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# *The Duty of States Parties to the Convention against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad*

Christopher Keith Hall\*

## **Abstract**

*The universal criminal jurisdiction provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the Convention') which require each state party to extradite or submit any case involving a foreigner in territory subject to its jurisdiction suspected of torture committed abroad against another foreigner to its competent authorities for the purpose of prosecution. What is not generally known is that Article 14 of the Convention, which contains no geographic restriction, requires each state party to ensure in its legal system that any victim of an act of torture, regardless of where it occurred, obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. Despite two recent decisions, one by a Canadian court and the other by the House of Lords, which erroneously asserted the contrary, an authoritative interpretation by the Committee against Torture, the ordinary meaning of the wording of Article 14, the structure of the Convention, and the drafting history all confirm that Article 14 applies to torture committed abroad regardless of the nationality of the perpetrator or the victim.*

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the Convention') set up a comprehensive scheme with the aim ultimately to end torture around the world through a broad range of measures including

\* Senior Legal Adviser, International Justice Project, Amnesty International. Email: [chall@amnesty.org](mailto:chall@amnesty.org).

prohibitions in criminal law, strong principles of criminal responsibility, the elimination of certain defences, regulations for security forces, training, duties to investigate and prosecute regardless of where the torture was committed, exclusion of statements obtained through torture, and procedures supplementing criminal proceedings to enable victims and their families to obtain civil reparations from those responsible for torture regardless where it was committed.<sup>1</sup>

In May 2005, the Committee against Torture ('the Committee'), the body established under the Convention to review compliance by states parties with their treaty obligations, confirmed in an authoritative interpretation that Article 14 requires states parties to provide a procedure permitting victims and their families to obtain reparations from those responsible for torture regardless of where it was committed.<sup>2</sup> In doing so it rejected a contrary decision by the Ontario Superior Court of Justice in the *Bouzari v. Islamic Republic of Iran* case. That court held that a civil action against a foreign state for torture committed abroad did not fit within the commercial activity or domestic tort exceptions to the State Immunity Act, even though the victim suffered much of the harm in Canada; that neither the *jus cogens* prohibition of torture nor any rule of customary international law provided an exception to state immunity, and that Article 14 of the Convention did not require Canada to provide a procedure for obtaining compensation for torture committed abroad.<sup>3</sup> This decision was upheld by the Ontario Court of Appeal, and the Supreme Court dismissed an appeal from that decision.<sup>4</sup> In June 2006, the House of Lords in the *Jones v. Ministry of Interior (Saudi Arabia)* case dismissed the Committee's interpretation and denied four UK nationals the opportunity to exercise their right under Article 14 of the Convention and other international law to obtain reparations from the state, a party to the Convention, and the officials who reportedly tortured them.<sup>5</sup>

As explained below, the various justifications given by the House of Lords and the Ontario courts, some of which are inconsistent, misapply long-established principles of treaty interpretation. The conclusions are contrary to the plain meaning of the Convention, its object and purpose, and the *travaux préparatoires* of the Convention. This article does not address all of the various flaws in the reasoning of the two judgments and the separate opinion concerning international law, some of which are addressed in other articles in this symposium, but it addresses the rationales advanced to justify the unfortunate conclusions about Article 14.<sup>6</sup>

<sup>1</sup> GA Res. 39/46, 10 Dec. 1984.

<sup>2</sup> Committee, Conclusions and recommendations, 34th Sess., 2–20 May 2005, UN Doc. CAT/C/CR/34/CAN, 7 July 2005, paras 4(g), 5(f).

<sup>3</sup> *Bouzari v. Islamic Republic of Iran*, 2002 ACWSJ LEXIS 2293; 2002 ACWSJ 3390; 114 ACWS (3d), 1 May 2002, para. 57.

<sup>4</sup> 122 CRR (2d) 26; 2004 CRR LEXIS 167, 30 June 2004; appeal dismissed, 122 CRR (2d) 376; 2005 CRR LEXIS 2, 27 Jan. 2005.

<sup>5</sup> *Jones v. Ministry of Interior Al-Mamlaka A-Arabiya AS Saudiya (the Kingdom of Saudi Arabia)* [2006] UKHL 26.

<sup>6</sup> See McGregor, 'Torture and State Immunity: Deflecting Impunity, Distorting Sovereignty', Novogrodsky, 'Immunity for Torture: Lessons from *Bouzari v. Iran*'; and Orakhelashvili, 'State Immunity and Hierarchy of Norms: Why the House of Lords Got It Wrong' in this Symposium.

# 1 The Correct Interpretation of Article 14 under the General Rule of Treaty Interpretation

## A Ordinary Meaning and Context

The basic rule of treaty interpretation, reflecting customary international law, is found in Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT), ratified by the United Kingdom in 1971: '[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'. This general rule incorporates a careful balance of approaches, including the textual and teleological, that can be supplemented by a secondary rule in certain circumstances that takes into account the drafting history. In applying the general rule, the International Law Commission has explained, '[w]hen a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted'.<sup>7</sup>

In accordance with that general rule, 'the ordinary meaning' of the terms of Article 14 is that it requires each state party to ensure in its legal system that any victim of an act of torture, regardless of where it occurred, obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In contrast to certain other provisions of the Convention, it contains no geographic limitation, such as a limitation to torture committed in the territory of a state party or subject to its jurisdiction. Article 14 unequivocally and unambiguously states:

1. 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, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

A detailed review of the context of Article 14 demonstrates that the Convention is a treaty with unlimited geographic scope designed to deal with a global scourge, except where specific provisions *expressly* limit the scope of a state party's responsibility either to take action in response to torture committed in its territory or to territory under the jurisdiction of the state party, a term which includes territory outside the state's frontiers, such as occupied territory and territory controlled by its armed forces in a peacekeeping operation, or to take action within such territory. Even in such provisions with restricted scope, often only certain aspects of the state's responsibilities are *expressly* limited to actions within territory subject to its jurisdiction. Other provisions

<sup>7</sup> International Law Commission, 'Draft Articles on the Law of Treaties, with commentaries', 2 YBILC (1966), art. 27, para. 6.

