

BOOK REVIEWS

KENNETH ROTH AND MINKY WORDEN (EDS.), *TORTURE: DOES IT MAKE US SAFER? IS IT EVER OK? A HUMAN RIGHTS PERSPECTIVE* (NEW YORK: THE NEW PRESS, 2005, 218 PP., HBK.).

"No man can be judged a criminal until he be found guilty; nor can society take from him the public protection until it have been proved that he has violated the conditions on which it was granted. . . . Either he is guilty, or not guilty. If guilty, he should only suffer the punishment ordained by the laws, and torture becomes useless, as his confession is unnecessary. If he be not guilty, you torture the innocent; for, in the eye of the law, every man is innocent whose crime has not been proved."

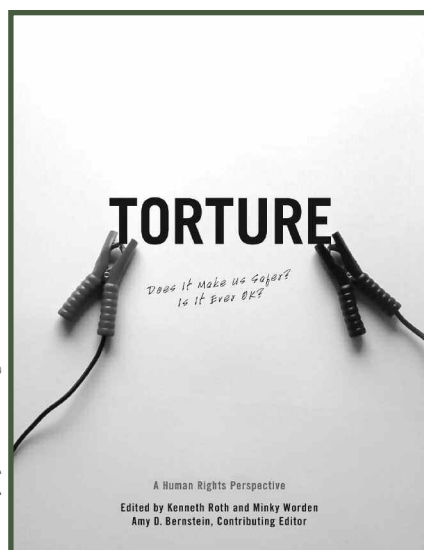
— Cesare Beccaria, *On Crimes and Punishments*

More than two centuries ago Beccaria composed the above passage to encapsulate the fundamental paradox of torture and to ask, in the absence of any rational basis for such an abhorrent practice, "What right but of power . . . [could] authorize the punishment of a citizen so long as there remains any doubt of his guilt?"

Beccaria's now famous denouncement, written at the climax of Europe's reexamination of the practice of torture, serves as a centerpiece of sorts for Human Rights Watch's (HRW) recent publication on the subject. HRW's Executive Director Kenneth Roth and Media Director Minky Worden have compiled a collection of essays written by prominent activists, academics, and government officials (including, among others, Senator John McCain, Sir Nigel Rodley, and Marie-Monique Robin) on the broad topic of the role of torture today. These essays focus on what can only be described as a recent and shocking departure from a long-standing prohibition against torture. Although many states historically have violated the international ban on torture by engaging in clandestine operations, these concealed abuses, although repugnant, generally have not threatened the continued strength of international legal mechanisms prohibiting torture. This has been in large part because most states, particularly in the West, have often feared violating what has become a moral taboo against the practice. As the authors in this volume suggest, how-

ever, recent state action to the contrary marks a significant shift in this paradigm such that countries like the United States are now publicly seeking to revise, reinterpret, or even ignore the very international legal framework that prohibits torture. In turn, this adulteration of international law threatens to destabilize what, for the past two centuries, has been a morally unassailable global ban against the practice.

Yet perspectives on torture are never monolithic and, as this volume illustrates, much of the current debate concerns two fundamental questions. First, what acts by definition constitute torture? Second, should torture ever be employed in situations where there is an immediate threat? With regard to the former, Michael Ignatieff argues that "clear thinking about torture . . . is not served



Courtesy of Human Rights Watch

by collapsing the distinction between coercive interrogation and torture. Both may be repugnant, but repugnance does not make them into the same thing" (20). Recognizing a distinction between these two practices, however, does not necessarily provide a method by which to sanction the former and prohibit the latter because, as Ignatieff contends, "I cannot see any clear way to manage coercive interrogation institutionally so that it does not degenerate into torture" (22). Although these two categories might exist theoretically, the repulsive experience of Abu Ghraib shows that any such distinction quickly dissolves. Thus, as Ignatieff admits,

the only viable approach is an absolute prohibition on both practices. For human rights defenders, this conclusion strongly validates their desire for a universal methodology. Yet Ignatieff cautions that although his research supports this conclusion, human rights defenders should be careful when predicating their own position solely on lofty morals. He concludes, "We cannot torture, in other words, because of who we are. This is the best I can do, but those of us who believe this had better admit that many of our fellow citizens are bound to disagree" (27).

