Committee registers complainant indications of those same mechanisms operating across the other twenty-three factors in the IAJ caseload, corroborated by 500+ registered complainants, pending conclusion of IAJ investigations across the active intake. The two bodies of evidence are complementary rather than substitutive: the matrix provides mechanistic precision for conduct the Shadow Report registers at scale; the Shadow Report provides the multi-factor, multi-complainant intake that situates the matrix's mechanistic findings within a developing systematic-practice picture, pending IAJ investigation conclusions. Neither body of evidence purports to establish what the other establishes.

A note on case-archive scope and disclosure policy. The cases developed at full mechanism-analysis depth in this Standard reflect investigations the IAJ has conducted to a sufficient evidentiary standard to warrant case-level documentation in the IAJ Case Archive (published separately). Additional cases across the twenty-four-factor framework are under continuing IAJ investigation. The IAJ's disclosure policy is explicit: no case is disclosed publicly absent a declaration from the victim requesting public disclosure. The publication will be updated as additional IAJ investigations conclude — anonymized where the victim's identity must be protected, and fully disclosed where the victim has consented. The architectural claim of this section — that the Five Structural Mechanisms and the Incapacitation Feedback loop are features of institutional design rather than disability-specific pathologies — is properly grounded in the disability-archive paradigm and supported at scale by the Shadow Report's registered complainant base. Case-level mechanistic precision for additional factors will follow as investigations conclude.

Article 14 Redress Beyond the Criminal Track

Article 14 redress survives the criminal lockout, and the survival is mechanism-specific. The matrix that follows states, for each of the five Article 14 mechanisms, the domestic vehicles through which it may be pursued and the principal obstructions each meets.

Article 14 mechanism	Domestic vehicles through which it may be pursued	Principal obstructions
Restitution	Vacatur, reopening, and the restoration of status, property, custody, benefits, or legal position	Finality doctrines, jurisdictional barriers, and immunity
Compensation	State tort law; federal statutory vehicles where independently available; victim-compensation funds; express new legislation	Immunity and unavailable causes of action
Rehabilitation	Funded medical and psychological care; disability accommodation; social and legal support	No integrated statutory entitlement exists

Satisfaction	Declaratory findings, acknowledgment, correction of records, and public truth-finding	Standing and declaratory-relief barriers
Guarantees of non-repetition	Training, discipline, independent investigation, institutional reform, tracking, and reporting	Self-policing and fragmented oversight
Cross-cutting design (all mechanisms)	An independent claims mechanism separated from the challenged judiciary; formal declaration accompanying compensation; constrained recourse against the officer for corruption, intentional discrimination, or gross misconduct; systemic reporting and non-repetition data	No such architecture exists in current law

Criminal investigation and prosecution may contribute to satisfaction and to guarantees of non-repetition, but their independent legal basis lies principally in Articles 4 through 7, under the law in force when the conduct occurred, with a prospective named offence governing future conduct; Article 14 requires a redress architecture that does not depend on the availability or success of the criminal track. Each obstruction, where it forecloses an outcome, is recorded as an implementation gap; the mechanism-by-mechanism mapping is developed in The Equivalence Representation and the Ex Post Facto Lockout. The cross-cutting design elements in the final row of the matrix are the State-compensation remedial architecture proposed in the companion IAJ Investigative Finding The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America, recorded here as proposed design demonstrating that redress and decisional independence are compatible, not as current law.

The accountability side of the same architecture admits of the same summary form. The following table states, for each route a person harmed by judicial conduct may attempt, the deciding institution, the principal barrier, and the record the attempt produces; in every route the recognition question — whether any institution ever examines the conduct as an alleged human-rights violation rather than as legal error, grievance, or case management — is the question the architecture prevents from being reached. The route-by-route investigation is stated in the companion IAJ Investigative Finding The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America.

Route and decision-maker	**Principal barrier**	**Record produced**
Motion, recusal, or accommodation request — decided by the challenged court itself	Self-review; timing; deference	Order and docket entry
Appeal — appellate judiciary	Harm treated as legal error rather than rights-deprivation; preservation, harmless error, finality	Opinion or summary order
Judicial-conduct complaint — judicial self-regulator	Merits-related exclusion; confidentiality	Often confidential or minimal
Civil damages action — the courts	Absolute judicial immunity; jurisdictional doctrine	Dismissal opinion
Criminal referral — prosecutor	Practically unreviewable discretion; proof; the accountability vacuum documented in Chapter 18.H	Often no accessible record
Legislative mechanism — political branch	Institutional inertia; impeachment's practical nullity	Hearing or report, rarely produced
Independent human-rights review — civil-society and international bodies	No direct domestic execution	Public record

The effectiveness of every route above must be tested from the position of the person the remedy exists to protect. The companion Investigative Finding treats the victim pathway itself as evidence: the same disability that makes the underlying harm visible may prevent use of the mechanism offered to correct it — the litigant in documented incapacitation cannot preserve objections, meet emergency deadlines, construct the appellate record, sustain collateral proceedings, obtain counsel, or survive repeated re-filing. A pathway navigable only by a healthy, represented, well-resourced litigant may exist formally while remaining unavailable to the person whose documented incapacity the challenged conduct caused or aggravated; this is the Incapacitation Feedback mechanism operating on the remedial plane, and the denial of meaningful access is itself evidence of whether an effective remedy exists.

Preventive Remedies: Formal Availability and Structural Foreclosure

The redress track is not the only track the foreclosure architecture closes. Article 2(1) obliges each State Party to take effective legislative, administrative, judicial or other measures to prevent acts of torture, and Article 16 extends the preventive obligation to CIDT; a preventive obligation is not satisfied by post-hoc damages, by prosecution after the fact, or by any remedy whose operation presupposes that the harm has already occurred. The companion IAJ Advisory Opinion Quia Timet and the Prevention of Threatened Torture and Cruel, Inhuman or Degrading Treatment by Domestic Authorities — an advisory opinion governed by the General Comment on IAJ Advisory Opinions, and stated as IAJ institutional analysis, not adjudication — reconstructs one of the few domestic doctrines capable of the anticipatory work the preventive obligation requires: *quia timet*, the preventive-equity doctrine received into federal equity at and before the Judiciary Act of 1789 and surviving in modern preliminary-injunction practice.

The Opinion concludes that the pathway is doctrinally coherent and, as a matter of proposed doctrinal extension, theoretically available, and that it is structurally foreclosed in operation for the substantial majority of cases it would reach, by the cumulative operation of abstention, the immunity architecture — including the 1996 amendment to 42 U.S.C. § 1983 barring injunctive relief against judicial officers acting in judicial capacity absent narrow predicates — standing constraints on prospective relief, pleading-stage review, the adequate-alternatives doctrine, and the institutional reception of the petitioners the framework would most often serve.

The asymmetry is structural: the petitioner must prevail against every obstacle deployed; the government need prevail on any one. The foreclosure operates against a background of absent preventive infrastructure — the United States maintains no GANHRI-accredited national human rights institution and — not being a party to OPCAT — no National Preventive Mechanism, notwithstanding repeated treaty-body recommendations that it establish such institutions. The IAJ records the Opinion's conclusion as an equivalence-as-operation failure on the prevention track, completing the three-track picture this Standard documents: prevention, accountability, and redress, each foreclosed by its own distinct doctrinal architecture — the preventive-equity foreclosure stated in the Advisory Opinion, the two-tier jurisdictional-and-immunity foreclosure stated in this Standard, and the Article 14 obstruction mapping stated above.

Stage	Foreclosure mechanisms	Practical consequence
Characterization	Severity-threshold attack; pleading-stage review; absent clinical documentation	Claim dismissed before any prevention analysis
Imminence	Standing and ripeness; the requirement of a real and immediate threat	Documented risk treated as speculative
Ongoing proceedings	Abstention; federalism and domestic-relations resistance	Federal court declines intervention
Source of right	Non-self-execution objection; interpretive reliance mischaracterized as a treaty cause of action	International framework rejected as load-bearing authority it was never invoked to supply
Defendant and remedy	Sovereign immunity; judicial immunity and the 1996 § 1983 amendment; limits on federal equitable power	No reachable actor or authorized relief
Alternative mechanisms	Appeals, grievances, recusal, and ethics procedures asserted as adequate	Applicant channeled into slower, post-deprivation processes
Institutional reception	Pro se status; repeat-filer skepticism; vexatious designation	Merits and evidence receive diminished consideration
Cumulative operation	Multiple independent dismissal grounds deployed simultaneously	The applicant must defeat every obstacle; the respondent need prevail on one

The Opinion's method generalizes into a remedy-effectiveness audit this Standard adopts for every claimed domestic mechanism: the substantive right supporting relief; the institution holding jurisdiction; the authority that can be reached; the timing threshold; the evidence that must already exist and whether the affected person can obtain it before the harm; the abstention, immunity, finality, and exhaustion or sequencing requirements engaged; whether the mechanism can produce the required relief in time and whether that relief is enforceable; what follows when the mechanism fails; whether the failure is recorded and reviewable; and whether actual outcomes correspond to theoretical availability. Formal availability, without this audit, does not by itself establish effectiveness. The foreclosure is general, not absolute: the Opinion delimits the narrow case profiles in which relief may be attainable, and the delimitation is part of the analysis, not a concession against it.

Before the recognition audit, the remedial analysis is completed by a Right-Holder and Lever-Control Audit, drawn from the companion IAJ Law Review How to Personally Enforce the Torture Convention. A closed enforcement circuit exists where each formally available route redirects the claimant to another mechanism that is itself unavailable, discretionary, non-remedial, or dependent on legislation not enacted; the systemic question is not whether any single pathway exists in theory, but whether the pathways, taken together, give the individual allegation somewhere to receive recognition, independent examination, effective redress, and a reviewable final disposition. The audit asks, for each route:

Question	Required inquiry
Who holds the right?	The survivor, complainant, witness, or affected family member to whom the entitlement runs
Who controls initiation?	Survivor, prosecutor, court, legislature, State, or international body
What may the right-holder initiate, invoke, request, or obtain under applicable law?	Receipt, acknowledgment, examination, hearing, reasons, review
What remains discretionary?	Charging, treaty opt-ins, legislative enactment, international referral
Who can supply the remedy?	Court, claims body, State, legislature, disciplinary authority
Is non-action reviewable?	Judicial review, mandamus, appeal, external oversight — or

	none
What record survives?	Intake record, investigative record, disposition, referral, public finding
What happens if every lever declines?	The residual implementation gap — direct Article 19 evidence; contextual and enabling-architecture evidence relevant to Article 20

Applied to the record this Part documents, the audit returns the finding the companion Review walks step by step: at each route the right-holder may be able to initiate or request action, but the decisive disposition — the charging decision, the treaty opt-in, the legislative cure, the final remedial authority — remains controlled by another institution the right-holder cannot command; and the residual gap is direct Article 19 implementation evidence and contextual, enabling-architecture evidence relevant to Article 20, without itself establishing that torture is being systematically practised. The companion publication names this audit's terminal condition Forum Nullus — the IAJ's proposed doctrine, not a presently recognized rule — and demonstrates its self-immunizing character across both the appellate-writ and collateral-suit scenarios.

A Dignity-Implementation Audit completes the remedial analysis of this Chapter. The five textual features by which the companion IAJ Law Review The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment and its companion workbook benchmark the paradigm dignity order — foundational placement, inviolability, an affirmative respect-and-protect duty, direct binding operation, and entrenchment — translate, for compliance purposes, into audit questions any implementation inquiry can apply; this Standard adds the sixth, operational question the Convention itself supplies. Applied to the United States, the audit returns the Plane B condition documented across Part V: dignity is not foundational but interstitial, not inviolable but balanceable, is subject to no freestanding federal clause imposing a general affirmative respect-and-protect duty, operates directly only where another guarantee carries it, carries express textual dignity guarantees only sub-federally, and is serviced by the remedial architecture whose foreclosure Chapters 18 and 20 record.

Feature	**Audit question**
Foundational status	Is dignity treated as an organizing constitutional value or merely incidental language?
Inviolability	Can the protection be balanced away against finality, efficiency, institutional comity, or security?
Respect-and-protect duty	Must the State only refrain from violation, or must it also prevent and remedy violations?
Direct operation	Can a person invoke the norm before a competent body?
Entrenchment	Can ordinary political or judicial processes narrow the protection?
Remedy (operational)	What prevention, investigation, compensation, rehabilitation, accountability, and non-repetition mechanisms actually follow? (CAT General Comment No. 3)

The audit is a diagnostic instrument, not a scoring of human-rights performance: a jurisdiction's answers locate its Plane B recognition architecture, and the Plane A obligation is owed identically across every answer.

The Limits of Finality, Fraudulent Res Judicata, and Judgments Connected to Torture or CIDT

Finality is an important component of legal certainty, but international, regional and domestic legal systems do not treat it as absolute. Different systems provide exceptional mechanisms — review, reconsideration, reopening, retrial, setting aside, non-recognition, cessation of continuing effects, compensation and other reparation — where specified fundamental defects undermine the integrity or legitimacy of an earlier adjudication. The governing consequence depends on the applicable system, the nature of the defect, the subject matter of the proceeding, and the remedy necessary to prevent continuing injustice.[252]

In *Almonacid Arellano v. Chile* the Inter-American Court of Human Rights held, in the context of criminal accountability for crimes against humanity, that *ne bis in idem* "is not an absolute right" and is not applicable where the court intended to shield the accused, where "the proceedings were not conducted independently or impartially in accordance with due procedural guarantees," or where "there was no real intent to bring those responsible to justice," and that a judgment rendered in those circumstances produces only an "apparent" or "fraudulent" *res judicata* (¶154). The Court grounded that doctrine in Rome Statute article 20, ICTY Statute article 10 and ICTR Statute article 9. Rome Statute article 20(3) permits proceedings notwithstanding a prior national adjudication where the national proceeding was for the purpose of shielding the person concerned, or where it was both not conducted independently or impartially and conducted inconsistently with an intent to bring the person to justice. These authorities concern international crimes and criminal accountability; they do not establish that every serious procedural or ethical violation automatically nullifies every resulting civil or criminal judgment.

The IAJ records openly that these authorities address finality operating in favour of an accused, whereas the conduct this Standard documents involves finality operating against a victim. The IAJ does not treat that difference as immaterial and does not conceal it. Its position is that the operative principle in each instrument is not who benefits but that a tribunal lacking independence or impartiality did not adjudicate — a proposition indifferent, on its own terms, to which party the defect favoured. The extension of that principle from the criminal-accountability setting to a civil proceeding is the IAJ's own analytical work and is identified as such.

The IAJ derives from those authorities the principle that a proceeding fundamentally corrupted by the absence of genuine independence or impartiality cannot claim conclusive finality where doing so would institutionalise impunity. The authorities do not themselves hold that every tribunal affected by partiality did not adjudicate, and they do not decide the civil-victim application. That derivation, and its extension from the criminal-accountability setting to a civil proceeding, are the IAJ's own analytical work and are identified as such.

[252] The authorities relied upon in this section, in full: *Almonacid Arellano et al. v. Chile*, IACtHR, Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 September 2006, Series C No. 154, ¶¶ 154–155; Rome Statute of the International Criminal Court, arts. 17(2)(c) and 20(3), 17 July 1998, 2187 U.N.T.S. 90; Statute of the International Criminal Tribunal for the former Yugoslavia, art. 10(2)(b); Statute of the International Criminal Tribunal for Rwanda, art. 9(2)(b); *Othman (Abu Qatada) v. the United Kingdom*, App. No. 8139/09 (ECtHR, Fourth Section, 17 January 2012, final 9 May 2012), ¶¶ 259, 265, 267 and 282; *In re Pinochet* [1999] UKHL 1, [2000] 1 A.C. 119 (H.L.), reasons of 15 January 1999; Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 4(2), ETS No. 117; Committee of Ministers Recommendation No. R (2000) 2, adopted 19 January 2000; *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12, General List No. 128, 31 March 2004, ¶¶ 138–141 and ¶ 153(9); *Medellín v. Texas*, 552 U.S. 491 (2008); and *Prosecutor v. Furundžija*, ICTY Trial Chamber, IT-95-17/1-T, Judgment of 10 December 1998, ¶ 155.

Other authorities show different manifestations of the same non-absoluteness. In *Othman (Abu Qatada) v. United Kingdom* the European Court of Human Rights held that admitting evidence obtained by torture would make a criminal trial "not only immoral and illegal, but also entirely unreliable in its outcome," and would be a flagrant denial of justice (¶267). That establishes the fundamental illegitimacy and unreliability of a proceeding dependent on torture evidence; it does not itself prescribe a reopening procedure for an already final judgment. In *In re Pinochet* [2000] 1 AC 119 the House of Lords exercised an inherent jurisdiction it described as "unfettered" to set aside its own completed order because judicial disqualification had produced an unfair procedure — while stating expressly that it would not reopen an appeal save where, through no fault of a party, that party had been subjected to an unfair procedure, and not merely because the earlier decision was later thought wrong.[253]

Protocol No. 7 to the European Convention, article 4(2), supplies a regional criminal-law example, permitting reopening where new facts emerge or a fundamental defect in the earlier proceeding could have affected its outcome; it is permissive in terms and confined to criminal proceedings. Committee of Ministers Recommendation No. R (2000) 2 recommends domestic mechanisms for re-examination or reopening following judgments of the European Court, and is a non-binding regional recommendation. In *Avena* the International Court of Justice required effective review and reconsideration of affected convictions and sentences; *Medellín v. Texas*, 552 U.S. 491 (2008), held that judgment not directly enforceable in United States courts absent implementing legislation. The pairing illustrates the Two-Plane Framework: the obligation exists on Plane A even where domestic doctrine withholds a directly enforceable mechanism on Plane B.

No cited authority establishes a universal rule that every serious judicial-ethics violation renders every resulting judgment void *ab initio*, and this Standard asserts none. The IAJ independently determines, as a matter of human-rights jurisprudence, that finality may not operate as the terminal mechanism of impunity where a judgment: (1) relies materially on statements or evidence obtained by torture; (2) orders or authorises conduct satisfying the legal elements of torture; (3) is produced through knowing judicial participation in or acquiescence to torture; (4) continues or enforces the effects of torture while foreclosing every effective avenue of cessation, investigation, accountability and reparation; or (5) operates to shield responsible persons through proceedings lacking genuine independence, impartiality, or intent to provide accountability.

The peremptory prohibition supports that determination with particular force as to torture. *Prosecutor v. Furundžija* states that the *jus cogens* prohibition "serves to internationally de-legitimise any legislative, administrative or judicial act authorising torture" (¶155). That holding does not prescribe a domestic reopening procedure or decide the *res judicata* effect of any particular judgment. It does establish that judicial form cannot confer international legitimacy on torture.

[253] Bianchi, A. "Immunity versus Human Rights: The Pinochet Case." European Journal of International Law 10(2), 237–277 (1999). DOI: 10.1093/ejil/10.2.237. — RELEVANCE: Supports the anti-impunity principle — developed in the Pinochet context — that grave human-rights violations resist immunity-based foreclosure; cited for that principle, not as a holding on U.S. domestic judicial immunity. Establishes that 'human rights atrocities cannot be qualified as sovereign acts: international law cannot regard as sovereign those acts which are not merely a violation of it, but constitute an attack against its very foundation and predominant values.' Municipal courts have both the right and duty to complement international tribunals. — AUTHORITY: Bianchi (Graduate Institute, Geneva) analysed the three Pinochet decisions of the UK House of Lords. For the first time in international history, a former head of state was held accountable before a municipal court for torture allegedly committed in office. Bianchi argues the divide within the Lords revealed a fundamental tension: if torture on a large scale is a *jus cogens* norm, no treaty or customary rule including immunity can derogate from it. His critical argument: acts violating *jus cogens* cannot be shielded by immunity because they do not constitute legitimate exercises of sovereign authority. The IAJ applies Bianchi's anti-impunity reasoning by analogy to domestic judicial-immunity architecture. Bianchi does not decide U.S. judicial immunity; it supports the broader proposition that official-form doctrines cannot define away peremptory-norm violations on the international plane.

The IAJ separately determines that the same anti-impunity principle applies to qualifying cruel, inhuman or degrading treatment where finality would eliminate every effective avenue of investigation, cessation, proportionate accountability, State responsibility and victim redress. That CIDT determination rests on the absolute and non-derogable character of the prohibition and is stated as the IAJ's jurisprudential determination, not as a holding of *Furundžija* or of any other single tribunal.

The procedural response required in a given system may be review, reconsideration, reopening, appeal, annulment, non-recognition, an independent proceeding, cessation of continuing effects, compensation, rehabilitation or another effective remedy. What the governing human-rights standard does not permit is the use of res judicata or finality to convert torture or qualifying CIDT into a legally protected and consequence-free institutional act.

Systemic Defect and the Voidability of Judgments

This section states an IAJ jurisprudential determination and, in its remedial consequence, a proposed doctrine. It is not presented as an existing rule of any legal system.

The preceding section addresses defects operating in a particular proceeding. This section addresses a distinct proposition resting on a different premise.

