
A Slippery Slope: Torture and Enhanced Interrogation in Outer Space

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The extraterritorial extension of human rights protections against torture and enhanced interrogation in space is premised upon the need to safeguard civil and political rights within the outer space paradigm. In promoting a broadened interpretation of torture as defined under international law, governments must be held to account concerning their obligations to respect, protect, and fulfil human rights throughout their activities across the final frontier.

Highlighted by the [Torture Memo](#), the exercise of coercive means within interrogation represents a common tool utilized the state in the interests of national security. Despite such questionable and repugnant measures being recognized as illegal under international law, the continuation of this illicit practice by many states has been underscored by its permeation into popular culture and television shows, where a common trope involves the use of torture to find the 'bad guy'.

Similarly, this trope has been extended across the science fiction genre by writers and futurists, often providing commentary upon the transposition of human nature and flaws across the outer space context. One recent example was illustrated within *The Expanse*, a television show depicting the colonisation of the solar system, which included a [notorious scene](#) where an individual with differing physiology was subjected to gravity as a form of torture.

While torture appears as little more than a plot device in science fiction, the boundary between science fiction and social reality represents an optical illusion. With an anticipated crewed lunar base to be [established by 2030](#), the growing presence of humans in space combined with the escalating potential for armed conflict between states in space, underscores the growing importance of human rights in safeguarding human health, safety, and dignity in the outer space context.

Context

Where torture is considered abhorrent in society, its use by state and non-state actors alike has been prohibited under international law, both within international agreements and international customary law. This is illustrated within the [International Criminal Court](#) case of *Filartiga v. Pena-Irala*, where the court recognized prohibitions on torture as a jus cogens norm in holding that "The torturer has become, like the pirate and the slave trader before him, *hostis humani generis*, an enemy of all [hu]mankind." Accordingly, torture has been considered an affront to humankind and is widely condemned in the international community. Its use has been considered so heinous that states are obligated to impose positive measures to prevent torture and criminalise its use. Consequently, an individual who commits torture, regardless of their position within a state or the laws of the state, cannot avoid criminal liability.

In the context of subjecting an individual to the elements of outer space, the current international law framework codifying the prohibition against torture is unclear. Various facets of the outer space environment presents unique hazards to [human health and well-being](#) – including radiation, behavioural and mental impacts of isolation, gravity's impact on muscle mass and bone loss. Exposure to [galactic](#)



[cosmic rays](#) is likely to cause damage to an individual's nervous system, wherein astronauts were found to have reached 60% of the acceptable limit in their system after only a 6-month mission. The potential for malicious actors to inflict superfluous injury or unnecessary suffering in outer space is therefore diverse – including the threat of radiation exposure, oxygen deprivation, or marooning.

The subjection of an individual to the natural environment may fall within gaps of international human rights law (IHRL) and international humanitarian law (IHL), where the unique environmental circumstances of space is not adequately considered when assessing instances of torture. The adoption of a broadened interpretation of torture, that both supports a human-rights based approach and accounts for the use of environmental factors to inflict harm, will protect individuals from unconventional methods of torture and promote the peaceful uses of outer space.

Definition in International Law

Due to its status as a *jus cogens* principle, the prohibition against torture is enshrined in IHRL frameworks. Both Article 5 of the [Universal Declaration of Human Rights](#) (UDHR) and Article 7 of the [International Covenant on Civil and Political Rights](#) (ICCPR) incorporate provisions prohibiting the use of torture or cruel, inhuman or degrading treatment or punishment. Most notable is the stand-alone treaty of the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT), an international agreement which has received widespread approval across its 171 State Parties. The CAT establishes a framework to protect the right against torture, as encapsulated within its definition of torture under Article 2:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Per this definition, torture represents an act inflicted on a person by a state official, or by the explicit or implicit approval of a state authority. This definition is problematic within the outer space context, concerning prolonged exposure to the elements/environment of space, which would constitute an omission - as the state may be argued as not inflicting such environmental conditions on the individual for the purpose of torture.

Omissions have been typically considered when contributing to [broader acts](#) that constitute torture, such as the denial of food in detention or withholding medical treatment. In this respect, utilising the environmental conditions of space for torture would be analogous to the deprivation of food or sleep as a form of inhuman or degrading treatment. Per the seminal case of [Ireland v. The United Kingdom](#) in the European Court of Human Rights (ECHR), the severity of the deprivation was determined to be inhuman or degrading treatment. Furthermore, in [Polay Campos v. Peru](#), the failure to provide adequate provisions to protect an individual against the cold – analogous to subjecting an individual to the natural environment – was held to be ill-treatment. Regardless, omissions of this nature seldom arise to the definition of torture.

