
Plamen Russev

Follow this and additional works at: https://readingroom.law.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation


Available at: https://readingroom.law.gsu.edu/gsulr/vol19/iss2/5

This Article is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.
RESTRAINING U.S. VIOLATIONS OF INTERNATIONAL LAW: AN ATTEMPT TO CURTAIL STUN BELT USE AND MANUFACTURE IN THE UNITED STATES UNDER THE UNITED NATIONS CONVENTION AGAINST TORTURE

INTRODUCTION

The United States ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in November 1994. CAT embodies the broad prohibition of all instances of torture as defined by international law.

At the same time, the United States remains the world leader in developing, marketing, selling, and exporting non-lethal weapons that serve as torture devices in the hands of law enforcement officials at home and abroad. Increasingly, these torture devices rely on the latest technological innovations to inflict severe pain with minimal or no physical signs of abuse. For example, U.S. manufacturers produce and export high-voltage electro-shock stun guns and stun belts in great quantities but without public scrutiny, impartial testing, or any regulation of design and use.


3. See CAT, supra note 1.


6. See UN Briefing, supra note 4, at 10; USA Market Leader, supra note 4.
This Note considers whether the manufacture and use of stun belts by law enforcement officials violate CAT. Part I describes the design, medical consequences, and proliferation of stun belt use both in the United States and abroad and highlights the device's significant potential for abuse. Part II presents the relevant provisions of CAT and the related U.S. reservations, declarations, and understandings regarding CAT. Part III discusses the U.S. judicial interpretation of the international law on torture, including CAT. Part IV examines and evaluates the potential for enforcing certain controlling principles of international law in the United States with regard to actions that violate the object and purpose of a treaty. Part V considers the U.S. conduct that violates CAT. Finally, Part VI lays out and evaluates the arguments that stun-belt torture victims could advance under CAT in U.S. courts. The Note concludes that although the official use and manufacture of stun belts violate CAT, the United States' limited ratification of CAT effectively undermines stun-belt torture victims' attempts to seek redress in U.S. courts for U.S. violations of the recognized international human right to be free from torture.

I. DESIGN, EFFECTS, AND USE OF STUN BELTS

A. Stun Belt Design and Function

The stun belt is an electronic device used to control prisoners, detainees, and even defendants in court. Secured around the waist, the belt shocks the wearer with 50,000 volts of high-pulse electric

---

7. The constitutional implications of stun belt use, manufacture, and training are beyond the scope of this Note. For a comprehensive treatment of stun belt use under the U.S. and Texas constitutions, see Dahlberg, supra note 5.

A police or prison officer can activate the belt by remote control from as far away as 300 feet. The electric shock lasts for eight full seconds and cannot be stopped once the belt is activated. The electric current enters the wearer’s body near the kidneys, travels along blood channels and nerve pathways, and causes increasingly excruciating pain throughout the eight seconds. The shock usually knocks the victim down in the first few seconds, causes him to shake uncontrollably during the entire period of discharge, and often leaves him incapacitated for up to fifteen minutes.

Stun belt manufacturers promote the device as an alternative to using leg-irons, leg-cuffs, or shackles to prevent the risk of escape or threat by potentially violent or unruly prisoners and detainees. One of the largest U.S. manufacturers has even asserted that a stun belt is a non-obvious mechanism to restrain a dangerous prisoner or defendant during trial without compromising the defendant’s right to


10. See Eaton, Stun Belt Ban, supra note 9, at 16A; Cattle Pen Court, supra note 8, at 10A; STOPPING TORTURE TRADE, supra note 4, at 28; USA Market Leader, supra note 4.

11. STOPPING TORTURE TRADE, supra note 4, at 28; USA Market Leader, supra note 4; Shock Power, supra note 9, at 14B.


13. See Stunning Technology, supra note 8, at 18; Unruly Prisoners, supra note 9, at B2; STOPPING TORTURE TRADE, supra note 4, at 28.

14. See Stun Belt Use, supra note 12, at 2 (noting, however, that a manufacturer’s manual encourages the use of stun belts together with other restraints such as handcuffs and leg shackles).
be presumed innocent.\textsuperscript{15} Company representatives also claim that their devices are medically safe and non-lethal when used properly.\textsuperscript{16}

B. The Effects of Stun Belt Use

Currently, there are no independent formal studies of the physical and psychological effects of stun belts on human beings.\textsuperscript{17} The only test results appear in REACT belt advertising brochures as an affidavit by a medical doctor, stating that he tested the belt on anesthetized pigs.\textsuperscript{18} The difference between conscious human beings fearing electrocution and sedated pigs is only one of the reasons that undermine the adequacy of this study.\textsuperscript{19} However, the official waiver that all prisoners must sign prior to wearing the belt offers a glimpse at some of the belt’s most obvious effects – immediate immobilization, which may result in defecation and urination, and welts on the skin, which may not heal for up to six months.\textsuperscript{20}

Furthermore, general medical studies on the effects of electrocution and reports of electric torture victims reveal that immediate effects may include burning, confusion, amnesia, headaches, nausea, convulsions, fainting, and cessation of heartbeat and breathing.\textsuperscript{21} Secondary effects can last for hours or days after the initial shock and include paralysis, muscular pain, swelling, headaches, vision impairment, and heart irregularities.\textsuperscript{22} Finally, long-term consequences can appear weeks to years after the shock.

\textsuperscript{16} See Eaton, Stun Belt Ban, supra note 9, at 16A; Stun Belt Use, supra note 12, at 4; STOPPING TORTURE TRADE, supra note 4, at 30.
\textsuperscript{17} See Stunning Technology, supra note 8, at 18; STOPPING TORTURE TRADE, supra note 4, at 30.
\textsuperscript{19} See Stunning Technology, supra note 8, at 18 (discussing the limited scope of the study).
\textsuperscript{20} See Stun Belt Use, supra note 12, at 2.
\textsuperscript{22} See Protecting Yourself, supra note 21, at 33.
and include speech and writing difficulties, paralysis, loss of taste, and long-term damage to teeth and hair. The high-voltage, short-duration electrical shocks inflicted by stun belts may result in grave or even fatal physical injuries, such as cardiac dirhythms, cardiac arrest, and possibly death in people taking psychotropic medications, suffering from epilepsy, or having congenital heart defects.

Although electroshock torture’s visible traces, such as skin reddening and scarring, may disappear within weeks, the psychological effects may reverberate for years. Manufacturers openly emphasize that the belt allows law enforcement officials to establish “total psychological supremacy” over prisoners or detainees wearing a stun belt. One company’s president unambiguously promotes the belt’s effectiveness as a function of the constant fear of severe pain it can inflict at any time upon a person held in a situation of powerlessness: “Electricity speaks every language known to man. No translation necessary. Everybody is afraid of electricity, and rightfully so.” A stun-belt distributor and trainer also confirms the tremendous psychological impact of wearing the belt. The manufacturer even argues that the belt serves as a deterrent rather than as punishment because it can control the wearer’s behavior merely by creating a great amount of anxiety about the possibility of experiencing a 50,000-volt blow in the kidneys. Such immense mental and emotional strain often results in serious psychological

23. See id.; STOPPING TORTURE TRADE, supra note 4, at 24.
24. See Stun Belt Use, supra note 12, at 5-6; stunning Technology, supra note 8, at 18 (discussing the death of a Texas corrections officer after a shock from a stun-shield similar in design and power to the stun belt).
25. See STOPPING TORTURE TRADE, supra note 4, at 24.
27. STOPPING TORTURE TRADE, supra note 4, at 29.
28. See Stunning Technology, supra note 8, at 18 (quoting a distributor and trainer’s statement: “If [the stun belt] ever kills anyone, I think it’s going to be from fright.”). Ironically, one manufacturer’s own promotional literature unambiguously describes the belt’s terrifying power in the poignant question: “After all, if you were wearing a contraption around your waist that by the mere push of a button in someone else’s hand, could make you defecate or urinate yourself, what would you do from the psychological standpoint?” STOPPING TORTURE TRADE, supra note 4, at 29.
29. See Stunning Technology, supra note 8, at 18.
problems such as post-traumatic stress disorder and severe depression.  

C. Distribution and Use of Stun Belts

The first reports of stun belt use in the United States criminal justice system date back to 1993. Although no official statistics on the use of stun belts in the United States are available, Amnesty International reports that the U.S. Marshalls Service, the U.S. Bureau of Prisons, and more than one hundred jurisdictions have purchased stun belts and estimates that belts currently in use exceed 1,000 throughout the country. One of the major manufacturers claimed in 1999 that prisoners had worn its belts on over 50,000 occasions during the prior five years.

