Volume 11 | Issue 2

Summer 2008

Opening Remarks: General Comment No. 2

Felice D. Gaer

Jacob Blaustein Institute for the Advancement of Human Rights

Follow this and additional works at: <https://academicworks.cuny.edu/clr>

Part of the [Law Commons](#)

Recommended Citation

Felice D. Gaer, *Opening Remarks: General Comment No. 2*, 11 N.Y. City L. Rev. 187 (2008).
Available at: 10.31641/clr110202

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact cunylr@law.cuny.edu.

OPENING REMARKS: GENERAL COMMENT NO. 2

*Felice D. Gaer**

*Desiring to make more effective the struggle against torture and other cruel, inhuman, or degrading treatment or punishment throughout the world.*¹

*Many people assume that the Convention [against Torture]'s principal aim is to outlaw torture and other cruel, inhuman degrading treatment or punishment. On the contrary, the Convention is based upon the recognition that these practices are already outlawed under international law. The principal aim of the Convention is to strengthen the existing prohibition of such practices by a number of supportive measures.*²

Our focus at this Symposium is a new General Comment to the Convention Against Torture—General Comment 2, which addresses Article 2 of the Convention.³ This Article, which is both terse and wide-ranging, requires States parties to take effective measures to prevent acts of torture, and prohibits any justification of torture on grounds of “exceptional circumstances” or superior orders. In many ways, the other substantive components of the Convention Against Torture (“Convention”) can be viewed as elaborations of Article 2(1), which calls for effective measures. The Article consists of three paragraphs, which state:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

* Felice D. Gaer is director of American Jewish Committee's Jacob Blaustein Institute for the Advancement of Human Rights. Ms. Gaer is the first American to serve as an Independent Expert on the UN Committee Against Torture. Nominated by the Clinton Administration and renominated by the Bush Administration, she has served on the Committee since 2000, including as Vice Chair (2004–2006), as General Rapporteur (2006–2008), and as year-round Rapporteur on Follow-up to Country Conclusions (2003–present).

¹ Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, pmbl, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 23 I.L.M. 1027 (1984) [hereinafter Convention].

² J. HERMAN BURGERS & HANS DANIELIUS, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A HANDBOOK ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT 1 (1988).

³ U.N. Office of the High Commissioner for Human Rights [OHCHR], Comm. Against Torture, *General Comment No. 2: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008), available at <http://www2.ohchr.org/english/bodies/cat/comments.htm> (follow “English” link under General Comment No. 2) [hereinafter *General Comment No. 2*].

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.⁴

I. THE ROLE OF A GENERAL COMMENT

Allow me to preface my remarks with some background on the nature and aims of a general comment. The U.N. General Assembly has adopted seven principal human rights treaties, each of which is monitored by an expert committee consisting of independent experts elected by the States parties to the treaty. Each of these expert committees has outlined its views on the content of the obligations of the States parties. The form of these general comments or general recommendations—they are termed differently in the conventions—has evolved: what were often very short comments, in some cases resolution-like in form, have grown longer, more complex, detailed, and precise in their commentary on specific components of each treaty.

Such a general comment can 1) focus each State party on the inadequacies, lacunae, and recurring violations of the treaty, as found in the reports submitted by each of the States parties or through the interactive dialogue between representatives of the State party and members of the committee; 2) inform States parties about the experience(s) gained by the treaty body which can assist them in implementing the treaty; and 3) guide States parties both in their domestic implementation of the convention and possible improved reporting procedures to the committee, and (4) identify future preventive measures that the States parties can take to realize the rights in the treaty.⁵

The general comments of a human rights treaty body thus constitute an interpretation of the treaty by the expert bodies charged with overseeing its implementation. They normally reflect the findings and conclusions by the relevant treaty body's experts that result from their examinations of State party reports. In this sense, general comments both consolidate the case-by-case findings of the treaty body, and also demonstrate the capacity of the treaty

⁴ Convention, *supra* note 1, art. 2.