Where a judicial system structurally produces, perpetuates, reinforces and rewards conduct meeting the elements of cruel, inhuman or degrading treatment, and that structural defect was operative in the particular proceeding — the litigant belonging to the affected class, the documented mechanism engaged, and the defect bearing upon the outcome or upon the litigant's capacity to obtain one — the IAJ determines, as a matter of human-rights jurisprudence, that the resulting judgment is voidable *ab initio*: liable to annulment with effect from its inception rather than prospectively only, at the instance of the affected party, before a forum competent to make that finding.

Where no competent and independent forum exists, the absence of a procedural vehicle is not merely the condition the Institute documents. It is itself part of the State's continuing failure to provide effective protection and remedy, and it requires legislative or institutional correction. The determination is stated as an IAJ jurisprudential determination and, in its remedial consequence, as a proposed doctrine; it is not presented as an existing rule of any legal system.

Two findings, concurrent and independent. The systemic determination operates upon the judgment. It does not, of itself, establish the responsibility of any individual judicial officer, which requires its own findings on its own evidence. Nor does it shield one. The registers that follow are kept separate, and each is stated on its own source; the earlier formulation, which ran them together and attributed all three to the State-responsibility articles, is withdrawn.

(a) No immunity. The IAJ independently determines, as a matter of human-rights jurisprudence, that where the elements are met judicial immunity falls away absolutely and is never available for a wrong of this character. That determination is the IAJ's own; it is not presented as the holding of any tribunal or as settled international law. Below the threshold, immunity legitimately shields the honest or erring judicial officer who does not otherwise engage individual liability, and reparation runs against the State. The honest judge is protected by the threshold, not by any inquiry into the adequacy of alternative fora. Where no alternative forum in fact exists, that absence is not a case-level immunity question; it is foreclosure. Systemic foreclosure is not only the absence of a forum but the absence of equivalence — of an architecture that in operation delivers prevention, protection, remedy, relief, and punishment, with zero immunity and zero limitation period once torture or CIDT is shown — and where systemic foreclosure is established, the threshold is decisive.

(b) Torture, criminal. Where the conduct constitutes torture, articles 4 to 7 of the Convention impose criminalisation, jurisdiction, custody and the obligation to prosecute or extradite. The source is the treaty text.

(c) Qualifying cruel, inhuman or degrading treatment. The consequences for qualifying CIDT are stated in four tiers, each separately sourced and separately classified, so that no tier borrows the authority of another.

Tier 1 — treaty text. Article 16(1) of the Convention extends articles 10, 11, 12 and 13 to cruel, inhuman or degrading treatment not amounting to torture, with the substitution of references. The obligations of prompt and impartial investigation and of an effective right to complain are therefore mandatory for qualifying CIDT in the same terms in which they bind for torture. Article 16(1) does not extend articles 4 to 7, which govern criminalisation, jurisdiction, custody and the obligation to prosecute or extradite in respect of torture.

Tier 2 — treaty-body interpretation. The Committee against Torture interprets the redress obligation of article 14 as extending to victims of cruel, inhuman or degrading treatment as well as of torture[254]. Redress, rehabilitation and compensation are accordingly owed for qualifying CIDT as a matter of the Committee's authoritative interpretation, which is distinct from the treaty text and is marked as such.

Tier 3 — professional and implementation guidance. The Guidelines on the Role of Prosecutors direct prosecutors to give due attention to the prosecution of crimes committed by public officials, and, where evidence is obtained through unlawful methods constituting a grave violation of human rights and especially involving torture or cruel, inhuman or degrading treatment, to refuse to use that evidence against anyone other than those who used such methods, or to inform the court accordingly, and to take all necessary steps to ensure that those responsible are brought to justice[255]. The Istanbul Protocol states that offenders should be subject to criminal proceedings where an investigation establishes that an act of torture appears to have been committed and provides sufficient, admissible evidence of individual culpability, that penalties should take into account the grave nature of the acts, and that no statutes of limitation should apply[256]. The Protocol is an official United Nations publication and an internationally recognised investigative standard; it is not treaty text, its own publication notice records that its findings, interpretations and conclusions are those of contributors in their individual capacities and do not necessarily reflect the views of OHCHR, the United Nations, its officials or Member States, and it does not amend article 16.

Tier 4 — IAJ determination. The IAJ independently determines that qualifying cruel, inhuman or degrading treatment may not be rendered consequence-free by the absence from the Convention text of an express criminalisation duty, and must receive effective investigation, accountability, proportionate sanction, State responsibility and victim redress. Where presently applicable domestic offences cannot deliver proportionate accountability for such conduct, the IAJ determines that the State's obligation to give effect to the prohibition requires the enactment of adequate offences. That is stated as the IAJ's jurisprudential determination and, in its legislative consequence, as proposed reform; it is not presented as an existing requirement of the Convention text.

(d) State responsibility and reparation. The conduct of a judicial organ is attributable to the State, which owes cessation and full reparation; the redress obligation runs under article 14

[254] Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, CAT/C/GC/3, ¶¶ 1–2.

[255] Guidelines on the Role of Prosecutors, Havana, 1990, U.N. Doc. A/CONF.144/28/Rev.1, guidelines 15–16.

[256] Istanbul Protocol (2022 ed.), HR/P/PT/8/Rev. 2, ch. I, ¶ 10 (m).

of the Convention as interpreted in General Comment No. 3, and under article 2(3) of the International Covenant on Civil and Political Rights[257]. The sources are customary State-responsibility law, treaty text, and treaty-body interpretation.

(e) Individual criminal responsibility. Individual criminal responsibility arises under applicable domestic or international criminal law, and not under the State-responsibility articles themselves.

(f) Personal civil liability. Personal civil liability is available only where a domestic or international cause of action exists — for example the Torture Victim Protection Act [258] — and is neither created nor guaranteed by international law.

The concurrence proposition is stated once and correctly. Article 58 of the International Law Commission's Articles on State Responsibility provides that those articles are without prejudice to the individual responsibility under international law of any person acting on behalf of a State, and the European Court of Human Rights, setting out that provision in *Jones and Others v. the United Kingdom*, described it as clarifying the position in respect of simultaneous individual responsibility[259]. Neither provision creates a cause of action. State and individual responsibility are concurrent and complementary, never alternatives: the State's answering never absolves the individual, and the individual's answering never absolves the State.

Repetition and the honest-error premise. The absolute immunity doctrine rests on the premise that a judge may err honestly and must be free to decide without fear of personal suit. Repetition after sufficiently specific and reliable notice may rebut the inference of honest error, particularly where the officer held the authority and a meaningful opportunity to prevent recurrence and nevertheless engaged the same documented mechanism against a further member of the same identified class. It does not by itself establish intent, prohibited purpose or bad faith, each of which requires independent proof on the elements. Where the IAJ's investigations identify recurrence by the same judicial actors, that record establishes the structural rather than incidental character of the mechanism. This Standard describes the pattern; it does not name individual officers, whose classification is a separate determination made on the elements, on a documented record.

Scope and limits. This determination does not affect judgments of the same system in which the structural defect was not operative, and does not disturb reliance interests acquired in good faith by third parties. The systemic finding rests on an independent evidentiary base — the IAJ's Istanbul Protocol investigations, the multi-victim comparative record, and the convergent indications assessed under article 20 — and not upon the judgments whose validity is in question. The extension of the systemic analysis to the civil-adjudicative setting is the IAJ's own doctrinal work.

Third-party reliance interests. Reliance interests acquired in good faith by third parties may shape remedy design, sequencing, compensation, notice, transition arrangements, and the protection of innocent parties. They may not continue torture or cruel, inhuman or degrading

[257] International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), arts. 4, 30 and 31; Convention against Torture, art. 14, as interpreted in general comment No. 3 (2012); International Covenant on Civil and Political Rights, art. 2(3).

[258] Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992), codified at 28 U.S.C. § 1350 note, § 2(a). The Act reaches conduct under actual or apparent authority, or colour of law, of a foreign nation only, and § 3(b) carries a custody or physical-control limiter absent from article 1 of the Convention; neither feature is read back into the treaty. The term "individual" was chosen so that foreign states and their entities could not be sued: S. Rep. No. 102-249, at 7 (1991).

[259] International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), art. 58; *Jones and Others v. the United Kingdom*, App. Nos. 34356/06 and 40528/06 (ECtHR, 14 January 2014), ¶¶ 109, 207 and 212. At ¶ 109 the Court sets out Article 58 as clarifying the position in respect of simultaneous individual responsibility; at ¶¶ 207 and 212 it treats the criminal line of Pinochet as distinguishable from the civil-immunity question. The IAJ records that the disposition in *Jones* upheld immunity, and records that disposition as a documented divergence from the requirements of the peremptory norm, not as a qualification of the IAJ's determination.

treatment, preserve its harmful effects, leave the victim exposed to ongoing harm, or deny an effective remedy. Where those limits and a reliance interest cannot both be honoured, the reliance interest yields, and the remedial design addresses the third party by compensation or transition rather than by leaving the violation in place.

CHAPTER 21 — ARTICLE 20: CONVERGENT INDICATIONS AND THE EVIDENCE ARCHITECTURE

IAJ Shadow Report to the CAT 83rd Session — September 2025

The IAJ submitted its Preliminary Shadow Report (IAJ-CAT-20250919-002-PUB) to the Committee Against Torture on 19 September 2025, requesting initiation of a confidential Article 20 inquiry into systemic judicially-facilitated torture and CIDT in the United States. The September 2025 Report identified 24 systemic factors. The IAJ's intake — updated to March 26, 2026 — comprises 500 registered complainants and more than 60 third-party reports since August 2025, and confirms the pattern the Report documented. The majority of complaints concern family court and child protective services conduct, including coercive parent–child separation, denial of medical accommodations, and retaliation for assertion of legal rights. The IAJ requests that the CAT hold the inquiry open to accommodate the continuous live feed of verified cases. All 24 factors are assessed in this Chapter and in Appendix B. The Article 20 threshold is the systematic practice of torture; the documented CIDT record is presented as evidence of the continuum, recurring mechanisms, escalation, official notice, and acquiescence relevant to that inquiry, not as an independent jurisdictional basis.

The systemic frame and what it can prove. The IAJ's submissions to the Committee are systemic complaints, and the systemic frame changes the object under examination. The question is not only whether one official committed an isolated act against a person in formal custody. It is whether an institutional system, acting through repeated official decisions and common mechanisms, placed a person in a condition of functional powerlessness, continued causing severe suffering after notice, prevented exit, suppressed complaint, and eliminated correction and remedy. Examined at that level, the systemic frame can materially support findings of: functional powerlessness or control outside a prison; cumulative severity, in place of transaction-by-transaction minimization; institutional rather than accidental causation; intent and prohibited purpose inferred objectively from repeated operation after notice; official consent, acquiescence, tolerance, or failure of due diligence; discrimination embedded in standard practices; the defeat of the lawful-sanctions justification; the failure of the prevention, investigation, complaint, protection, and redress duties; and reliable indications warranting an Article 20 examination. General Comment No. 2 supports this direction: the Committee describes its understanding of effective prevention as continually evolving, recognizes that the conditions giving rise to ill-treatment frequently facilitate torture, extends the obligations across any territory or facilities under a State's de jure or de facto control, and holds the State responsible where its officials fail to exercise due diligence against harm by private actors — while preserving Article 1's elements throughout.[260] The Committee has also found an Article 16 violation outside any prison or interrogation setting: its finding of official acquiescence in the destruction of a Roma settlement in *Hajrizi Dzemajl et al. v. Yugoslavia*, Comm. No. 161/2000 — recorded earlier in this Standard with its attribution discipline — defeats any categorical equation of the Convention with prison custody. Two guards hold throughout. A single act may be torture: the adopted definition contains no systematicity element, and the record of the United Kingdom's rejected proposal to require systematic infliction stands as this Standard states it. And systemic evidence helps prove the elements; it never replaces them. Each finding in this enumeration answers, point for point, a standard objection to the non-custodial application — minimization, absent intent, absent purpose, isolated error, private conduct, lawful sanctions, and the custody equation.[261]

A. Convergent Indications Warranting Independent Examination

Article 20(1) authorizes the Committee to initiate a confidential inquiry when it "receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party." The IAJ's analytical position is that the 24 factors supply reliable information and well-founded indications warranting an Article 20 inquiry on four convergent grounds set out below; the IAJ does not assert that the formal systematic-practice threshold is itself established, but that the convergence of these four grounds is sufficient to support the inquiry the Article 20 framework contemplates.

The verification discipline the IAJ applies to this evidence architecture is the discipline its comparative instruments model. The companion 197-jurisdiction workbook to the IAJ Law Review The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment records, for every row, the source relied upon, the operational status of the instrument, and a per-row confidence rating, and the corrections its verification passes documented teach four rules this Standard adopts for every implementation finding: read the actual provision relied upon; exclude false positives that protect office, prestige, or institutional decorum rather than the human person; determine whether the text relied upon is currently in force; and examine operative jurisprudence as well as enacted wording. The IAJ applies the same verification principles in assessing the implementation record: the underlying source, operational status, institutional practice, available remedy, source quality, and inferential bridge are to be identified and tested separately, with the detailed evidence register maintained in the companion investigative materials, so that the Committee may test each link independently. The operative structure is the four-plane imputation method carried in the companion IAJ Law Review How to Personally Enforce the Torture Convention: for each alleged implementation failure, the binding standard, the administered reality, the documented divergence, and the imputation to the named duty-bearer are stated as linked registers, each carrying its evidence and its consequence.

[260] Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2 (2008), ¶¶ 3–4, 7, 18.

[261] The mapping, objection by objection: "the harm is not severe — each ruling is ordinary" → cumulative severity, refusing transaction-by-transaction minimization; "no intent" → intent inferred objectively from repeated operation after notice; "no prohibited purpose" → discrimination embedded in standard practices; "isolated error by a good-faith judge" → institutional rather than accidental causation, with the gateway protecting the honest judge; "not official conduct" → consent, acquiescence, tolerance, or failure of due diligence; "lawful sanctions" → the systemic record defeats the justification; "not custody" → functional powerlessness outside a prison; "no forum" → reliable indications warranting an Article 20 examination.

Three categories are kept distinct in what follows, and neither this Chapter nor the corpus lets one borrow the proof of another: enabling architecture — the rules that obstruct detection, investigation, remedy, and accountability; pattern evidence — documented instances showing repetition, organization, and official knowledge or acquiescence; and the Article 20 inference of systematic practice, which only the Committee draws. A remedial defect does not itself prove systematic practice; it explains how such practice could persist undetected — which is why the foreclosure findings of Parts III through V enter this Chapter as enabling architecture, not as the inference. Independent corroboration exists outside this corpus at both levels: the Inter-American Commission's admissibility finding in Report No. 154/20 that no effective remedy was available in the United States to survivors of the CIA program (¶¶ 22–23), and the paired verbatim record — the United States' commitments to the Committee set against the Committee's contradicting findings, 1999 through 2021 — catalogued as a self-contained evidentiary reference in Appendix A of the companion IAJ Law Review How to Personally Enforce the Torture Convention, verified against the primary United Nations and United States Government sources from the same CAT-record module on which this Standard draws.

The capacity observation of the companion Review governs the IAJ's own role in this architecture. For the mechanisms that accept information or petitions from individuals, standing is not the scarce resource — no organization's sponsorship is a jurisdictional prerequisite; the inter-State, contentious, and advisory procedures, by contrast, are not individually invocable at all. Capacity is: preserving evidence, corroborating allegations, coding recurring mechanisms, connecting individual files to a documented pattern, maintaining continuity after individual proceedings end, stall, or prove ineffective, and presenting the record in a form capable of independent examination. That is what the IAJ archive supplies to the Article 20 record; it manufactures neither the underlying right nor the individual's ability to supply information, and it confers no standing the individual does not already hold. The independence architecture of that role is stated in the companion publication's dedicated analysis: an investigation neither appointed, funded, scoped, nor adjudicated by the institution investigated. The IAJ concludes that a court-controlled expert mechanism — including a court-appointed expert under Federal Rule of Evidence 706 — ordinarily cannot supply the structural independence the Istanbul Protocol requires where the court's own conduct is under investigation, particularly where the court controls appointment, scope, evidence access, funding, or disposition of the findings; a mechanism carrying enforceable safeguards that remove those forms of institutional control must be assessed on its actual structure.

The evidence architecture accordingly runs in five distinguishable layers, and the companion publication's National Evidentiary Record supplies the layer this Standard could not supply from its own investigations. First, the primary investigated case complexes, documented under the IAJ's Istanbul Protocol methodology. Second, independent adjudicated examples — published Supreme Court, circuit, and state accommodation decisions assembled in the companion's Record, evidence generated by the courts themselves and independent of any IAJ investigation. Third, government enforcement records. Fourth, the structural enforcement absences documented on the bounded searches. Fifth, the Article 20 inference, drawn from the layers together and never from any single one. The layered record answers directly the objection that the framework arises from one complainant or one institutional conflict: the second and third layers exist independently of the IAJ and document materially similar accommodation-denial, exclusion, and remedial-foreclosure mechanisms; whether any instance constitutes torture, cruel, inhuman or degrading treatment, or evidence of systematic torture remains an element-specific determination. The investigative methodology by which these convergent indications are produced and recorded is set out at Appendix D.

The international mechanisms are mapped by function, so that international recognition is never mistaken for individual domestic enforcement:

Mechanism	What it can do	What it cannot ordinarily do for the individual
CAT Article 22	Decide individual communications where the competence is accepted	The United States has not accepted the procedure
CAT Article 20	Undertake a confidential inquiry upon reliable information containing well-founded indications that torture is being systematically practised	Decide the individual claim or award compensation
CAT Article 21	Inter-State communication and conciliation where accepted	Provide an individually invocable or binding judgment
CAT Article 30 / ICJ	Resolve inter-State disputes where jurisdiction exists	The United States reserved against compulsory Article 30(1) jurisdiction, and an individual cannot initiate the procedure
Special Procedures	Receive allegations, communicate with States, report publicly	Compel domestic relief
Inter-American Commission	Receive individual petitions; issue findings and recommendations	Produce a binding Inter-American Court judgment against the United States, which has not accepted that Court's contentious jurisdiction
ICJ advisory opinion	Clarify international law on request of an authorized UN organ	Be requested by an individual — only an authorized United Nations organ or agency may request it — and the opinion, though legally authoritative, does not bind

The unaccepted or non-remedial character of the optional procedures is not itself a breach (Chapter 17); the map records why no external avenue substitutes for the unimplemented domestic duties.

First, the "policy-based" qualifier that appears in 18 of the 24 factors supports a strong inference of institutional rather than individual character. These are not individual acts of misconduct — they are described by their proponents as institutional policies. A policy framing is, by its express terms, institutional rather than aberrational. The Committee's own jurisprudence has identified official policy as a strong indicator relevant to the Article 20 inquiry into whether information warrants independent examination of systematic practice.

Second, the three-level architecture (direct harm + facilitation + impunity, operating simultaneously across multiple institutional settings) describes the kind of interlocking system that the Article 20 inquiry framework is designed to examine. No single factor by itself warrants such examination; their convergence across Level 1, 2, and 3 supplies the convergent indications that warrant independent Article 20 inquiry.

Third, the alleged absence or ineffectiveness of domestic remedies across the 24 factors, supported at the intake level by 500+ registered IAJ complainants and by completed case-specific investigations where available, supports inquiry into whether the violations are institutional rather than aberrational. When a state's legal architecture provides no effective remedy for a category of official conduct, the absence of remedy is itself evidence that the conduct is officially tolerated, which is the kind of evidence the Article 20 framework treats as warranting independent inquiry into whether the practice is systematic.

Fourth, the IAJ's investigated case archive supplies mechanism-level evidence to the convergent indications warranting independent examination under Article 20. The IAJ's independently investigated case complexes — spanning state family courts and federal courts in multiple states, and including a completed Istanbul Protocol investigation, a preliminary investigation of a parental-termination and courthouse-arrest record, a court-induced-disability record with no pre-existing dire conditions, and documented federal litigation records — each independently document the five structural mechanisms operating in different courts, different states, different procedural stages, and different classes of complainant. The completed investigation records active attorney-instigation of the discriminatory judicial conduct (see Chapter 13.B above).

The court-induced-disability record establishes the cleanest causal inference in the archive: no pre-existing dire conditions; all documented aggravated disabilities developed as a direct result of the proceedings. The investigated family-court records add indigenous and racial dimensions to the Article 1 discriminatory-purpose element. In addition, a documented multi-year sub-record in the IAJ archive adds a cross-56-judge institutional-consistency dimension: a complete state and federal litigation history spanning 2018 to 2026, involving more fifty-six named judges of state and federal courts, all producing the same pattern: accommodation denied, ADA claims foreclosed pre-merits or dismissed on procedural grounds, disability never examined substantively. This sub-record is not a statistical inference from a sample. It is a complete documented record of every state and federal case across the period, and it adds a cross-56-judge institutional-consistency dimension to the mechanism-level evidence supplied independently by the other investigated records.