While the United States is hailed as the birthplace of electro-shock technology in the 1970s, the manufacture and use of stun devices, including stun belts, has proliferated throughout the world, especially in the 1990s. Whereas only two companies, one American and one British, produced stun devices in the 1970s, more than 150 did in 2001, 97 of which were U.S. companies. Stun belt use, in particular, has spread around the world and reaches as far as Singapore and South Africa, where electro-shock torture is common.
2002] STUN BELT USE AND MANUFACTURE 609

D. The Stun Belt’s Significant Potential for Abuse

Although most police or prison officials would not activate stun belts without a reason, many reports describe arbitrary and unwarranted official use.37 The use of stun belts encourages an over-reliance on them by law enforcement officials.38 A U.S. law enforcement official stated that, in his experience, the mere availability of stun guns and belts tends to increase their usage.39 In a notorious California case, even a municipal judge ordered the activation of a stun belt to silence a pro se defendant.40 The belt’s reliance on creating psychological supremacy over prisoners and detainees generates the perfect conditions for abuse in an environment already notorious for incidents of arbitrary beatings, punishment, and torture.41

37. See, e.g., STOPPING TORTURE TRADE, supra note 4, at 29 (recounting prisoners’ experiences of being electro-shocked as arbitrary punishment without being violent or trying to escape and of being taunted by prison officials before or after electro-shocks); A Call to Action by the UN Committee against Torture, AMR 51/107/2000, item 2, July 1, 2000, available at http://web.amnesty.org/ai.nsf/index/amr511072000 (last visited October 31, 2002) (letter by Amnesty International Secretary General Pierre Sané) [hereinafter Call to Action] (listing cases of unwarranted electro-shocks in prisons, jails, and private facilities in Virginia, Colorado, and Tennessee); UN Briefing, supra note 4, at 10 (reporting that a severely mentally ill Arizona death penalty inmate, wearing a stun belt while being transported from Arizona State Hospital to a court hearing, suffered a seizure due to unsupervised and likely unprovoked activation of the belt).

38. STOPPING TORTURE TRADE, supra note 4, at 31.

39. Id.


A number of courts have recognized the potential for abuse of electro-shock devices such as the stun belt. In addition, the states of Michigan, Hawaii, Rhode Island, and Massachusetts, as well as the cities of Washington, D.C., Baltimore, Maryland, and Annapolis, Maryland, have all banned the use of stun weapons by civilians and police. A number of European countries, including Belgium, Denmark, Finland, Luxembourg, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom, have also prohibited all electro-shock weapons and devices, other than cattle prods.

II. THE CONVENTION AGAINST TORTURE

A. Definition of Torture and State Obligations Under CAT

On December 10, 1984, the United Nations General Assembly adopted by consensus the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the preamble, the drafters of CAT pointed out that the Convention further develops the principles of human rights protection established

Days; 'Other Abuses at Corcoran State Prison. FBI is investigating facility, Which Has Most Killings of Inmates in U.S.; LOS ANGELES TIMES, Aug. 21, 1996, at A1, available at 1996 WL 1163909 (describing in detail the fatal shootings of seven Corcoran inmates and allegations of beatings, torture, and abuse by prison officials and the ensuing FBI investigation); Prison Abuse Inquiry Moving Forward FBI to Investigate Beatings Seen on Tape--Texas Jailors Could Face Up to 10 Years, DALLAS MORNING NEWS, Aug. 21, 1997, at 23A, available at 1997 WL 11513723 (presenting the FBI's decision to undertake full-scale investigation of beatings "of Missouri prisoners whose torture at a Texas county jail was captured on videotape").


44. STOPPING TORTURE TRADE, supra note 4, at 33 (noting, however, that "the ban is not always fully comprehensive"); Davidson, supra note 32 (asserting that "no other Western country [except for the United States] uses stun belts").

45. This section will present only the CAT Articles whose provisions are relevant to the analysis of stun belt use and manufacture in infra Part V.

46. CAT, supra note 1, at 197.

Article One broadly defines torture as the intentional infliction of severe physical or mental pain or suffering by anyone acting in an official capacity for any impermissible purpose. The definition has three elements: 1) torture is an act inflicting severe pain or suffering; 2) by an official, a person acting in official capacity, or anyone acting with the consent or acquiescence of a public official; 3) for any impermissible purpose. The breadth of this definition raises questions about the scope and nature of the Convention's prohibition against torture.

CAT suggests that acts of torture are easily and clearly identifiable as long as they inflict severe physical or mental pain or suffering for

---

47. Id.; see also U.N. CHARTER art. 55 ("[T]he United Nations shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.").
48. CAT, supra note 1, at 197; see also Universal Declaration of Human Rights, art. 5, G.A. Res. 217A, 3 U.N. GAOR, at 71, U.N. Doc. A/810, (1948) ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.").
49. CAT, supra note 1, at 197; see also International Covenant on Civil and Political Rights (ICCPR), art. 7, 999 U.N.T.S. 171 (Dec. 9, 1966) ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.")
50. CAT, supra note 1. Article One of CAT states:
1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering ... inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Id.

an impermissible purpose. Some scholars have asserted that the nature, duration, and severity of the act can serve as evidence of the perpetrator's intent and thus find torture under Article One.

Further, the language of Article One appears to limit the definition of torture to acts by public officials or by persons acting in an official capacity. However, Article One can also reach private conduct by imposing liability for acts inflicted "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Thus, a public official need not carry out the acts of torture to be liable, as long as he encourages, tolerates, or consents to such acts by private individuals. In this way, CAT can potentially reach private actors and create private duties. Paragraph Two of Article One supports this idea by endorsing the validity of any international instrument or national legislation that ensures greater protection from torture than CAT.

Finally, Article One provides a few illustrative examples of impermissible purposes for inflicting torture, such as the obtaining of information or a confession, inflicting punishment or intimidation, or

---

53. CAT, supra note 1, art. 1. As Professor Lippman points out, there is no indication if the test to determine whether an act qualifies as torture is objective or subjective. Lippman, supra note 52, at 313 n.347. Furthermore, different legal traditions may also influence the judicial treatment of an act of torture as either a criminal or a civil wrong. See Winston P. Nagan & Lucie Atkins, The International Law of Torture: From Universal Proscription to Effective Application and Enforcement, 14 HARV. HUM. RTS. J. 87, 94 & nn.31-32 (2001) (citing British and International Criminal Tribunal for the Former Yugoslavia cases treating torture as a crime and United States statutes and federal cases treating torture as a tort). Seeking redress for torture under tort law allows for control and sanction of torture through the institutions of civil society. Id. at 94.

54. See Lippman, supra note 52, at 314. Professor Lippman asserts that CAT deals with the "opaque nature of the notion of severe pain and suffering" more effectively than did the European Court of Human Rights in various human rights cases. Id. at 313. In Republic of Ireland v. United Kingdom, 2 E.H.H.R.R 25 (1978), for example, the European Court held that although certain British techniques against IRA guerrillas amounted to inhuman and degrading treatment, they "did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood." Id. at 80. To find torture, the European Court seems to look for regular acts in the same location by the same law enforcement officers against the same type or group of detainees. See The Greek Case (1969), 12 Y.B. Eur. Conv. on H. R. 195; Lippman, supra note 52, at 313-14.

55. See CAT, supra note 1, art. 1.

56. Id.

57. See Lippman, supra note 52, at 314.

58. See Private Duties, supra note 52, at 61.

59. CAT, supra note 1, art. 1(2); Private Duties, supra note 52, at 61; see also Regina v. Bartle, 38 L.L.M. 581, 591 (1999) ("[I]t would run completely contrary to the intention of the Convention [Against Torture] if there was anybody who could be exempt from guilt.").
discriminating in any way against a person or a group.\textsuperscript{60} Article One recognizes that any pain or suffering arising from, inherent in, or incidental to legal sanctions does not constitute torture.\textsuperscript{61} However, the sanction must be lawful under international rather than domestic legal principles to prevent states from undermining the goals of CAT by adopting draconian punishments.\textsuperscript{62}

Article Two requires each state party to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”\textsuperscript{63} The article prohibits the use of superior orders or any exceptional circumstances, such as war, internal political instability, or other public emergency, as justification for torture.\textsuperscript{64}

Article Four directs each state party to ensure that all acts and attempts to commit or aid in the commission of torture constitute offenses under its domestic criminal law.\textsuperscript{65} In this way, CAT again may reach private conduct, as long as it constitutes complicity or participation in torture, and even may permit sanctions against public officials who provide torture training and equipment to allied regimes.\textsuperscript{66} Article Four also requires that, in defining the appropriate punishment for these offenses, each state party should take into account their grave nature.\textsuperscript{67}

\textsuperscript{60} CAT, supra note 1, art. 1. By including the phrase “for such purposes as,” the drafters of CAT intended to provide a few examples rather than a comprehensive list of the purposes that may indicate a suspect act amounts to torture. See Lippman, supra note 52, at 314 & n.354.

\textsuperscript{61} CAT, supra note 1, art. 1.


\textsuperscript{63} CAT, supra note 1, art. 2(1).

\textsuperscript{64} Id. at art. 2 (2, 3).

\textsuperscript{65} Id. at art. 4(1) (“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”) (emphasis added).

\textsuperscript{66} Id. See also Lippman, supra note 52, at 315. Some commentators, however, describe this attempt at a broader reach as not broad enough. See, e.g., Lippman, supra note 52, at 315-16 (pointing out that, unlike the Declaration Against Torture, G.A. Res. 34/52, U.N. GAOR, 30th Sess., Supp. No. 34, at 91, U.N. Doc. A/10408 (1976), Article Four does not penalize incitement to torture nor does it require criminal penalties for cruel or inhuman treatment or punishment).