⁵ U.N. OHCHR, Int'l. Human Rts. Instruments, *Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process*, ¶ 105, U.N. Doc. HRI/MC/2006/4 (May 17, 2006); Int'l. Human Rts. Instruments, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, art. 1, ¶ 1–3, U.N. Doc. HRI/GEN/1/Rev. 5 (Apr. 26, 2001).

norms to be applied to changing conditions and to reflect new insights that are gained from the in-depth examinations of the States parties' experiences of seeking to comply with the obligations set forth in the instrument. With regard to the examination of reports by States parties on measures they have taken to give effect to the Convention, the Convention Against Torture authorizes the Committee to "make such general comments" on the report "as it may consider appropriate."⁶

In preparing General Comment 2, the members of the Committee Against Torture ("the Committee" or "CAT") reviewed its own work including concluding observations on State party reports which were submitted to and reviewed by the Committee, in accordance with Article 19,⁷ since it began such reviews.⁸ Members of the Committee prepared drafts, consolidated them and then discussed and revised the consolidated draft during the course of a number of sessions.⁹ The Committee also asked the Secretariat to circulate the revised draft for responses and suggestions from States parties, other U.N. treaty bodies, U.N. agencies, national human rights institutions, academics and non-governmental organizations. The draft General Comment was also posted on the U.N. website of the Office of the High Commissioner for Human

⁶ Convention, *supra* note 1, art. 19 ¶ 3. Formulation of this provision was one of the last addressed by the drafters and the members of the U.N. General Assembly. Because it explicitly, for the first time, authorized a U.N. human rights treaty body to formulate conclusions about a specific report of a specific State party, there was substantial opposition to the concept. Soviet bloc States proposed that the term "general comments" be used here, more in keeping with the terms and actions of the other treaty bodies. As to whether this meant that the Committee was prohibited from addressing comments to "all State parties collectively based on the examination of a number of reports," BURGERS & DANIELIUS, *supra* note 2, at 159, Burgers and Danielius conclude that any such prohibition "is certainly not something the authors of the Convention intended." *Id.* Indeed, the Committee Against Torture (CAT) adopted a General Comment on Article 3 in 1996 and no State party raised objections. Even though the Soviet Union had vanished from the scene, a member of the Russian Federation served on the CAT and participated in the adoption of the Comment. Since that time, meetings of the chairs of the U.N. human rights treaty bodies have exhorted the various committees to issue general comments as part of the "harmonization" process. The CAT has also made joint statements with recommendations concerning the annual commemoration of Torture Victims Day, June 16, and has written a letter to the States parties following the terrorist bombings on September 11, 2001. None of these remarks addressed to all States parties has been challenged by the States parties.

⁷ Convention, *supra* note 1, art. 19.

⁸ As of 1999, 58 reports had been reviewed. THE RAOUL WALLENBERG INST., CONCLUSIONS AND RECOMMENDATIONS OF THE UN COMMITTEE AGAINST TORTURE xi (L. Holmstrom ed., 2000).

⁹ See generally *id.*

Rights (“OHCHR”), and more than fifty responses were received by the CAT.¹⁰ The responses were collated by the OHCHR and distributed to the Committee members.

Each response was reviewed and where appropriate, suggestions were incorporated into the General Comment. Committee members finalized, discussed, fine-tuned and adopted the General Comment at the end of their thirty-ninth session, in November 2007. The final text, dated January 2008, is posted on the OHCHR website of CAT.¹¹

II. ASPECTS OF GENERAL COMMENT 2: A CLOSER LOOK

Some of the noteworthy elements of General Comment 2 are described in the remainder of my remarks. These examples will follow the ORDER of TODAY’S Symposium program, rather than the Comment, highlighting the three topics to be discussed today: prohibited conduct, protected contexts, and new approaches to prevention.