The consistency of the pattern across fifty-six different judges operating in different cases at different procedural stages supports a reasonable inference of institutional rather than isolated causation. The IAJ records that uniform outcomes across fifty-six actors are not by themselves dispositive proof of systematic practice under Article 20(1); alternative explanations — recurring procedural posture, shared deficiencies in claim framing, common standing or jurisdictional doctrines, law-of-the-case and preclusion effects, and common institutional guidance — must be assessed in any inquiry the Committee may undertake. With that calibration stated openly, the IAJ records that the investigated case archive is probative mechanism-level evidence supporting an Article 20 examination: it cannot be dismissed as statistical artifact, selection bias, or representational distortion — it is a set of independently investigated case complexes documented at full IAJ investigative depth, in which the same mechanism-level pattern recurs across the complainants, judges, courts, jurisdictions, and procedural contexts it encountered. The Committee, not the submitting organization, ultimately determines whether the systematic-practice criterion is met.

This mechanism-level evidence is architecturally paired with the Shadow Report's multi-complainant record: 500+ registered IAJ complainants across Factors 2, 3, 4, 8, 9, and 10 provide the multi-factor, multi-institutional pattern evidence that the investigated case archive documents at the mechanism level. The two bodies of evidence are complementary rather than cumulative: the investigated case archive supports the inference that the mechanism operates as institutional rather than individual conduct; the Shadow Report's live-update pointing to an increasing 500+ registered-complainant record provides corroborating pattern evidence that the mechanism is not confined to the disability archive. Together they supply convergent indications warranting independent examination of whether the practice meets the Article 20 systematic-practice criterion.

The relationship between these two bodies of evidence is methodological, not merely cumulative. The documented disability-in-court record compiled in *Harmonizing the Architecture of Disability Rights* — twenty independent adjudicated decisions and Department of Justice enforcement actions across multiple jurisdictions and decades — and the IAJ's own investigated case complexes together provide institutional-character evidence: they support the inference that the five mechanisms operate as design features rather than individual aberrations, because they recur across multiple independently IAJ-investigated complainants and that documented record, in multiple jurisdictions over multiple decades, with consistent pattern.. The Shadow Report's 500+ registered complainants establish corroborating intake-level pattern evidence at the level of allegation — documenting those same design features across twenty-four factor categories, pending completion of IAJ investigations. Institutional-character evidence does not substitute for factor-specific evidence; factor-specific evidence does not make institutional-character evidence redundant. The two together supply reliable information and well-founded indications warranting independent examination under Article 20; the IAJ does not assert that the Article 20 systematic-practice threshold is itself established, but that the convergence of mechanistic and pattern-level evidence is sufficient to support an Article 20 inquiry.

> DIGNITY ALIGNMENT TEST — Chapter 21 Article 20 Significance: This is a normative check that informs object-and-purpose analysis; it does not substitute for treaty elements, evidentiary proof, causal analysis, or the Committee's determination. THESIS POSITION: A documented pattern of identical outcomes across 56 judges in these state and federal proceedings over 8.5 years — producing uniform denial of accommodation through what the IAJ argues is institutional design — supplies convergent indications warranting independent examination under Article 20(1). | ADVERSARIAL COUNTER: Each judge exercised independent judgment according to applicable law; the outcomes may reflect consistent application of legitimate legal doctrines, not a torture policy. | DIGNITY DERIVATION: UDHR Article 1 states that all human beings are born "free and equal in dignity." Universality means that a system that systematically denies recognition of dignity to one category of persons is in tension with the foundational principle, regardless of how many individual actors implement that system. The dignity principle does not by itself prove that fifty-six judges acted under common institutional design rather than independent application of common doctrines — that question is an empirical and causal one for the Committee's Article 20 inquiry. The dignity principle does, however, inform the framing of the inquiry: if convergent indications point to institutional rather than individual causation, the Article 20 framework is the proper instrument for that examination, and dignity-as-object-and-purpose supports a generous rather than narrow reading of what triggers the Article 20 inquiry. The IAJ records the alternative explanations — recurring procedural posture, shared deficiencies in claim framing, law-of-the-case effects, and common institutional guidance — that must be assessed in any Article 20 examination, and does not assert that the dignity principle resolves the empirical question that examination would address.

For the record, in December 2024, formal communications by victims were submitted to United Nations Special Procedures mandate-holders covering disabilities, displaced persons, elderly, freedom of expression, health, independence of judges and lawyers, justice / truth / reparation, peaceful international order, racism, international solidarity, adequate standard of living, torture, and women's rights. The IAJ, established electronically August 4, 2025, has adopted those submissions as part of its institutional record. Those submissions followed exhaustion of all domestic remedies (documented in Chapter 20) and were preceded by independent analysis arriving at conclusions substantially identical to those of the Committee's 2014 Concluding Observations (CAT/C/USA/CO/3-5) — before discovery that the Committee had independently reached the same findings. Independent convergence between that analysis and the Committee's authoritative conclusions, reached without knowledge of each other, strengthens confidence that those conclusions are not an artifact of a single investigator's framing; it corroborates them without itself establishing every factual or legal conclusion. This Standard therefore is not only preparatory to a potential submission — it supports a documented record of communications already lodged with United Nations mechanisms, to which this analysis is primarily addressed.

The integrity of the State's response record may itself supply evidence relevant to an Article 20 examination. A declination, closure notice, or implementation-gap memorandum is not presumptively reliable merely because it exists in writing: its evidentiary weight depends on whether it identifies the evidence reviewed, discloses conflicts, records omitted investigative steps and contrary evidence, preserves the underlying material, tests the combined state–federal execution architecture, and distinguishes statutory impossibility, judicial rejection, fair-warning limits, evidentiary insufficiency, and prosecutorial omission. Where such documentation is materially false, incomplete, conflicted, or self-protective, the defect may constitute a second implementation failure; and where it is relied upon in the preparation of the State Party's periodic reporting, it may also impair the reliability of the Article 19 reporting record (see the IAJ Standard Prosecutorial Misconduct and UNCAT Accountability).

The Article 20 record should also examine temporal lockout as an institutional mechanism: whether repeated refusal to apply the represented pre-existing architecture, followed by reliance on the prospectivity of later legislation or on the passage of limitation periods, systematically converts implementation delay into practical impunity (see the IAJ companion thesis The Equivalence Representation and the Ex Post Facto Lockout). The preventive track supplies the counterpart mechanism: as the companion IAJ Advisory Opinion Quia Timet and the Prevention of Threatened Torture and Cruel, Inhuman or Degrading Treatment by Domestic Authorities documents, the adequate-alternatives doctrine operates as a trap that channels petitioners toward post-deprivation remedies — the petitioner who has not invoked alternatives is told to invoke them, the petitioner who waits loses the timeline, and the petitioner who invokes them while seeking anticipatory relief is told to await their outcome — converting prevention delay into consummated harm, the inverse of what Article 2(1) requires.

The record layer now includes a published notice record. By the IAJ Memorandum and Record of Notice On the Duty of the Legislatures of the United States to Complete the Nation's Compliance with the Convention against Torture, the duties described there — including the joint-enforcement legislation the ratification architecture presupposes — have been placed on the public record and addressed to the members of the Congress and of the legislatures of the several States — a published civil-society notice record directed to those alone able to supply the statutory cure. Express institutional or individual notice is asserted only where supported by evidence of transmission, delivery, acknowledgment, docketing, referral, or response; upon such transmission, the record converts what has been constructively known to the Government since 2014 into matter of express notice, and subsequent action or inaction will bear on institutional knowledge and the adequacy of the State Party's response. Consistent with the discipline this Standard maintains throughout, that notice bears on the Article 20 and reporting record; it is not asserted as Article 1 acquiescence, which does not reach legislative inaction.

The published notice record now extends to the enforcement side. By the IAJ Memorandum and Record of Notice On the Duty of the Prosecutors in the United States under the Convention against Torture, the duties existing law already sustains — receipt, preservation, protection, investigation or referral, charging where the law reaches, the pleading and preservation of the UNCAT-consistent construction where reach is disputed, and declination by record only where the law does not reach — have been placed on the public record and addressed to the prosecuting authorities of the United States and of the several States, those alone able, within the limits of current law, to bring particular cases; express notice to any particular office is asserted only where transmission, delivery, acknowledgment, docketing, referral, or response is evidenced. Together with the notice to the legislatures, the two instruments close the record layer's notice architecture on both sides of the deficiency: the cure only legislation can supply, and the enforcement existing law already commands. Consistent with the discipline this Standard maintains throughout, this notice too bears on the Article 20 and reporting record; it is not itself asserted as establishing Article 1 acquiescence by any office or officer, which remains governed by the elements stated in Chapter 13.F.

The declination record supplies the same evidence architecture at the level of the individual matter. A reasoned declination, recorded in the office's files and available, where appropriate, to oversight, is evidence of Article 12 compliance where it reflects a prompt, impartial, and adequate examination — the investigative duty requires prompt, impartial, and recorded examination, not successful prosecution, and the record alone does not establish that those substantive requirements were met. A silent declination supplies no such evidence: where no record is produced and none is identified, the State is in no position to demonstrate that the examination the Convention requires occurred.

Confidentiality regimes may constrain public access, but they do not relieve the State of demonstrating performance to the treaty body; unexplained silence is accordingly recorded as an unmet requirement, subject to displacement by evidence of an actual, prompt, and impartial examination. A good-faith, evidence-based decision not to charge, taken after such an examination, does not, without more, constitute the violation; what the Convention condemns is categorical non-enforcement. For the Article 20 record this yields a concrete and falsifiable category of compliance evidence: charging instruments, declination and gap memoranda, referrals tracked to disposition, and the formal records of pattern-or-practice investigations are the principal sources from which the Nation's investigative-and-prosecutorial response to torture allegations is reconstructed by outside reviewers, and the systematic absence of such records — intake avoidance before merits review, silent declination after it — is itself among the convergent indications this Chapter assembles (the two failure modes are stated in On the Duty of the Prosecutors in the United States under the Convention against Torture).

A declination or gap memorandum carries probative weight, in turn, only to the extent it identifies the conduct alleged, the evidence preserved, the vehicles considered, any conflict, the protection steps taken, the referrals made and their dispositions, the construction and fair-warning analysis performed, and the treaty outcomes left unmet; the absence of those components limits the memorandum's evidentiary value and is itself part of the implementation record. And the same operational evidence governs Article 19 reporting: a State Party report that lists statutes without operational evidence — the office-level record this Chapter identifies or lawfully disclosable aggregate, anonymized, audited, or representative case data — demonstrates, at most, equivalence as reach — never equivalence as operation.

For judicial actors the declination record carries additional weight, because declination is the end of the line. The companion IAJ Investigative Finding The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America assembles the authorities that make a decision not to prosecute practically unreviewable — the Executive's exclusive authority and absolute discretion whether to prosecute; *Inmates of Attica Correctional Facility v. Rockefeller*'s refusal to convert courts into superprosecutors; *Heckler v. Chaney*'s presumption that non-enforcement decisions are immune from judicial review — so that no court will examine why a credible allegation against a judicial officer was declined. Where the declination itself cannot be reviewed, the declination record is the only accountability surface that exists; the documentation duties this Chapter states are therefore not an administrative preference but the entire residue of reviewability the domestic system leaves.

The same Finding supplies two disciplines for reading the resulting record. Archive control: where the institution under examination controls complaint classification, retention, confidentiality, disposition coding, merits exclusions, and publication, the record may systematically understate the very category of harm at issue, and the Article 20 analysis must examine the rules governing what enters the archive as well as what the archive contains. Negative space: a functioning accountability system would leave observable traces — compensated victims, disciplinary decisions on adjudicative harm, independent recusal review, criminal referrals and their outcomes, reform following identified patterns — and the documented absence of those traces across every mechanism in which they would ordinarily appear is itself evidence about the structure, provided the expected baseline, the search performed, and the limits of the available records are stated, and provided the absence is not treated as proof of any individual violation or of the nonexistence of unlocated corrective action.

The same Notice records the corollary that explains where the documentation function now sits. A charging power that the Constitution and the laws commit to the prosecuting office, and that the office declines to use in cases reaching the conduct UNCAT governs, does not lie dormant: its documentation function migrates — to civil-society institutions, which acquire and exercise it through investigation and record-keeping, and, in the absence of domestic investigation, to the treaty bodies and special-procedure mandate-holders that become the principal fora in which the conduct is examined at all.

The IAJ record this Standard assembles, and the Shadow Report recorded earlier in this Chapter, stand within that migrated function: they are not a substitute the IAJ prefers to domestic enforcement, but the record the non-exercise of the domestic charging power has left to be made. The companion Advisory Opinion on *quia timet* extends the same architecture to the preventive track: the recorded dispositions of attempted preventive invocations — the filings, the orders entered, the courts' stated reasoning — are invited into the IAJ's cumulative documentation and enter the Article 20 record as foreclosure evidence of the same class as the declination record. The companion Investigative Finding names the migration's institutional cause: the United States has established no institution meeting the Paris Principles, and the investigative function a national human rights institution would discharge is, for the conduct this Standard documents, performed by the IAJ as the civil-society occupant of the unfilled function.

Preventive performance is itself an Article 20 evidence category. Evidence relevant to Article 20 includes not only completed acts and the subsequent failures of investigation and redress, but the operation of preventive mechanisms before infliction: the documented risks presented to competent authorities, the notice given, the relief sought, the barriers invoked, the protective alternatives offered or withheld, whether the predicted act then occurred and the predicted injury followed, and whether the sequence repeated across cases and institutions. The relevance lies in the repeated sequence and the State's response, not in the denial of any particular application. The sequence bears on Article 20 only where the underlying information supplies the reliable, well-founded indications Article 20 itself requires; the denial of an individual application, standing alone, establishes none of it.

CONCLUSION

The prohibition of torture and CIDT has evolved beyond the original travaux paradigm. Custody, interrogation, prison, police, and military settings remain core applications, but not exclusive applications. The contemporary standard reaches any official or officially acquiesced treatment satisfying the substantive elements. Courts, family systems, disability-accommodation systems, debtor-punishment systems, welfare systems, medical-control systems, and other institutional mechanisms are not categorically outside the prohibition.

Companion IAJ publications address the domestic-remedy and equivalence questions raised by practitioners: why ordinary constitutional, disability, due-process, family-law, and appellate mechanisms should have provided protection, why they failed, and why that failure matters under UNCAT. This Standard addresses the logically prior international-law question: what the contemporary torture and CIDT prohibition now encompasses. MKUltra confirms the point historically: a contemporary prohibition of torture and CIDT that cannot reach non-consensual state experimentation and behavioral-control practices outside ordinary custody is not a serious account of the evolved prohibition.

The IAJ synthesis provides the legal framework within which a torture victim's judicial persecution can be characterized as CIDT, even where the original treaty text left that question open. Continuous state conduct under Article 14, the CRPD–Article 15 convergence filling the gap without RUD filter, the Istanbul Protocol (2022) on the avoidance of retraumatisation in investigation and documentation, from which the IAJ draws its own analogy to repeated proceedings, and the functional-custody analogy developed in Chapter 14 each supply part of that argument. Together, they provide a substantial and mutually reinforcing basis for the IAJ's position, while acknowledging that some dimensions of the doctrine continue to develop and that further institutional engagement — before treaty bodies, Special Rapporteurs, and international courts — will be part of the framework's continued refinement.

The observation with which this Standard opened has borne the weight placed on it. On the substance of the prohibition the international human-rights authorities converge, because they proceed from the dignity that is their common source: the prohibition of torture is absolute, non-derogable and undiminished, and no authority examined in this Standard holds otherwise.

Divergence appears elsewhere, and it is not confined to domestic doctrine. International tribunals have divided over whether a procedural immunity may close a particular forum, and over what follows for the victim when it does — the International Court of Justice in Jurisdictional Immunities of the State, the European Court of Human Rights in *Al-Adsani* and in *Jones*. This Standard records those holdings accurately, states their reasoning and their reach, and does not pretend they were decided otherwise. It rejects them, independently and for reasons stated in the chapters above, where their reasoning or their practical operation permits a peremptory norm to be rendered consequence-free.

That such contrary institutional authority exists does not make the governing baseline indeterminate: a norm from which no derogation is permitted is not made uncertain by the tribunals that decline to give it effect, and the divergence between the obligation and its enforcement is a fact about enforcement, not about the obligation. Nor does divergence of either kind — between tribunals, or between the international obligation and domestic doctrine on immunity, on remedy, and on the reach of the enacted text — resolve itself. This Standard has resolved it, on each question, by returning to the enacted text and the peremptory norm and giving them the effect that the substance of the authorities already accords them. That is the office the IAJ claims: not to defer to the divergence, but to end it by recalling the law to the dignity from which it derives.

The IAJ applies the contemporary standard through companion instruments: the IAJ Shadow Report to the Committee Against Torture, the IAJ Operative Guide for the Identification and Investigation of Domestic Torture and CIDT, the IAJ Case Archive, and the IAJ's coercive-reunification and analytical memoranda. This Standard states the standard; the companion instruments operationalize it.

The IAJ's ambition — consistent with the IAJ thesis 'Harmonizing the Architecture of Disability Rights' — is that this synthesis becomes the shared analytical standard that every human rights body, treaty committee, Special Rapporteur, and national court applying UNCAT uses when confronting judicial persecution of torture victims. It is a framework presented as the IAJ's own analytical work product.

The Institutional Position of the Institute

The Institute records a position about the architecture of protection, stated as its own institutional determination.

The United States has established no national human rights institution meeting the Paris Principles. In that absence the documentation, investigation and reporting functions such an institution would discharge fall, for the conduct this Standard documents, to civil society. The Institute occupies that unfilled function. But civil society has no compulsory process, no power of summons, no jurisdiction and no enforcement. It can document a violation; it cannot end one. Neither can an accredited national institution, which is advisory and reports rather than adjudicates.

The consequence is structural. Where the courts of a State decline, on procedural grounds, to reach conduct that satisfies the elements of the peremptory prohibition, and where international judicial fora are foreclosed by non-acceptance of jurisdiction, the enforcement of the norm falls entirely to political and reporting mechanisms. Those mechanisms differ from adjudication in one decisive respect: participation in them is withdrawable by unilateral executive act, whereas jurisdiction, once accepted, is not. A State may leave a political body, withhold funding, decline cooperation with Special Procedures, or refrain from accepting an individual-complaint procedure — and in the case of the United States the relevant foreclosures are already in place. Article 22 of the Convention against Torture has never been accepted; the contentious jurisdiction of the Inter-American Court of Human Rights has never been accepted; the State is not party to the European Convention on Human Rights; the Rome Statute has not been ratified.

If, in addition, domestic and international courts hold that procedural immunity may close every remaining forum, then the enforceability of a norm from which no derogation is permitted rests at the discretion of the party bound by it. That is not a defect in any particular judgment. It is a defect in the architecture, and it is the condition this Institute's proposed doctrine of Forum Nullus identifies at the level of the individual claimant, generalised to the level of the norm itself: the baseline has no holder.

The Institute therefore determines that no civil-society body, and no national human rights institution however constituted, can hold the baseline of the prohibition alone. The baseline is held only where the fora converge on a single proposition: that no procedural immunity, in any forum, may operate so as to render a violation of a peremptory norm consequence-free. That determination does not require the abolition of procedural immunity, which serves purposes the Institute does not contest; it requires that immunity yield at the threshold, and that no forum treat another forum's availability as the reason for its own abstention where no forum is in fact available. Multilateral protection and international solidarity are not defeated by argument. They are defeated by architecture, one withdrawal and one procedural bar at a time, until the obligation subsists and nothing at all attaches to its breach.

The comparative-constitutional record on which that recall rests is stated in the companion IAJ Law Review The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment: the near-universal constitutional recognition of dignity corroborates the content of the Plane A obligation, and the United States exception it documents supplies the structural condition of the Plane B failure this Standard records.