\textsuperscript{67} CAT, supra note 1, art. 4(2). However, Professor Lippman points out a potential loophole in the failure of Article Four to restrict the effect of any applicable statute of limitations to torture claims and to prohibit the granting of amnesties or pardons for torture convictions. Lippman, supra note 52, at 316.
Article Ten, emphasizing the prevention of torture, requires each state party to include education and information about the prohibition of torture in the training and official rules or instructions of anyone who may be in a position to inflict or prevent torture. In addition, Article Eleven requires systematic review of "interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment."69

B. Purpose and Objective of CAT

The above provisions embody CAT’s purpose, as summarized in the preamble: "[T]o make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world."70 The 1986 report of the Special Rapporteur71 declared in even stronger terms that CAT’s objective was to enable the international community to continue and intensify its struggle against torture, "the plague of the second half of the twentieth century."72 Even the United States, in its Statement of Reservations, Declarations and Understandings of CAT,73 recognized that "the object and purpose of the Convention [is] to prohibit torture."74 Finally, Amnesty International carried forward CAT’s purpose and objective by initiating in 2000 its international campaign for universal eradication of torture.75 Notably, a seminal U.S. judicial

68. CAT, supra note 1, art. 10. Such persons include "law enforcement personnel, civil or military, medical personnel, public official and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment." Id.
69. Id. at art. 11.
70. Id. at Preamble.
73. See infra Part II.C.
74. UN Briefing, supra note 4, at 43.
disposition that relied on CAT to recognize the right to be free of physical torture as an established norm of international law also declared that its holding was "a small but important step in the fulfillment of the ageless dream to free all people from brutal violence."\(^{76}\)

CAT underscores the fundamental social and political impact of torture by asserting that its prohibition aims "to promote universal respect for, and observance of, human rights and fundamental freedoms" which "derive from the inherent dignity of the human person" and form "the foundation of freedom, justice, and peace in the world."\(^{77}\) The 1986 Special Rapporteur Report also pointed out that the "dehumanizing effect of torture – the destruction of exactly that which makes man a human being – . . . may well explain the general condemnation of the phenomenon of torture."\(^{78}\) Finally, some commentators have asserted that, with its denial of transparency, accountability, and responsibility and its blatant disregard of individual rights, the official practice of torture not only undermines the notions of good governance and democracy but also seeks to trump the law.\(^{79}\) In this way, torture has far-reaching consequences for world order because it "attacks the authority and legitimacy of the state, provokes or intensifies social conflict, undermines the idea of peace, and, in its tacit claim to unlimited social control, challenges the idea of the rule of law itself."\(^{80}\)

C. U.S. Reservations, Declarations, and Understandings

The United States entered a large number of reservations, understandings, and declarations when it ratified CAT.\(^{81}\) Most

---

76. Filartiga v. Pena-Irala, 630 F.2d 876, 890 (2d Cir. 1980).
77. CAT, supra note 1, Preamble.
79. See, e.g., Nagan & Atkins, supra note 53, at 90; see also Lippman, supra note 52, at 335 (concluding that "[s]o long as torture is practiced, condoned, or tolerated, all human rights are in jeopardy").
significantly, the United States declared that the provisions of articles 1 through 16 of CAT were not self-executing.\textsuperscript{82} U.S. courts often use the doctrine of non-self-executing treaties to refuse a litigant’s desired application of a treaty provision.\textsuperscript{83} Thus, an explicit legislative declaration or a judicial finding that a treaty provision is not self-executing usually affects the success of treaty-based claims for human rights violations.\textsuperscript{84}

The United States has also entered an understanding about the definition of torture, which appears to be narrower than the broad definition under Article One of CAT.\textsuperscript{85} The understanding restricts the definition of torture by requiring a specific intent to inflict severe physical or mental pain or suffering, by listing concrete actions that produce mental pain or suffering, and by limiting punishable acts of torture to those directed against persons in the offender’s custody or physical control.\textsuperscript{86} Further, the United States interprets CAT’s prohibition of official acquiescence to torture as applying only to circumstances in which “the public official, prior to the activity constituting torture, ha[s] knowledge of such activity and thereafter breach[es] his legal responsibility to intervene to prevent such activity.”\textsuperscript{87} Although the legal effect of the U.S. declarations and understandings on plaintiffs’ claims alleging CAT violations is somewhat ambiguous,\textsuperscript{88} both international organizations and other

\begin{flushleft}
\textsuperscript{82} UN Briefing Appendix, supra note 4, at 43. Articles 1 through 16 define the state parties’ substantive obligations whereas articles 17 through 33 outline the treaty’s administration and enforcement procedures. See CAT, supra note 1.

\textsuperscript{83} See, e.g., United States v. Alvarez-Machain, 504 U.S. 655, 667 (1992) (stating that the court’s duty to enforce a treaty on behalf of an individual depends on whether the treaty is self-executing); United States v. Thompson, 928 F.2d 1060, 1066 (11th Cir. 1991) (“[A] treaty must be self-executing in order for an individual citizen to have standing to protest a violation of the treaty.”).

\textsuperscript{84} See, e.g., White v. Paulsen, 997 F. Supp. 1380, 1385-87 (E.D. Wash. 1998) (holding that plaintiffs had no private right of action under CAT because the treaty’s language indicated an intent that it was not self-executing). For a detailed treatment of the legal effect of the U.S. non-self-executing declaration regarding CAT, see infra Parts II.D and VI.

\textsuperscript{85} UN Briefing, supra note 4, at 5.

\textsuperscript{86} Senate Report, supra note 81, at 15.

\textsuperscript{87} Id.

\textsuperscript{88} See infra Parts II.D, III.C, and VI.
\end{flushleft}
state parties to CAT have expressed strong objections to the understandings. 89

D. The Legal Effect of the U.S. Reservations, Declarations, and Understandings

1. The Non-Self-Executing Declaration

In its usual interpretation, the doctrine of non-self-executing (NSE) international agreements requires the enactment of implementing legislation when the agreement "manifests an intention that it shall not become effective as domestic law" without such legislation. 90 Under this reading, individuals in U.S. jurisdictions cannot take cases to their own domestic courts or to international courts or tribunals set up under an NSE treaty without the enactment of legislation implementing the treaty as U.S. domestic law. 91 CAT proponents who oppose NSE declarations claim that the U.S declaration minimizes the possible enforcement of CAT in the United States and thus removes some of CAT's essential guarantees. 92 Part VI shows that this argument is not without merit. 93

However, courts have interpreted non-self-executing declarations in many different ways when presented with treaty-based human

---

89. See UN Briefing, supra note 4, at 5.
Amnesty International believes that the definition of torture in Article 1, which has been internationally negotiated, should be accepted as such. It should be left to the Committee against Torture, rather than individual states, to interpret the provisions of the Convention, in order to provide a uniform standard for all States parties.

Id. The Netherlands officially objected on February 26, 1996 to the U.S. understanding on the ground that "it appears to restrict the scope of the definition of torture under article 1 of the Convention." Id. at 5 n.7

90. Restatement (Third) of the Foreign Relations Law of the United States § 111(4) (1987) [hereinafter Restatement]. Further, the Senate or Congress may require implementing legislation when they consent to joining an international treaty. Id. Finally, the U.S. Constitution may require implementing legislation. Id.

91. See, e.g., UN Briefing, supra note 4, at 5-6 (applying this reading to CAT); Call to Action, supra note 37, item 1 (applying this reading to CAT).

92. See UN Briefing, supra note 4, at 6. Some commentators go even further and suggest that the "United States' long refusal to ratify the Convention Against Torture is indicative of its general unwillingness to subscribe to the treaty-based regime concerned with international human rights." Nagan & Atkins, supra note 53, at 109.

93. See infra Part VI.
rights claims. Thus, both courts and numerous scholars agree that the term “not self-executing,” when applied to treaty provisions, has multiple meanings.

This Note adopts the position that “NSE declarations, properly construed, permit courts to apply the treaties directly to provide a judicial remedy in some, but not all, cases that raise meritorious treaty-based human rights claims.” This position relies heavily on the analysis of statements by executive branch officials to the Senate during ratification of human rights treaties. Furthermore, this approach takes into account the political considerations and constraints that shape the U.S. decisions regarding whether and how to ratify international treaties. In sum, NSE declarations attempt to reconcile two competing policy objectives: (1) ensuring that the U.S. can comply with its treaty obligations; and (2) preventing human rights treaties from changing domestic law. Thus, NSE declarations serve as “window dressing” and enable ratification by


95. See, e.g., United States v. Postal, 589 F.2d 862, 876 (5th Cir. 1979) (describing the self-execution doctrine as “one of the most confounding in treaty law”); United States v. Noriega, 808 F. Supp. 791, 797 (S.D. Fla. 1992) (characterizing the self-execution doctrine as “complex and not particularly well understood”).