which do not *expressly* limit the state party's obligations to territory within its jurisdiction clearly have a broader geographic reach. Indeed, in all but one instance where the Convention requires a state party to act with respect to torture committed outside territory subject to a state party's jurisdiction, these requirements are implied from the context. It is fully in keeping with the intent of the General Assembly that the Convention takes the same approach to its geographic scope as the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture), on which it is largely modelled.<sup>8</sup> Indeed, two years later, the General Assembly expressly requested the Commission on Human Rights to prepare a draft convention 'in the light of the principles embodied in the Declaration [against Torture]'.<sup>9</sup>

Some provisions of the Convention *expressly* apply only to conduct within territory under a state's jurisdiction and do not imply an obligation to act with respect to extra-territorial conduct or to take action outside territory subject to its jurisdiction. For example, Article 2(1), like the corresponding provision in Article 4 of the Declaration against Torture, requires each state party to 'take effective legislative, administrative, judicial or other measures to prevent acts of torture *in any territory under its jurisdiction*'. Article 5(1)(a) requires each state party to establish jurisdiction over torture '[w]hen the offences are committed *in any territory under its jurisdiction or on board a ship or aircraft registered in that State*'.

Four other provisions, which correspond to similar provisions in the Declaration against Torture with territorial limitations, impose obligations *expressly* limited to territory subject to a state party's jurisdiction. Article 11, which requires a state party to take certain measures with regard to places of detention in any territory subject to its jurisdiction, partially implements geographically restricted Article 4 of the Declaration against Torture. Article 12 requires a state party to investigate when there are reasonable grounds to believe that torture occurred in any territory under its jurisdiction and Article 13 requires it to investigate complaints of persons alleging torture in any territory under its jurisdiction. These two articles implement the similarly restrictive Articles 8 and 9 of the Declaration against Torture. Article 16(1) is a special case.<sup>10</sup> In addition, Article 20(1) establishes a procedure for the consideration of information which appears to the Committee 'to contain well-founded indications that torture is being systematically practised *in the territory of a state party*'.

<sup>8</sup> GA Res. 3452 (XXX), 9 Dec. 1975 (only Arts 4, 6, 8, 9, and 10 are restricted either geographically or with respect to the state responsible, which could be acting extraterritorially). On the same day, the General Assembly took the first step that led to the adoption of the Convention when it requested the Commission on Human Rights to study 'any necessary steps for ... [e]nsuring the effective observance of the Declaration': GA Res. 3453 (XXX), 9 Dec. 1975.

<sup>9</sup> GA Res. 32/62, 8 Dec. 1977. See also GA Res. 39/46, 10 Dec. 1984 (reiterating this point when adopting the Convention).

<sup>10</sup> Art. 16 was added to ensure that some of the obligations in the preceding 15 arts, which expressly applied only to torture, also applied to other cruel, inhuman, or degrading treatment. It was not possible to reach agreement expressly to impose these obligations with regard to each of the preceding arts or to extend these obligations to address other ill-treatment committed abroad.

Article 3(1) of the Convention, which prohibits the expulsion, return (*refoulement*), or extradition of 'a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture', is the only provision of the Convention which *expressly* requires a state party to act with respect to torture committed abroad. However, as described below, other substantive provisions implementing the geographically unrestricted provisions of the Declaration against Torture, which do not expressly refer to conduct or measures abroad, either *necessarily* apply to conduct committed outside territory subject to a state party's jurisdiction, or by their unconditional wording alone *clearly imply* that the state party must take measures regarding torture committed outside territory subject to its jurisdiction. In addition, two implementation provisions, Articles 21 (state complaints) and 22 (individual complaints), have no geographical limitations.

Article 4, which requires states parties to define 'all acts of torture' as crimes under national law, reflects the same unconditional requirement in Article 7 of the Declaration against Torture. Article 5(1)(b) and (c) require each state to establish its jurisdiction over torture offences when the alleged offender or victim (if it considers this step appropriate) is a national of the state. This unconditional obligation supplements the obligation in Article 5(1)(a) regarding torture committed in the state party's territory or on its ships or aircraft, and necessarily it must include torture committed abroad despite the absence of an express qualifier 'regardless of where it occurred'. Article 5(2) contains unconditional language requiring each state party to 'take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him' to the state where the crime occurred, the state of the suspect's nationality, or the state of the victim's nationality. Although this provision expressly requires action only when the alleged offender is present in territory under its jurisdiction and is silent with respect to whether it includes persons suspected of committing torture outside the forum state, this provision, by virtue of Article 7, necessarily requires each state party to provide for universal jurisdiction over such extraterritorial conduct whenever the forum state fails to extradite the suspect.

Similarly, Article 6(1) unconditionally requires each state party to detain any person found in its territory suspected of torture, without limiting it to torture committed in territory subject to the jurisdiction of the state party, or to ensure his or her presence at criminal or extradition proceedings, and Article 6(2) requires a preliminary inquiry, but, unlike Articles 12 and 13, it necessarily applies to torture committed abroad. Likewise, Article 7(1) requires a state party which does not extradite a person found in territory under its jurisdiction who is suspected of torture, without specifying where that torture took place, to 'submit the case to its competent authorities for the purpose of prosecution'. Although it is silent on this point, the necessary implication is that this provision applies to persons suspected of torture committed elsewhere, and it has always been so interpreted. Article 8 contains obligations with regard to extradition and Article 9 requires states to 'afford one another the greatest measure of assistance in connection with criminal proceedings'. Although neither article expressly states that it applies to torture committed abroad, neither article has a geographic

restriction and it cannot be seriously contended that either article applies only to torture within territory subject to the jurisdiction of the requested state party.