The definition advanced under the CAT does not encompass omissions analogous to subjecting someone to the natural environment - for example leaving an astronaut stranded/marooned, therefore depriving them of the necessities of life, or subjecting them to radiation exposure. Consequently, the context of exposing an individual to the elements as a method of torture is unlikely to constitute torture as it would be an omission, rather than an act that is wantonly inflicted on an individual by the state.



Divergent Interpretations

Divergent interpretations on the definition of torture which may theoretically make torture permissible in outer space, contingent upon differing views of what constitutes an “official purpose”. The case of [Ireland v. The United Kingdom](#) in the ECHR determined torture on the basis of severity of suffering, irrespective of an official purpose. Additionally, in the 1967 case of [Denmark v. Greece](#) before the ECHR (“Greek Case”) there was found to be a litmus test to determine whether an act constituted torture: whether it was carried out for an official purpose, rather than whether it causes severe physical or mental suffering.

Firstly, depending on the composition of a future settlement, an “official purpose” may be solely of terrestrial governments, and non-applicable to the actions of sovereign local authorities not party to the CAT. Second, for spacefaring states party to the CAT, the effective control test concerns determining whether an individual engaging in torture extraterritorially in space constitutes an official purpose of the state.

Ongoing [legal ambiguity](#) surrounding formal definition/classification and astronaut draws the nature and authenticity of any potentially torturous actions conducted into question. Firstly, while Article 5 of the [1968 Rescue Agreement](#) (RA) states that astronauts are considered [envoys of humankind](#), academics such as Louis de Gouyon Matignon [argue](#) that the actions of astronauts are considered representative of humankind rather than attributable to any single nation state. Second, where Article 6 of the RA holds that State Parties bear international responsibility for all activities in outer space under their purview, state responsibility for the actions of individuals in space does not necessarily equate to state support or sanction for such activities.

Accordingly, an astronaut may theoretically engage in torture in space - where they are considered as an envoy of mankind rather than agent of any one state, and where such acts are conducted without “official purpose”. This situation becomes increasingly uncertain when also considering the potential activities of human spaceflight participants and commercial astronauts.

In IHL, the definition of torture is engaged in narrow circumstances of conflict; however, the definition is more suitable to the outer space context. The definition provided in [Prosecutor v. Kunarac](#) asserts that the infliction may occur through omission, and that the act does not require the present of a state official to be regarded as torture under customary international law pertaining to IHL. However, IHL is only applicable in instances of armed conflict. This is defined in [Prosecutor v. Tadic](#) as “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.” Torture is not always used when there is a state of warfare, and there may be instances where there are hostilities are more accurately defined as “sporadic acts of violence” as held by [Juan Carlos Abella v. Argentina](#). Therefore, IHL is non-applicable concerning instances of torture during periods of peacetime or intermittent skirmishes.

Conclusion

There exist clear shortfalls in the interpretation and extraterritorial extension of torture to outer space. Although the *1967 Outer Space Treaty* holds that actions must be in [accordance with international law](#), the gaps in international law may theoretically permit torture in narrow circumstances:

1. The lack of a mechanism for omissions to fall within the scope of torture - whereby actions, including subjecting an individual to the natural environment without sufficient protections, may not constitute torture.
2. The requirement of torture being for the “official purpose” of a state - whereby astronauts not representative of a state could carry out sufficiently severe enough acts or omissions that would constitute torture, save for the lack of an official purpose.

Lacking a sufficiently broadened definition of torture, and in the absence of directed human rights provisions prohibiting torture within the context of outer space, the potential for states to engage in



divergent interpretations bears the possibility for space actors to act with impunity and engage in actions deemed abhorrent by the international community.

The present definition of torture under international law (IHL and IHRL) are silent concerning the theorised examples of torture in the outer space context. Where IHL provides a suitable definition in concerning omissions as a means of torture, such is only engaged in instances of protracted armed conflict. Exposure to the harsh elements of the outer space environment (i.e. gravity) as a method of torture does not fall within the definition of torture in IHRL, as it constitutes an omission. Further, where astronauts and other individuals in space may not be considered as state official's, their liability for torturous acts as conducted for "official purposes" may be non-applicable.

These gaps within international jurisprudence illustrates the potential for states to transpose their illicit activities into the outer space context. Contrary to belief, the rule of law is not silent in the vacuum of space. In safeguarding individual healthy, security and dignity in outer space, an expanded interpretation that considers the unique, isolated, and dynamic environmental factors of outer space must be developed. This is crucial in precluding threats to individual liberty and supporting the continuing peaceful uses of outer space.