97. See Four Doctrines, supra note 94, at 707-08 (criticizing the Restatement’s approach, summarized in supra note 90 and accompanying text, for ignoring the Supremacy Clause’s effect on the United States’ determination to carry out its international obligations).

98. Sloss, supra note 94, at 135. For specific illustrations, see infra Part VI.


100. See id. at 171-96 (explaining the politics of NSE declarations and treaty ratification).

101. Id. at 135. Sloss uses numerous statements by U.S. treaty makers to show their firm belief in the importance of treaty compliance for U.S. constitutional and international political reasons. Id. at 178-84. In addition, he explains the domestic political legacy of the “Bricker Amendment” that creates the perceived political requirement to avoid treaty-based changes to domestic law. Id. at 173-77; see also Louis Henkin, U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker, 89 AM. J. INT’L L. 341, 343 (1995).
securing the votes of Senate members who oppose treaty-based changes to domestic laws while still preserving the goal of treaty compliance. 102 In this way, U.S. treaty makers can avoid the political costs of making any decision about possible trade-offs between the two objectives that they (claim to) value equally. 103

In reality, various discrepancies exist between U.S. treaty obligations and preexisting domestic laws, especially in the arena of human rights. 104 Thus, judges must make the hard choice, which treaty makers skirted, of determining the priority of each policy objective. 105 The wide range of judicial decisions regarding NSE declarations illustrates the difficulty of this choice. 106

According to the above theory, the legal effect of the United States’ NSE declaration regarding CAT does not preclude all U.S. litigants from asserting claims under CAT without implementing legislation. 107 Rather, only plaintiffs who rely on CAT as a source of a private cause of action, i.e. seeking to modify domestic laws by expanding private rights pursuant to an international treaty, cannot benefit from CAT’s substantive provisions in their claim. 108 Alternatively, “where plaintiffs seek to raise treaty-based human rights claims by relying on federal or state statutory or common law to establish a private cause of action — courts should ask whether allowing the claim to go forward would effectively deprive the NSE declarations of any legal force whatsoever.” 109

102. Sloss, supra note 94, at 190. “[T]he ‘we can have our cake and eat it too’ sales pitch was a clever tactic for advancing the short-term goal of obtaining Senate consent for treaty ratification.” Id. at 187

103. Id. at 193.

104. See id. at 219 (urging the executive branch to acknowledge its mistaken assertions that NSE declarations eliminate any discrepancies between international treaty obligations and U.S. domestic law).

105. See id. at 197.

106. See Four Doctrines, supra note 94 (categorizing the various court approaches into four different doctrines of self-executing treaties).

107. In that respect, Amnesty International’s objections to the U.S. NSE declaration rely on the limited Restatement view of NSE declarations. See UN Briefing, supra note 4, at 5-6; Call to Action, supra note 37; RESTATEMENT, supra note 90.

108. See Sloss, supra note 94, at 215-16. For further analysis of the effect of this limitation, see infra Part IV.A.2.

109. Sloss, supra note 94, at 220 (further asserting that an answer in the negative would allow the court to reach the merits of the case). Part IV.B infra discusses this situation and highlights the
2. The Understanding Regarding the Definition of Torture

U.S. judicial interpretation undermines the official understanding that limits the definition of torture to acts directed against persons in the offender’s custody or physical control. A federal district court relied on the legislative history of a statute that provided jurisdiction for the plaintiff’s torture claim to find a defendant liable because he had the authority and discretion to order plaintiff’s release although the plaintiff was never in the defendant’s custody or physical control. This precedent enables plaintiffs in federal courts to assert torture claims consistent with CAT’s broad definition of torture.

III. U.S. Judicial Interpretation Of The International Law On Torture And CAT

A. Filartiga v. Pena-Irala

In 1979 Dr. Filartiga, a Paraguayan physician, brought a civil action in federal court in New York against Pena-Irala, a citizen of Paraguay residing illegally in the United States. The complaint alleged that Pena-Irala had tortured to death Filartiga’s seventeen-year old son Joelito three years earlier. In 1976, in his official capacity as Inspector General of the Police in Paraguay, Pena-Irala kidnapped and severely tortured Joelito. On the same day, the police brought Dr. Filartiga’s daughter to Pena-Irala’s home where she saw her brother’s severely tortured and lifeless body. As she fled in horror, Pena-Irala followed her and shouted that she deserved
Dr. Filartiga believed that Pena-Irala tortured and killed his son in retaliation for his own political activities and beliefs as a long-standing opponent of Paraguay’s oppressive regime.\(^{119}\)

Dr. Filartiga brought the action against Pena-Irala primarily under the Alien Tort Claims Act (ATCA),\(^{120}\) which creates a federal cause of action for suits alleging (1) torts committed anywhere in the world, (2) against aliens, (3) in violation of the law of nations or a treaty of the United States.\(^{121}\) Because the plaintiffs did not allege that their action arose directly under a U.S. treaty, the court inquired whether the defendant’s conduct violated the law of nations.\(^{122}\) Plaintiffs invoked many treaties and international instruments, including the predecessor of CAT, the U.N. Declaration Against Torture, as evidence of the international customary law prohibiting official torture.\(^{123}\)

After reviewing all relevant sources of customary international law, the Second Circuit held that torture constitutes a civil wrong because it violates customary international law.\(^{124}\) Although this case

\(^{118}\) Id.

\(^{119}\) Id.


\(^{121}\) Filartiga v. Pena-Irala, 630 F.2d 876, 880 (2d Cir. 1980) (quoting ATCA’s language granting jurisdiction).

\(^{122}\) Id. at 880.

\(^{123}\) Id. at 880 & n.7. Dr. Filartiga asserted his cause of action under “wrongful death statutes; the U.N. Charter; the Universal Declaration on Human Rights; the U.N. Declaration Against Torture; the American Declaration of the Rights and Duties of Man; and other pertinent declarations, documents and practices constituting the customary international law of human rights and the law of nations,” as well as under ATCA and the Supremacy Clause of the U.S. Constitution. Id. at 879.

\(^{124}\) Id. at 884.

Having examined the sources from which customary international law is derived — the usage of nations, judicial opinions and the works of jurists — we conclude that official torture is now prohibited by the law of nations. The prohibition is clear and unambiguous, and admits of no distinction between treatment of aliens and citizens. Id. The Second Circuit relied on a U.S. Supreme Court case that identified the appropriate source of international law as the “the works of jurists, writing professedly on public law[,] the general usage and practice of nations [and] judicial decisions recognizing and enforcing that law.” Id. at 880 (quoting United States v. Smith, 18 U.S. (5 Wheat.) 153, 160-61 (1820)). The court then referred to a number of documents and cases, including the U.N. Charter, the Universal Declaration of Human Rights, the Declaration on the Protection of All Persons From Being Subjected to Torture, the American Convention on Human Rights, International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, the constitutions of fifty-five nations (including the United States and Paraguay), and U.S. Department of State Country Reports on Human Rights, all of which prohibit or condemn torture. Id. at 882-84.
predated the drafting of CAT and its subsequent ratification by the United States, it expanded the role of domestic courts in the application of human rights law in general and in the law relating to the prohibition of torture in particular. Specifically, by extending legal remedies to private plaintiffs, 

Filartiga

provided an important method of subjecting a torturer to legal proceedings and endorsed ATCA as the jurisdictional vehicle that allows private claimants to allege violations of treaty-based human rights.

B. Kadic v. Karadzic

Fifteen years later, after the United States had ratified CAT, the same court addressed the question of liability for torture inflicted by a person who did not act under the authority of a recognized state. A group of citizens from newly-independent Bosnia-Herzegovina brought an action against Radovan Karadzic, President of the self-proclaimed Bosnian-Serb republic (Srpska) within Bosnia-Herzegovina, for various acts of torture and genocide carried out by military forces under his command. The plaintiffs asserted federal jurisdiction for their claim primarily under ATCA. The court found that plaintiffs, being aliens and bringing a tort action, satisfied the statute’s first two requirements. The court then focused on the third element and inquired whether Karadzic violated the law of nations if he did not act as an official of an internationally recognized

125. See id. at 880-84.

126. Id. at 885 ("[I]nternational law confers fundamental rights upon all people vis-a-vis their own governments . . . [T]he right to be free from torture is now among [those rights].").

127. Id. at 887; see also id. at 890 (noting the wisdom of the First Congress’ decision to create federal jurisdiction through ATCA in cases involving international law or treaties in light of the foreign relations implications of such cases).

128. 70 F.3d 232 (2d Cir. 1995).

129. See id. at 236.

130. Id. at 236-37. The plaintiffs served Karadzic with the summons and complaint while he was visiting the United Nations in New York. Id. at 237.

131. Id. at 237. Although plaintiffs also invoked the Torture Victim Protection Act of 1991 (TVPA), Pub. L. No. 102-256, 106 Stat. 73, (1992), the court pointed out that TVPA is not a jurisdictional statute and that TVPA permitted plaintiffs to pursue their claims under ATCA. Id. at 246.