Article 10 of the Convention also contains an absolute obligation, without any territorial limitation, for each state to include information about the prohibition of torture in the training of law enforcement personnel. It necessarily applies to training carried out abroad by a state party for any law enforcement personnel, for example civilian police (CIVPOL) components of peacekeeping operations. It implements a similar obligation recognized in Article 5 of the Declaration against Torture, which has no geographic limitation.<sup>11</sup> Likewise, Article 15 unconditionally 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’. As the House of Lords found without any difficulty only a few months before *Jones in A and Others*, the silence of the Convention on this article’s geographic scope was irrelevant when it concluded that it was ‘a duty of states’ not to invoke statements obtained as a result of torture abroad as evidence in any proceedings.<sup>12</sup> This conclusion is fully consistent with the similar prohibition in Article 12 of the Declaration against Torture, which contains no geographic restriction. Finally, paragraph 1 of Article 14 of the Convention unconditionally requires each state party to ‘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’.<sup>13</sup>

This survey demonstrates that the Convention is not primarily territorial, but rather that when the drafters wished to limit obligations to territory under a state party’s jurisdiction they did so expressly, and that they closely followed the same geographic scope of the Declaration against Torture.

## **B Object and Purpose**

The Preamble makes it clear that the Convention was designed to be part of a broader effort to secure universal respect for human rights. It was based on a recognition that ‘the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’ and in fulfilment of ‘the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms’. More specifically, it was based on a desire ‘to make more effective the struggle against torture and other cruel, inhuman or degrading

<sup>11</sup> The Ontario Court of Appeals asserted without citing any basis that Art. 10 ‘clearly’ applied only within the territorial jurisdiction of the territorial state: *Bouzari*, Ont. CA, *supra* note 4, para. 76.

<sup>12</sup> *A (FC) and others (FC) v. Secretary of State for the Home Department* [2005] UKHL 71, at para. 31 (*per* Bingham J).

<sup>13</sup> Art. 14(2) was designed to ensure that, where there is a broader right to compensation under national law, it would not be restricted by Art. 14(1); e.g., persons might be entitled to compensation for expenses in assisting victims or to other types of reparations: see J.H. Burgers and H. Danelius, *The United Nations Convention: A Handbook on the Convention and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1988), at 147. There is no evidence that this para. was designed to protect any obligatory national civil jurisdiction that was broader than in para. 1.

treatment or punishment throughout the world'. Thus, each provision of the Convention must be interpreted in a manner which will make the struggle to end torture and ill-treatment more – not less – effective throughout the world.

### C *Subsequent Practice Establishing the Understanding of all States Parties*

According to Article 31(3) of the VCLT, a number of factors 'shall be taken into account, together with the context', including 'any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation'.<sup>14</sup> Such subsequent practice includes the authoritative interpretations of the meaning of the treaty by expert bodies established under the treaty, such as the Committee, which has made it clear that Article 14 requires states parties to provide procedures for victims to obtain reparations for torture committed abroad.<sup>15</sup> Such an agreement must establish the understanding of all the parties to the treaty.<sup>16</sup> Although there is some inconsistent state practice by a handful of states, it is not sufficient to demonstrate an agreement by the 145 states parties to the Convention that Article 14 contains a geographic restriction.

The Committee indicated when it considered the report of Canada in May 2005 in the light of the decision in the *Bouzari* case that Article 14 requires states parties to permit victims to recover for torture in civil actions against states and their officials. The *co-rapporteur* on the Canadian report, Felice Gaer, asked the government delegation what Canada had done to guarantee the right to compensation. One delegate, Ms Fitzgerald, conceded that the article 'included no express limitations', but asserted, without citing any authority, that it was limited to torture committed in the forum state; claimed, erroneously, that no state had interpreted Article 14 as requiring universal civil jurisdiction,<sup>17</sup> and stated that there was no discussion of such jurisdiction during the drafting, which she asserted would have occurred if there had been any intention to override state immunity. Felice Gaer noted in response that 'the preparatory work had not been as straightforward as had been described' and that the USA had such legislation. The Chair disagreed with the Canadian government analysis of immunity and noted that a state could deny immunity as a countermeasure under international law. Ms Levasseur of Canada asserted that there was no exception to state immunity for torture committed abroad and cited the US understanding filed on ratification that Article 14 did not require a procedure for making such claims (discussed below in section 2).

<sup>14</sup> One of these factors is not relevant here: 'any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions': VCLT, Art. 31(3)(a).

<sup>15</sup> International Law Association, Committee on International Human Rights Law and Practice, *Final Report on the Impact of the Findings of United Nations Human Rights Treaty Bodies* (2004), at 6 (suggesting that subsequent practice may include the considered views of treaty bodies).

<sup>16</sup> As the International Law Commission explained, 'the understanding of the parties' necessarily means "the parties as a whole": ILC Commentary, *supra* note 6, art. 27 para. 15.

<sup>17</sup> This claim appears to have been based on the acceptance in the *Bouzari* case by both the Ontario Superior Court and the Ontario Court of Appeal of the mistaken view that no state interpreted Art. 14 to require extraterritorial civil jurisdiction over torture committed abroad: *Bouzari*, Ont. CA, at para. 78, and Ont. Sup. Ct, at para. 56, both *supra* note 4. As discussed below in sect. 2, the drafters of the US law implementing Art. 14 declared that the USA was under such an obligation.

Ms Fitzgerald advanced two mutually exclusive and entirely speculative explanations: that the deletion of the geographic restriction on the scope of this article during drafting (see the discussion below in section 2) must have been either an error or, citing the implausible view of unnamed experts, a decision to remove the restriction because there already was an implicit limitation.<sup>18</sup> The Committee carefully reviewed these contentions and at the close of the session it expressed its concern about '[t]he absence of effective measures to provide civil compensation to victims of torture in all cases', and it recommended that Canada 'review its position under article 14 of the Convention to ensure the provision of compensation through its civil jurisdiction to all victims of torture'.<sup>19</sup> The House of Lords dismissively asserted that 'the legal authority of this recommendation is slight' and Lord Hoffmann went even further, contending that 'as an interpretation of article 14 or a statement of international law, I regard it as having no value'.<sup>20</sup> These views are in marked contrast to the reliance by the International Court of Justice and other national courts on the interpretation of treaty bodies.<sup>21</sup>