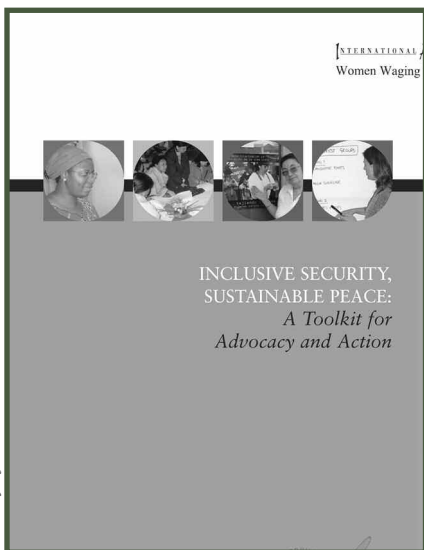
While parsing the definition of torture has become one method whereby states can circumvent their legal prohibition, others have sought to legitimize torture by appealing to the hypothetical notion of the "ticking bomb," i.e., that torture is justified to prevent an immediate threat only known by a person held in custody. Although such a scenario poses an interesting philosophical dilemma, Eitan Felner argues that in practice this caveat serves only to "rationalize the institutionalization of torture" (43) as a method of interrogation. In support of this conclusion, Felner cites the example of the Landau Commission, whose 1987 report justifying the intentional infliction of pain and suffering in cases of a "ticking bomb" was adopted by the Israeli government as a sanctioned interrogation technique. Under the "ticking bomb" rationale, the use of physical force during interrogations is justified as long as there is an immediate threat. But as the historical legacy of the Commission illustrates, this ill-defined notion of "immediacy" poses the question of "where should the line be drawn between the person who planted the bomb and other members of the cell, between members of the cell and those in charge of the organization, between those in charge of militant activities within the organization and the political echelon?" (35). As Felner concludes, the institutionalization of an exception to a ban on torture inevitably leads to a slippery slope whereby any intended limits evaporate in the face of the dissolution on an absolute prohibition.

In many respects Felner's conclusion echoes that of Ignatieff and the majority of the other authors who argue that exceptions

to the universal ban on torture engender a blurring of moral censure, which has served as its strongest historical bulwark. Beyond the counter-productivity of torture as a method of interrogation, “those who advocate ... exception[s] to the prohibition of torture must know that they are advocating opening the floodgates to torture of limitless cruelty” (35). Human Rights Watch’s new book illustrates that although there is little disagreement that torture should itself be prohibited, state efforts to identify exceptions to or alternative definitions of torture function to provide the very ambiguity necessary for justifying its use.

***INCLUSIVE SECURITY, SUSTAINABLE PEACE: A TOOLKIT FOR ADVOCACY AND ACTION* (HUNT ALTERNATIVES FUND AND INTERNATIONAL ALERT, 2004, 304 PP., Hbk.).**

To quote Ashraf Ghani, Chancellor of the University of Kabul, “Investment in men lasts a generation; investment in women lasts many.” Although Chancellor Ghani was suggesting that there is a positive correlation between the advancement of women and long-term economic development, this idea can be expanded to include sustainable peace. Because women are most often faced with bearing the burden of caring for community and family in post conflict situations, it is not only desirable but imperative to the success of long-term peace and justice that women be included in peacebuilding processes.



Courtesy of Hunt Alternatives Fund

With this viewpoint in mind, International Alert’s Gender and Peacebuilding Programme and Hunt Alternatives Fund’s Women Waging Peace (now The Initiative for Inclusive Security) recently teamed up for

the publication of *Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action* (Toolkit). This new Toolkit specifically responds to the lack of attention given to women in dealing with violent conflict. It also draws from a wide range of women’s experiences to focus on their roles and contributions during each phase of violent conflict, from prevention to reconstruction. In doing so, it ambitiously seeks to outline an inclusive approach to conflict transformation.