132. Id. at 238.
state but rather as a private individual when he directed his subordinate military forces to perpetrate torture and genocide.\textsuperscript{133}

The court concluded that “certain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals.”\textsuperscript{134} Thus, Karadzic was liable under the ATCA for acts of torture “without regard to state action, to the extent that [these acts] were committed in pursuit of genocide or war crimes.”\textsuperscript{135} The court discussed the international consensus on the prohibition against torture and found that even an illegitimate regime is a state for purposes of international law violations that require state action.\textsuperscript{136} This holding demonstrates the court’s willingness to treat the “official action” requirement flexibly, even if it would not go so far as to impose liability on purely private actors for acts of torture.\textsuperscript{137}

\textit{C. Xuncax v. Gramajo}\textsuperscript{138}

A few months before the \textit{Kadic} decision, the federal District Court in Massachusetts also found blatant violations of international law in a civil action by Guatemalan and United States citizens against Guatemala’s former Minister of Defense Hector Gramajo.\textsuperscript{139} Over an eight-year period, the plaintiffs and their family members suffered brutal torture and other violent abuse at the hands of the Guatemalan military forces acting under the orders and direction of the defendant

\textsuperscript{133} See id. at 238-44. The court noted that both plaintiffs and defendant took self-contradictory positions about Karadzic’s status. Id. at 239. Karadzic asserted simultaneously that he was the President of Srpska and that he was not a state actor. Id. Similarly, the plaintiffs claimed that, although Karadzic was the President of Srpska, he was “not an official of any government.” Id.

\textsuperscript{134} Id. at 239.

\textsuperscript{135} Id. at 244.

\textsuperscript{136} Id. at 239-40, 245.

\textsuperscript{137} See id. at 239, 242, 245.


\textsuperscript{139} \textit{Xuncax v. Gramajo} consolidated and addressed together Civil Action No. 91-11564 by nine Guatemalan citizens and Civil Action No. 91-11612 by Ortiz, a United States citizen, against the same high-ranking Guatemalan public official. \textit{Xuncax}, 886 F. Supp. at 169. The Guatemalan plaintiffs asserted their claims under international law and ATCA while Ortiz based her claim primarily on TVPA. Id. at 176, 179, 184. Plaintiffs served their complaints upon defendant while he was attending the Kennedy School of Government at Harvard University in Cambridge, Massachusetts. Id. at 169.
while he occupied high-ranking positions, including Minister of Defense, in the Guatemalan Government.\footnote{140}

The court relied on U.S. federal law precedent\footnote{141} in its analysis of the Guatemalan plaintiffs' torture claims under international law, as well as a number of international agreements and conventions\footnote{142} that "have established beyond question that the use of official torture is strictly prohibited by the most fundamental principles of international law."\footnote{143} On that basis, the court concluded that the plaintiffs' allegations fit squarely within the definition of torture and the universal and obligatory prohibition against it.\footnote{144}

The court also clearly stated its preference for the Filartiga approach that focused on protecting substantive rights created by international law.\footnote{145} In contrast, an alternative approach looked to domestic (municipal) law as a source of substantive rights a plaintiff might seek to enforce through ATCA's grant of jurisdiction.\footnote{146} The court emphatically stressed the "inadequacy of municipal law to address, meaningfully, such human rights violations as . . . torture."\footnote{147} Significantly, the court pointed out that CAT itself created "an obligation incumbent upon individual nations to see that such violations of international law are redressed."\footnote{148} This treaty-based obligation supports the court's holding that ATCA creates a federal private cause of action in U.S. courts for tortious violations of international law, without recourse to domestic law, as a source of the cause of action.\footnote{149}
Further, in its ruling in favor of the American plaintiff’s claim under TVPA, the court effectively eliminated the statute’s limitation to “[a]cts directed against an individual in the offender’s custody or physical control.”\textsuperscript{150} The plaintiff was never in the defendant’s personal custody or physical control since Gramajo was never present where and when the plaintiff was subjected to torture.\textsuperscript{151} However, the court looked to the statute’s legislative history to find Gramajo liable under TVPA because he had authority and discretion to order plaintiff’s release.\textsuperscript{152} This judicial interpretation makes the application of TVPA consistent with CAT’s broad definition of torture, which encompasses acts carried out with the “consent or acquiescence of a public official,” and thus effectively undermines the official U.S. position that seeks to limit the definition of torture in this respect.\textsuperscript{153}

D. Torture Claims Under International Law in U.S. Courts

The three cases presented above define the approach to bringing claims for treaty-based human rights violations in U.S. courts. \textit{Filartiga} defines torture as a civil wrong because it violates customary international law and enables private litigants to bring treaty-based torture claims in federal courts via ATCA.\textsuperscript{154} Further, \textit{Kadic} establishes that international law imposes individual liability for torture committed by private individuals in pursuit of “certain forms of conduct [that] violate the law of nations,” such as genocide or war crimes.\textsuperscript{155} Finally, \textit{Xuncax} eliminates TVPA’s limitation of torture and endorses ATCA’s creation of a private right to sue in U.S. courts for tortious violations of international law.\textsuperscript{156}

\begin{itemize}
  \item \textsuperscript{150} \textit{See id.} at 178 & n.15 (quoting TVPA, § 3(b)(1) (emphasis added)).
  \item \textsuperscript{151} \textit{See id.} at 173-74.
  \item \textsuperscript{152} \textit{id.} at 178 n.15 (“[A] higher official need not have personally performed or ordered the abuses in order to be held liable [under the TVPA].” (quoting the Senate Committee Report, S. Rep. 102-249, at 9 (1991))).
  \item \textsuperscript{153} \textit{CAT, supra} note 1, art. 1; \textit{see also supra} notes 85-89 and accompanying text.
  \item \textsuperscript{154} \textit{Filartiga v. Pena-Irala}, 630 F.2d 876, 884-87 (2d Cir. 1980).
  \item \textsuperscript{155} \textit{Kadic} v. \textit{Karadzic}, 70 F.3d 232, 239 (2d Cir. 1995).
\end{itemize}
These three cases demonstrate that, despite the official reservations to CAT, U.S. courts not only willingly apply CAT’s principles in deciding domestic cases, but also tend to interpret liberally the two domestic statutes, ATCA and TVPA, that enable U.S. litigants to bring torture claims to match the scope of protection against torture guaranteed by CAT.¹⁵⁷

IV. INTERNATIONAL LEGAL PRINCIPLES REGARDING ACTIONS THAT VIOLATE THE OBJECT AND PURPOSE OF A TREATY

While courts observe and use the principles of CAT to enhance protection against torture, a number of U.S. companies develop, produce, market, and export electro-shock devices, such as stun belts, that serve as instruments of torture in the hands of law enforcement officials both in the United States and abroad.¹⁵⁸ Although no language in CAT specifically prohibits the manufacture and export of torture devices,¹⁵⁹ international jurisprudence on the interpretation of international conventions stipulates that actions in violation of the object and purpose of an international agreement violate the agreement itself.¹⁶⁰ In this respect, the United States arguably violates CAT on two levels — by entering reservations and understandings that undermine the object and purpose of CAT¹⁶¹ and by “consent[ing] or acquiesc[ing]” through its public officials to the development, manufacture, and marketing of torture devices, thereby promoting their use throughout the United States and abroad.¹⁶²

¹⁵⁷. See supra Parts III.A, III.B, and III.C.
¹⁵⁸. See USA Market Leader, supra note 4.
¹⁵⁹. See CAT, supra note 1, art. 1.
¹⁶⁰. See, e.g., Reservations to the Convention on Genocide, Advisory Opinion, 1951 I.C.J. 15, 24 (May 28) (“The object and purpose of the Genocide Convention imply that it was the intention . . . that as many States as possible should participate . . . . The object and purpose of the Convention thus limit . . . the freedom of making reservations . . . .”); Human Rights Committee, General Comment on Issues Relating to Reservations Made Upon Ratification or Accession to the Covenant or the Optional Protocols, General Comment No. 24 (Nov. 2, 1994) (asserting that actions designed to remove supportive guarantees or to evade provisions that secure the enjoyment of protected rights violate the object and purpose of the Covenant to define certain political and civil rights and to place them in a framework of legally binding obligations for the states that ratify).
¹⁶¹. See supra Part II.C.
¹⁶². For an extensive treatment of this argument, see infra Part V.A. Note, however, the close interrelation of the two alleged violations — the U.S. redefinition of torture seeks to minimize the
The Vienna Convention on the Law of Treaties\footnote{Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].} stipulates that "[a] State . . . may, when signing, ratifying, . . . accepting, approving or acceding to a treaty, formulate a reservation unless . . . the reservation is incompatible with the object and purpose of the treaty."\footnote{Id. at art. 19. Although the United States has not ratified the Vienna Convention, the Convention has the force of customary international law and thus its principles still legally bind the United States. See RESTATEMENT, supra note 90, at 196.} Thus, the United States' understandings and reservations to CAT seek to limit any obligation to provide protections above those defined by its own existing domestic law and practice.\footnote{See Call to Action, supra note 37, item 1; UN Briefing, supra note 4, at 4. This is also consistent with the "window dressing" strategy to achieving ratification of international treaties. See supra Part II.D.1.} Critics of this practice argue that if state parties to international agreements that set universal standards for the protection of human rights routinely enter such limitations, they would effectively render these agreements futile.\footnote{See Henkin, supra note 101, at 343.} The U.N. Human Rights Committee has expressed its clear disapproval of such practice in the context of the International Covenant on Civil and Political Rights (ICCPR):\footnote{The United States reservations to ICCPR and CAT are almost identical in content and character. See Henkin, supra note 99, at 342.}