¹⁰ See, e.g., U.N. OHCHR, Comm. Against Torture, *Compilation of Comments Submitted by States Parties*, U.N. Doc. CAT/C/GC/2/CRP.1/Add.1, *Compilation of Comments Submitted by United Nations Specialized Agencies and Others*, U.N. Doc. CAT/C/GC/2/CRP.1/Add.2, *Compilation of Comments Submitted by National Human Rights Institutions*, U.N. Doc. CAT/C/GC/2/CRP.1/Add.3, *Compilation of Comments Submitted by Non-Governmental Organizations*, U.N. Doc. CAT/C/GC/2/CRP.1/Add.4.

¹¹ This is the second General Comment issued by the Committee against Torture. The first one, on Article 3 of the Convention was tied specifically to the Committee’s practice and criteria in examining individual communications submitted under Article 22 of the Convention and dealing with the specific topic of Article 3. U.N. OHCHR, Comm. Against Torture, *General Comment No. 01: Implementation of article 3 of the Convention in the context of article 22*, U.N. Doc. A/53/44, annex IX (Nov. 21, 1997), available at <http://www2.ohchr.org/english/bodies/cat/comments.htm> (follow “Refolement and communications (implementation of article 3 in the context of article 22)” link).

Subsequent to the adoption of General Comment 2 and in the closing days of the Bush administration, the United States submitted observations on several points including on the legal status of a general comment. The United States considers these to be merely policy statements rather than a conclusory legal pronouncement. Two points may be made on this: (a) a policy statement is not necessarily exclusive of legal content; and (b) Article 38 of the Statute of the International Court of Justice enumerates as a source of international law, “general principles of law” common to the principal legal systems of the world. Statute of the International Court of Justice art. 38(1)(c), June 26, 1945, 59 Stat. 1031, 33 U.N.T.S. 993. General comments of the human rights treaty bodies would certainly qualify to be considered as general principles of law. Furthermore, Article 38 cites as sources for determining the content of international law, “judicial decisions and the teachings of the most highly qualified publicists” *Id.* art. 38(1)(d). The human rights treaty bodies would seem to fall into such categories.

A. *Prohibited Conduct*

1. Absolute prohibition

General Comment 2 emphasizes that when the Convention states “no exceptional measures . . . justify acts of torture,” the Committee has consistently interpreted this straightforwardly to reinforce “the absolute and non-derogable character of this prohibition [against torture]”¹² The *jus cogens* nature of the norm prohibiting torture is cited in General Comment 2, thus recognizing the synergistic relationship between the Convention and the customary norm of international law.

2. Torture must be a punishable crime

The General Comment seeks to make certain that the offenses of torture and cruel, inhuman, degrading treatment or punishment, as set forth in the Convention, are criminal offenses. As the Committee members have routinely stressed, there is a difference between naming and prosecuting conduct as an aggravated assault, for example, rather than as torture or ill-treatment. Naming and defining the crime of torture will alert everyone to the special gravity of torture; the need to strengthen deterrent measures; and will assist the Committee as well as empower the public to monitor and challenge State action.¹³

Article 2 (3) prohibits resort to justifications of torture that invoke orders from a superior officer or public authority, and Article 2(2) emphasizes that “no exceptional circumstances” may be invoked as a justification of torture.¹⁴ In the General Comment, the Committee emphasizes the legal responsibility of those in the chain of command as well as the direct perpetrator(s), including by acts of instigation, consent or acquiescence. With a focus on the obligation to prevent torture, the Committee reminds each State party to “closely monitor its officials and those acting on its behalf,” reporting to the Committee any incidents prohibited by the Convention, particularly in the context of anti-terrorism, as well as measures taken to investigate, punish, and prevent further incidents.

Amnesties that prohibit prosecution violate the non-derogability of the norm.¹⁵ As noted, General Comment 2 reiterates that Article 2 rejects all justifications of torture by any State party.

¹² General Comment No. 2, *supra* note 3, ¶ 1.

