**Observations of the United States of America**

**on the Committee Against Torture’s Draft**

**General Comment No. 1 (2017) on Implementation of**

**Article 3 in the Context of Article 22**

April 5, 2017

1. The United States appreciates the opportunity to respond to draft General Comment No. 1 regarding the implementation of Article 3 in the context of Article 22 of the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (“the CAT”), and it thanks the Committee for its significant work on this project. The United States is firmly committed to carrying out its obligations under the CAT and under other human rights treaties to which it is Party. The obligations of States Parties under Article 3 provide important protections for persons around the world, and the United States appreciates the Committee’s effort to provide guidance that will help States Parties improve implementation of their obligations under the CAT.

2. The observations of the United States focus on those paragraphs in the draft General Comment that, in the view of the United States, should be revised or, in some cases, deleted, from the final text. These observations make a number of specific points illustrative of U.S. concerns rather than a comprehensive catalogue of all points on which the United States may disagree. The United States hopes its views will be useful to the Committee as it finalizes its new General Comment on Articles 3 and 22.

1. **General Observations**

3. The United States reiterates its view that where the text of the CAT provides that obligations apply to a State Party in “any territory under its jurisdiction,” such obligations extend to “all places that the State Party controls as a governmental authority.” We have concluded that the United States currently exercises such control at the U.S. Naval Station at Guantanamo Bay, Cuba, and over all proceedings conducted there, and with respect to U.S.-registered ships and aircraft.[[1]](#footnote-1)

4. In 2008, the United States stated its view that Article 3 of the CAT, which does not use the phrase “territory under its jurisdiction,” does not apply outside U.S. sovereign territory.[[2]](#footnote-2)

5. As a matter of policy, the United States upholds the principle of non-refoulement as reflected in CAT Article 3 with respect to all transfers, regardless of location. This policy is set forth in Section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998, which provides that “[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.” However, the United States does not accept the Committee’s view, expressed throughout the draft General Comment, including in **paragraphs 9[[3]](#footnote-3) and 10[[4]](#footnote-4)**, that Article 3 applies to transfers occurring outside U.S. sovereign territory.

6. In the interest of clarity, the United States recommends that the Committee use the precise language of Article 3 when describing the treatment of individuals to whom the obligation applies. By its terms, Article 3 applies when “there are substantial grounds for believing that [an individual] would be in danger of being subjected to torture […].”[[5]](#footnote-5) The United States suggests that the Committee use this terminology throughout its General Comment, including in **paragraph 8**, rather than risk confusion by paraphrasing or substituting other terms not contemplated by the States Parties.

7. The United States understands the Committee’s desire to encompass various concepts within the term “deportation,” as indicated in **draft footnote 6**. However, many States consider “deportation” to be a term of art referring to certain types of immigration removal, and using the term to capture other forms of transfers obscures the significant differences between immigration removals and extraditions. Thus, the United States suggests that the Committee use throughout the draft General Comment either the precise, full language from CAT Article 3, or a broader term defined by the Committee to constitute shorthand for this language that will be more easily understood by States to include non-immigration operations such as extradition to avoid possible confusion (for example, “transfer” could be used).

8. Similarly, the United States recommends that the Committee clarify its distinction between the “State of origin” and “State of deportation.” Article 3 applies regardless of whether the receiving State is the individual’s “State of origin.” Various paragraphs of the draft General Comment suggest that past treatment or potential future treatment in an individual’s “State of origin” is relevant to a determination with respect to a different State to which the individual might be transferred. Moreover, some may misread the term “State of deportation” to mean the sending State. Thus, the United States recommends that the Committee consider using a single term, such as “receiving State,” throughout the General Comment (including in **paragraph 30**).

9. Finally, the United States observes that this draft General Comment repeatedly asserts what States Parties “should” do or not do, without clarifying whether the Committee believes the given principle reflects a legal obligation under the CAT or a suggestion or best practice. In several of our specific observations below, the United States presents its view as if the Committee’s intention is to assert a legal obligation. Nonetheless, the United States would not ordinarily read the use of the term “should” in the final General Comment to reflect the Committee’s assertion of a legal obligation, rather than a suggestion or a best practice.

1. **Specific Observations**
   1. **Paragraph 12**

10. The United States does not agree that a determination that a person cannot be returned to a particular country consistent with Article 3 automatically entitles that person to remain in the country in which he or she is located. For example, Article 3 would not preclude removing the person to a third country where there are no substantial grounds for believing that the individual would be in danger of being subjected to torture. Article 3 also does not prohibit transferring an individual to a receiving State where there previously were substantial grounds for believing he or she would be in danger of being subjected to torture, if country conditions or other material circumstances have changed to reduce or eliminate that risk. As a result, the United States recommends that the Committee consider revising **paragraph 12** to avoid the implication that allowing the individual to remain in the territory is the only option consistent with Article 3.