Of particular concern are widely formulated reservations which essentially render ineffective all Covenant rights which would require any change in national law to ensure compliance with Covenant obligations. No real international rights or obligations have thus been accepted . . . . So that reservations do not lead to a perpetual non-attainment of international human rights standards, reservations should not systematically reduce the obligations undertaken only to those presently existing in less demanding standards of domestic law. Nor should interpretative declarations or reservations seek to remove an autonomous meaning to Covenant obligations, by pronouncing them to be
identical, or to be accepted only in so far as they are identical, with existing provisions of domestic law.\textsuperscript{168}

However, the international customary law on treaties neutralizes the effect of unacceptable reservations by rendering them severable and void: "The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation."\textsuperscript{169}

Furthermore, the Vienna Convention unambiguously requires that any state party to an international treaty not act in any way against the purpose and objective of the treaty until the state clearly expresses its intention not to be bound by the treaty.\textsuperscript{170} In the context of CAT, U.S. law enforcement officials' use of torture devices, such as stun belts, and the consent or acquiescence of U.S. official authorities to the development, production, marketing, and worldwide sales by U.S. manufacturers of stun belts, would amount to such action.\textsuperscript{171} Similarly, U.S. government training programs instructing both U.S. and foreign law enforcement officials in the use of electro-shock devices, such as stun belts, violate both specific provisions of CAT and its objective to eradicate torture.\textsuperscript{172}

\textsuperscript{168} General Comment on the Issues Relating to Reservations Made Upon Ratification or Accession to the Covenant or the Optional Protocols, U.N. Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.6 (1994), ¶ 12, 19.

\textsuperscript{169} Id. ¶ 18; see also JORDAN J. PAUST ET AL., INTERNATIONAL LAW AND LITIGATION IN THE U.S. 78 (2000) (presenting the argument that "a putative reservation is not of great import to the reserving state (so it is severable) but is of such import to the community that it is thwarting the object and purpose of a treaty and, thus, void").

\textsuperscript{170} Vienna Convention, supra note 160, art. 18:

A State . . . is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) that State . . . has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, . . . acceptance or approval, until [it] shall have made its intention clear not to become a party to the treaty; or (b) that State . . . has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

\textsuperscript{171} For the details of this argument, see infra Parts V and VI.A.2.

\textsuperscript{172} See CAT, supra note 1, arts. 10, 11; supra Part II.A.
However, United States courts could apply the principles of the Vienna Convention only by recognizing them as an established norm of international law because the United States is not a party to the Vienna Convention.\(^{173}\) Although some federal courts have adopted such an approach in international commercial dispute cases,\(^{174}\) this Note evaluates the potential for enforcing compliance with CAT's prohibition against torture under the terms of CAT itself.\(^{175}\)

V. U.S. CONDUCT THAT VIOLATES CAT

A. Official Use of Stun Belts

Using stun belts on prisoners and detainees in the United States satisfies the three elements of CAT's definition of torture.\(^{176}\) First, the documented physical and mental consequences of 50,000-volt, eight-second long electric shocks prove that stun belts inflict severe physical and mental pain and suffering.\(^{177}\) Second, numerous sources, including manufacturer sales statistics, Non-Governmental Organization (NGO) investigations, and even judicial opinions, show that public officials throughout the United States use stun belts.\(^{178}\) Third, documented cases of stun belt abuse reveal an impermissible purpose for activating the belt.\(^{179}\) Therefore, stun belt use by U.S. law enforcement officials constitutes torture under CAT.\(^{180}\)

---


\(^{174}\) See, e.g., Chubb & Sons, Inc. v. Asian Airlines, 214 F.3d 301 (2d Cir. 2000) ("We . . . treat the Vienna Convention as an authoritative guide to the customary international law of treaties."); Logan v. Dupuis, 990 F. Supp. 26, 29 & n.6 (D.D.C. 1997) ("Although the United States is not a party to the Vienna Convention, it regards the substantive provisions of the Vienna Convention . . . as codifying the customary international law of treaties."); see also supra note 164.

\(^{175}\) See infra Part VI (substantiating this proposition).

\(^{176}\) See CAT, supra note 1, art. 1(1).

\(^{177}\) See supra Parts I.A and I.B.

\(^{178}\) See supra Part I.C.

\(^{179}\) See supra note 37 and accompanying text.

\(^{180}\) See Elizabeth Olson, U.S. Prisoner Restraint Holds Amount to Torture, Geneva Panel Says, N.Y. TIMES, May 18, 2000, at A12 (reporting the finding of the U.N. Convention Against Torture Monitoring Committee that use by U.S. law enforcement officials of stun belts to restrain prisoners violates CAT); see also Dahlberg, supra note 5, at 265-90 (arguing that stun belt use violates the Eighth Amendment cruel and unusual punishment clause, the Sixth Amendment right to counsel and the Fourteenth Amendment due process clause of the U.S. Constitution). See generally, Nagan & Atkins, supra note 53.
B. Manufacture of Stun Belts

Article Four of CAT requires each state party to criminalize the perpetration, complicity, or participation in torture and to define appropriate penalties for these grave offenses. Various sources document that the primary customers of stun-belt manufacturers are U.S. local, state, and federal law enforcement agencies as well as foreign law enforcement agencies. In fact, the manufacturers specifically target law enforcement agencies in their marketing campaigns. Official use of stun belts on people in custody constitutes torture. Developing, manufacturing, marketing, selling, and exporting stun belts for use by government officials throughout the United States and abroad serves the purpose of developing the market and thus increases the demand for devices that inflict torture. Therefore, the stun-belt manufacturers’ conduct amounts to impermissible complicity with torture under CAT.

VI. ENFORCING COMPLIANCE WITH CAT

To enforce compliance with CAT through U.S. courts, plaintiffs must assert specific instances of non-compliance that violate the human rights CAT protects. The main vehicles for raising torture claims in U.S. courts are CAT, as a treaty of the United States, and

---

181. CAT, supra note 1, art. 4.
182. See supra Parts I.C and I.D.
183. See supra notes 14, 15, 26-29 and accompanying text. The nature of the sales pitch makes it unlikely that the manufacturers would be willing to sell stun belts to private individuals. See id.
184. See supra Part V.A.
185. See STOPPING TORTURE TRADE, supra note 4, at 31 & n.31 (pointing out that the mere availability of stun belts encourages their use).
186. See CAT, supra note 1, art. 4(1).
187. See RESTATEMENT, supra note 90, §§ 703(3), 907 (“An individual victim of a violation of a human rights agreement may pursue any remedy provided by that agreement or by other applicable international agreements. . . . A private person having rights against the United States under an international agreement may assert those rights in courts in the United States of appropriate jurisdiction either by way of claim or defense.”). This article focuses on judicial enforcement of compliance with CAT in the United States because judicial enforcement has a greater potential to influence the offender’s conduct than CAT’s complicated enforcement provisions. See Lippman, supra note 52, at 319-25 (reviewing and criticizing CAT’s enforcement provisions for their complexity and relative ineffectiveness); infra note 196 and accompanying text.
ATCA, as a statute granting federal jurisdiction over treaty-based claims of torture.\textsuperscript{188} The plaintiffs invoking CAT or ATCA in U.S. courts may be U.S. citizens or aliens.\textsuperscript{189} The defendants in cases alleging that stun belt manufacture violates CAT may include the U.S. government and its officials for perpetration of, or U.S. stun-belt manufacturers for complicity with, torture by stun belts.\textsuperscript{190} This Part will evaluate the adequacy of CAT as ratified by the United States and the adequacy of ATCA in seeking to enforce compliance with CAT through U.S. courts.