Although the Toolkit was developed specifically for female activists, its value extends to anyone concerned with or engaged in peace and security, including academics, policy makers, and practitioners. The information is presented in six sections: an Introduction (which provides an overview and users’ guide); Conflict Prevention, Resolution and Reconstruction; Security Issues; Justice, Governance and Civil Society; Protecting Vulnerable Groups; and an Appendix (which includes some of the international legal tools that require the inclusion of women in post-conflict reconstruction). Additionally, each section is divided into chapters that identify key issues and provide flexible and imaginative strategies for dealing with them. For example, one section addresses security issues and includes chapters on the disarmament and reintegration of former combatants, security sector reform, as well as the challenges presented by the circulation of small arms and light weaponry in post-conflict environments. Where possible, concrete examples are also included to highlight the practical implications of the material presented.

Adding teeth to an already formidable text, the authors have included several of the basic legal instruments for protecting women and promoting their inclusion in peace processes. These internationally agreed upon mechanisms include, for example, UN Security Council Resolution 1325 on Women, Peace and Security, which states that justice systems have an obligation to respond to gender-based crimes and to ensure prosecution. Armed with this information, women advocates can, for example, pressure their governments to prosecute and punish perpetrators of “genocide, crimes against humanity and war crimes, including those relating to sexual and other forms of violence against women and girls.”

Ultimately, *Inclusive Security, Sustainable Peace* is not only a groundbreaking and innovative publication but a source of

empowerment. According to the Toolkit, conflict can be a creative and positive process as long as women and their needs are integrated into strategies for peace. To make the information as widely accessible as possible, the Toolkit is available in both hard copy and online at <http://www.womenwagingpeace.net/toolkit.asp>. The website also offers chapters in Arabic, French, Spanish, Portuguese, Pashto, and Dari. Further, the hard-copy version has been designed in a user-friendly binder format, which makes it possible to remove individual sections for a variety of uses. For more information, or to order a free copy of the Toolkit, contact policycommission@womenwagingpeace.net.

TREVOR BUCK, *INTERNATIONAL CHILD LAW* (AUSTRALIA: CAVENDISH PUBLISHING, 2005, 331 PP., Pbk.).

This is a book for anyone, lawyers and non-lawyers alike, interested in international child law and looking for a place to begin their study. No survey of international child law could begin without a discussion of the concept of childhood and its place in evaluating children’s rights. The most fundamental question is: what is a child? The book provides a number of different angles from which this question may be considered and then connects it to a discussion on the place of childhood within human rights law. Of primary importance in this discussion is how international child law has struggled to balance a paternalistic approach with one that allows children more self-determination.

For those with little prior knowledge of the subject, the first two parts of the book provide information on the systematic and theoretical grounding within which modern international child law developed. Chapter one surveys the historical, psychological, and sociological research on childhood, while chapter two provides a brief tour of international institutions for the uninitiated. It also includes a brief discussion on the international legal and political systems that have shaped developments in international human rights and international child law.

The book then examines international child law by discussing the United Nations Convention on the Rights of the Child 1989 (CRC), the most important international document concerning international child law. This chapter lays out the CRC’s legal architecture and considers how successful it has been in protecting the rights of the child. Although the CRC’s immediate effects may not yet be fully appreciated within the com-

mon law system, the book's focus is directed more toward the long-term establishment of normative standards from which international child law may develop.

The final four chapters provide a specific discussion of international child law, including child labor, the child in Europe, international child abduction, and international adoption. Each section serves as an entry point to greater critical examination of the particular topic and, as with the other chapters, includes a short, helpful list of further reading and Internet sources. Equally useful are the appendices, which contain the full texts and extracts of significant international legal documents related to child rights law.

International Child Law is a comprehensive primer for those looking to introduce themselves to this subject matter. It allows room for both the professional and non-professional to approach complicated issues related to international child law. Most importantly, the book also remains mindful of what still must be done to adequately protect the rights of children throughout the world.

LISA HAJJAR, *COURTING CONFLICT: THE ISRAELI MILITARY COURT SYSTEM IN THE WEST BANK AND GAZA* (LONDON: UNIVERSITY OF CALIFORNIA PRESS, 2005, 312 PR., PBK.).