PRIMARY AUTHORITIES

International Treaties and Instruments

- *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, Articles 1, 2, 4, 7, 12–16, 20; Optional Protocol to the Convention Against Torture (OPCAT), Dec. 18, 2002, 2375 U.N.T.S. 237, Article 4(2) (definition of deprivation of liberty — any form of detention or imprisonment or placement in a custodial setting which a person is not permitted to leave at will by order of any judicial, administrative or other authority)*
- *Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3, Articles 13, 15*
- *International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195, Article 5(a)*
- *United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Sept. 13, 2007, Articles 7, 10, 22*
- *Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, Article 37*
- *International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, Articles 7, 14, 26*
- *Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, Articles 18–21, 26, 27, 31, 32, 53, 64*

- *European Convention on Human Rights, Nov. 4, 1950, ETS No. 5, Articles 3, 6(1), 13, 41*
- *American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123, Articles 1(1), 5, 25, 63(1), 70(2)*
- *Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S.T.S. No. 67*
- *Optional Protocol to the Convention against Torture (OPCAT), Dec. 18, 2002, 2375 U.N.T.S. 237, Article 4(2) (functional deprivation-of-liberty definition)*
- *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Nov. 26, 1968, 754 U.N.T.S. 73*
- *UN Basic Principles on the Independence of the Judiciary, endorsed by G.A. Res. 40/32 and 40/146 (1985), Principle 16*
- *Council of Europe, Committee of Ministers Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, ¶¶ 66–71 (functional-only civil, criminal and disciplinary liability model; State-recourse channel)*
- *Consultative Council of European Judges (CCJE), Opinion No. 3 (2002), ¶¶ 51–58, 75–77 (criminal liability for offences committed outside judicial office; civil remedy through appeal and State liability)*
- *ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries and annex, U.N. Doc. A/77/10 (2022); conclusion of the work welcomed and conclusions taken note of, G.A. Res. 78/109 (7 December 2023)*
- *ILC, Conclusions on identification of customary international law, with commentaries, U.N. Doc. A/73/10 (2018), Conclusions 3, 10(3), 11*
- *ILC, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, U.N. Doc. A/73/10 (2018), Conclusions 3, 13(3)–(4)*
- *ILC, Articles on Responsibility of States for Internationally Wrongful Acts (2001), Articles 2, 4, 5, 7, 8, 31, 58 (Article 2, elements of an internationally wrongful act; Article 4, conduct of State organs, including those exercising judicial functions; Article 5, conduct of persons or entities empowered by law to exercise elements of governmental authority; Articles 7 and 8, excess of authority and conduct under instructions, direction or control; Article 31, reparation; Article 58, individual responsibility without prejudice)*
- *ILC, Immunity of State officials from foreign criminal jurisdiction, draft article 7, U.N. Doc. A/72/10 (2017), ¶ 74 (provisionally adopted by recorded vote, 21–8–1); first reading completed 2022, noted in G.A. Res. 77/103, ¶ 2(c)*

- *ILC, Draft articles on prevention and punishment of crimes against humanity, U.N. Doc. A/74/10 (2019), draft article 6 (no statute of limitations)*

UN Treaty Body Materials

- *UN Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2 (Jan. 24, 2008), ¶¶ 2, 5, 8–11, 15, 16, 21*
- *UN Committee Against Torture, General Comment No. 3: Implementation of Article 14 by States Parties, CAT/C/GC/3 (Dec. 13, 2012), ¶¶ 2, 5, 38, 40*
- *UN Committee Against Torture, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, CAT/C/USA/CO/3-5 (Dec. 19, 2014), ¶¶ 9–12, 18–27*[262]
- *ILC Guide to Practice on Reservations to Treaties, with Commentaries, UN Doc. A/66/10/Add.1 (2011), Guideline 4.5.3 (severability of impermissible reservations)*

UN Special Procedures

- *Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem: Custody, violence against women and violence against children, A/HRC/53/36 (13 April 2023), ¶¶ 11, 14, 19, 61, 73, 74(l) (cited under Chapter 8 as external corroborative authority on the coercive parent–child separation pattern; frame is CRC/CEDAW/Istanbul Convention, not UNCAT)*
- *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer: Psychological Torture, A/HRC/43/49 (2020), ¶ 37 (coercive psychiatric intervention based on "medical necessity" or "best interests" and "conversion therapy" may well amount to torture if all UNCAT-Article-1 defining elements are given)*
- *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Alice Jill Edwards: Charter of Rights of Victims and Survivors of Torture, A/HRC/61/42 (2026) (cited under Chapter 8.1 as persuasive thematic analysis concerning the Article 14 reparation architecture, victim status, accountability, and the concurrent character of State and individual responsibility; not a judicial holding or a binding interpretation by the Committee against Torture)*
- *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite: Reimagining Justice: Confronting Contemporary Challenges to the Independence of Judges and Lawyers, A/HRC/53/31 (13 April 2023) (cited under Chapter 5.C as the 2023 Special Rapporteur report evidencing the evolving international standard under which judicial misconduct is not categorically insulated from scrutiny by domestic finality doctrines; frame is ICCPR Article 14 and the 1985 UN Basic Principles on the Independence of the Judiciary, not UNCAT)*
- *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite: Safeguarding Judicial Independence Amid Challenges to Democracy, A/HRC/56/62 (2024) (cited under Chapter 8.2 as external corroborative authority on judicial actors as State-action public officials; frame is ICCPR Article 14 and 1985 UN Basic Principles on the Independence of the Judiciary, not UNCAT)*
- *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli: Practical Experiences of Domestic Reparation Programmes, A/HRC/42/45 (11 July 2019) (cited under Chapter 18.H as external corroborative authority that the reparation*

[262] UN Committee Against Torture. Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America. CAT/C/USA/CO/3-5, 19 December 2014. — RELEVANCE: The CAT Committee's most recent substantive review of U.S. UNCAT compliance. Directly supports Chapter 17: the Committee found the 'prolonged mental harm' understanding excessively narrow; recommended withdrawal of the Article 16 reservation; and urged federal-level criminalization of torture in conformity with Article 1. Also cited in the existing body text of this publication. — AUTHORITY: Adopted at the Committee's 53rd session after reviewing the U.S.'s combined 3rd–5th periodic reports and hearing civil society testimony. Key findings: The U.S. has not criminalized torture at the federal level in full conformity with Article 1; the 'prolonged mental harm' understanding creates actual or potential loopholes for impunity; the Article 16 reservation was invoked in OLC memoranda as 'deeply flawed legal arguments' to advise that torture could be lawfully authorized; the CIA rendition and secret detention program violated multiple Convention provisions and has not been adequately investigated. The Committee recommended re-introduction of the Law Enforcement Torture Prevention Act and withdrawal of the Article 16 reservation.

obligation for grave violations is durable and programmatic; frame is the transitional-justice pillars and UDHR Article 8, not UNCAT)

- *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli: Financing of Reparation for Victims of Serious Violations of Human Rights and Humanitarian Law, A/78/181 (2023) (cited under Chapter 18.H as external corroborative authority that the reparation obligation is financeable and does not lapse with time; frame is the transitional-justice pillars, not UNCAT)*
- *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Bernard Duhaime: Documentation of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law, A/HRC/60/32 (2025) (cited under Chapter 13.F as external corroborative authority on the documentation obligation — record integrity, preservation, and accessibility as components of investigation and remedy; frame is the transitional-justice pillars, not UNCAT)*
- *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite: "Justice Is Not for Sale": The Improper Influence of Economic Actors on the Judiciary, A/79/362 (2024) (cited under Chapter 8.2 as external corroborative authority on the improper influence of economic actors on the judiciary and its bearing on the honest-error premise underlying domestic judicial-immunity architecture)*
- *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite: Principles for Judicial Appointments, A/HRC/62/43 (2026) (cited under Chapter 8.2)*
- *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston: Report of the Mission to the United States of America, A/HRC/38/33/Add.1 (2018) (cited under Chapter 8.3 as UN-mandate-level documentation of U.S. conditions bearing on the Chapter 18 corroborating equivalence channel; frame is ICESCR economic-social rights and UDHR Articles 22 and 25, not UNCAT; the extension to Article 16 equivalence-breach analysis is the IAJ's own)*
- *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston: Digital Welfare States and Human Rights, A/74/493 (2019) (cited under Chapter 8.3 as external corroborative authority on Appendix B Category 4)*
- *Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, Tomoya Obokata: Contemporary Forms of Slavery Affecting Currently and Formerly Incarcerated People, A/HRC/57/46 (19 July 2024) (cited under Chapter 8.4 as external corroborative authority on compulsory labour during incarceration, including in the United States, and its bearing on the Chapter 11 lawful-sanctions carve-out; the report does not address the Thirteenth Amendment or its punishment clause; frame is Article 4 UDHR and the Slavery Convention framework, not UNCAT)*

Country Objections to U.S. UNCAT RUDs

- *Finland, the Netherlands, and Sweden: formal objections to U.S. Reservations and Understandings deposited upon U.S. ratification of UNCAT (1994), on file with the UN Secretary-General (Bayefsky compilation, UN Treaty Collection depositary record, Chapter IV.9).*
- *The Federal Republic of Germany filed a Note 23 communication (26 February 1996) stating that the U.S. RUDs do not touch upon the United States' obligations as State Party to the Convention.*
- *Objections lodged by France, Spain, and additional States concern the U.S. reservations to the ICCPR, not to UNCAT, and are not part of the UNCAT count.*

ICJ and International Jurisprudence

- *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, ICJ Reports 2012, p. 422, ¶¶ 68–69 (obligations erga omnes partes; standing of any State party), ¶ 99 (the prohibition of torture is part of customary international law and has become a peremptory norm)*

- *Barcelona Traction, Light and Power Company Ltd. (Belgium v. Spain), Second Phase, ICJ Reports 1970, p. 3, at p. 32, ¶¶ 33–34 (obligations erga omnes; the basic rights of the human person as a source of such obligations)*
- *Legal Consequences for States of the Continued Presence of South Africa in Namibia, Advisory Opinion, ICJ Reports 1971, p. 16 (evolutionary treaty interpretation)*
- *R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3) [2000] 1 AC 147 (UK House of Lords) (immunity ratione materiae of a former head of State in extradition proceedings; torture not an official function once the Convention regime binds the States concerned; limited to conduct after 8 December 1988 under s. 134 of the Criminal Justice Act 1988 and the dual-criminality requirement)*
- *Jalloh v. Germany [GC], App. No. 54810/00, ECHR 2006-IX, Judgment of 11 July 2006 (ECtHR) (UNCAT Articles 1, 15 and 16 reproduced among the international materials at §48; Article 3 minimum-severity and forcible-medical-intervention criteria at §§67–74 and §76; inhuman and degrading treatment found, not torture, at §§82–83 and 105–106)*
- *Selmouni v. France [GC], App. No. 25803/94, ECHR 1999-V, Judgment of 28 July 1999, §101 (ECtHR) (living-instrument principle; threshold evolution)*
- *Kudła v. Poland [GC], App. No. 30210/96, ECHR 2000-XI, Judgment of 26 October 2000, §§92–94 (ECtHR) (inevitability floor distinguishing ordinary state-activity burden from ill-treatment; quoted formulation at §92)*
- *Almonacid Arellano et al. v. Chile, IACtHR, Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 September 2006, Series C No. 154, ¶¶ 154–155 (ne bis in idem not absolute where the proceeding was not genuine).*
- *Rome Statute of the International Criminal Court, arts. 17(2)(c) and 20(3), 17 July 1998, 2187 U.N.T.S. 90 (proceedings not conducted independently or impartially; sham-shielding).*
- *Statute of the International Criminal Tribunal for the former Yugoslavia, art. 10(2)(b); Statute of the International Criminal Tribunal for Rwanda, art. 9(2)(b) (national proceedings not diligent or impartial).*
- *Othman (Abu Qatada) v. the United Kingdom, App. No. 8139/09 (ECtHR, Fourth Section, 17 January 2012, final 9 May 2012), ¶¶ 259, 265, 267, 282 (flagrant denial of justice; torture-tainted evidence).*
- *In re Pinochet [1999] UKHL 1, [2000] 1 A.C. 119 (H.L.), reasons of 15 January 1999 (official character no answer to the torture prohibition).*
- *Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 4(2), ETS No. 117 (reopening on new facts or a fundamental defect).*
- *Committee of Ministers Recommendation No. R (2000) 2, adopted 19 January 2000 (re-examination and reopening following judgments of the European Court).*
- *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004, p. 12, General List No. 128, 31 March 2004, ¶¶ 138–141, ¶ 153(9) (review and reconsideration must be effective; the judicial process is suited to the task).*
- *Medellín v. Texas, 552 U.S. 491 (2008) (non-self-executing treaty obligations; cure assigned to Congress).*
- *Prosecutor v. Furundžija, ICTY Trial Chamber, IT-95-17/1-T, Judgment of 10 December 1998, ¶ 155 (jus cogens prohibition of torture; internationally delegitimising acts inconsistent with it).*
- *Jones and Others v. the United Kingdom, App. Nos. 34356/06 and 40528/06 (ECtHR, 14 January 2014), ¶ 109 (the Court sets out ILC Article 58 and describes it as clarifying the position in respect of simultaneous individual responsibility; the disposition upholding immunity is recorded by the IAJ as a documented divergence from the peremptory norm, not as a qualification of the IAJ's determination).*
- *Bouyid v. Belgium [GC], App. No. 23380/09, ECHR 2015, Judgment of 28 September 2015 (ECtHR) (power-asymmetry / dignity engine; dignity diminution as Article 3 violation in conditions of induced powerlessness)*
- *Ximenes-Lopes v. Brazil, Inter-Am. Ct. H.R. (Ser. C) No. 149, Judgment of 4 July 2006 (IACtHR) (Article 5 personal-integrity responsibility in institutional non-punitive vulnerability)*
- *Furlan and Family v. Argentina, Inter-Am. Ct. H.R. (Ser. C) No. 246, Judgment of 31 August 2012 (IACtHR) (judicial delay affecting disabled litigant; heightened-diligence duty; personal-integrity engagement)*

- *Tibi v. Ecuador, Inter-Am. Ct. H.R. (Ser. C) No. 114, Judgment of 7 September 2004 (IACtHR) (cumulative-effect doctrine in Article 5 ill-treatment assessment)*
- *Maritza Urrutia v. Guatemala, Inter-Am. Ct. H.R. (Ser. C) No. 103, Judgment of 27 November 2003 (IACtHR) (psychological severity in induced powerlessness without physical injury)*

- *Al-Adsani v. United Kingdom [GC], App. No. 35763/97, ECHR 2001-XI, Judgment of 21 November 2001 (ECtHR) (peremptory status of the prohibition accepted; immunity sustained by nine votes to eight)*
- *McElhinney v. Ireland [GC], App. No. 31253/96, and Fogarty v. United Kingdom [GC], App. No. 37112/97, Judgments of 21 November 2001 (ECtHR) (companion immunity judgments of the same day)*
- *Kalogeropoulou and Others v. Greece and Germany (dec.), App. No. 59021/00 (ECtHR, 2002) (enforcement-stage immunity)*
- *Ould Dah v. France (dec.), App. No. 13113/03 (ECtHR, 2009) (foreign amnesty for torture denied effect)*
- *Marguš v. Croatia [GC], App. No. 4455/10, Judgment of 27 May 2014 (ECtHR) (amnesties for grave violations incompatible with Convention obligations)*
- *Naït-Liman v. Switzerland [GC], App. No. 51357/07, Judgment of 15 March 2018 (ECtHR) (State-practice survey method for testing legal movement)*
- *Aydın v. Turkey, Reports 1997-VI, Judgment of 25 September 1997, ¶¶ 82–86 (ECtHR) (rape by an official as torture)*
- *Köbler v. Austria, Case C-224/01, ECLI:EU:C:2003:513 (CJEU, 30 September 2003) (Member State liability in damages for infringement of Union law by a court adjudicating at last instance)*
- *Traghetti del Mediterraneo v. Italy, Case C-173/03 (CJEU, 13 June 2006), and Commission v. Italy, Case C-379/10 (CJEU, 24 November 2011) (exclusions and fault-limitations of State liability for judicial breach precluded)*
- *Barrios Altos v. Peru, Inter-Am. Ct. H.R. (Ser. C) No. 75, Judgment of 14 March 2001, ¶ 41, and Interpretation, (Ser. C) No. 83 (2001) (amnesty, prescription and responsibility-eliminating measures inadmissible; effects general in nature)*
- *Loayza Tamayo v. Peru, Inter-Am. Ct. H.R. (Ser. C) No. 33, Judgment of 17 September 1997, ¶ 57 (gradations of ill-treatment)*
- *Cantoral Benavides v. Peru, Inter-Am. Ct. H.R. (Ser. C) No. 69, Judgment of 18 August 2000, ¶¶ 95–102 (severity line and reclassification)*
- *Bámaca-Velásquez v. Guatemala, Inter-Am. Ct. H.R. (Ser. C) No. 70, Judgment of 25 November 2000, Separate Concurring Opinion of Judge García Ramírez, ¶ 25 (jus cogens recognition; recorded as persuasive analysis, not a holding of the Court; the judgment's own treatment is at ¶ 209)*
- *Espinoza Gonzáles v. Peru, Inter-Am. Ct. H.R. (Ser. C) No. 289, Judgment of 20 November 2014, ¶ 141, and Mendoza et al. v. Argentina, (Ser. C) No. 260 (2013), ¶ 199 (absolute prohibition of torture and cruel, inhuman or degrading treatment as international jus cogens)*
- *Bulacio v. Argentina (2003); Goiburú et al. v. Paraguay, Inter-Am. Ct. H.R. (Ser. C) No. 153 (2006); Gelman v. Uruguay (2011) (anti-foreclosure line; access to justice in the peremptory register; democratic pedigree does not save the shield)*
- *Miguel Castro Castro Prison v. Peru (2006); Fernández Ortega v. Mexico and Rosendo Cantú v. Mexico (2010); González et al. ("Cotton Field") v. Mexico (2009); I.V. v. Bolivia (2016); "Street Children" (Villagrán Morales) v. Guatemala (1999); Caesar v. Trinidad and Tobago, (Ser. C) No. 123 (2005); Bueno Alves v. Argentina (2007); Bayarri v. Argentina (2008) (non-custodial and continuum jurisprudence)*
- *Cabrera García and Montiel Flores v. Mexico, Inter-Am. Ct. H.R. (Ser. C) No. 220 (2010), and Boyce v. Barbados, (Ser. C) No. 169 (2007) (conventionality control ex officio across every judicial organ)*
- *Ríos Ávalos et al. v. Paraguay, Inter-Am. Ct. H.R. (Ser. C) No. 429 (2021); Apitz Barbera et al. v. Venezuela (2008); Cordero Bernal v. Peru (2021); López Lone et al. v. Honduras (2015) (calibrated judicial accountability; protection of the decisional function with accountability for established misconduct)*
- *Advisory Opinion OC-18/03, Juridical Condition and Rights of Undocumented Migrants (Ser. A) No. 18 (17 September 2003), and Advisory Opinion OC-26/20 (Ser. A) No. 26 (9 November 2020) (IACtHR) (peremptory-register advisory jurisprudence)*

- *Abou Elkassim Britel, Binyam Mohamed, Bisher Al-Rawi & Mohamed Farag Ahmad Bashmilah (United States), IACHR Report No. 154/20, Petition 1638-11, Admissibility (9 June 2020), ¶¶ 16–18, 22–23 (no effective domestic remedy; merits reserved)*

U.S. Constitutional and Statutory

- *U.S. Constitution, Article VI, Supremacy Clause; Fifth, Eighth, Fourteenth Amendments*
- *18 U.S.C. §§ 2340–2340A (Torture Act — extraterritorial jurisdiction; not a limitation on UNCAT's international scope)*
- *Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804) (statutes construed to avoid conflict with international law); Stump v. Sparkman, 435 U.S. 349 (1978) (absolute judicial immunity for judicial acts regardless of malice or corruption — the domestic immunity doctrine whose absolute scope generates the captive-litigant structural reality addressed in Chapter 14)*
- *Medellín v. Texas, 552 U.S. 491 (2008) (non-self-execution governs domestic judicial enforcement; international obligation preserved)*
- *18 U.S.C. § 3281 (no limitation period for offenses punishable by death, including §§ 241 and 242 where death results)*
- *18 U.S.C. § 3286(b) (no limitation period for listed offenses, including § 2340A, where the offense resulted in, or created a foreseeable risk of, death or serious bodily injury)*
- *18 U.S.C. § 249(d) (no limitation period where death results)*
- *United States v. Correa, No. 1:20-cr-00148-CMA, ECF No. 182 (D. Colo. Sept. 23, 2024) (Arguello, Sr. J.) (order denying motion to dismiss an indictment filed more than fourteen years after the alleged conduct; holding §3286(b) unambiguous and applicable to any offence listed at §2332b(g)(5)(B), including §2340A, without requiring satisfaction of the "Federal crime of terrorism" element at §2332b(g)(5)(A))*
- *Historical U.S. Government Materials on Human Experimentation*
- *U.S. Senate Select Committee on Intelligence and Subcommittee on Health and Scientific Research of the Committee on Human Resources, Project MKULTRA, the CIA's Program of Research in Behavioral Modification, Joint Hearing, 95th Cong., 1st Sess. (Aug. 3, 1977).*
- *U.S. Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (Church Committee), Final Report, Book I, Foreign and Military Intelligence (1976).*
- *Commission on CIA Activities Within the United States (Rockefeller Commission), Report to the President (1975).*

Istanbul Protocol and Investigative Standards

- *UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 2022 edition, HR/P/PT/8/Rev.2: ¶1 (a State's obligation to investigate in good faith and with due diligence is measured by its compliance with Istanbul Protocol standards) and ¶11 (under UNCAT articles 12 and 13, investigations should include a medical examination complying with the Protocol) — the documentation standard; ¶¶6–8 (the Committee against Torture's identification of purpose, intention and severity as the factors distinguishing torture from ill-treatment); ¶205 (where multiple actors investigate, coordination is required so that the person is not subjected to duplicative statements, avoiding retraumatisation), ¶274 (the person must retain control over disclosure of sexual torture or ill-treatment, including when, in what detail and to whom, in order to minimise retraumatisation) and ¶526 (interviews must be conducted in a way that reduces the risk of retraumatisation and allows the person to maintain a sense of control) — the avoidance of retraumatisation in investigation, disclosure and documentation. The extension of that concern to repeated judicial proceedings, which the IAJ terms the second-bite problem, is the IAJ's own analogy and is not stated by the Protocol.*