\textit{A. Bringing Claims Under CAT as Ratified by the United States}

CAT primarily imposes affirmative obligations on state parties.\textsuperscript{191} Specifically, CAT requires governments to criminalize the perpetration of, complicity with, or participation in torture.\textsuperscript{192} CAT also requires each state party to provide an effective remedy to any torture victim\textsuperscript{193} and to observe the victim’s right to an individual hearing before an impartial tribunal.\textsuperscript{194} Some commentators assert that the right to an individual hearing does not entail the right to judicial review although any person whose rights are violated should obtain an effective remedy.\textsuperscript{195} However, in the United States, courts are the only “competent authority” that can adjudicate the merits of individual claims and provide a remedy.\textsuperscript{196}

\begin{flushleft}
\textsuperscript{188} See, e.g., Kadic v. Karadzic, 70 F.2d 232, 238 (2d Cir. 1995); Filartiga v. Pena-Irala, 630 F.2d 876, 880 (2d Cir. 1980).
\textsuperscript{189} See 28 U.S.C. § 1350 (1993); CAT, supra note 1, art. 5(1).
\textsuperscript{190} See infra Part VI.A.2.
\textsuperscript{191} See CAT, supra note 1, arts. 2-16.
\textsuperscript{192} Id. at art. 4.
\textsuperscript{193} Id. at art. 14. (“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation . . . .”)
\textsuperscript{194} Id. at art. 13. (“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities.”)
\textsuperscript{195} See Sloss, supra note 94, at 143.
\textsuperscript{196} See John Quigley, The International Covenant on Civil and Political Rights and the Supremacy Clause, 42 DePaul L. Rev. 1287, 1296 (1993) (asserting that “[s]ince the United States has no legislative or administrative mechanism available to individuals, the only possible remedy is judicial” in the context of an ICCPR provision similar to CAT’s Article 13).
\end{flushleft}
I. Jurisdiction Under CAT

CAT’s Article Five explicitly requires state parties to establish jurisdiction over acts of torture committed in the state’s territory by a national of that state against a victim of that state. CAT permits a state party to exercise discretion in deciding whether to grant jurisdiction to victims who are citizens of the state. Thus, the U.S. NSE declaration is relevant to a U.S. litigants’ ability to base jurisdiction on CAT when bringing torture claims before U.S. courts.

In 1994 Congress enacted implementing legislation “only to establish Article 5(1)(b) jurisdiction over offenses committed by U.S. nationals outside the United States, and to establish Article 5(2) jurisdiction over foreign offenders committing torture abroad who are later found in territory under U.S. jurisdiction.” The legislation limited implementation of CAT only with regard to these two issues. Thus, in light of the NSE declaration, the United States apparently intended to ensure that no CAT provisions other than the identified Article Five subsections acquire domestic legal effect.

However, the extensive pre-ratification Senate hearings demonstrate no intent to limit CAT’s domestic legal effect only to acts of torture committed outside the United States. In fact, when Senator Helms asked whether CAT would apply “if a law


198. CAT, supra note 1, art. 5.

199. Id. at art. 5(1)(c).

200. See supra Part II.D.1.


202. See supra Part II.D.1.

enforcement official in New York tortures a suspect in custody in New York whose alleged criminal activity took place in New York,” the State Department Legal Adviser simply answered “Yes.” Thus, the official NSE declaration does not bar plaintiffs from basing jurisdiction on CAT for torture claims in U.S. courts because the U.S. legislation implementing Article Five did not intend to preclude other CAT provisions from having domestic legal effect upon ratification. However, under CAT’s Article Five, only U.S. citizens would be able to assert that U.S. courts have jurisdiction over their torture claims.

2. Substantive Claims Under CAT
   
a. Claims Against U.S. Government Officials

Using stun belts on prisoners and detainees in the United States satisfies the three elements of CAT’s definition of torture. Notably, the U.S. understanding that restricts the CAT definition of torture by requiring specific intent and direct custody or physical control would not undermine a stun-belt torture victim’s claims because the victim can show specific intent by proving that the officials intended for him to experience the adverse effects of stun-belt use (or else they would not have pushed the button) and because Xuncax eliminated the direct custody or physical control requirement. Therefore, stun-belt use by U.S. law enforcement officials constitutes torture under CAT as ratified by the United States and as interpreted by federal courts. Thus, any U.S. citizen

205. Id. at 41-2 (discussion between Sen. Helms and Abraham Sofaer, State Department Legal Adviser).
206. See id. at 8 (statement of Abraham Sofaer, State Department Legal Adviser) (indicating that CAT “will be applied as a matter of U.S. law” and that the United States would assume “domestic and international legal obligations . . . when the Convention is ratified.”); see also John A. Perkins, The Changing Foundations of International Law: From State Consent to State Responsibility, 15 B.U. INT’L L.J. 433, 492 n.185 (1997) (asserting that NSE declarations have “limited legal effect upon the obligation of the United States to provide ‘an effective remedy.’”).
207. See CAT, supra note 1, art. 5(1)(c) (requiring that the victim be a national of the CAT state party). Aliens can bring CAT-based torture claims via ATCA. See infra Part VI.B.
208. See supra Part V.A.
209. See supra text accompanying notes 37, 86, 148-151.
who is the victim of stun belt use at the hands of U.S. law enforcement officials has a meritorious claim under CAT.

A successful federal class action seeking to enjoin U.S. law enforcement agencies and their officials from using stun belts on anyone in custody would deprive stun belt manufacturers of a significant portion of their market.210 However, evidence shows that U.S. manufacturers export stun belts to a number of other countries.211 Therefore, a more effective way to curtail stun-belt torture would be to hold manufacturers liable.

b. Claims Against U.S. Manufacturers

Article Four of CAT requires each state party to criminalize the perpetration of, complicity with, or participation in torture and to define appropriate penalties for these grave offenses.212 Developing, manufacturing, marketing, selling, and exporting stun belts for the use of government officials throughout the United States and abroad amounts to complicity with torture.213

The Model Penal Code defines “complicity” as aiding, agreeing, or attempting to aid another person in committing a criminal offense.214 This definition is consistent with CAT’s requirement that state parties make complicity with torture a criminal offense.215 However, so far the United States has not taken any measures to modify its domestic criminal laws in accordance with CAT.216 In fact, the official NSE declaration attests to the political ideal, if not the intent, to avoid modifying domestic laws pursuant to international treaties.217

211. See USA Market Leader, supra note 4.
212. CAT, supra note 1, art. 4.
213. See supra Part V.B.
215. CAT, supra note 1, art. 4(1).
216. See UN Briefing, supra note 4, at 6 (criticizing the U.S. government for not making torture an explicit crime under federal law except with regard to acts committed outside U.S. territory); Call to Action, supra note 37, item 1.
217. See supra Part II.D.1.
At least two U.S. federal courts have based considered liability for complicity with international human rights violations in the framework of the domestic criminal law concepts of "conspiracy" and "aiding and abetting." This approach suggests that plaintiffs suing stun-belt manufacturers under CAT could avoid the pernicious effect of the NSE declaration by asserting that their claim does not seek to expand domestic law because the existing crimes of conspiracy and aiding and abetting are analogous to complicity under CAT. The two cases, however, have limited (if any) precedential value over a CAT-based claim because both courts asserted subject matter jurisdiction under ATCA and not under a U.S. treaty. Thus, to the extent that imposing liability for complicity with torture requires the expansion of domestic laws, the NSE declaration means that plaintiffs cannot bring a claim under CAT against stun-belt manufacturers in U.S. courts.

B. Bringing CAT Claims via ATCA

The Alien Tort Claims Act grants to federal courts jurisdiction over any civil action (1) by an alien, (2) for a tort only, (3) committed in violation of the law of nations or a treaty of the United States. Both official use and private manufacture of stun belts violate CAT, which is a "treaty of the United States." These CAT violations encroach upon torture victims' international and domestic human

218. Carmichael v. United Technologies Corp., 835 F.2d 109, 113-14 (5th Cir. 1988) (finding that a U.S. corporate defendant did not violate the international law on torture because it did not "conspire in, or aid and abet, official acts of torture by one nation against the citizens of another nation."); Eastman Kodak Co. v. Kavlin, 978 F. Supp. 1078, 1094 (S.D. Fla. 1997) (finding both private individuals and state actors liable for conspiring to commit a violation of international law).

219. This argument would parallel the U.S. assertion that "existing federal and state laws already outlaw any act falling within [CAT's] definition of torture." UN Briefing, supra note 4, at 6. However, explicitly outlawing torture sends a clear message to all potential offenders and thus creates more effective deterrence and provides more adequate punishment than existing laws. Id.

220. Carmichael, 835 F.2d at 112-13; Eastman Kodak, 978 F. Supp. at 1090. For a discussion of CAT-based claims under ATCA, see infra Part VI.B.

221. This conclusion illustrates the proposition that the NSE declaration may preclude plaintiffs from seeking to create a treaty-based private cause of action. See supra Part II.D.1.


223. See id.; supra Parts VI.A.2.a and VI.A.2.b.
rights and thus are legal "torts." Therefore, nothing in the language of the statute would preclude any alien from bringing suit in U.S. federal court against U.S. government officials for perpetrating torture by using stun belts or against U.S. stun-belt manufacturers for complicity with torture.

Whenever U.S. courts have imposed civil liability for torture under ATCA, however, they have not relied on CAT as an independent source of law but rather as evidence that freedom from torture is a prevalent norm of customary international law. Therefore, the current U.S. precedent has limited value for plaintiffs who wish to assert a human rights treaty violation under ATCA. To complicate matters further, U.S. courts have consistently held that the doctrine of sovereign immunity bars claims against the U.S. government and its officials under ATCA.

1. Limitations of the ATCA Precedent

U.S. courts have ruled in favor of alien plaintiffs who have asserted under ATCA that torture by foreign government officials violates the law of nations or customary international law. Federal courts have also imposed liability under ATCA on corporate defendants who conspired with state actors in committing human rights abuses and thus violated customary international law.

---

224. See BLACK'S LAW DICTIONARY 1489 (6th ed. 1990) (defining "tort" as "[a] legal wrong committed upon the person . . . independent of contract" such as "a direct invasion of some legal right of the individual").