However, in the light of the erroneous claim about the lack of national legislation implementing Article 14 and contradictory – and admittedly speculative – explanations by the Canadian delegates for the Working Group's decision to eliminate the geographic restriction, it is not surprising that the Committee, which would be fully aware of the drafting history (discussed below in section 2), rejected them. Moreover, the complaints by the House of Lords that the conclusions and recommendations did not include analysis or interpretation ignores their purpose, which is to provide, promptly after examination of a state party's report, a short, straightforward identification of the extent to which the state is fulfilling its obligations under the Convention, based on written information submitted by states and non-governmental organizations and discussions with the state's representatives, and to recommend steps to remedy any problems. It can be regretted that these documents focus only on the most pressing problems evident in the information before the Committee with regard to each state instead of including a comprehensive review and compliance with each Convention provision, and that the Committee does not include a thorough legal analysis in support of its interpretations of treaty provisions. Much could be done to improve guidelines for reports and the consistency and thoroughness of questioning.

Nevertheless, as the exchange above concerning Canada's report demonstrates, the Committee's interpretations of Convention obligations take into account the legal positions advanced by the state concerned. Moreover, like the other expert bodies

<sup>18</sup> This exchange, which took place on 6 May 2005, is reported at: UN Doc. CAT/C/SR.643, 13 May 2005, para. 65; UN Doc. CAT/C/SR.646/Add.1, 13 May 2005, paras 41–45, 64, 67, 73–74. The Canadian courts accepted the unsupported hypothesis of an expert that the geographic restriction had been dropped by states as superfluous because it was already implicit in the article: *Bouzari*, Ont. CA, *supra* note 4, at para. 80.

<sup>19</sup> Conclusions and recommendations (Canada), *supra* note 2, at paras. 4(g) and 5(f).

<sup>20</sup> *Jones*, *supra* note 5, at para. 15 (*per* Lord Bingham); para. 27 (*per* Lord Hoffmann).

<sup>21</sup> See, e.g., *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)*, ICJ, General List No. 131, 9 July 2004, ICJ Rep., 136, at paras 109–112 (relying on the views of two treaty bodies for the geographic scope of the treaties); Osaka High Court, Judgment of 28 Oct. 1994, 1513 Hanrei Jiho 71, at 87, 38 *Japanese Annual Int'lL* (1995) 118 (treaty body views can be 'supplementary means of interpretation').



established to monitor the implementation of human rights treaties, the Committee has moved slowly and carefully over the past two decades to develop its interpretation of the Convention in the light of experience, focussing on the most pressing issues in each country. The Committee is doing the same with regard to Article 14 and it has commented on other recent occasions on the obligation under that article with regard to torture committed abroad. For example, it has requested information about the compensation awarded to the victim of an Austrian CIVPOL officer charged with ill-treatment abroad; recommended that the Republic of Korea ensure in its legal system that 'all victims obtain redress and have an enforceable right to compensation', welcomed a French procedure that enables victims to obtain compensation for terrorism committed abroad, asked the Ukraine whether procedures to obtain reparations applied to non-nationals, expressed concern that Japan had imposed reciprocity requirements on foreign victims seeking reparations for torture committed abroad and questioned Benin whether compensation and rehabilitation mechanisms were available to victims who were refugees or non-nationals.<sup>22</sup>

Of course, the continuing failure of states parties to fulfil their numerous obligations under the substantive and procedural provisions of the Convention, as evidenced with depressing regularity in the reports of states parties to the Committee and non-governmental organizations, such as Amnesty International, and the conclusions and recommendations of the Committee, does not constitute subsequent state practice demonstrating an agreement of the states parties as a whole that the Convention does not impose such obligations. Such an approach would rob the treaty of any meaning. However, that was the approach taken by the Canadian courts and the House of Lords when examining the scanty evidence of states failing to implement Article 14.<sup>23</sup>

### **D Relevant Rules of International Law Concerning the Right of Victims to Reparations**

Under Article 31(3)(c) of the VCLT, part of the general rule of interpretation includes that 'any relevant rules of international law applicable in the relations between the parties' must be taken into account in the interpretation of treaties.<sup>24</sup> The Ontario

<sup>22</sup> Conclusions and recommendations (Austria), UN Doc. CAT/C/AUT/CO/3, 15 Dec. 2005; Conclusions and recommendations (Republic of Korea), UN Doc. CAT/C/KOR/2, 18 May 2006, at para. 8; Conclusions and recommendations (France), UN Doc. CAT/C/FRA/CO/3, 3 Apr. 2006; List of issues (Ukraine), UN Doc. CAT/C/UKR/Q/5/Rev.1, 26 Feb. 2007, at para. 30; UN Doc. CAT/C/JPN/CO/1, 18 May 2007, at para. 22 (concluding that Japan 'should take all necessary measure[s] to ensure that all victims of acts of torture or ill-treatment can exercise fully their right to redress, including compensation and rehabilitation'); see also *ibid.*, at para. 23 (finding Japan's failure to provide rehabilitation to victims of crimes of sexual violence committed abroad contributed to 'a failure of the State party to meet its obligations under the Convention'). List of issues (Benin), UN Doc. CAT/C/BEN/Q/2, 9 July 2007, at para. 20.

<sup>23</sup> *Bouzari*, Ont. CA, *supra* note 4, at para. 79; *ibid.*, Ont. Sup. Ct., *supra* note 4, at paras 56–58; *Jones*, *supra* note 5, at para. 57 (*per* Lord Hoffmann) (erroneously stating that Germany and New Zealand agreed with the USA).

<sup>24</sup> VCLT, Art. 31(3)(c); see also ILC Commentary, *supra* note 6, art. 27, para. 16 (relevant rules need not be limited to rules at the time the treaty was adopted); French, 'Treaty Interpretation and the Incorporation of Extraneous Legal Rules', 55 *Int'l & Comp LQ* (2006) 281.

courts and the House of Lords did discuss other rules of international law, including the doctrine of state immunity and the European Convention on Human Rights. For reasons explained in the articles by McGregor, Novogorodsky, and Orakhelashvili in this volume, these rules do not bar a civil claim for torture against a state or its officials.<sup>25</sup> However, neither court examined the rules of international law guaranteeing the right of victims to reparations.