IAJ Record

- *IAJ evidentiary record: independent expert reports (Istanbul Protocol medico-legal investigation; independent medical expert reports) and case record filings, maintained in the IAJ Case Archive and accessible to treaty bodies through IAJ secure-access protocols (info@iaj.institute).*
- *IAJ Human Rights Analysis (treaty violation assessment)*
- *IAJ Thesis: Harmonizing the Architecture of Disability Rights (Third Edition, May 2026), Part VIII (Treaty-Historical Framework and IAJ Synthesis); the National Evidentiary Record (Part XX-A) and its bounded zero-enforcement finding with the self-concealment mechanism; the jurisdictional-custody limiting principle and four-element causation discipline; the Institutional Adjustment Obligation record; the CRPD ratification-record equivalence parallel; the self-immunizing-discrimination analysis; the fifteen-mechanism taxonomy; the independence architecture for court-conduct investigations; the Five-Level Gravity Scale as domestic-vehicle mapping; the proposed Forum Nullus doctrine (so identified); the Self-Concealing Violation Principle; the five-layer independent evidentiary record; the jurisdictional-custody operational indicators; the psychological-severity documentation principle; the operational-availability rule; relied on in Chapters 4, 8, 15, 16.H, 18, and 19 and Appendix C.4 — the Méndez (A/HRC/22/53) treatment stated in this Standard superseding, for corpus purposes, the corresponding Third Edition characterization pending the corrected edition or erratum*
- *IAJ Thesis: The Equivalence Representation and the Ex Post Facto Lockout (companion thesis; ratification-record equivalence quotations verified against page images of S. Exec. Rep. No. 101-30; the reach-versus-operation conjunctive reading of CAT/C/USA/CO/3-5; the plane-resolved ex post facto analysis and anti-lockout drafting rule; relied on in Chapter 17, Chapter 18.H, Chapter 20, and Chapter 21)*
- *IAJ Collaborative Prosecution Framework: Joint State–Federal Enforcement of the Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment in the United States (combined state–federal execution architecture; no-unilateral-gap-declaration rule; seven-determination joint enforcement analysis; relied on in Chapter 13.F and Chapter 17.D)*
- *IAJ Standard: Prosecutorial Misconduct and UNCAT Accountability — An IAJ Analytical Standard on Ethical Failure, Evidence Integrity, Execution-Architecture Abandonment, and State-Party Compliance (application of this Standard's Two-Plane Framework to prosecutorial conduct; relevance-without-automatic-conversion principle; functional-independence rule; documentation-integrity standard; relied on in Chapter 13, Chapter 16, Chapter 17.D, Chapter 18.H, and Chapter 21)*
- *IAJ Memorandum and Record of Notice: On the Duty of the Legislatures of the United States to Complete the Nation's Compliance with the Convention against Torture (published civil-society notice record directed to federal and state legislators; the consignment-and-return analysis; the legislated-coordination deficiency; relied on in Chapter 17.B, Chapter 17.D, Chapter 18.H, and Chapter 21)*
- *IAJ Memorandum and Record of Notice: On the Duty of the Prosecutors in the United States under the Convention against Torture (published civil-society notice record directed to the federal and state prosecuting authorities; the plead-and-preserve and court-confrontation sequencing that legitimates a documented gap; the referral-is-not-closure rule; the intake-avoidance and silent-declination failure modes; the Article 13 expert-protection duty; relied on in Chapter 13.F, Chapter 16, Chapter 17.D, Chapter 18.H, Chapter 19.A, Chapter 21, and Appendix C.3)*
- *IAJ Advisory Opinion: Quia Timet and the Prevention of Threatened Torture and Cruel, Inhuman or Degrading Treatment by Domestic Authorities (advisory opinion governed by the General Comment on IAJ Advisory Opinions; the preventive-track structural-foreclosure analysis; the operational-equivalence corroboration; the adequate-alternatives lockout and institutional-reception findings; relied on in Chapter 17.D, Chapter 20, Chapter 21, and Appendix C.3)*
- *IAJ Investigative Finding: The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America (the Principle 16 pairing finding — personal judicial immunity internationally tolerable only with appeal, discipline, and State compensation, a pairing the United States withholds; the judge-made immunity genealogy and self-dealing circularity; the criminal-accountability vacuum and the unreviewability of declination; archive control and negative-space evidence; the precedent-suppression proposition; the State-compensation remedial architecture; relied on in Chapter 9, Chapter 16, Chapter 18.H, and Chapter 21)*
- *IAJ Law Review: The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment — A Comparative Survey of the World's Constitutions and the United States Exception, with its companion 197-jurisdiction workbook (the verified comparative-constitutional survey; the four-register discipline separating torture, CIDT, non-*

derogability, and jus cogens; the trumping-order/balancing-order distinction; the German § 839(2) calibrated-immunity worked example; the United States textual-outlier finding; the flagged IAJ–tribunal divergence record; relied on in the Executive Statement, Chapter 9.B, Chapter 9 (documented-failure note), Chapter 11, Chapter 18.D, Chapter 18.H, and the Conclusion)

- *IAJ Law Review: How to Personally Enforce the Torture Convention: A Practical Guide, in Impossible Steps, to Vindicating a Non-Derogable Personal Right Under United States Law (the step-by-step traversal of the domestic and international enforcement architecture, carried in its Analytical Notes and Appendix A; the mechanism-specific Article 14 equivalence showing and its narrowing case line through Goldey v. Fields; the recorded-and-answered contrary Article 14 immunity passage; the deposited Understandings II(1)(c), II(1)(d), and II(5); the 2006 no-penal-immunity concession; Inter-American Commission Report No. 154/20; the four-tier acquiescence ladder and the concurrency split-by-wrong; the external-closure record; the individual-accessibility equivalence dimension; the translation-tax rule; the lever-control audit and functional mechanisms map; the four-plane imputation method; relied on in Chapter 9, Chapter 10, Chapter 13, Chapter 17, Chapter 18.H, Chapter 20, and Chapter 21)*
- *IAJ Psychological Investigation Standard (the Doctrine of Distress-Induced Harm; the five-step forensic method and the statistically established stressor-to-onset temporal window; relied on in Chapter 19.A)*
- *IAJ Guide: Guide to Domestic Criminal Enforcement of Torture and Cruel, Inhuman, or Degrading Treatment in the United States, Integrated Version 1.6 (Three-Part Edition and Appendix), July 2026, Document ID IAJ-GDE-20260709-004-PUB, 156 pp., prepared as an educational legal memorandum for federal and state prosecutors, attorneys general, inspectors general, civil rights units, public integrity sections, judicial conduct authorities and oversight personnel (the IAJ Prosecutor's Guide) — IAJ institutional publication and corpus source, not independent legal authority; relied upon at Chapter 13.C for the classification discipline underlying the Two-Axis Judicial Taxonomy and its three-category predecessor statement, the shocks-the-conscience threshold analysis, the Articles 10–13 assessment, and the charging-vehicles analysis.*

APPENDIX A — SUMMARY APPLICATION FRAMEWORK: JUDICIAL DISABILITY ACCOMMODATION DENIAL

Relationship to this thesis. This Appendix is a short summary. The publication's general standard — the contemporary content of the peremptory prohibition and the evolved application of Articles 1 and 16 beyond the custodial and interrogation paradigm — is established in Parts I–IV. This Appendix does not restate that standard; it records, in summary form, how the standard applies to one domain: systematic judicial discrimination against disabled litigants through denial of reasonable accommodations. The full application framework — the six analytical moves, the counterargument analysis, and the complete authorities apparatus — is developed at length in the body of this thesis, and its domestic disability-law dimension, together with the documented case record on which this domain draws, is set out in the companion IAJ thesis *Harmonizing the Architecture of Disability Rights*. The cases illustrate the framework; they do not establish it.

The six analytical moves, in brief

Move 1 — No setting exclusion in the enacted text. Article 1 defines torture by its five elements and contains no exemption for the judicial setting; the treaty's custodial emphasis is emphasis, not preclusion.

Move 2 — The purpose elements are satisfied by the specific conduct. Both the coercion clause and the discrimination clause of Article 1(1) may be engaged where procedural compulsion, applied after notice of severe harm, extracts participation, production, silence, or compromised compliance from a disabled litigant — where the facts establish it.

Move 3 — The lawful-sanctions carve-out is neutralised. Three independent principles defeat the carve-out: the "only from" limitation, the "lawful" requirement, and the cumulative-pattern reading — grounded in Article 1's text, CAT General Comment No. 2's official-capacity framework, and the Nuremberg Justice Case principle that judicial form cannot legalize participation in internationally prohibited conduct.

Move 4 — Severity is established medically, not asserted. Permanent, documented physical sequelae assessed through the Istanbul Protocol method may meet the severity element; Move 4 carries severity only, with intent supplied by the documented prior notice.

Move 5 — Jus cogens closes any residual architecture-based gap. The peremptory norm reaches official torture in any setting, independent of the treaty's custodial architecture (VCLT arts. 53, 64; Belgium v. Senegal; Barcelona Traction).

Move 6 — OPCAT Article 4(2)'s anti-evasion language. OPCAT's "any form of detention or imprisonment" and functional-custody reasoning confirm that the paradigm is functional, not architectural.

Article 1 / Article 16 element mapping

The following table maps each element of the prohibition to the move that establishes it and the primary source on which that move rests.

Element	Establishing move	Primary source
Threshold applies to the setting (no exclusion)	Move 1	UNCAT art. 1 text; art. 16
Prohibited purpose (coercion / discrimination)	Move 2	UNCAT art. 1(1); ordinary meaning of the enumerated purposes
Not arising only from lawful sanctions	Move 3	UNCAT art. 1 carve-out; CAT GC2 (official-capacity); Nuremberg Justice Case principle
Severe pain or suffering	Move 4	Istanbul Protocol (2022) documentation method
Coverage independent of treaty architecture	Move 5	VCLT arts. 53, 64; Belgium v. Senegal; Barcelona Traction
Functional (not architectural) custody	Move 6	OPCAT art. 4(2)

Limiting principle

The framework does not assert that any accommodation denial — or any erroneous or adverse ruling — constitutes torture or ill-treatment. It states when documented facts may bring judicial accommodation denial within Articles 1 or 16. Each element (severity, intent, official nexus, prohibited purpose, and the lawful-sanctions analysis) must be independently established on the facts. Where the conduct constitutes neither torture nor CIDT — below the gateway into the peremptory continuum — judicial immunity legitimately shields the good-faith judge who does not otherwise engage individual liability, and reparation runs against the State; once the conduct constitutes at least CIDT the analysis in Parts I–IV governs, torture being the graver classification within the continuum and not a second gateway. This summary neither expands nor qualifies that standard.

Full application framework

The complete six-Move framework, the counterargument analysis, and the international authorities apparatus (UNCAT, CAT General Comment No. 2, HRC General Comment No. 31, the regional jurisprudence, OPCAT, the Istanbul Protocol, and the Nuremberg Justice Case) are developed in the body of this thesis; the United States statutory and constitutional layer, and the documented record of adjudicated decisions and Department of Justice enforcement actions on which this domain draws, are set out in the companion IAJ thesis *Harmonizing the Architecture of Disability Rights*. Practitioners applying the framework to a specific record should work from this thesis together with that companion.

APPENDIX B — NON-CUSTODIAL APPLICATION TAXONOMY AND CROSS-CUTTING MECHANISMS

Purpose. This appendix records, in summary form, the non-custodial application taxonomy developed in Chapter 15, so that other IAJ instruments may cite "Appendix B" for the category framework. It sets out the six principal categories and the cross-cutting mechanisms layer. It is a reference index, not a substitute for the element-by-element analysis in Chapter 15; every category requires proof of severe suffering, official nexus, intent or acquiescence, a prohibited purpose where Article 1 is invoked, and the failure of any lawful-sanctions exclusion.

The principal categories (1–4)

1. Coercive parent–child separation by courts and CPS. Removal, prolongation of separation, obstruction of reunification, and information deprivation by family courts, child-protection agencies, and law enforcement acting under judicial authority. Category 2A (exploitation through proximity, or "mate crime") is a subcategory addressing befriending-based exploitation of disabled persons under official acquiescence.

2. Denial of medical care through jurisdictional control. Denial or obstruction of medically indicated care by agencies and courts exercising jurisdictional control, including unlicensed clinical determinations overriding medical recommendations. Supplemented by coercive reproductive and bodily-autonomy interventions and conversion or identity-corrective interventions (Special Rapporteur on Torture, A/HRC/43/49 ¶37).

3. Law-enforcement conduct facilitated by judicial process. Non-custodial law-enforcement harm enabled, directed, or protected by judicial process, including debtors' prison and fines-and-fees coercion (DOJ fines-and-fees guidance; Bearden v. Georgia, 461 U.S. 660 (1983); Williams v. Illinois; Tate v. Short) and non-custodial crowd-control force at rights-assertion events.

4. Administrative agencies and welfare/benefits coercion. Coercive use of administrative authority — benefit withdrawal, accommodation denial, attrition-designed procedures, digital and algorithmic adjudication — over persons who cannot exit the agency's jurisdiction without severe consequence.

The principal categories (5–6)

5. Functional custody, dependency-control, and non-criminal institutional confinement. Settings that reproduce the functional reality of custody without the criminal-custodial form — nursing homes, assisted living, disability institutions, orphanages, guardianships, conservatorships, residential programmes, and state-acquiesced private-household servitude — analyzed through the OPCAT Article 4(2) anti-evasion logic by functional analogy (IE Older Persons; CRPD; trafficking/slavery mandates as applicable).

6. State experimentation, behavioral control, neurodata, and surveillance coercion. Non-consensual state experimentation and its contemporary successors — neurodata and biometric extraction, cognitive monitoring, algorithmic risk classification, and surveillance-enabled targeting — with MKUltra as the historical control and the SR Privacy neurotechnology report (A/HRC/58/58, 2025) as external corroborative authority.

Cross-cutting mechanisms

Recurring across all categories: impossible-compliance regimes; institutional labyrinth; human-rights-defender retaliation; language-access deprivation; medical-evidence suppression; state-acquiesced private violence; private-contractor anti-evasion; and remedy foreclosure. These are tools through which the elements are produced, not independent categories.

Relation to the detector methodology. Disability accommodation denial (Chapter 12) is privileged as a detector, not as a category: it is the most sensitive instrument for rendering the Article 1 and Article 16 elements visible and provable, and it takes its place as one category among the many in which those elements appear.

APPENDIX C — U.S. COMPLIANCE FAILURES UNDER UNCAT ARTICLES 10–15

A Domestic Implementation Audit

Miranda Fricker's framework of epistemic injustice provides the most precise characterization of the vexatious designation as a mechanism of harm. The designation is an act of testimonial injustice — a credibility deflation directed at the disabled litigant as a knower — that simultaneously functions as hermeneutical injustice: the system applies a category designed for genuinely bad-faith litigation to a person whose nonconforming participation is unintelligible to the critical framework's epistemic structure. The court cannot read what the disabled litigant is doing as legitimate legal speech, so it reclassifies it as abuse of process. The designation is weaponized to eliminate pro se and disabled litigants who are not in fact litigious; it conceals institutional discomfort with non-normative litigants rather than identifying bad faith, and it functions to suppress nonconforming narratives. For UNCAT purposes, the vexatious designation converts an Article 13 violation (suppression of complaint) into also — on the IAJ's interpretive determination — a potential Article 15 application (coerced procedural history used against the litigant), established as a violation only where the statement construction, torture nexus, and evidentiary use are proved, and — where the preventive-duty predicate is established — an Article 2 issue (structural failure to prevent torture by eliminating the complainant's ability to assert their rights). Once designated vexatious, the disabled litigant cannot file further pleadings challenging the very judicial conduct that is the subject of the UNCAT analysis — making the designation self-insulating and systematic in its operation.

This Appendix sets out the IAJ's assessment of U.S. compliance with UNCAT's implementation obligations in Articles 10 through 13, as they apply to the judicial disability discrimination documented in this Standard and in the IAJ Case Archive. It draws on the IAJ Prosecutor's Guide and on the DOJ Petition for Federal Criminal Investigation filed in the primary IAJ case. The analysis is intended to assist the Committee against Torture in its Article 19 review and in any Article 20 inquiry, and to assist the Special Rapporteur on Torture within that mandate's distinct communications, country-visit, and thematic-reporting functions.

C.1 — Article 10: Training and Education

UNCAT Article 10 requires each State party to ensure that education and information regarding the prohibition of torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials, and other persons who may be involved in custody, interrogation, or treatment of any individual subject to arrest, detention, or imprisonment. Article 16's incorporation extends this obligation to CIDT. The record establishes that Article 10 extends to judicial officials whose conduct may cause severe physical or psychological harm to litigants in proceedings over which they preside.

The compliance record in the United States with respect to judicial disability discrimination training is documented in the IAJ Case Archive cases and is inadequate. In Prakel v. State of Indiana, the federal district court found that the Dearborn County Court had no official ADA guidelines for judges and no training on evaluating accommodation requests. In King v. Marion Circuit Court, the court found the same absence: no consideration of reasonable alternatives was given because no training infrastructure existed for judges to know their obligations. In Reed v.

Illinois, a state court judge hectored a litigant going through a neurological convulsion without recognizing the medical emergency, characterizing it as a “speech impediment” — precisely the failure of basic disability training that Article 10 is designed to prevent. The DOJ has not documented any systematic Article 10 compliance program specifically addressing judicial treatment of disabled litigants.

C.2 — Article 12: Prompt and Impartial Investigation

UNCAT Article 12 requires each State party to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. Article 16 extends this obligation to CIDT by incorporating Articles 10-13 by reference.

The IAJ has not located, within the public records and institutional sources identified in its documented search, evidence that the Department of Justice Civil Rights Division, the Public Integrity Section, or the Office of Professional Responsibility opened a prompt and impartial investigation directed to the possible torture or CIDT dimensions of the cases documented in the IAJ Case Archive. This is a bounded negative finding: it does not exclude non-public investigative activity or records outside the sources searched.

Several of the cited decisions contain facts that, in the IAJ’s assessment, warrant competent-authority examination under the reasonable-ground standard: adjudicated retaliation following a federal complaint (Popovich, $400,000 jury verdict); a federal finding of intentional discrimination (King); published appellate reversals confirming that disabled litigants were denied fair trials (Reed, Gropen); a published Seventh Circuit opinion confirming deliberate denial of accommodation to a litigant who went into a convulsion during trial; and an appellate finding that the factual basis for an accommodation denial had been fabricated (Gropen). Whether Article 12 was violated in any particular matter depends on whether there was reasonable ground to believe torture had occurred, whether a competent authority conducted an actual prompt and impartial examination, and what the relevant State records show. In the absence of identified evidence of such an examination, the IAJ records a serious implementation concern and requests independent verification; it does not convert absence from the searched public record into conclusive proof that no investigation occurred.

The record establishes that a DOJ petition in the IAJ’s primary investigated case record specifically invokes Article 12 as grounds for a federal criminal investigation into the anchor acts documented in that record. As of the date of this Standard, no investigation has been opened. The Article 12 compliance failure is compounded by the doctrine of judicial immunity — which, while it does not extinguish the UNCAT investigation obligation, functions in practice as an institutional barrier to criminal referrals against judicial actors. The IAJ draws the CAT Committee’s attention to this structural immunity problem as a compliance concern under both Article 12 and Article 2.

C.3 — Article 13: Right to Complain Without Retaliation

UNCAT Article 13 requires each State party to ensure that any individual who alleges torture or CIDT in any territory under its jurisdiction has the right to complain to, and to have their case promptly and impartially examined by, competent authorities. States must ensure that complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of their complaint or any evidence given.

Popovich v. Cuyahoga County Court supplies adjudicated evidence of retaliation following a discrimination complaint: after the complaint was filed, the state court cancelled proceedings and issued an ex parte no-contact order barring contact with his daughter for nearly five years, and a federal jury found retaliation. The judgment is directly relevant evidence of complaint-related retaliation and of the vulnerability of complainants to adverse judicial action.

Article 13 applies where an individual alleges torture; Article 16 extends the Article 13 complaint and protection obligations to covered CIDT. Popovich therefore does not, merely because retaliation was found, establish an Article 13 violation unless the protected complaint and the conduct complained of fall within that Convention scope. The IAJ uses Popovich as an adjudicated analogue, and as evidence supporting investigation of whether comparable retaliation against a torture or CIDT complainant would violate Article 13.

The primary IAJ record documents a second complaint-suppression mechanism: the use of a vexatious-litigant designation to restrict further filings, including filings challenging the official conduct under examination. The designation was imposed after the complainant filed federal suits against California courts for ADA violations; its timing, stated grounds, scope, and practical operation are relevant to retaliation and effective-complaint analysis.

The designation constitutes an Article 13 violation only where the evidence establishes that it operated as retaliation or intimidation because of a complaint alleging torture or covered CIDT, or that it prevented prompt and impartial examination of such a complaint. The IAJ presently records the mechanism as evidence warranting that inquiry and, where the required factual predicates are independently established, as conduct capable of violating Article 13. It is not classified as a completed Article 13 violation solely from sequence or adverse effect.