It is a disquieting phenomenon of the human condition that some of the worst systems of oppression and human rights abuse are often established through intentional and state-sanctioned legal codification. The Israeli system of occupation of the West Bank, Gaza, and East Jerusalem is an example of such a phenomenon because settlements/colonies, military bases, and control over movement and expression are all grounded in what Israel has decreed to be law over the area and people it controls. In her book on the Israeli military court system, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, Lisa Hajjar offers a sober, detailed account of exactly how "carceralism" — the broad array of governing institutions and practices that serves to collectively imprison Palestinians — functions to control, oppress, divide, abuse and, in some cases, kill the Palestinian population living under occupation. This book offers more than just detailed individual cases of abuse or a polemic on the evils of occupation; Hajjar's research is a plea for humanity and an indictment of the use of law to pursue injustice.

Following Israel's capture and occupation of the West Bank and Gaza in 1967, Israel's Military Advocate General formulated a policy to rule over these territories. This policy rejected the applicability of the 1949 Fourth Geneva Convention concerning territories occupied as a result of war and chose instead certain aspects of international law that guaranteed a system of administration without ensuring rights for the population itself. Hajjar argues that the Israeli state has made prodigious use of this manufactured law to maintain and legitimize its rule over Palestinians in the West Bank and Gaza and to punish and thwart resistance to such occupation.

Courting Conflict is an ethnographic study based largely on Hajjar's first-hand observation of military court operations, as well as interviews and discussions with the system's participants throughout the 1990s. By observing numerous trials and presenting herself as an objective researcher, Hajjar managed to establish relationships with parties on all sides of the military court system — judges, prosecutors, defense lawyers, interpreters, and defendants — and successfully engaged them in discussion about their perspectives and experiences. She uses this information masterfully to explain how these military courts produce a mockery of justice. For example, Hajjar details incidents where judges within the system are actually soldiers, many of whom are not required to possess legal training; where torture is used to extract information; where the use of secret evidence is common; and where the testimony of Israeli soldiers is given extraordinary weight, even when it is contradictory or false. Hajjar effectively reveals the prosecutorial advantages inherent in such a system and how a *de facto* presumption of guilt contributes to the facility of convicting Palestinians.

In one example, Hajjar describes how "Salah," a local karate champion, was arrested and interrogated for 57 days. He was suffocated, beaten on the genitals, and had his head smashed against the wall, which caused semi-paralysis. Prison authorities prevented Salah from seeing a doctor, which led to his permanent paralysis. Salah never gave a confession, but charges were brought against him based on secret evidence. Although Salah's lawyer eventually was able to work out a deal for him, he was found guilty of "aiding an illegal organization" and sentenced to one-and-a-half years in prison for

giving a bag of flour to someone who, according to the secret evidence, was a member of Fatah (a Palestinian political organization considered illegal at the time). Salah's story is one of many recounted by Hajjar, which illustrate how every aspect of these cases is the result of another injustice, each building on the other to produce the inevitable outcome: guilty.

Hajjar provides unprecedented access to the inner workings of the Israeli military courts; she uncovers new information and reframes existing knowledge not only to describe but also to analyze a legal system of injustice that persists virtually unchallenged. Unique in its in-depth exploration of the military court system in the Occupied Palestinian Territories, *Courting Conflict* will stand as an authoritative source on the subject and as important reading for human rights advocates seeking to understand how law can function as a crucial tool for institutionalizing oppression. **HRB**

Mark Vorkink, a J.D. candidate at the Washington College of Law, wrote the review of Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective for the Human Rights Brief.

Christiana Hoffman, a Program Assistant with the United States Institute of Peace's Rule of Law Program, wrote the review of Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action for the Human Rights Brief. These views are her own.

Mihir Mankad, a J.D. candidate at the Washington College of Law, wrote the review of International Child Law for the Human Rights Brief.

Huwaida Arraf, a J.D. candidate at the Washington College of Law and co-founder of the International Solidarity Movement, wrote the review of Courting Conflict: The Israeli Military Court System in the West Bank and Gaza for the Human Rights Brief.