The right of victims and their families to recover reparations for crimes under international law, whether during peace or armed conflict, has been confirmed in provisions of a number of international instruments adopted over the past two decades since the Convention was adopted in 1984. These instruments, none of which were mentioned by the House of Lords or the Ontario courts, do not restrict this right geographically or abrogate it by state or official immunities. They include the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>26</sup> the 1998 Rome Statute of the International Criminal Court,<sup>27</sup> and two instruments co-sponsored by the UK adopted in April 2005 by the Commission on Human Rights, the first of which was adopted subsequently in December of that year by the UN General Assembly, the UN Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and international humanitarian law (Van Boven-Bassiouni Principles)<sup>28</sup> and the UN Updated set of principles for the protection and promotion of human rights through action to combat impunity (Joinet-Orentlicher Principles).<sup>29</sup> Both instruments, which were designed to reflect international law obligations, have been cited by Pre-Trial Chamber I of the International Criminal Court in its determination that the harm suffered by victims of crimes under international law includes emotional suffering and economic loss.<sup>30</sup> Most recently, the UN Human Rights Council adopted by consensus the International Convention for the Protection of All Persons from Enforced Disappearance with a very broad definition of the right to reparations and referred it to the UN General Assembly

<sup>25</sup> The House of Lords asserted that state immunity was merely a procedural rule that left victims of torture free to pursue a different way of settlement, *Jones, supra*, note 5, at 16. However, diplomatic protection is a procedure for one state to assert claims that it was injured by another state, not a method for individual victims to obtain reparations from states and their officials. It would be of no use to victims, such as Bouzari, in a foreign country seeking reparations from their own governments. Moreover, according to the classic – and unjust – view, a state is under no obligation to exercise diplomatic protection, to seek full reparations, or to provide any reparations obtained to the victims, and the UK has refused to exercise diplomatic protection to obtain reparations for its four nationals in the *Jones* case. See the article by McGregor in this issue.

<sup>26</sup> GA Res. 40/34, 29 Nov. 1985.

<sup>27</sup> Rome Statute of the International Criminal Court, adopted by the UN Diplomatic Conference on the Establishment of an International Criminal Court, Rome, UN Doc A/CONF.183/9\*, 17 July 1998, as corrected by the *process-verbaux* UN Doc CN577.1998.TREATIES-8, 10 Nov. 1998, and UN Doc CN604.1999.TREATIES-18, 12 July 1999, Art. 75. Its reach is potentially universal as the Security Council can refer a situation involving crimes in any state to the Prosecutor.

<sup>28</sup> UN Comm'n Hum. Rts Res. E/CN.4/2005/35, 13 Apr. 2005; GA Res. A/RES/60/147, 16 Dec. 2005.

<sup>29</sup> UN Comm'n Hum Rts Res. E/CN.4/2005/81, 15 Apr. 2005.

<sup>30</sup> *Situation of the Democratic Republic of the Congo*, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, and VPRS 6, Case No. ICC-01/04, Pre-Trial Chamber I, Int'l Crim. Ct, 17 Jan. 2006, at para. 115.

for adoption at its sixty-first session in 2006.<sup>31</sup> This right is inherent in the right to a remedy, as guaranteed in Article 2 of the International Covenant on Civil and Political Rights (ICCPR), adopted four decades ago in 1966.<sup>32</sup> Indeed, the international community recognized the rights of victims to civil recovery directly against foreign states for war crimes a century ago in Article 3 of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land.<sup>33</sup>

## 2 Supplementary Means of Interpretation – the *Travaux Préparatoires*

Article 32 of the VCLT permits recourse:

to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable[.]<sup>34</sup>

Once the analysis above mandated by Article 31 has been completed, it would not be convincing to assert that the interpretation of the unconditional obligation in Article 14(1) as containing no geographic restriction leaves the meaning of that provision either ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable. As the International Court of Justice has explained, 'If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter.'<sup>35</sup> Therefore, the use of supplementary means of interpretation is relevant only to confirm the meaning of Article 14(1).

The *travaux préparatoires* demonstrate that the drafters considered briefly, adopted without discussion, and then abandoned one year later a proposal by the Netherlands to restrict the unconditional obligation in Article 14 to torture committed in territory under the jurisdiction of the state party. As noted above, the General Assembly wanted the Convention to embody the principles of the 1975 Declaration against Torture, which contained no geographic restriction on the obligation to afford redress and compensation. The proposed Draft Convention for the Prevention and Suppression of Torture, submitted by the International Association of Penal Law on to the Commission on Human Rights on 15 January 1978 went further and contained no

<sup>31</sup> UN Human Rights Council Res. A/HRC/1/L.2, 29 June 2006, Art. 24.

<sup>32</sup> See Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13 (no suggestion that the right to a remedy under the ICCPR is geographically restricted).

<sup>33</sup> 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, reprinted in A. Roberts and R. Guelff, *Documents on the Laws of War* (3rd edn., 2000), at 67; H. Fujita, I. Suzuki and K. Nagano, *War and the Rights of Individuals, Renaissance of Individual Compensation* (1999), expert opinions by Frits Kalshoven at 31, Eric David at 49, and Christopher Greenwood at 59.

<sup>34</sup> VCLT, Art. 32.