Miranda Fricker's framework provides the most precise characterization of the vexatious designation as a mechanism of harm. The designation is testimonial injustice — credibility deflation of the disabled litigant as a knower — that simultaneously constitutes hermeneutical injustice: the system applies a category designed for bad-faith litigation to a person whose nonconforming participation is unintelligible to the critical framework's epistemic structure. The designation is weaponized to eliminate pro se and disabled litigants who are not in fact litigious; it conceals institutional discomfort with non-normative litigants rather than identifying bad faith. For UNCAT purposes, the vexatious designation converts an Article 13 violation (suppression of complaint) into also — on the IAJ's interpretive determination — a potential Article 15 application (coerced procedural history used against the litigant), established as a violation only where the statement construction, torture nexus, and evidentiary use are proved, and — where the preventive-duty predicate is established — an Article 2 issue (structural failure to prevent torture). Once designated, the disabled litigant cannot file pleadings challenging the judicial conduct subject to the UNCAT analysis — the designation becomes self-insulating and systematically operative. The companion IAJ Advisory Opinion Quia Timet and the Prevention of Threatened Torture and Cruel, Inhuman or Degrading Treatment by Domestic Authorities adds the operational-reception dimension of the same mechanism: courts extend to such petitioners the skepticism reserved for repeat filers even where no formal vexatious designation would be sustainable, and petitions framed in the international vocabulary of UNCAT, the ICCPR, and *jus cogens* meet a judicial reception calibrated to the conventional vocabulary of domestic constitutional litigation — a cultural and institutional feature of contemporary practice, recorded as Plane B documentation, that suppresses the substantive merits before they are reached.

Gropen documents a third mechanism relevant to Article 13 analysis: a published California appellate finding that the factual basis used to deny an accommodation request had been fabricated. That finding is relevant to whether the available complaint and review process was impartial and capable of correcting the underlying conduct. It does not, standing alone, establish an Article 13 violation. Article 13 is engaged only where a complaint alleging torture or covered CIDT was not promptly and impartially examined, or where the complainant or witnesses were subjected to prohibited retaliation or intimidation because of that complaint. The IAJ records Gropen as an investigative predicate for that element-specific inquiry.

Article 13's protection extends, in operational terms, to the actual or prospective expert witnesses without whom the conduct UNCAT governs can rarely be substantiated. An expert who, by retaliation, loss of credentials, professional discipline, or the calculated pressure of repeated litigation, is deterred from rendering honest opinions in torture and CIDT cases is, for compliance purposes, a witness lost — the deterred expert is the protective counterpart of the corrupted expert examined in Chapter 6, and the two failures converge on the same point of the evidentiary apparatus. A prosecuting authority's failure to take available protective steps for the experts in the cases before it is itself a failure of the Article 13 protection duty (see the IAJ Memorandum and Record of Notice On the Duty of the Prosecutors in the United States under the Convention against Torture). Protection analysis under Article 13 must likewise account for continuing institutional dependency and jurisdictional control — the complainant who remains subject, as litigant, parent, patient, benefits recipient, or license-holder, to the authority of the institution complained of without being physically detained — and not only the threat of physical retaliation; the vexatious-litigant record above is the operative example of retaliation administered through that continuing control.

Comparative compliance benchmark: The UK Crown Prosecution Service's 2022 Public Statement on Prosecuting Disability Hate Crime provides the clearest available benchmark for what UNCAT-compliant prosecutorial practice looks like in a comparable common law jurisdiction. The CPS framework includes: a shared police/CPS definition of disability hate crime deliberately broader than the statutory threshold to capture all relevant cases; mandatory sentence enhancement applications in every disability hate crime case (equivalent to § 249(a)(2)); Community Impact Statements from the disabled community to document systemic harm; and a dedicated Hate Crime Annual Report providing transparent accountability. The framework also requires CPS prosecutors not to remove a disability hate crime flag once applied — signaling institutional commitment to the victim's perspective even where evidence is insufficient to prosecute as a hate crime. None of these framework elements exists in the United States. Their complete absence — across Article 10 (training), Article 12 (investigation threshold), and Article 13 (victim protection) — is itself a compliance gap the CAT Committee should address in its next periodic review.

C.4 — The DOJ Petition: Domestic Criminal Framework and the Article 7 Obligation

UNCAT Article 7 requires that where a State party does not extradite an alleged torturer found in its territory, it must submit the case to its competent authorities for the purpose of prosecution. Where a person alleged to have committed torture is found in territory under the State party's jurisdiction — including its own officials for conduct within its own territory — Article 7, operating within the jurisdictional architecture of Articles 5 through 8, requires submission of the case to the competent authorities for the purpose of prosecution unless the person is extradited. Article 16 does not extend Article 7 to CIDT; for CIDT, the operative duties arise from Article 12's reasonable-ground investigation obligation, Article 13's complaint and protection requirements, and the domestic offences and charging standards applicable to the facts. The IAJ Prosecutor's Guide identifies the charging vehicles available under U.S. domestic law for this purpose:

18 U.S.C. § 242 (Deprivation of Rights Under Color of Law): Prohibits willful deprivation of any right secured by the Constitution or federal law under color of state law. Evidence satisfying the deliberate-indifference standard (Farmer) for the underlying constitutional deprivation bears on knowledge and culpability; § 242's independent willfulness and fair-warning requirements must also be established. Years of medical filings constituting actual knowledge, combined with orders ignoring that knowledge, are relevant evidence toward that willfulness showing; they do not establish it automatically. This is the primary domestic vehicle for prosecuting judicial disability discrimination causing severe harm.

18 U.S.C. § 241 (Conspiracy Against Rights): Prohibits conspiracy to deprive persons of federally protected rights. Where multiple judicial actors coordinate to deny accommodation, retaliate for federal complaints, or suppress disability evidence across multiple proceedings, the conspiracy provision may be implicated where admissible evidence establishes an agreement and the intent § 241 requires; coordination alone is not the statutory agreement. The 42 U.S.C. § 1985(3) civil analog requires class-based animus — disability animus as documented in the case files — and provides an independent route to establish coordinated discriminatory purpose.

18 U.S.C. § 249(a)(2) (Hate Crime Prevention Act — Disability): Where admissible evidence supports a willful act causing bodily injury "because of the actual or perceived disability" of the victim, together with a statutory jurisdictional circumstance and the required certification, a federal hate crime offense may be established. Documented physiological harm (immune deterioration, neurological injury, convulsion during trial) caused by deliberate denial of accommodation to a disabled litigant may support both the bodily-injury and bias-motivation showings; whether the offence is established depends on proof of willful bodily injury, because-of causation, the statutory jurisdictional circumstance, the required certification, and all applicable evidentiary and fair-warning requirements. The DOJ has prosecuted § 249 disability cases; a preliminary, non-exhaustive review has located no publicly reported federal prosecution applying § 249(a)(2) to adjudicative conduct by a judicial officer — an observation limited to the sources reviewed, on which no comprehensive negative finding is made pending completion and publication of the search protocol, and which does not establish that no unreported, sealed, or otherwise unlocated matter exists — a prosecution gap the IAJ records under the Convention's enforcement discipline: non-use of an otherwise adequate offence is not, by itself, an Article 4 criminalization failure; it constitutes Article 12 operational evidence where reasonable grounds were not investigated, and engages Article 7 only where the Articles 5 through 8 jurisdictional and presence conditions apply.

The IAJ draws the CAT Committee's attention to the gap on that footing — as structural operational evidence under Article 12, with Article 4 implicated only insofar as no enacted offence reaches the required conduct, and Article 7 within its jurisdictional architecture. The charging vehicles exist. Where concealment conduct is documented in the record, it is separately examinable under 18 U.S.C. § 4 (misprision of felony) — subject to the affirmative-act limitation and the residual role discussed in section C.6 — alongside the obstruction and falsification statutes charged directly. Where the documented record — verified by the IAJ against primary sources, and subject to independent verification by competent authorities — meets Article 12's reasonable-ground threshold, a prompt and impartial investigation and genuine testing of the applicable charging vehicles must follow; whether prosecution then follows depends on the admissible evidence, each offence's independent elements, jurisdiction, certification, and ordinary charging standards. The absence of a prosecution is not itself the breach; where the evidentiary record establishes categorical non-examination despite competent-authority receipt of information meeting Article 12's threshold, that non-examination constitutes the operational failure identified here. Where that showing is made, it is the United States' UNCAT compliance failure in its most concrete and measurable form: vehicles that could be tested, are not. The corpus's documented negative-space methodology is stated in the companion IAJ publication Harmonizing the Architecture of Disability Rights (Third Edition), whose National Evidentiary Record specifies the archive searched — the Department of Justice enforcement record, 1996 through 2024, including every quarterly status report and the formal disability-rights cases database — the coding criterion applied, and the bounded character of the resulting zero-enforcement finding; the enforcement-archive search complements, and does not substitute for, the prosecution-search record reserved for separate citation.

C.5 — Article 15: Non-Use of Statements Established to Have Resulted from Torture

UNCAT Article 15 requires each State party to 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. Article 15 applies where a specific statement is established to have resulted from torture and is invoked as evidence, except against the alleged torturer to establish that the statement was made. The IAJ separately proposes, as its own interpretive construction, that silence or non-appearance deliberately treated by a tribunal as communicative evidence may, in an appropriate case, be evaluated as a juridical statement in substance; that proposed construction does not dispense with Article 15's torture nexus or its evidentiary-use requirement. Adverse reliance on incapacity, non-appearance, disability-related conduct, coerced participation, or records produced under other coercive conditions may separately implicate Articles 2, 12, 13, and 14 and applicable domestic due-process, disability-access, and evidence rules even where Article 15 is not established, and the analyses below are recorded on that footing.

The IAJ record documents, across two independent investigations, recurring coerced-evidence and adverse-inference mechanisms requiring Article 15 review; whether Article 15 is established in each instance depends on proof of the proposed statement, the torture nexus, causation, and evidentiary use. First, in a completed IAJ investigation of a California family-court record, the courts drew systematic adverse inferences from the complainant's disability-affected courtroom performance: her difficulty communicating, emotional distress during appearances, and inability to track proceedings while unmedicated were characterized as non-cooperation, bad faith, and abuse of process. The trial was ultimately conducted in her absence while she was confined in a residential psychiatric facility — and her failure to appear was used against her rather than treated as evidence of the incapacity she had documented. The cumulative property judgment of over $1.1 million and permanent custody loss were issued while she was unable to participate, constituting a proceeding built on the foundation of coerced prior appearances and adverse characterizations derived from disability-induced conduct.

Second, in the IAJ's investigated Texas parental-termination record, the parent was excluded from her own permanency hearing despite being the Person Most Knowledgeable (PMK). She was denied the opportunity to witness testimony against her, to guide examination and cross-examination through her court-appointed attorney, and to provide testimony under oath. The court-appointed attorney explicitly requested that the court facilitate the parent's ability to inform counsel and guide cross-examination; the court denied this request. Post-termination testimony provided by the parent to the IAJ reveals substantial substantive information that was excluded from the judicial record and that, under this analysis, could materially affect the merits of the termination and warrants independent review. Her non-appearance — caused by documented transportation failure, with repeated attempts to halt proceedings communicated to the court — was used against her as an adverse inference. The IAJ proposes that the coerced absence, deliberately treated as communicative evidence, constitutes a juridical statement in substance; Article 15 is engaged where the underlying conditions are independently established as torture, the absence is causally attributable to those conditions, and the inferred statement is invoked as evidence. Independently of Article 15, the exclusion and adverse reliance documented here may establish violations of applicable domestic due-process and disability-access law, and bear on Articles 2, 12, and 13 where each provision's separate predicates — the preventive-duty engagement, the reasonable-grounds and non-investigation showing, and the complaint-suppression and non-examination showing — are established on the full record: a termination judgment was issued using procedural inferences drawn from the absence of the PMK who was prevented from appearing by circumstances outside her control, and whose participation was actively excluded by the court.

The underlying adverse-inference mechanism has a potential structural dimension that extends beyond these two cases; Article 15 applies in those instances where its independent elements are established. The combination of (a) compelled unaccommodated appearance causing disability-related conduct, and (b) adverse inference from that conduct, converts the disabled person's disability itself into evidence against them. On the IAJ's proposed construction, this parallels the mechanism Article 15 addresses at the interrogation-room level; whether Article 15 itself is established in any instance depends on the statement construction, the torture nexus, and the evidentiary use, while the underlying practice is independently relevant to Articles 2, 12, 13, and 16 where each provision's distinct predicates are established, and to domestic due-process and disability-access law. The documented pattern warrants a systematic compliance audit — examining how many U.S. family court and CPS termination proceedings have been decided using adverse inferences from disabled parents' coerced appearances — to determine the extent of the structural failure across the domestic family-court docket.

An IAJ-documented federal appeal record supplies a third record illustrating a potential Article 15 application at the appellate level and, independently, a broader coerced-evidence concern. The appellant's response to a show-cause order — produced during active neurological relapse under a 35-day deadline — was a statement made under conditions of coercive compulsion: documented inability to perform legal research and writing, physician's orders for complete rest, and the coercive structure of the show-cause mechanism itself (respond within 35 days or face automatic dismissal). The response was the product of the same disability-induced compulsion that this Standard identifies as generating Article 15-implicated evidence in civil proceedings. The Ninth Circuit panel reviewed that response — produced under conditions it knew were coercive, because the response itself disclosed them — and used it as the basis for finding the appeal frivolous. Article 15 prohibits the invocation of statements established to have been made as a result of torture. A response produced under documented disability-coerced conditions and used to justify permanent foreclosure of an ADA appeal engages the Article 15 analysis on the IAJ's proposed construction where the torture nexus and the evidentiary use are established; independently of Article 15, the use of that response against its maker may be relevant to Articles 2, 12, 13, or 16 where the distinct predicates of the particular provision are established by the complete record, and may violate applicable domestic due-process law. The response illustrates a recurrent mechanism warranting the systematic audit described above: the same structure operates at the appellate level as at the trial-court level, producing coerced-condition evidence that is then used against the person whose coerced condition produced it.

The same conduct the IAJ identifies, on its interpretive determination, as a potential Article 15 application — drawing adverse inference from coerced non-appearance, a violation where its elements are established — also supplies evidence bearing on the "obtaining information" purpose element of Article 1, and the two provisions operate independently and cumulatively. Certain procedural mechanisms — appearance, filing, response, document production, testimony — require information or participation as their ordinary adjudicative function. Adjudicative procedures routinely seek information, and that ordinary institutional function does not by itself establish Article 1's obtaining-information purpose; the purpose element is engaged only where the evidence supports the conclusion that severe suffering was intentionally imposed or continued as a means of extracting information, testimony, participation, or communicative compliance. Procedural information-gathering is context; the prohibited purpose must be independently proved. When coercive procedural compulsion produces silence rather than compliance, the court converts that silence into information and uses it in judgment: non-appearance is treated as admission; failure to file is concession; inability to cross-examine is acceptance of adverse testimony; absence from a permanency hearing is evidence of parental unfitness. The adverse inference taken from medically compelled non-appearance is not merely, on the IAJ's construction, a coerced statement used as evidence (Article 15) — it may also constitute, where that purpose showing is made, information extracted through coercion (Article 1, obtaining-information purpose element). Article 15, where its elements are established, prohibits using the coerced statement as evidence; Article 1's obtaining-information purpose element addresses the coercive extraction itself. Where the separate elements of Article 15 and of Article 1 are each independently established, the same judicial conduct may engage both provisions; the analyses are legally distinct — proof of one does not automatically establish the other, and failure of a shared factual predicate may affect both.

C.6 — Article 4: Criminalization of Complicity and Participation — Attorneys, Prosecutors, and Medical Experts

UNCAT Article 4 requires each State party to ensure that all acts of torture are offences under its criminal law, and specifically that "an attempt to commit torture and an act by any person which constitutes complicity or participation in torture" shall be criminal offences. The complicity and participation language is not restricted to state actors. Its "any person" language is not limited to public officials. Article 4 does not itself define the complete elements of complicity or participation: those elements come from the applicable implementing offence or international criminal regime, and the substantial-practical-assistance formulation used in this Appendix is comparative guidance drawn from the ICTY jurisprudence discussed below, not language enacted in Article 4. Article 4 is a State-directed criminalization duty; it does not itself adjudicate any individual's guilt. On the documented record, the IAJ identifies three categories of non-judicial participant conduct in the judicial torture context — spanning private participants (attorneys and private experts) and public actors (prosecutors and government-employed experts), whose attribution, official-capacity, immunity, and liability analyses differ — that warrant investigation under the Article 4 framework — for instigation, aiding, conspiracy, or another independently applicable liability mode, in each instance only where the underlying torture and every element of the relevant mode (conduct, mental state, causation, agreement where required, applicable offence, jurisdiction, and fair warning) are established: attorneys whose litigation strategy is documented as instigating harmful judicial orders; prosecutors whose conduct is analyzed below on the institutional State-duty track; and medical experts whose false or deliberately shaded testimony supplies the evidentiary predicate for coercive harmful orders.

Attorney assistance, solicitation, and participation. The ICTY's development of the aiding and abetting doctrine — from Tadić through Furundžija — supplies the comparative international-criminal-law formulation: practical assistance to torture with knowledge of its substantially contributing character grounds individual criminal liability within a tribunal whose subject-matter, temporal, territorial, and personal jurisdiction exists, regardless of the actor's official status. The IAJ uses those formulations as analytical guidance for identifying participation and assistance; individual liability in a United States judicial-conduct case must arise under an international jurisdiction that actually applies or under independently applicable domestic law. An attorney who files a motion requesting a harmful judicial order — where it is established that the attorney knew the court would issue it, knew the disabled litigant could not survive compliance, and knew from the medical record that compliance would cause severe physiological harm — may thereby provide practical assistance relevant to instigation or aiding. The filing is evidence bearing on causation, not proof of it: but-for contribution does not by itself establish criminal proximate causation. The filing may constitute evidence of assistance, solicitation, conspiracy, purpose, causation, or participation under an independently applicable liability regime; it is not Article 1 "instigation" merely because a private attorney requested the subsequent official act — Article 1's instigation limb concerns private infliction instigated by a public official. A completed IAJ Istanbul Protocol investigation documents this pattern specifically: counsel filed motions requesting sanctions, vexatious designations, and accommodation denials that the court issued in sequence, with contemporaneous knowledge from the medical record that the accumulating orders were causing documented severe physiological harm. The IAJ investigation finding characterized this as active accomplice conduct rather than ordinary critical advocacy.

The domestic non-accountability of these attorneys is not a legal excuse under UNCAT Article 4. Litigation privilege — whose scope and exceptions vary by jurisdiction and by claim — immunizes attorneys, where and as adopted, from civil liability for statements and conduct in judicial proceedings. It does not immunize them from criminal prosecution. United States v. Lanier, 520 U.S. 259 (1997) — recorded at Factor 24 of the Shadow Report framework — establishes that criminal prosecution of judicial officers under 18 U.S.C. § 242 is legally available and has been used: the fair warning requirement is satisfied when the constitutional principle itself gives sufficient notice. A separate statutory route applies to attorneys: 18 U.S.C. § 241 (conspiracy against rights) reaches private persons where its own conspiracy, intent, federal-right, causation, jurisdictional, and fair-warning requirements are established; Lanier supplies the relevant fair-warning analysis, not attorney liability itself. Section 241 independently reaches private persons where admissible evidence establishes the agreement and the required intent to interfere with a federally protected right; its own text and elements govern. Joint action with State officials may be relevant evidence of the agreement and its objective; Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), already in the archive at Factor 19, is cited only as the civil state-action analogy, not as establishing §241's criminal reach. Where domestic law fails to criminalize a required liability mode, Article 4 is implicated. Where adequate law exists but competent authorities fail to investigate information meeting the Article 12 threshold, the failure is operational non-performance under Article 12. Article 7's submit-for-prosecution obligation is additionally engaged only where the jurisdictional and presence conditions of Articles 5 through 8 apply and the State does not extradite. These failures are recorded separately, not collapsed — the same discipline applied to judicial actors in Appendix C.4.