¹³ *Id.* ¶ 11.

¹⁴ Convention, *supra* note 1, ¶ 5.

¹⁵ General Comment No. 2, *supra* note 3, ¶ 5.

Amnesties are identified as violative of the Convention because, along with other measures, they “preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators,” establishing a shield or immunity, which the Convention prohibits, and thus, they undermine the non-derogability of torture.¹⁶

3. The Prohibition applies to both torture and to cruel, inhuman or degrading treatment or punishment

The Comment emphasizes that the non-derogability of the prohibition applies to both torture and cruel, inhuman or degrading treatment or punishment. The Convention does not provide for loopholes, exigencies, or conditions under which one or another of the provisions of the Convention may be ignored. The Committee had previously reinforced this point in a letter to all States parties following the 9/11/2001 attacks on the World Trade Center and Pentagon. The Committee reminded each State party that the non-derogable nature of the obligations undertaken by them in ratifying the Convention—including those in Articles 2, 15 and 16, which some had argued could be set aside in the global war against terrorism—“must be observed in all circumstances.”¹⁷

B. *Protected Contexts*

1. The Convention’s preventive obligations apply to “any” territory under its jurisdiction

The General Comment points out that the reference in Article 2 to “any territory,” as in other articles of the Convention, refers not only to acts on board a ship or airplane, but also during military occupation or peacekeeping operations when the alleged offender is a national of the State, and includes acts in places such as embassies, military bases, detention facilities, “or other area[s] over which a State exercises factual or effective control.”¹⁸ The Committee’s consistent view that the Convention’s obligations have extra-territorial effect, demonstrated in its conclusions and observations, is consistent with the broad interpretation accepted with regard to “territory” during the negotiations on the Convention, which were “not limited to a State’s land territory” but to areas of “factual con-

¹⁶ *Id.*

¹⁷ U.N. OHCHR, Comm. Against Torture, *Report of the Committee Against Torture, Twenty-seventh and Twenty-eighth Session*, ¶ 17, U.N. Doc. A/57/44 (May 17, 2002).

¹⁸ *General Comment No. 2*, *supra* note 3, ¶ 16.

trol.”¹⁹ Other observers have noted the Convention does not refer to “its territory” but rather “any territory,” which appears to have an expansive interpretation beyond the sovereign territory of a State.²⁰

This issue was one of the more contested provisions in the General Comment. However, any other interpretation would be incompatible with the overarching non-derogability principle, as it cannot be imagined that a State can avoid its responsibilities under the Convention by torturing people on the territory of others. At the same time, however, it is reasonable to understand that an obligation in relation to acts outside the State’s sovereign territory can only apply to situations in which the State has the obligation or power to stop the violation, particularly, for example, violations carried out by members of its military forces or other persons acting as its agents.

2. The Convention’s applicability to all persons under the State’s control or custody

General Comment 2 emphasizes that States, not individuals, undertake obligations under the Convention. While torture is often envisioned in popular understanding as brutality inflicted by—at the hands of—a State official, the Convention’s scope is broader than that. To clarify this, the Comment references by example a wide array of institutions, locations, and actors. In listing contexts of custody or control (prisons, hospitals, schools, institutions that care for children, the aged, mentally ill or disabled, military institutions, etc.), the Comment also recalls that the State’s obligations with regard to the acts of State agents, private contractors, and others acting in official capacity or on behalf of the State or under its direction or control.²¹ It explicitly emphasizes “contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.”²²

3. Acts by non-State or private actors are covered if a State fails to exercise due diligence

General Comment 2 addresses acts committed by private individuals with the “consent or acquiescence” of a public official and

¹⁹ BURGERS & DANIELIUS, *supra* note 2, at 123–4.

²⁰ A. BYRNES, *The Committee Against Torture*, in THE UNITED NATIONS AND HUMAN RIGHTS 509 (Philip Alston ed., 1995).