<sup>35</sup> *Advisory Opinion on the Competence of the General Assembly for the Admission of a State to the United Nations* [1950] ICJ Rep 8.

geographic limitations.<sup>36</sup> Three days later, Sweden submitted a draft convention, with the predecessor of Article 14 providing that '[e]ach State Party shall guarantee an enforceable right to compensation to the victim of an act of torture', without any geographic restriction.<sup>37</sup> Numerous and detailed changes in the wording of this draft article were made over the next three years, and twice there were changes made with regard to geographic scope, but the *travaux préparatoires* shed no light whatsoever on the reasons for the changes in geographic scope. However, they do make it clear that the Working Group carefully scrutinized every word of the text of this article throughout the course of drafting and that the contentious issues regarding this provision were the scope of the remedy and whether it would cover ill-treatment other than torture. One year later, on 19 February 1979, Sweden submitted a revised version with a slightly different formulation, but also without any geographic restriction, stating: '[e]ach State Party shall ensure that the victim of an act of torture has an enforceable right to compensation'.<sup>38</sup> In 1980, the words 'in its legal system' were added after the word 'ensure' to make it more precise and, after extensive discussion, the Working Group thoroughly revised the rest of the text to strengthen the right to compensation by requiring that it be fair and adequate, supplemented it with (in square brackets) the right to the means for rehabilitation, and revised the second paragraph.<sup>39</sup>

When the Working Group resumed discussion of this article in 1981, the discussion 'was mainly concerned with the word "rehabilitation"', which was modified to require that it be 'for as full a rehabilitation as possible'.<sup>40</sup> A correction was made in the placement of the French version of 'in its legal system' and, in addition, without any explanation in the *travaux préparatoires*, the Working Group provisionally accepted, without any indication of a discussion, a retrograde proposal by the Netherlands to insert the phrase 'committed in any territory under its jurisdiction' after the word 'torture'.<sup>41</sup> However, at the next session, in 1982, the Working Group sent to the Commission on Human Rights the draft convention as adopted so far in an annex to its report, indicating with respect to each article when it was adopted. The annex included the final version of Article 14, omitting the geographic restriction, and expressly stated in a footnote that this version was '[a]dopted in 1982'.<sup>42</sup> The report of discussions at that session, which asserts that the Working Group 'considered article 14 provisionally agreed to last year and decided to retain it as it is', must, therefore, be an incomplete and an inaccurate account.<sup>43</sup> However, given the clear inconsistency of the restriction with the principles of the Declaration, the Working Group's decision to omit the geographic restriction in the final version is not surprising since it brought

<sup>36</sup> UN Doc. E/CN.4/NGO/213, 15 Jan. 1978.

<sup>37</sup> UN Doc. E/CN.4/1285, 18 Jan. 1978, art. 12.

<sup>38</sup> UN Doc. E/CN.4/WG.1/WP.1, 19 Feb. 1979, art. 12.

<sup>39</sup> UN Doc. E/CN.4/1408 (1980), at 64–66; Burgers and Danelius, *supra* note 12, at 68–69.

<sup>40</sup> UN Doc. E/CN.4/1475 (1981) 62; Burgers and Danelius, *supra* note 12, at 74.

<sup>41</sup> UN Doc. E/CN.4/1475 (1981) 62; Burgers and Danelius, *supra* note 12, at 74.

<sup>42</sup> UN Doc. E/CN.4/1982/30/Add. 1, Annex I, 15 Mar. 1982, at 23 (note d says that this version of Art. 14 was '[a]dopted in 1982').

<sup>43</sup> UN Doc. E/CN.4/1982/30/Add. 1, para. 41.

Article 14 back into line with the geographic scope of the Declaration and all previous drafts. The Commission on Human Rights, composed of 43 member states but open to any UN Member as an observer, carefully scrutinized the Working Group's text at its 1982, 1983, and 1984 sessions and it appears that not a single state objected to the Working Group's decision to omit the geographic restriction or contended that it was a 'mistake'.

The Commission on Human Rights then transmitted the text of the entire draft Convention as it now reads to the General Assembly in March 1984, except for Articles 19 and 20(3) and (4), on which neither it nor the Working Group could agree, so that it could find solutions to problems that had not been resolved by the Working Group.<sup>44</sup> In response to the letter of the Secretary-General of 26 March 1984 inviting comments on the entire draft Convention, 31 states, including states that had not participated actively in the Working Group, submitted extensive written comments on a number of articles in the draft, but none of them objected to any aspect of Article 14 or found any 'mistake' in that article.<sup>45</sup> Indeed, Thailand, which permits alien residents to sue foreigners for torts committed abroad, noted that nearly all the safeguards in Articles 11 to 16 were included in national law, including the rules related to compensation.<sup>46</sup> The Netherlands stated that the draft convention was 'the outcome of intensive and prolonged deliberations and may be considered the best possible text' and that, therefore, it was 'prepared to accept in its entirety the present draft convention'.<sup>47</sup> The USA noted that its representatives had 'made a number of declarations and interpretive statements which are contained in the official records of the negotiations, a part of the legislative history of the convention', which it continued to maintain, but none of them appear to have been about the scope of Article 14.<sup>48</sup> Moreover, like the Netherlands, the USA expressly stated that it [the USA] would strongly support a resolution that 'would adopt in its entirety, without change, the draft convention ... as prepared by the Working Group of the Commission on Human Rights'.<sup>49</sup>

The Third Committee of the General Assembly subsequently considered the text in public sessions, in a series of multilateral informal discussions and 'many informal discussions on a bilateral basis took place throughout the session'.<sup>50</sup> A review of the summary records of the discussions in the Third Committee, the Third Committee report, and the verbatim records of the General Assembly meeting in plenary session indicate that, although states, including the Netherlands and the USA, commented on Articles

<sup>44</sup> Comm'n Hum. Rts Res 1984/21.

<sup>45</sup> Report of the Secretary-General, Torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/39/499, Add. 1 and Add. 2 (1984). France stated that it was 'in full agreement with all the provisions adopted' and Italy stated that it was 'prepared to accept the draft convention in its entirety': UN Doc. A/39/499.

<sup>46</sup> UN Doc. A/39/499/Add.1.

<sup>47</sup> UN Doc. A/39/499, 2 Oct. 1984, at 12.

<sup>48</sup> Statement of the United States of America, 18 Sept. 1984, Report of the Secretary-General, Torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/39/499 (1984), at 20.

<sup>49</sup> *Ibid.*, at 21

<sup>50</sup> Burgers and Danelius, *supra* note 12, at 102.