Prosecutors who fail to investigate and refer. Article 12 obligates the State Party to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that torture has been committed in any territory under its jurisdiction. Article 7's submit-or-extradite obligation applies where the alleged offender is present in territory under the State's jurisdiction, the applicable Article 5 jurisdiction exists, and the State does not extradite. Article 13 obligates the State Party to ensure the right to complain and to protect complainants and witnesses. Article 14 obligates the State Party to ensure redress, including the means for as full rehabilitation as possible. Article 2(1) imposes a free-standing prevention obligation. Taken together, these obligations require the State Party, through its prosecutorial and law-enforcement authorities, to investigate documented judicial and attorney-instigated torture and to submit cases for prosecution where the evidence supports it. The Committee against Torture's General Comment No. 3 (2012) treats failure to investigate or prosecute as capable of amounting to a de facto denial of redress and identifies combatting impunity as part of the guarantees of non-repetition required under Article 14. These treaty obligations run to the State Party, not to the individual prosecutor as a personal treaty obligation; where a prosecutor with institutional authority to act knows that the reasonable-ground threshold is met and declines to ensure a prompt and impartial investigation, the State's Article 12 breach is attributable through that office; Article 13 is additionally engaged where complaint-examination or protection duties are implicated, Article 14 where the omission defeats effective redress, and Article 2 where the omission bears on prevention of continuing or foreseeable torture — attribution following only for the provisions whose distinct predicates are established. Two doctrinal bars block private suits seeking to compel a prosecutor to investigate or charge documented torture: absolute prosecutorial immunity under Imbler v. Pachtman (recorded at Factor 13 of the Shadow Report framework) for charging decisions made within the advocacy function, and Linda R.S. v. Richard D., 410 U.S. 614 (1973), and the cases applying it (Inmates of Attica Correctional Facility v. Rockefeller, 477 F.2d 375 (2d Cir. 1973); Wayte v. United States, 470 U.S. 598 (1985)), holding that a private complainant lacks judicially cognizable standing to compel prosecution of another. Together these doctrines produce a domestic structure in which prosecutorial non-investigation of documented torture is largely insulated from private civil challenge — which is the State Party compliance defect this Standard documents, not a license for individual prosecutors to ignore the conduct. Surviving exposures remain available along two distinct fact patterns. Where prosecutorial conduct includes affirmative misconduct outside the advocacy function — investigative work, evidence fabrication, witness-like attestation, advice to police, coercive process deployment, suppression of exculpatory material — absolute immunity does not attach (Buckley v. Fitzsimmons, 509 U.S. 259 (1993); Burns v. Reed, 500 U.S. 478 (1991); Kalina v. Fletcher, 522 U.S. 118 (1997)), and the prosecutor faces qualified-immunity §1983 exposure, state tort claims, Monell municipal liability where applicable, federal criminal liability under 18 U.S.C. § 242 where the affirmative conduct meets the willful-deprivation-of-rights elements, and bar discipline under Model Rules 3.3, 3.4, and 3.8. Where prosecutorial conduct is pure non-prosecution standing alone, personal domestic exposure is narrow but State Party breach attribution and international scrutiny — under Article 12 and, where their distinct predicates are established, Articles 2(1), 13, and 14 — remain available without regard to domestic civil immunity — through Committee against Torture review of the State Party's compliance record, Special Rapporteur on Torture communications directed to the State Party, and Article 20 systematic-practice inquiries where the threshold is met. On the international plane, absolute prosecutorial immunity is a domestic doctrine analyzed under the same two-register rule stated in Chapter 9.C — for torture, established *jus cogens*, the IAJ holds that the immunity cannot defeat international accountability; for ill-treatment meeting the severity threshold, the same conclusion is the Institute's own institutional determination — with the calibration that the claim is jurisdictional in scope: it operates in the analysis applied by treaty bodies, Special Rapporteurs, and international forums, not as a directive to U.S. domestic courts to disregard Imbler. The IAJ does not contend that domestic courts will or should ignore prosecutorial immunity in §1983 actions; it contends that the Committee against Torture, in evaluating State Party compliance, and other international bodies, in evaluating *jus cogens* obligations, are not bound to accept a domestic immunity doctrine as defining the treaty's reach or the prohibition's content.

Medical experts who provide false or shaded testimony. Where torture is independently established and a medical expert is proved to have testified falsely about the disabled person's condition — denying the disability, minimizing the harm, or characterizing medically compelled non-compliance as strategic — the expert occupies a specific position in the causal chain: the false testimony may supply the evidentiary predicate on which the coercive order issues on its stated medical basis, and where that causal showing is made, the expert is the actor who corrupts the information at the source — converting the information-extraction apparatus's product from unreliable into apparently authoritative, and enabling the judicial actor to issue a punitive judgment with manufactured medical cover. Article 4's "participation in torture" language frames the inquiry rather than concludes it: false, deliberately misleading, or materially incomplete expert evidence may warrant investigation for professional misconduct, perjury, obstruction, evidence fabrication, conspiracy, or participation in an independently established offence — individual responsibility requiring proof of the underlying torture and of every conduct, mental-state, causation, jurisdictional, and fair-warning element of the applicable law. Expert witness immunity — the domestic doctrine that immunizes witnesses from civil liability for testimony — is analyzed under the same two-register rule as litigation privilege and judicial immunity: for torture, established *jus cogens*, the IAJ holds that it cannot operate to defeat international-law accountability; for ill-treatment meeting the severity threshold, the same conclusion is the Institute's own institutional determination. The Istanbul Protocol (2022 edition) supplies authoritative medico-legal standards for medical professionals who participate in legal proceedings involving torture allegations, including the standard that professionals not provide false or misleading testimony; it guides practice and investigation and does not itself impose criminal liability. Violation of those standards in proceedings where torture is established may constitute professional misconduct and — where every element of an applicable liability mode is proved — participation in the prohibited act, cognizable by the CAT Committee and Special Rapporteur on Torture as a distinct category of Article 4 conduct. The state's Article 2 prevention obligation extends to ensuring that medical professionals operating in its judicial system do not provide false testimony that enables torture: failure to regulate and sanction such conduct bears on Article 2 where competent authorities knew or reasonably should have known of the torture risk, possessed the capacity to act, and failed to take reasonably available preventive measures causally relevant to the prohibited conduct.

Complicity and adjacent post-offense assistance and concealment: the domestic statutes that partially occupy the field. Article 4's criminalization duty extends beyond the principal act — "an act by any person which constitutes complicity or participation in torture" — and United States law contains three general statutes that partially occupy this field. The mapping is not uniform. Section 2 supplies a domestic mode of principal and accomplice liability for the predicate offense itself and corresponds to Article 4's complicity-and-participation limb directly; §§ 3 and 4 occupy the adjacent after-the-fact field — post-offense assistance and concealment — which Article 4 reaches only where the international participation standard is independently satisfied. Their anti-impunity work is execution architecture; it is not, by that fact alone, complicity or participation in torture.

18 U.S.C. § 2 (principals). Section 2(a) makes anyone who "aids, abets, counsels, commands, induces or procures" the commission of a federal offense "punishable as a principal." Its settled content is the Peoni formulation: the defendant must "associate himself with the venture, … participate in it as in something that he wishes to bring about, [and] … seek by his action to make it succeed," and in Rosemond v. United States, 572 U.S. 65 (2014), the Supreme Court restated the structure as an affirmative act in furtherance of the offense, undertaken with intent to facilitate it — with advance knowledge extending to the full scope of what makes the conduct criminal. Section 2(b) adds willful causation: whoever “willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal” — enacted, in the revisers’ words, to remove all doubt that one who puts the enterprise in motion through an innocent agent or instrumentality is guilty as a principal though he never performs the direct act. In the judicial-conduct context this Standard examines, § 2(b) gives federal statutory expression to the causal structure of a mechanism Part IV documents: the actor who procures the harmful act through the court — the instrumentality-of-process mechanism — subject always to this Appendix’s element discipline: a federal predicate offense, willfulness, and every element of the underlying crime.

18 U.S.C. § 3 (accessory after the fact). “Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact,” at a penalty capped at half the principal’s maximum term and fine (fifteen years’ imprisonment where the principal is punishable by life imprisonment or death). Its elements are affirmative: a completed federal offense, knowledge of it, assistance rendered to the offender, and the specific intent to hinder apprehension, trial, or punishment. Read with § 4, the pair divides the after-the-fact field: § 3 punishes protecting the offender; § 4 punishes concealing the offense; both require an affirmative act, and neither reaches passivity as such.

18 U.S.C. § 4 (misprision of felony). The statute provides in full: “Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.” As construed by the federal courts, the offence has four conjunctive elements: a completed federal felony; the defendant’s knowledge of its actual commission; failure to notify federal authority; and an affirmative step of concealment — mere silence, mere failure to report, is not misprision. United States v. Ciambrone, 750 F.2d 1416 (9th Cir. 1985) (reversing a conviction absent an affirmative act); United States v. Johnson, 546 F.2d 1225 (5th Cir. 1977); Lancey v. United States, 356 F.2d 407 (9th Cir. 1966); see also United States v. Olson, 856 F.3d 1216 (9th Cir. 2017) (the defendant must know the predicate conduct is a felony). In reach, the statute is an enacted domestic recognition that concealment of a known felony is itself criminal — addressed to “whoever,” public official and private actor alike, with no carve-out for institutional actors.

In operation, § 4’s practical role is shaped by three features, each documented in the IAJ Guide to Domestic Criminal Enforcement of Torture and CIDT. First, the predicate: § 4 requires a felony “cognizable by a court of the United States,” and that requirement is answered, where the elements of the individual statutes are independently established, by the execution architecture on which the United States conditioned ratification — §§ 241 and 242, the obstruction and retaliation statutes (§§ 1512, 1513), the falsification statute (§ 1519), § 1001, § 249 where its elements are met, and § 2340A where applicable. The absence of a statute extending § 2340A to domestic acts does not control § 4: the ratification record represented that domestic torture was already reachable through existing federal and state law, and the surgical, extraterritorial-only character of § 2340A is a construction-by-conduct of that premise. Where domestic official torture or CIDT constitutes a felony under any vehicle of that architecture, the § 4 predicate exists. Second, the affirmative-act element: misprision is not a general failure-to-prosecute or failure-to-report statute; it requires affirmative concealment — and the affirmative act (falsified records, false statements, coordinated suppression) will typically itself constitute an independent felony under §§ 1519, 1512–1513, 1001, or 371, or under §§ 241–242 where the concealment is itself a deprivation, so that in the Guide's charging architecture the cover-up is charged directly and § 4 stands as the residual count reaching the knowing concealer whose act fits no other vehicle. Third, the enforcement gate: Linda R.S. v. Richard D., 410 U.S. 614 (1973), and the cases applying it hold that a private complainant lacks judicially cognizable standing to compel the prosecution of another, and federal charging discretion is separately broad; § 4 accordingly creates no private right to compel investigation or prosecution. The statute is recorded as architecture, not as a general duty to report: no such general duty exists under § 4, and this Standard does not assert one.

Can UNCAT's acquiescence concept guide the way? As measure and map, yes; as a liability standard, no. On the treaty plane, acquiescence does work that the domestic trio does not: Article 1 places the acquiescent official inside the definition of the wrong itself, and General Comment No. 2 gives the concept its content — officials who know, or have reasonable grounds to believe, that torture or ill-treatment is being committed and fail to exercise due diligence to prevent, investigate, prosecute, and punish; and the Committee's jurisprudence holds that ill-treatment can be committed through acts or omissions, negligence sufficing (Černáková v. Slovakia, CAT/C/72/D/890/2018, ¶ 9.3). On the domestic plane, §§ 2, 3, and 4 each demand an affirmative act joined to a specific mental state, and omission grounds accomplice liability only through the recognized narrow channel: an independent legal duty to act, breached with the required intent. The acquiescence concept cannot be imported to enlarge those elements — fair warning and the principle of legality forbid it, and this Standard's own element discipline requires the domestic mode to be established on its own terms.

What acquiescence supplies instead is threefold. First, identification: it names the actor Article 4's duty must reach — the knowing, duty-bearing, passive official — and thereby defines what a complete domestic implementation would criminalize. Second, measurement: it exposes the seam with precision. The paradigm treaty actor — the official who knows of the conduct and lets it proceed — is the precise figure the domestic modes cannot touch absent an affirmative act or an independent legal duty; the seam is structural — the affirmative-act architecture and intent standards of the domestic modes — and under the Guide's discipline a residual gap is declared only after the full execution-architecture analysis has been run and tested against every available vehicle. That seam, measured by the treaty's own definitional standard, is this Appendix's sharpest single equivalence-as-operation finding in the complicity field. Third, mapping the existing bridge: where domestic law independently imposes a protective or supervisory duty on the official — custodial, institutional, statutory — the omission-plus-duty channel of accomplice doctrine is already open, and the acquiescence analysis identifies exactly which officials bear such duties and from what point notice ran. The IAJ concludes: acquiescence guides the way as measure and map — it defines the actor, measures the shortfall, and locates the lawful bridges — but liability itself must travel on domestic elements; the residue is recorded as an Article 4 implementation gap, not cured by interpretive importation.

C.7 — Professional Ethics and Domestic Complicity Doctrine: ABA Model Rules and the Model Penal Code

The international accountability framework of Appendix C.6 operates on the international plane and is not dependent on domestic enforcement. Two independent domestic accountability frameworks — professional ethics under the ABA Model Rules of Professional Conduct, and complicity doctrine under the Model Penal Code — operate in parallel on the domestic plane.

The disciplinary pathway is open to grievance by any person without the prosecutorial-discretion barriers that block criminal referrals against judicial actors — though the rules of professional conduct create no private cause of action, and the disciplinary authority controls investigation and sanction; the criminal pathway requires an enacted offence in the relevant jurisdiction.

1. ABA Model Rules professional accountability. Attorneys who participate in judicial torture implicate multiple rules of professional conduct; all United States jurisdictions maintain enforceable professional-conduct rules, most substantially influenced by or modeled on the ABA Model Rules, with jurisdiction-specific modifications, and the governing rule in any application is the adopting jurisdiction's own enactment. Rule 1.2(d) prohibits counselling or assisting a client in conduct the lawyer knows is criminal or fraudulent; its application requires the client's conduct, that conduct's criminality or fraud, the lawyer's knowledge, and actual counselling or assistance. Rule 2.1 requires independent professional judgment and candid advice to the client; filings pursued to harm rather than to advance a legitimate objective bear on that judgment, though the rule is not a general prohibition on harmful motions. Rule 3.1 prohibits claims and contentions lacking a nonfrivolous basis in law and fact; an improper purpose or a harsh consequence does not alone establish frivolousness, which is assessed against the filing's legal and factual basis. Rule 3.3 requires candor to the tribunal; misrepresenting facts to support harmful accommodation denials — as documented in a completed IAJ investigation's finding that fabricated claims were used to deny medical stays — falls squarely within the rule's candor requirement where the misrepresentation and the lawyer's knowledge are established. Rule 3.4 states specific fairness-to-opposing-party prohibitions; the coordinated conduct documented here is assessed against the particular enacted subsections rather than as a free-standing fairness category. Rule 8.4(b) makes it professional misconduct to commit a criminal act reflecting adversely on fitness; Rule 8.4(c) makes it misconduct to engage in dishonesty, fraud, or misrepresentation. The described conduct may implicate the jurisdiction-specific counterparts of Rules 1.2, 2.1, 3.1, 3.3, 3.4, and 8.4, depending on the particular filing, representation, evidence, knowledge, client objective, and enacted rule text; no professional violation is established by the Model Rule alone. Bar disciplinary proceedings, suspension, and disbarment are available through state bar authorities where the adopted rule's elements are established, independently of any criminal prosecution or international accountability proceeding.

2. Model Penal Code complicity doctrine. The MPC supplies the most analytically developed complicity model in American law; it is an analytic framework whose operative liability content in any case is the jurisdiction's enacted law, applied here to attorney conduct documented as instigating harmful judicial orders. MPC §2.06(3)(a) (ALI, Proposed Official Draft 1962) holds a person accountable as an accomplice when, with the purpose of promoting or facilitating the commission of an offense, they "aid or agree or attempt to aid such other person in planning or committing it." Three distinct liability modes apply. Under §2.06(3)(a)(i) solicitation mode: an attorney who files motions requesting orders the attorney knows will cause documented physiological harm may be soliciting a judicial officer to commit an element of the offense — a mode satisfied only where the purpose requirement and the underlying offence are established. Under §2.06(3)(a)(ii) aiding mode: an attorney who provides the legal pleadings that activate the court's coercive mechanism may aid the commission of judicial torture, where purpose and the underlying offence are established. Under the §2.06(3)(a)(iii) omission mode: where a person has a legal duty to prevent the commission of the offense and, with the purpose of promoting or facilitating its commission, fails to make proper effort to do so, accomplice liability may attach — a mode available only where the individual personally bears a legally enforceable duty to prevent the particular criminal offense and acts with the culpability the enacted accomplice statute requires; a general institutional responsibility under ADA Title II does not by itself establish that criminal-law duty or mens rea, though ADA Coordinators, court administrators, and supervising attorneys may bear qualifying personal duties on a specific statutory or judicial showing.

3. MPC conspiracy doctrine (§5.03) and attempt (§5.01). MPC §5.03 (ALI, Proposed Official Draft 1962) establishes conspiracy liability where the agreement, the criminal purpose, and any applicable overt-act requirement under §5.03(5) are proved; the Code does not adopt the Pinkerton rule, and membership in a conspiracy does not automatically make a conspirator liable for substantive offences committed by another — liability for the substantive offence must be separately established under the jurisdiction's enacted accomplice or other attribution rules (§2.06). Where attorney-judicial coordination is proved to satisfy the §5.03 agreement standard — a common purpose to engage in conduct constituting an offense — conspiracy liability may attach to the agreement itself, and a filing may supply the overt act where the enacted provision requires one and the filing is proved to be in pursuance of the conspiracy. Under §5.01(1)(b), attempt liability requires that the person act with the culpability otherwise required for the offense and "with the belief that it will cause such result without further conduct on his part" — a standard a sanctions filing may meet only where the required culpability, the belief, and the relationship of the filing to the target offense are independently proved under the enacted attempt provision. The MPC framework and the federal §241 conspiracy vehicle in Appendix C.6 address partially overlapping forms of group and assisted liability, each retaining distinct agreement, purpose, protected-right, jurisdictional, attribution, and fair-warning requirements; together they map an analytic framework for domestic criminal accountability whose operative content in any jurisdiction is that jurisdiction's enacted law — the Model Penal Code is a model, adopted in varying parts and forms across the states, not uniformly operative law.

The three-plane accountability structure. The convergence of the ABA Model Rules and MPC frameworks with the international law accountability in Appendix C.6 produces a three-plane structure for attorney conduct: (a) international (where applicable predicates are established) — Article 4 complicity criminalization as a State Party obligation, ICTY accountability under international criminal law where jurisdictional predicates are met, and Rome Statute Article 25 modes of liability for international crimes within ICC jurisdiction; (b) domestic criminal — 18 U.S.C. §§241, 242, §2 aiding and abetting, MPC §§2.06 and 5.03; (c) professional ethics — ABA Model Rules disciplinary proceedings, suspension, and disbarment. The three planes are legally distinct: unavailability or failure on one does not necessarily resolve another, though each retains its own predicates, and failure to establish a shared underlying fact — the underlying torture, knowledge, intent, falsity, agreement, or causation — may affect more than one. An attorney who is not prosecuted or convicted remains subject to bar discipline where the adopted rule's elements are established. The IAJ's analytical position on domestic immunity doctrines (Chapter 9) does not assert direct override of those doctrines under VCLT Article 53, but maintains that domestic immunity cannot redefine the substantive content of the international prohibition or excuse the State's nonperformance of its UNCAT obligations. The three-plane domestic structure operates to address accountability gaps on the domestic plane to the extent each plane functions within its own scope.

APPENDIX D — Investigative Methodology for Non-Custodial Institutional Torture

This Appendix is a methodology summary. It demonstrates how the analytical framework of this Standard supports operational investigative practice; it does not itself contain the operational protocols. The granular case-handling protocols — intake screening, the full IAJ Functional Severity Scale with case-row classifications, the assessment-matrix worksheets, the investigation-stage protocols, the outcome categories, and the documentation and disclosure protocols — are contained in a separate IAJ publication: the IAJ Operative Guide for the Identification and Investigation of Domestic Torture and CIDT (IAJ-GDE-20260625-001-PUB). The Operative Guide governs the conduct of investigations; this Appendix records the doctrinal anchor of those protocols.

The Six-Stage Protocol in Summary

Stage 1 — Initial identification. Threshold screening against the five Article 1 elements (Chapter 1) and the public-official element (Chapter 13): documented disability or vulnerability, documented institutional conduct, documented harm, and an official nexus. The stage produces a screening decision, not a legal characterization.

Stage 2 — Baseline and timeline documentation. Pre-proceedings baseline (medical, functional, financial, family) and a dated timeline of institutional acts and clinical or documented harm events. Key document types and their evidentiary weight: Type A (independent expert reports — physician letters, SSA determinations, Istanbul Protocol investigation reports) carry the highest evidentiary weight, independent of the litigation outcome; Type B (case record filings by the party) are illustrative documentation whose legal characterizations are secondary to the factual descriptions they contain.

Stage 3 — Mechanism attribution. Attribution of the documented conduct to the structural mechanisms defined in Appendix A (Legibility Default, Epistemic Mismatch, Accommodation Splitting, Throughput Pressure, Plausible Neutrality, Incapacitation Feedback), with specific documentary evidence for each. Cases in which three or more mechanisms operate simultaneously present strong indicators of systematic practice independent of any particular official's subjective motive; the systemic showing supplements, and never substitutes for, the element-by-element classification of the underlying conduct under Article 1 or Article 16.

Stage 4 — Gradient assessment. Application of the CIDT-to-Torture gradient (Chapter 10) and the IAJ FUNCTIONAL SEVERITY SCALE (an IAJ analytical classification informed by Istanbul Protocol documentation principles; not promulgated by the Istanbul Protocol itself and not externally validated). This scale is an IAJ analytical instrument; it has not been adopted by the CAT Committee, the Istanbul Protocol, or any other treaty body, and the IAJ does not represent that the scale has been externally validated. The Istanbul Protocol's contribution to the scale is methodological — the documentation principles, the connection between clinical findings and legal characterization, the rigor of medico-legal investigation — not the specific five-level structure or the specific level assignments, which are the IAJ's own.