²¹ *General Comment No. 2*, *supra* note 3, ¶ 15.

²² *Id.* ¶ 15.

the circumstances in which they amount to the practices of torture or ill-treatment under the Convention.²³ A systematic failure to provide protection against such violence and to hold the perpetrators accountable would engage the Convention's attention. The Comment emphasizes the Committee's practice of addressing such situations "where State authorities or others . . . know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish . . ."²⁴ The Comment explains that such inaction becomes a "form of encouragement and/or de facto permission."²⁵ The Comment's explicit use of the concept of due diligence to explain the meaning of acquiescence is significant. Moreover, it has obvious additional implications for the State's obligations with regard to the process of preventing torture.

4. Individuals and groups made vulnerable by discrimination must be protected

The Convention's definition of torture, in Article 1, focuses attention on prohibited acts set forth in the definition when carried out for "any reason based on discrimination of any kind"²⁶ The General Comment specifically highlights the broad range of "minority or marginalized individuals or populations especially at risk of torture,"²⁷ reflecting the Committee's own past findings. The laws regarding obligations under the Convention must be "in practice applied to all persons" regardless of such factors as race, age, religious belief or affiliation, gender, sexual orientation, transgender identity, mental or other disability.²⁸ The non-derogability principle precludes singling out any population—no matter how hated that population may be in its context—for torture. In keeping with the concept of due diligence required by State authorities, the Comment specifies that there is an obligation to protect members of these or other groups especially at risk of torture "by fully prosecuting and punishing all acts of violence and abuse against these individuals"²⁹

²³ *Id.* ¶ 7.

²⁴ Convention, *supra* note 1, ¶ 18.

²⁵ General Comment No. 2, *supra* note 3, ¶ 18.

²⁶ *Id.*

²⁷ General Comment No. 2, *supra* note 3, ¶ 21.

²⁸ *Id.*

²⁹ *Id.*

5. Women and torture

The General Comment references the Committee's own experience by reporting that "States reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women."³⁰ It continues: "The contexts at which women are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes"³¹

The Comment also makes it clear that a reference to "gender" cannot be limited to discussing women: "Both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles."³² This means that from the perspective of the Committee gender encompasses women who may deviate from local cultural norms as well as others who do not conform to favored models of sexuality and identity. Significantly, in the General Comment the Committee asks States parties to identify such situations and report on the measures taken to punish and prevent them.³³

6. The Context of Counterterrorism

General Comment 2, begun by the Committee in 2003, reflects and addresses the context of global counterterrorism efforts. Specifically, it examines means to deter torture in the context of ongoing efforts by States as well as international bodies to conduct counterterrorism measures. The General Comment reflects an awareness of the danger posed when the prevention of torture and cruel, inhuman or degrading treatment or punishment is challenged today in the name of security.

The Convention, adopted by the U.N. General Assembly in 1984, was drafted and approved at a time when international terrorism was very real and a factor considered by those who argued that exceptional measures justified the practice of torture. However, the Convention explicitly made the prohibition absolute. General Comment 2 makes clear that the principles that animated the Convention are unchanged and must apply in all circumstances.

In the context of the global war against terrorism, it remains

³⁰ *Id.* ¶ 22.

³¹ *Id.*

³² *Id.*

³³ *Id.*

important to maintain a focus on the extensive and absolute human rights prohibition against torture articulated in the Convention and the parallel prohibition of reliance on an order of a superior as a justification of torture. There has been much commentary in recent years about the Geneva Conventions and their applicability. The Geneva Conventions and international humanitarian law contain non-derogable prohibitions on torture. However, they do not preempt nor replace the obligations that States parties assume in ratifying the Convention against Torture.