1, 3, 5, 6, 7, and 16, in addition to Articles 19 and 20, no state criticized the text of Article 14 or claimed that it contained a ‘mistake’.<sup>51</sup> Indeed, France particularly ‘welcomed’ the ‘consensus provisions relating to . . . compensation of victims’.<sup>52</sup>

In 1988, *six years* after the decision by the Working Group to return to a geographically unrestricted text, US President Reagan, when transmitting the Convention to the US Senate for its consent to ratification, stated that it would ‘appear’ that the geographic restriction in the draft prepared by the Working Group in 1984 had been ‘deleted by mistake’, speculating that the absence of any record in the *travaux préparatoires* of a reason for the change confirmed this contention since civil universal jurisdiction would have been as controversial as criminal universal jurisdiction.<sup>53</sup> No other evidence was cited for his claim, which is particularly surprising in the light of the absence of diplomatic protests about the use of the Alien Tort Claims Act by US courts to exercise such jurisdiction over torture and other crimes under international law committed abroad in the two years between the *Filártiga* decision and the change made by the Working Group.<sup>54</sup> Moreover, the acceptance of universal criminal jurisdiction in the Convention necessarily included universal civil claims in the large number of civil law jurisdictions around the world that require their courts to entertain an *action civile* or an *actio popularis* claim for compensation in criminal proceedings.<sup>55</sup> In 1990, two years after President Reagan’s statement, an Assistant Legal Adviser for the US State Department stated during Senate hearings on implementation of the Conven-

<sup>51</sup> Summary records of the Third Committee, UN Doc. A/C.3/39/SR (1984), at 44–46, 49–52; the Report of the Third Committee, UN Doc. A/39/708 (1984); and the verbatim reports of the plenary discussion in the General Assembly, UN Doc. A/39/PV.93 (1984).

<sup>52</sup> UN Doc. A/C.3/39/SR.51, at para. 19.

<sup>53</sup> The President asserted: ‘The negotiating history of the Convention indicates that Article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in its territory, not for acts of torture occurring abroad. Article 14 was in fact adopted with express reference to “the victim of an act of torture committed in any territory under its jurisdiction”. The italicized wording appear [*sic*] to have been deleted by mistake. This interpretation is confirmed by the absence of discussion of the issue, since the creation of a “universal” right to sue would have been as controversial as was the creation of “universal jurisdiction”, if not more so.’

Summary and Analysis of the Convention and Other Cruel, Inhuman or Degrading Treatment or Punishment, in Message from the President of the United States transmitting the Convention and Other Cruel, Inhuman or Degrading Treatment or Punishment, 20 May 1988, 10th Congress, 2nd Sess., Treaty Doc. 100-20 (1988), at 13.

<sup>54</sup> *Filártiga v. Peña-Irala*, 630 F. 2d 876 (2d Cir.1980).

<sup>55</sup> It is common for civil law countries, which are the vast majority of countries in the world, to require their courts to include civil claims in criminal proceedings initiated by victims or organizations acting on their behalf in an *action civile* or *action popularis*. For example, a study limited to EU Member States noted that such procedures exist in Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden: Y. Donzallaz, *La convention de Lugano du 16 septembre 1998 concernant la compétence judiciaire et l’exécution des décisions en matière civile et commerciale*, No. 5203-5272 (1998), at 3. Indeed, EU Member States are required to enforce compensation and restitution judgments in such proceedings issued by courts in other Member States: see Council Reg. 44/2001 [2001] OJ L12/1, art. 5, No. 4. Moreover, other states permitting civil claims to be raised in criminal cases based on universal jurisdiction include Argentina, Bolivia, China, Colombia, Costa Rica, Myanmar, Panama, Poland, Romania, Senegal, and Venezuela: see Amnesty International, *Universal Jurisdiction: The Scope of Universal Civil Jurisdiction*, IOR 53/008/2007, July 2007.

tion that, in addition to policy arguments against universal civil jurisdiction, this form of jurisdiction had been considered and rejected during the drafting of the Convention and then claimed that the geographic restriction 'was deleted, evidently, by a mistake in the printed version', but cited no contemporary statements by any delegates who participated in the Working Group in support of this claim.<sup>56</sup>

The authors of the most authoritative history of the drafting of the Convention, one of whom was a member of the Swedish delegation and the author of the original unrestricted version of Article 14 ultimately adopted, and the other was chair of the Working Group and a member of the Netherlands delegation which proposed the restriction finally abandoned, make no mention of any 'mistake' by the Working Group.<sup>57</sup> There are almost no academic articles that give any credence to President Reagan's claim.<sup>58</sup> On 27 October 1990, the US Senate gave its advice and consent to ratification of the Convention, together with the administration's statement that 'it is the understanding of the United States that article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party', but, pointedly, the declaration did not repeat the claim that the wording of that article was a 'mistake'.<sup>59</sup>

However, in 1991, there were second thoughts and both houses of Congress then squarely rejected President Reagan's view. Congress enacted the Torture Victim Protection Act in 1991 to implement the USA's obligations under the Convention, which provides for universal civil jurisdiction over torture committed abroad. Congress expressly stated in the introduction to the legislation that it was '[a]n Act to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from an individual who engages in torture and extra-judicial killing'.<sup>60</sup> The reports of the committees of each house of Congress made it clear that they rejected President Reagan's contention that Article 14 did not impose a

<sup>56</sup> Statement of David P. Stewart, Assistant Legal Advisor, US Department of State, Torture Victim Protection Act of 1989, Hearing before the Subcommittee on Immigration and Refugee Affairs of the Senate Committee on the Judiciary, 101st Congress, 2nd Sess., 22 June 1990, at 19. See also Statement of John O. McGinnis, Deputy Assistant Attorney General, Office of Legal Counsel, in *ibid.*, at 13 (Art. 14 geographically restricted, but no mention of a 'mistake').

<sup>57</sup> Burgers and Danelius, *supra* note 12, at 92, 99–107, 146–147. If, indeed, there had been a mistake, it is inconceivable that it would have escaped the attention of the authors of this thorough treatise.