Stage 5 — Treaty integration and classification. Integration of the documented record with the treaty framework: Article 1 or Article 16 characterization (Chapters 1 and 9), lawful-sanctions analysis (Chapter 11), and the compliance articles audited in Appendix C (Articles 10, 12, 13, 15). The output is a preliminary treaty classification with each element supported or flagged as unsupported.

Stage 6 — Jus cogens and immunity architecture assessment. Application of the *jus cogens* hierarchy analysis (Chapter 9) and the two-tier immunity architecture from the IAJ federal-record analysis: Tier 1 (jurisdictional-access doctrines) and Tier 2 (merits-level immunity doctrines). The relevant VCLT principle is Article 27 — a State party may not invoke the provisions of its internal law as justification for its failure to perform a treaty — with VCLT Article 53 invoked as a statement of the customary content of the *jus cogens* framework, not as a U.S. treaty obligation (the United States is not a party to the VCLT). The disciplined statement is: domestic immunity doctrines cannot redefine the substantive content of the international prohibition or excuse the State's nonperformance, and the IAJ stands by that proposition by independent investigation while flagging each divergence between its position and existing judicial holdings.

Outputs and Use

The protocol's integrated output is a standard-form assessment matrix recording case identification, baseline and severity level, mechanisms operating, gradient classification, treaty classification, and the *jus cogens* and immunity assessment. Completed assessments feed the IAJ Case Archive and, in aggregate, the systematic-practice evidence architecture described in Chapter 21.

This Appendix should be read together with Appendix A (the six-Move analytical framework and the structural mechanisms), Appendix C (the Articles 10–15 compliance audit), and the IAJ Operative Guide for the Identification and Investigation of Domestic Torture and CIDT, which governs actual investigative conduct.

APPENDIX E — THE EUROPEAN CORPUS: AUTHORITIES CONSIDERED

This Appendix records every authority of the European human-rights system, the European Union, and the Council of Europe considered in the preparation of this Standard — including authorities of minor or limited weight, recorded so that their consideration is documented. Legend: ● = pinpoint verified against the retrieved primary text; ○ = holding stated on the settled public record. Contrary authorities appear under the discipline stated throughout this Standard: recorded as documented failures to give the peremptory norm its effect, never as carve-outs. All materials are regional or supranational corroborative authority: they support; they do not decide.

I. Peremptory status and its consequences. Al-Adsani v. the United Kingdom [GC] (no. 35763/97, 2001) ● — peremptory status accepted (¶ 61); immunity upheld by nine votes to eight over the joint dissent of Judges Rozakis and Caflisch, joined by Judges Wildhaber, Costa, Cabral Barreto and Vajić (hierarchy displaces immunity); McElhinney v. Ireland [GC] (no. 31253/96, 2001) ● and Fogarty v. the United Kingdom [GC] (no. 37112/97, 2001) ● — the same-day State-immunity trilogy; Jones and Others v. the United Kingdom (nos. 34356/06 and 40528/06, 2014) ● — engaged in the body of this Standard: immunity extended to named officials; State practice described as in flux and ordered kept under review; ILC Article 58 recorded at ¶ 109; Kalogeropoulou and Others v. Greece and Germany (no. 59021/00, dec. 2002) ● — enforcement-stage immunity for the Distomo judgment; Naït-Liman v. Switzerland [GC] (no. 51357/07, 2018) ● — no established obligation of universal civil jurisdiction; method of testing legal movement; Ould Dah v. France (dec., no. 13113/03, 2009) ● — foreign amnesty for torture ineffective; Marguš v. Croatia [GC] (no. 4455/10, 2014) ● — amnesties for grave violations incompatible; ECtHR Advisory Opinion P16-2021-001 (2022) ● — limitation periods and the torture prohibition; Demir and Baykara v. Turkey [GC] (2008) ● — the Court's consolidated method of interpreting through international materials.

II. The custodial-core evolution (engaged in Part II, Stage Three, and Chapter 7). Ireland v. the United Kingdom (1978; revision judgment 2018 ●), Tyrer v. the United Kingdom (1978), Soering v. the United Kingdom (1989), Herczegfalvy v. Austria (1992), Aydın v. Turkey (1997) ●, Selmouni v. France [GC] (1999) ●, Kudła v. Poland [GC] (2000) ●, Jalloh v. Germany [GC] (2006) ●, Bouyid v. Belgium [GC] (2015) ● — each engaged with pinpoints in the body of this Standard. Additions of record: Gäfgen v. Germany [GC] (no. 22978/05, 2010) ● — a threat of torture, without physical act, is inhuman treatment; Svinarenko and Slyadnev v. Russia [GC] (2014) ● — caging defendants during trial degrading in itself; Vinter and Others v. the United Kingdom [GC] (2013) ● — dignity constrains the structure of punishment.[263]

[263] Vinter and Others v. the United Kingdom [GC], nos. 66069/09, 130/10 and 3896/10, 9 July 2013. The sentence most frequently quoted from this judgment — that "it would be incompatible with the provision on human dignity in the Basic Law for the State forcefully to deprive a person of his freedom without at least providing him with the chance to someday regain that freedom" (¶ 113) — is the Grand Chamber's report of the reasoning of the German Federal Constitutional Court in the Life Imprisonment case, addressed to the German Basic Law. It is not a statement of Convention doctrine in the Court's own voice, and this Standard does not deploy it as one. The Court adopts the reasoning by analogy in the paragraph that follows: "Similar considerations must apply under the Convention system, the very essence of which, as the Court has often stated, is respect for human dignity" (¶ 114). The Convention holding is stated at ¶ 119 — Article 3 "must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be

III. The non-custodial reach. M.S.S. v. Belgium and Greece [GC] (no. 30696/09, 2011) ● — State-attributable destitution violates Article 3 without custody or force; O'Keeffe v. Ireland [GC] (no. 35810/09, 2014) ● — systemic protective failure in the school system; Opuz v. Turkey (no. 33401/02, 2009) ● and Volodina v. Russia (2019) ● — discriminatory institutional passivity after notice; D. v. the United Kingdom (1997) ● and Pretty v. the United Kingdom (no. 2346/02, 2002) ● — the scope of "treatment" beyond deliberate physical acts; X and Y v. the Netherlands (1985) ● — the positive-obligations foundation.

IV. Acquiescence in private violence. 97 Members of the Gldani Congregation of Jehovah's Witnesses v. Georgia (no. 71156/01, 2007) ● and Identoba and Others v. Georgia (2015) ● — official acquiescence in mob violence engages the prohibition; the Strasbourg analogues of Hajrizi Dzemajl.

V. Disability, institutional settings, and procedural accommodation. Keenan v. the United Kingdom (2001) ● — heightened duties toward the mentally vulnerable; Stanev v. Bulgaria [GC] (2012) ● — social-care placement as deprivation of liberty with Article 3 conditions; L.R. v. North Macedonia ● — investigation faulted for individual-intent focus in place of systemic examination; V.I. v. the Republic of Moldova (2024) ● — systemic problem in involuntary psychiatric treatment of a disabled child; Article 46 general measures; R.P. and Others v. the United Kingdom (2012) ● — disability may require procedural measures for effective participation; no violation found on the facts — recorded for its principle and its limit alike.

VI. Structural impunity and systemic response. Cestaro v. Italy (no. 6884/11, 2015) ● and Cirino and Renne v. Italy (2017) ● — deficient criminal architecture as structural impunity; Committee of Ministers, Guidelines on Eradicating Impunity for Serious Human Rights Violations (2011) ●; CPT, Fourteenth General Report (combating impunity) ●; CPT, Twenty-Seventh General Report (complaints mechanisms) ●; CPT, Factsheet on Social Care Establishments ● — formal "voluntary" labels do not control the factual inquiry; ECtHR Registry, Guides on Article 3 and Article 13 ○ — Registry syntheses, consulted as consolidations and not as authority.

VII. Immunity and access to court (the conditioned-legitimacy doctrine). Ashingdane v. the United Kingdom (1985) ● — the legitimate-aim and proportionality test; Osman v. the United Kingdom (1998) ● and Z and Others v. the United Kingdom [GC] (2001) ● — blanket immunity examined and the doctrine refined; Fayed v. the United Kingdom (1994) ●; A. v. the United Kingdom (2002) ●; Cordova v. Italy (No. 1) (2003) ● — parliamentary immunity disproportionate as applied; Waite and Kennedy v. Germany [GC] (1999) ● and Ernst and Others v. Belgium (no. 33400/96, 2003) ● — reasonable alternative means as a material factor; McFarlane v. Ireland [GC] (no. 31333/06, 2010) ● — personal judicial immunity distinguished from the State's duty to compensate; Sergey Zubarev v. Russia (2015) ● — a judge's immunity from a defamation suit held proportionate; recorded as minor contrary weight on the calibration question; Bădescu and Others v. Romania (nos. 22198/18, 48856/18 and 57849/19, 15 April

justified on legitimate penological grounds" — and at ¶ 122, that a whole life prisoner "is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions". The distinction is recorded because the dignity sentence circulates detached from its German constitutional attribution, including in the Court's own Registry Information Note on the judgment, where it appears without that attribution. The proposition this Standard draws from Vinter — that dignity constrains the structure of punishment — rests on ¶¶ 114 and 119, in the Court's own voice, and not on the German passage at ¶ 113.

2025) ● — criminal accountability of judges for deliberate abuse of office distinguished from good-faith error in the interpretation or application of law (¶¶ 74–75, 124–125); the Court found no violation of Article 7, the distinction operating to confirm the foreseeability of the domestic framework rather than to condemn it — recorded with that limit.

VIII. The judicial-accountability architecture of the Council of Europe. Committee of Ministers Recommendation CM/Rec(2010)12, on judges: independence, efficiency and responsibilities (¶¶ 66–71) ●; CCJE Opinion No. 3 (2002) (¶¶ 51–58, 75–77) ● — no immunity from ordinary criminal process for conduct criminal in any circumstances; CCJE, Magna Carta of Judges (2010) ●; Venice Commission, CDL-AD(2013)008 ●, CDL-AD(2016)015 ●, and CDL-AD(2017)002 ● — functional immunity only; Council of Europe (CAHDI), State Immunity under International Law and Current Challenges ● — the contest between peremptory status and immunity recorded, with immunities described as increasingly requiring justification.

IX. European Union law. Köbler v. Austria (C-224/01, 30 September 2003) ● — Member State liability for judicial breaches at last instance; the judicial-independence objection rejected because the liability is the State's; Traghetti del Mediterraneo v. Italy (C-173/03, 13 June 2006) ● — national limitations of that liability to intentional fault, and exclusions for judicial interpretation or fact-assessment, precluded; Commission v. Italy (C-379/10, 24 November 2011) ● — maintenance of such a shield condemned; the Court upholding both grounds, that Law No. 117/88 art. 2(2) excludes State liability in general terms where the breach results from the interpretation of provisions of law or the assessment of facts and evidence, and that art. 2(1) and (3) confine liability to dolo or colpa grave on terms stricter than the manifest-infringement standard.

X. Scholarship of the European system. Erika de Wet, The Prohibition of Torture as an International Norm of Jus Cogens and Its Implications for National and Customary Law, 15 EJIL 97 (2004) ● — the norm's binding effect on legislatures, executives, and judiciaries; Alexander Orakhelashvili, State Immunity and Hierarchy of Norms: Why the House of Lords Got It Wrong, 18 EJIL 955 (2007) ● — the sustained displacement argument; Andrea Bianchi, Human Rights and the Magic of Jus Cogens, 19 EJIL 491 (2008) ● — the calibration warning against automatic procedural consequences; Nataşa Mavronicola, Torture, Inhumanity and Degradation under Article 3 ECHR: Absolute Rights and Absolute Wrongs (Hart 2021) ● and her study of Bouyid ● — the leading defence of the absolute character across the whole continuum; Elaine Webster, Dignity, Degrading Treatment and Torture in Human Rights Law (2018) ○; Thomas Kleinlein, Change of Peremptory Norms of General International Law, ESIL Reflections 12:5 (2023) ● — the methodology of peremptory-norm development.

APPENDIX F — THE INTER-AMERICAN CORPUS: AUTHORITIES CONSIDERED

This Appendix records every authority of the Inter-American human-rights system considered in the preparation of this Standard, on the same terms and under the same legend as Appendix E: ● = pinpoint verified against the retrieved primary text; ○ = holding stated on the settled public record. The materials carry distinct legal statuses — regional treaty provisions and ratification practice evidence the commitments of the participating States; judgments of the Court are regional judicial authority; Commission decisions carry the status of their procedural stage; official handbooks and compendia are institutional syntheses, not holdings; separate opinions and scholarship are persuasive analysis. All are corroborative: they support; they do not decide. The United States is not a party to the American Convention or the Inter-American Convention to Prevent and Punish Torture, and is engaged in this system through the American Declaration and OAS membership.

I. Peremptory status across the continuum. Caesar v. Trinidad and Tobago (Ser. C No. 123, 2005) ● — Article 5(1)–(2) as precepts of *jus cogens*; the separate opinion of Judge Cançado Trindade develops the parity of torture and CIDT in the peremptory domain; Ximenes-Lopes v. Brazil (Ser. C No. 149, 2006), ¶ 126 ● — the continuum formula inside a judgment engaged in Chapter 7; Bueno Alves v. Argentina (2007) ● and Bayarri v. Argentina (2008) ● — the formula repeated in merits jurisprudence; the continuum line carried forward: Espinoza Gonzáles v. Peru (Ser. C No. 289, 2014), ¶ 141 ● — the prohibition of torture and cruel, inhuman or degrading treatment or punishment stated as absolute and non-derogable, and "nowadays ... part of international *jus cogens*"; Mendoza et al. v. Argentina (Ser. C No. 260, 2013), ¶ 199 ● — the same formula reiterated; Bámaca-Velásquez v. Guatemala (Ser. C No. 70, 2000) ● — the *jus cogens* recognition at ¶ 25 belongs to the separate concurring opinion of Judge García Ramírez and is recorded as persuasive analysis rather than a holding, the judgment's own treatment being at ¶ 209; Blake v. Guatemala, separate opinion, ¶ 15 ○ and IACHR, Ortiz Hernández v. Venezuela (Report No. 2/15, 2015), ¶ 212 ○ — the remaining members of the compiled continuum set, recorded as considered and scheduled for primary-text verification; Advisory Opinion OC-26/20, ¶ 106 ● — torture and CIDT listed separately among recognized *jus cogens* norms; Advisory Opinion OC-18/03, ¶¶ 98–101 ● — the peremptory domain grows; equality and non-discrimination entered it; Goiburú v. Paraguay (Ser. C No. 153, 2006), ¶¶ 84, 128, 131 ● — *jus cogens* with access to justice carried into the peremptory register; La Cantuta v. Peru (Ser. C No. 162, 2006) ●; Almonacid Arellano v. Chile (Ser. C No. 154, 2006) ● — engaged in the body of this Standard; IACHR, Michael Domingues v. United States (Report No. 62/02) ● — engaged in the body of this Standard; the evolutionary *jus cogens* identification methodology; A.A. Cançado Trindade, Jus Cogens: The Determination and the Gradual Expansion of Its Material Content (OAS) ● — the expansion narrative from torture and CIDT to equality and access to justice, retrieved from the OAS text; J.J. Ruda Santolaria, The Treatment of Peremptory Norms of General International Law (Jus Cogens) in the Inter-American Human Rights System, ch. 12 in D. Tladi (ed.), Peremptory Norms of General International Law (Jus Cogens): Disquisitions and Disputations (Brill/Nijhoff 2021) 319 ●; L.C. Lima and L. Marotti, 12 Goettingen J. Int'l L. 219 (2022) ● — the calibration scholarship on regional recognition and universal identification.

II. The gradient and evolutionary classification. Loayza Tamayo v. Peru (Ser. C No. 33, 1997), ¶ 57 ● — the single graded category from torture through other cruel, inhuman or degrading treatment, verified verbatim; Cantoral Benavides v. Peru (Ser. C No. 69, 2000), ¶¶ 95–102 ● — the evolutionary reclassification rule and psychological torture; Maritza Urrutia v. Guatemala (Ser. C No. 103, 2003) ● and Tibi v. Ecuador (Ser. C No. 114, 2004) ● — engaged in Chapter 7; Inter-American Convention to Prevent and Punish Torture (1985), preamble and Articles 2, 3, 6, 8–9, 17 ● — definition without a severity qualifier; the obliterate-the-personality limb; could-have-prevented liability; the all-acts dignity preamble, retrieved from the OAS text; IACtHR Case Law Handbook No. 10 (Personal Integrity) ○ — the Court's own consolidation.

III. The non-custodial holdings and acquiescence. Fernández Ortega v. Mexico (2010) ● and Rosendo Cantú v. Mexico (2010) ● — rape by soldiers outside any custody classified as torture; Miguel Castro Castro Prison v. Peru (Ser. C No. 160, 2006) ● — sexual violence within the torture analysis; González et al. ("Cotton Field") v. Mexico (2009) ● — structural discrimination and tolerance of private violence after notice; I.V. v. Bolivia (2016) ● — non-consensual sterilization as CIDT; informed consent; Vera Vera v. Ecuador (2011) ● — medical neglect of a detained man; custodial, recorded for the medical-care duty and not for setting; "Street Children" (Villagrán Morales) v. Guatemala (Ser. C No. 63, 1999) ● — threats and psychological suffering, the Court holding that a sufficiently real and imminent threat of prohibited treatment may itself contravene Article 5; the right-to-life and dignified-life link is stated by the Court at ¶¶ 144 and 191, while the fuller "minimum conditions for a dignified life" and "project of life" formulations belong to the joint concurring opinion of Judges Cançado Trindade and Abreu Burelli and are recorded as persuasive analysis.

IV. Disability and institutional settings. Ximenes-Lopes v. Brazil (Ser. C No. 149, 2006) ● and Furlan and Family v. Argentina (Ser. C No. 246, 2012) ● — engaged in Chapter 7 with the precise-dispositif discipline; IACtHR Case Law Handbook No. 42 (Persons with Disabilities) ○; IACHR Compendium on Equality and Non-Discrimination ○ — structural, indirect, and intersectional discrimination; material equality in judicial proceedings.

V. Anti-foreclosure and impunity. Barrios Altos v. Peru (Ser. C No. 75, 2001), ¶ 41 ● — amnesties, prescription, and measures designed to eliminate responsibility inadmissible, verified verbatim; interpretation judgment (Ser. C No. 83, 2001) ● — effects general in nature; Bulacio v. Argentina (Ser. C No. 100, 2003), ¶¶ 115–117 ● — no domestic provision or institute may impede; Gelman v. Uruguay (2011) ● — democratic ratification does not save the shield; Almonacid Arellano (Ser. C No. 154, 2006) ● — sham finality stripped; IACHR Compendium on Truth, Memory, Justice and Reparation ○; IACHR Report No. 154/20 (Binyam Mohamed et al. v. United States) ● — engaged in the body of this Standard; immunity-ground dismissals as insurmountable obstacles.

VI. The judge as duty-bearer and calibrated accountability. Almonacid Arellano, ¶ 124 ● — conventionality control, verified verbatim; Cabrera García and Montiel Flores v. Mexico (Ser. C No. 220, 2010) ● — ex officio, all judicial organs; Boyce v. Barbados (Ser. C No. 169, 2007) ● — a constitutional savings clause condemned; Ríos Ávalos v. Paraguay (Ser. C No. 429), ¶¶ 101–107 ● — votes and opinions protected except intentional violations of the law or proven incompetence; Article 70(2) of the American Convention as interpretive standard; Apitz Barbera v. Venezuela (Ser. C No. 182, 2008) ● — discipline is not a disguised appeal; Cordero Bernal v. Peru (2021) ●; López Lone v. Honduras (2015) ●; IACHR, Guarantees for the Independence of Justice Operators (2013), ¶¶ 216–218 ●; the IACtHR Judicial Independence case-law compilation ○.

VII. Functional custody and systemic method. IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty (Resolution 1/08) ● — deprivation defined functionally, including de facto custody a person may not leave at will, by order of a judicial, administrative or other authority; IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas (2011) ○; IACtHR Case Law Handbooks No. 13 (Judicial Protection) ○ and No. 32 (Reparation Measures) ○; Velásquez Rodríguez v. Honduras (Ser. C No. 4, 1988) ● — engaged in the body of this Standard; attribution, due diligence, and the systemic method.

VIII. Recent corroboration recorded for verification. Rojas Riera v. Venezuela (2026) ○ — torture linked to institutional opacity and deficient judicial control; recorded as post-dating this Standard's primary verification window; Beatriz v. El Salvador ○ — harm aggravated by the judicialization of urgent medical care; the Court did not classify the conduct as torture or CIDT, and the authority is recorded with that limit; both are scheduled for primary-text verification before any use beyond this record.

UNCAT and *jus cogens*: A contemporary perspective. The Evolved Peremptory Prohibition of Torture Beyond the Custodial Paradigm and Its Application to Judicial Conduct and the Immunities That Shield It

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