Article 2 (2) states very clearly that “*no exceptional circumstances whatsoever . . . may be invoked . . . as a justification [for acts] of torture.*”³⁴ Moreover, the Convention explicitly excludes a state of war or a threat of war or any other public emergency as a justification. General Comment 2 reminds that “this includes any threat of terrorist acts or violent crime, as well as armed conflict, international or non-international.”³⁵ The Comment not only rejects torture in such circumstances, but also rejects “any religious or traditional justification” that would violate this absolute prohibition.³⁶

C. *New approaches to prevention*

1. Preventing ill-treatment is a means to prevent torture

Although the Convention addresses torture in Article 1 and ill-treatment in Article 16, the experience of the Committee, however, has made clear, as the Comment points out, that “conditions that give rise to ill-treatment frequently facilitate torture, and therefore the measures required to prevent torture must be applied to prevent ill-treatment” as well.³⁷ To clarify that the obligation to prevent torture itself is wide-ranging and that measures required to prevent it are often congruent with measures to prevent ill-treatment, General Comment 2 further emphasizes the fact that the obligations to prevent torture and to prevent ill-treatment are “indivisible, interdependent, and interrelated.”³⁸ Notably, these terms stem from the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights.³⁹

³⁴ Convention, *supra* note 1, art. 2(2) (emphasis added).

³⁵ *Id.* ¶ 5.

³⁶ *Id.*

³⁷ General Comment No. 2, *supra* note 3, ¶ 3.

³⁸ *Id.*

³⁹ World Conference on Human Rts., June 14–25, 1993, *Vienna Declaration and Programme of Action*, U.N. Doc A/CONF.157/23 (July 12, 1993).

2. Certain basic guarantees apply to all persons deprived of their liberty

The General Comment identifies a range of safeguards for all detainees and adds that the Committee has been consistent in reminding States parties to use them. Among those specified are “the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives,”⁴⁰ three of the most important means of preventing torture. Among other essential guarantees are impartial mechanisms to inspect places of detention, and the ability to have remedies that allow complaints to be examined and to challenge the legality of one’s detention.⁴¹

3. Preventive measures must be effective

The Committee emphasizes that Article 2 not only obligates States parties to take administrative, legislative, judicial, and other measures to prevent torture, but also that these measures must be effective. To clarify that preventive measures are not limited to items enumerated in the Convention, or even the General Comment, the Committee calls on States to reevaluate preventive measures for their effectiveness and to revise and replace them as needed. Thus, as technology evolves, new methods of prevention may be discovered, such as videotaping all interrogations, having same-sex guards when privacy is involved, and using investigative procedures such as the Istanbul Protocol of 1999, all of which the Committee has highlighted in its ongoing reviews of State party compliance with the Convention. The General Comment also points out that Article 2 “provides authority . . . to expand the scope of measures required to prevent torture.”⁴²

4. Evaluation and reporting are preventive measures

Effective measures require more than words: they require continual evaluation. Over the past eight years the Committee against Torture has consistently demanded information about compliance with the norms of the Convention including disaggregated data from States parties to enable the Committee to identify compare and recommend steps that would otherwise go unnoticed and unaddressed. This step, and so much more of the work of the Committee, has helped promote respect for monitoring abuses, which

⁴⁰ *Id.* ¶ 13.

⁴¹ *Id.*

⁴² *Id.* ¶ 14.

were once ignored. Building “a culture of respect”⁴³ for women and minorities, for them and others who are targeted by discriminatory policies, is also part of the responsibility of the States parties, the treaty body that monitors the Convention against Torture, and of experts and advocates alike who engage in upholding the norms of the Convention every day.

5. Domestic Violence

The Committee also consolidated in General Comment 2 developments with regard to understanding the gendered dimensions of the Convention that have been examined in the Committee particularly during the last eight years. The degree of detail that can be developed for each point was necessarily limited in the General Comment on Article 2. However, a key point of the General Comment was to outline a path that would recognize the extent to which the adoption and implementation of effective measures to prevent torture must be conducted with an understanding of the dimensions of torture itself, and to encourage further gender integration and thereby further universalization of the norm prohibiting torture.