<sup>58</sup> Byrnes, 'Civil Remedies for Torture Committed Abroad: An Obligation under the Convention?', in C. Scott, *Torture as Tort* (2001), at 537, 546, 548. This article, which appears to be the first to support the 'mistake' claim, asserts that President Reagan's view was 'the most plausible theory' for the deletion without examining the far more plausible possibility that the report's cryptic account of the history was inaccurate, since the first part of the report that all states would be mostly likely to check would be the text of the draft treaty rather than an account of the drafting history. Indeed, the International Law Commission has cautioned that 'it is beyond question that the records of treaty negotiations are in many cases incomplete or misleading, so that considerable discretion has to be exercised in determining their value as an element of interpretation': ILC Commentary, *supra* note 6, art. 27, para. 10.

<sup>59</sup> The understanding is available at: [www.ohchr.org/english/countries/ratification/9.htm#reservations](http://www.ohchr.org/english/countries/ratification/9.htm#reservations). The instrument of ratification was not deposited until 1994.

<sup>60</sup> Torture Victim Protection Act of 1991, PL 102-256, 1992 HR 2092.

legal obligation on states parties to provide for universal civil jurisdiction over torture committed abroad. The House Committees on Foreign Affairs and on the Judiciary expressly stated: that ‘this Convention obligates states parties to adopt measures to ensure that torturers are held legally accountable for their acts. One such obligation is to provide means of civil redress to victims of torture.’<sup>61</sup> Similarly, the Senate Committee on the Judiciary declared:

This legislation will carry out the intent of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by the U.S. Senate on October 27, 1990. The convention obligates state parties to adopt measures to ensure that torturers within their territories are held legally accountable for their acts. This legislation will do precisely that – by making sure that torturers and death squads will no longer have a safe haven in the United States.<sup>62</sup>

In addition, the committee squarely rejected the contrary view voiced by two of its members, supporting the US administration’s position, that the drafters ‘specifically declined to extend coverage to acts committed outside the country in which the lawsuit is brought’.<sup>63</sup> The USA supplemented this legislation with the Torture Victims Relief Act of 1998, which was designed to provide rehabilitation assistance to victims of torture committed abroad living in the USA, as well as those abroad.<sup>64</sup> Only a mechanistic approach to treaty interpretation would give full value to the views of a state’s executive, supported by the advice of a single house of the legislature, over the subsequent considered views of both houses of Congress.

It is striking that not a single state party appears to have sought to invoke the detailed procedure set forth in Article 79 of the Vienna Convention on the Law of Treaties to correct the ‘mistake’.<sup>65</sup> No state party appears to have attempted in the past two decades to ‘correct’ the text by proposing an amendment of the Convention pursuant to Article 29. Similarly, not a single state party has made a reservation to Article 14(1) or, apart from the USA, a declaration or understanding asserting that the obligations under this provision were geographically restricted.<sup>66</sup> Indeed, until Canada resur-

<sup>61</sup> Committees on Foreign Affairs and on the Judiciary, House of Representatives, Report to accompany HR 2092, HR Rep. No. 367, 102d Cong., 1st Sess., pt. 1 (1991), reprinted in B. Stephens and M. Ratner, *International Human Rights Litigation in U.S. Courts* (1996), at 247, 250.

<sup>62</sup> Committee on the Judiciary, Senate, Report on the Torture Victim Protection Act of 1991 to accompany S. 313, as amended, S. Rep. No. 249, 102d Cong., 1st Sess. (1991), reprinted in Stephens and Ratner, *supra* note 60, at 255, 257–258.

<sup>63</sup> *Ibid.*, Minority views of Messrs Simpson and Grassley 267.

<sup>64</sup> Pub. L. 105-320, 105th Cong.

<sup>65</sup> VCLT, Art. 79.

<sup>66</sup> The absence of any objections to the understanding is not surprising since it has no legal effect and only reservations would be subject to objections, which are rarely made by other states parties even when clearly contrary to the treaty’s object and purpose. Although Germany stated in response that the US understanding did not touch upon its obligations, this is true of all understandings, except those that are disguised reservations. Since the Congress had enacted the TVPA 3 years earlier with the intention of fulfilling its obligations under Art. 14, the USA was certainly not seeking to escape its obligations under that article. In any event, apart from the recent statements by Canada and the UK, none of the other 141 states parties has claimed that Art. 14 does not impose an obligation to provide procedures applicable to torture committed abroad.



rected President Reagan's claim two years ago, it appears that not a single other state party to the Convention had agreed with it that Article 14(1) did not apply to torture committed abroad.<sup>67</sup> Indeed, the United Kingdom made this claim for the first time in the submissions by the Secretary of State in the *Jones* case.

Perhaps litigation is not always the best way to determine the correct interpretation of treaties. A more careful review of the scope of Article 14 in accordance with classic principles of treaty interpretation demonstrates that Article 14 was intended to provide a procedure for victims and their families to recover reparations for torture committed abroad.

<sup>67</sup> Lord Hoffmann claimed that Germany and New Zealand expressed similar views in reports to the Committee against Torture, but this contention is not correct. Neither report asserts that Art. 14(1) did not require each state party to ensure in its legal system that victims of torture committed abroad had 'an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible': *Jones*, *supra* note 5, at para. 57. However, this provision does not expressly impose a specific obligation to fund private torture rehabilitation clinics. Therefore, the German statement that '[b]eyond its duties under article 14 of the Convention, the Federal Government supports rehabilitation for victims of torture who come to Germany as refugees', noting a contribution towards the work of a private treatment centre for victims of torture in Berlin, Second Periodic report of Germany, UN Doc. CAT/C/29/Add.2 (1997), at para. 39, does not suggest that Germany believes that it has no obligation under Art. 14(1) to ensure that victims of torture abroad have an enforceable right to compensation. Similarly, the New Zealand report, after declaring that 'public health care would be available to most asylum-seekers, including those who have suffered torture, while they are going through the refugee application process', noted that they would not be able to obtain benefits under one particular insurance scheme for pre-existing injuries that had occurred abroad. Moreover, the report noted a number of ways in which victims of torture could obtain compensation in criminal proceedings: UN Doc. CAT/C/29/Add.4, 29 July 1997, at paras 35–37, 40.