226. See Kadic v. Karadzic, 70 F.2d 232, 238 n.1 (2d Cir. 1995); Filartiga v. Pena-Irala, 630 F.2d 876, 880 (2d Cir. 1980).

227. See infra Part VI.B.1.

228. See infra Part VI.B.2.

229. E.g., Kadic, 70 F.2d at 241-44 (holding that genocide, war crimes, torture, and summary execution violate the law of nations); Siderman de Blake v. Republic of Argentina, 965 F.2d 699, 717 (9th Cir. 1992) (confirming that official torture violates established norms of customary international law); Filartiga, 630 F.2d at 880 (finding that "act[s] of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations"); see also Siderman, 965 F.2d at 714 (describing customary international law as "the direct descendant of the law of nations").

230. E.g., Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424, 439-47 (D.N.J. 1999) (finding Ford a de facto state actor who subjected plaintiff to unpaid labor in Nazi Germany and thus violated the law of
cases that have invoked CAT, plaintiffs have used it merely as evidence that the prohibition of official torture is an established norm of international customary law.\textsuperscript{231}

Thus, alien plaintiffs who sue U.S. government officials for inflicting torture by stun belts would be better off adhering to the precedent and not asserting their claim under the treaties prong of ATCA.\textsuperscript{232} Similarly, alien plaintiffs should assert that, by developing, manufacturing, marketing, and selling stun belts to U.S. law enforcement agencies, manufacturers entered into a conspiracy with state actors to violate the international customary law on torture as evidenced by CAT.\textsuperscript{233} The avoidance of asserting CAT as an independent source of law to maximize alien plaintiffs' chances of success in seeking to curtail torture in the United States is a paradoxical strategy in a country that has ratified CAT.\textsuperscript{234} However, this paradox is a direct consequence of the U.S. NSE declaration that precludes CAT's substantive provisions from having any legal effect as domestic law in the absence of comprehensive implementing legislation.\textsuperscript{235} This situation illustrates the relevance of the position that the United States should withdraw its reservations, declarations, and understandings with regard to CAT.\textsuperscript{236}

\textsuperscript{231} See \textit{Kadic}, 70 F.2d at 238 n.1; \textit{Filartiga}, 630 F.2d at 880 n.7.

\textsuperscript{232} Thus, the claims in \textit{Kadic} and \textit{Filartiga} could serve as models for plaintiffs' complaints. See \textit{Kadic}, 70 F.2d at 238 n.1; \textit{Filartiga}, 630 F.2d at 880 n.7.

\textsuperscript{233} \textit{Eastman Kodak Co.}, 978 F. Supp. at 1091-92, could serve as a model for a plaintiff's complaint. The stun-belt manufacturers' conduct is instrumental to the state officials' ability to inflict torture by stun belts and therefore arguably parallels the \textit{Eastman Kodak Co.} defendant's instigation of the plaintiff's arbitrary detention with the help of state officials. See \textit{Eastman Kodak Co.}, 978 F. Supp. at 1080-81, 1091.

\textsuperscript{234} See generally \textit{TREATIES IN FORCE}, supra note 2, at 472.

\textsuperscript{235} See \textit{RESTATEMENT}, supra note 90, \S\ 111 (postulating that NSE declarations, in conjunction with implementing legislation, determine whether a treaty has effect as domestic, as opposed to international, law and whether the treaty may provide the rule of decision in domestic proceedings).

\textsuperscript{236} See \textit{UN Briefing}, supra note 4, at 5-6; \textit{Call to Action}, supra note 37, at item 1.
2. The Pernicious Effect of the Sovereign Immunity Doctrine on Claims Under ATCA

Cases under ATCA against the United States or its officials have inevitably failed because of the doctrine of sovereign immunity.\(^{237}\) This doctrine bars any suit against the United States without its explicit consent.\(^{238}\) Courts have asserted that ATCA claims are subject to the sovereign immunity doctrine because the United States’ decision to enact ATCA does not express its consent to being sued by aliens for torts in its own courts.\(^{239}\) Therefore, U.S. courts will most likely invoke the sovereign immunity doctrine to dismiss any alien plaintiffs’ claims under ATCA for U.S. government officials’ torture by stun belts.\(^{240}\)

Once again, this inevitable dismissal under the sovereign immunity doctrine results from the U.S. NSE declaration limiting CAT’s legal effect as domestic law in the absence of comprehensive implementing legislation.\(^{241}\) Enacting CAT fully would eliminate such problems.\(^{242}\)

CONCLUSION

The United Nations Convention Against Torture seeks to reduce and eventually eliminate all instances of torture by anyone acting in

\(^{237}\) E.g., Goldstar (Panama) S.A. v. United States, 967 F.2d 965, 971 (4th Cir. 1992) (barring ATCA claim for negligence in failing to prevent mob violence and looting in the wake of the 1989 invasion of Panama because ATCA was not an express waiver of U.S. sovereign immunity); Sanchez-Espinoza v. Reagan, 770 F.2d 202, 207 (D.C. Cir. 1985) (holding that the doctrine of sovereign immunity barred aliens’ claims under ATCA against the United States and its officials for supporting the Nicaraguan Contras).

\(^{238}\) United States v. Sherwood, 312 U.S. 584, 586 (1941) (“The United States, as sovereign, is immune from suit save as it consents to be sued, . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.”); United States v. King, 395 U.S. 1, 4 (1969) (declaring that the United States’ consent to be sued “cannot be implied but must be unequivocally expressed”).

\(^{239}\) E.g., Koohi v. United States, 976 F.2d 1328, 1372 at n.4 (9th Cir. 1992) (deciding that ATCA does not constitute a waiver of the sovereign immunity of the United States so as to permit aliens’ suit for tort against the United States in its own courts). See, e.g., Saltany v. Reagan, 702 F. Supp. 319 (D.D.C. 1988) (barring suit under ATCA against the U.S. government or its officers acting in the scope of their offices in the absence of explicit waiver of the doctrine of sovereign immunity).

\(^{240}\) See id.

\(^{241}\) See RESTATEMENT, supra note 90, § 11; supra note 229 and accompanying text.

\(^{242}\) See supra text accompanying note 230.
STUN BELT USE AND MANUFACTURE

an official capacity.\textsuperscript{243} To further this objective, CAT also prohibits complicity with official torture.\textsuperscript{244} Because stun belt use in the hands of law enforcement officials violates CAT, the manufacture of stun belts only serves to further develop the market and thus expand the potential for stun-belt torture.\textsuperscript{245} In this way, stun belt manufacture amounts to complicity with torture and violates CAT.\textsuperscript{246}

The Vienna Convention on The Law of Treaties requires that the United States, as a party to CAT, not permit or engage in actions that undermine or contradict CAT's purpose and objective.\textsuperscript{247} However, at this time U.S. courts are not likely to invoke those principles to enforce compliance with CAT, absent a U.S. judicial recognition of the Vienna Convention as customary international law in the context of treaty-based human rights violations claims.\textsuperscript{248} Therefore, stun-belt torture victims in the United States must rely on CAT's substantive provisions to seek redress for their violated right to be free from torture.\textsuperscript{249}

Despite the official U.S. declaration that CAT's substantive provisions are not self-executing, the U.S. treaty makers intended at least to create a basis for jurisdiction over private claims by U.S. citizens for torture under CAT.\textsuperscript{250} The Alien Tort Claims Act grants the same jurisdictional powers of U.S. federal courts over aliens' claims.\textsuperscript{251}

Nevertheless, the NSE declaration precludes U.S. citizens from invoking CAT's substantive provisions in U.S. courts to create a new private cause of action for official torture or complicity therewith.\textsuperscript{252} Thus, plaintiffs must find a similar cause of action under domestic law that would enable them to obtain adequate redress.\textsuperscript{253}

\begin{itemize}
\item \textsuperscript{243} See supra Parts II.A and II.B.
\item \textsuperscript{244} See supra Part II.A.
\item \textsuperscript{245} See supra Part V.
\item \textsuperscript{246} See supra Part VI.B.
\item \textsuperscript{247} See supra Part IV.
\item \textsuperscript{248} See supra Part IV.
\item \textsuperscript{249} See supra Parts IV and VI.
\item \textsuperscript{250} See supra Part II.D.1.
\item \textsuperscript{251} See supra Part VI.B.
\item \textsuperscript{252} See supra Part VI.A.2.
\item \textsuperscript{253} See supra Part VI.A.2.b.
\end{itemize}
doctrine of sovereign immunity similarly bars aliens’ attempts to sue U.S. government officials for inflicting torture. In addition, no U.S. courts have applied CAT’s substantive provisions under ATCA to find liability for torture, but have looked instead to established norms of customary international law.

These significant and very real obstacles to obtaining remedy for human rights violations under a treaty of the United States convert the U.S. ratification of CAT into little more than a symbolic gesture. Such treatment of an important international treaty protecting an essential human right is inconsistent with the central role the United States plays in the international legal and political arena.

Plamen I. Russev

---

254. See supra Part VI.B.2.
255. See supra Part VI.B.1.