Above, I explained that acts by non-State or private actors are covered if the State fails to exercise due diligence. The Committee’s General Comment has specifically recognized the applicability of the Convention to gender and especially to domestic violence, which, as CAT’s Chairman stated during the deliberations, was “among the acts covered by Article 2” and, “one of the worst forms of ill-treatment, if only because of the extent of the phenomenon.”⁴⁴ So often condoned or ignored by governments, the urgency of a State response to domestic violence is specifically underlined in General Comment 2.

III. A WORD OF APPRECIATION

This morning, I took from my shelf a remarkable 1994 Article, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*.⁴⁵ This work, and those that have followed it, have been extremely influential. Professor Rhonda Copelon, the author of that Article, has served as Faculty Advisor for the Law Review on this Sympo-

⁴³ General Comment No. 2, *supra* note 3, ¶ 24.

⁴⁴ U.N. OHCHR, Comm. Against Torture, *Summary Record of the First Part (public) of the 782nd Meeting*, ¶ 4, U.N. CAT/C/SR. 782 (Feb. 22, 2008).

⁴⁵ Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 292 (1994).

sium. Through a body of writing, analysis and advocacy, she has transformed the way that the human rights discourse and U.N. bodies in particular understand “the place of women and the status of gender-based violence within the human rights discourse,”⁴⁶ and I would like to recognize that contribution.

When Eleanor Roosevelt reflected on the Universal Declaration of Human Rights ten years after its adoption, she reminded observers that human rights had to have meaning “in small places *close to home*”⁴⁷—the real world of the ordinary person. Today, fifty years later, almost sixty years after the adoption of the Universal Declaration, Professor Copelon reminds us that human rights should begin at home.⁴⁸ In 1994, she told us that “the egregiousness of gender-based violence has been matched only by its absence from human rights discourse.”⁴⁹ Today, that too has changed significantly and is still changing in large measure due to the insights and attention she has brought to the subject matter, to the work of U.N. and regional human rights bodies, and to CUNY Law School itself through the International Women’s Human Rights Law Clinic.

So, I salute Professor Copelon and her students—a group of dedicated lawyers who are changing the way we look at the world of human rights. As was stated at the Beijing World Conference on Women in 2005, they are looking at the world “through women’s eyes”⁵⁰—and as a result, so are the rest of us! I note that there will be several papers devoted to the important gender-related aspects of General Comment 2 during the Symposium today.

Finally, as we move into a discussion of the presentations at today’s Symposium, I would like to offer thanks to the organizers. In particular, I would like to thank CUNY Law School and the New York City Law Review, as well as the Association of the Bar of the City of New York for convening and co-sponsoring this important and timely Symposium today. Special thanks to Lisa Davis and her

⁴⁶ *Id.*

⁴⁷ Eleanor Roosevelt, In Your Hands, Remarks Delivered at the United Nations in New York at the Presentation of “IN YOUR HANDS: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights” (Mar. 27, 1958) (emphasis added), <http://www.udhr.org/history/inyour.htm> (last visited Dec. 1, 2008).

⁴⁸ Copelon, *supra* note 45, at 291 (citing EDUARDO GALEANO, THE BOOK OF EMBRACES: IMAGES AND TEXT 143 (1989)) (emphasis added).

⁴⁹ *Id.* at 292.

⁵⁰ Beijing 2005: The 10th Anniversary Commemoration of the Fourth World Conference on Women, Beijing, P.R.C., Aug. 29–Sept. 1, 2005.

colleagues from the New York City Law Review who have successfully shepherded every step of the program and today's activities.

I am eager to hear the remarks, analysis and interpretations by such experts and advocates, including several members of international treaty bodies, as they look at developments in the international law prohibiting torture. During the Symposium, speakers will address the authority, adequacy and policy implications of General Comment 2, focusing on prohibited conduct, protected contexts, and new approaches to prevention. I thank all participants in advance for your contributions and your insights.