11. Evidence providing substantial grounds for believing that an individual would be in danger of torture upon further transfer from the receiving State to a third State would be considered, as appropriate, along with other factors, as part of a determination of whether there are “substantial grounds for believing that he would be in danger of being subjected to torture” if transferred. Article 3 would not be implicated simply due to a general or non-specific risk of potential transfer to a third State after the initial transfer.[[6]](#footnote-6)

* 1. **Paragraph 13**

12. Although collective transfer could pose a risk of an Article 3 violation, the United States disagrees that collective transfer constitutes a per se violation of Article 3. For example, a collective transfer to a State where there are no substantial grounds for believing that any of the individuals being transferred would be in danger of being subjected to torture would not constitute a violation of Article 3. As a result, the United States recommends that the Committee phrase **paragraph 13** in terms of a heightened risk of violation, rather than a per se violation. In the United States, all individuals subject to immigration removal or extradition are provided an opportunity to raise a claim that their transfer to a particular country would be inconsistent with CAT Article 3, and all such claims are considered on an individual basis in accordance with applicable regulations and procedures.

* 1. **Paragraph 14**

13. The United States does not interpret Article 3 as imposing such a broad range of legal obligation on States Parties to refrain from taking measures that might unintentionally cause individuals to leave its territory. There might well be extreme circumstances in which a State intentionally enacts measures for the purpose of inducing individuals with a need for protection under Article 3 to leave the country without being afforded a meaningful opportunity to have their Article 3 claims considered by a competent authority, in which case Article 3 might be implicated. Those situations, however, must be distinguished from those where States adopt immigration, security, or budgetary policies that may cumulatively cause certain non-citizens in need of protection to depart from the country voluntarily. In addition, even with this change, examples such as “cutting funds for assistance programs to asylum seekers” are overbroad in light of States’ discretion to determine budgetary levels for assistance programs. Moreover, suggesting that any cuts to assistance risk putting a State in violation of Article 3 could have the perverse effect of dissuading States from providing additional and discretionary forms of assistance in the first place. We recommend that the Committee consider modifying this sentence to “withholding basic forms of humanitarian assistance from asylum-seekers.”

* 1. **Paragraphs 18 and 30**

14. The United States suggests that the Committee consider the practice of a range of States Parties in further developing the list of best practices contained in both **paragraphs 18** and **30**, in order to make this General Comment as useful a reference tool for States Parties as possible. In particular, we note that many of the best practices in these paragraphs as currently drafted appear to relate to deportations and other immigration-related transfers, but do not take into account the significant differences between immigration removals and extraditions.

15. Specifically, the United States notes that the qualifier “when necessary” in **paragraphs 18(b)** and **43** is ambiguous and difficult to apply. In the United States, certain indigent criminal defendants have a right to appointed legal counsel, but individuals in immigration proceedings do not have such a right (although they may obtain legal services, including *pro bono* representation, on their own, and the United States has several programs aimed at facilitating access to such legal services).[[7]](#footnote-7)

16. Additionally, with respect to **paragraph 18(d)**, we recommend that the Committee suggest that such examinations be done “as appropriate” to account for the fact that every individual should have a personal, particularized evaluation.[[8]](#footnote-8)

17. Finally, with regard to **paragraph 18(e)**, the United States notes that not all appeals have automatic suspensive effect, and that it could therefore be difficult for States Parties to implement this suggested best practice.

* 1. **Paragraphs 19-20**

18. The United States has separately provided its views on these paragraphs in a joint submission to the Committee with the Governments of Canada, Denmark, and the United Kingdom.

* 1. **Paragraph 21**

19. The United States is concerned that **paragraph 21** as drafted may be read to imply that if a State does not make “adequate” mental health care services available to victims of torture, that State would itself be committing torture. Although the United States agrees that there might be particular instances where the availability of adequate medical services should factor into the transfer decision, our view is that the CAT does not suggest that a State is responsible for torture if it generally does not provide certain forms of health care services for individuals not in its custody.[[9]](#footnote-9) As a result, the United States suggests that the Committee clarify the distinction between intentional denial of medically necessary and otherwise available services in order to intentionally inflict severe pain or suffering, which may amount to torture under certain circumstances, and the more common situation, where a State does not guarantee certain health care services to all.

* 1. **Paragraph 22**

20. The United States notes that this paragraph, as drafted, extends far beyond a State Party’s obligations under Article 3, which applies during the process of determining whether to expel, return, or extradite an individual to another State. Once an individual has been transferred to a State in a manner consistent with Article 3, the transferring State does not maintain an ongoing, indefinite obligation to monitor all transferred individuals, who may number in the thousands, or to permit them to reenter the transferring State’s territory. In addition, this draft paragraph appears to encourage States to intervene in the domestic legal proceedings of other States, and to conduct routine monitoring in the territory of other States regardless of any risk of torture at the time of transfer. The United States recommends that the Committee delete **paragraph 22**, or else revise it to suggest that States Parties may consider requests for assistance from transferred individuals who subsequently face torture in the receiving State.

* 1. **Paragraph 25**

21. The United States notes that the terminology used in this paragraph is not clear, including the use of the term “notification of adherence to the extradition treaty.” If the Committee means to suggest that States formulate reservations when becoming party to extradition treaties that might conflict with the Convention, we note that reservations are uncommon in the context of bilateral treaties and would have to be accepted by the other party for the treaty with the reservation to enter into force between the parties.

22. If, instead, the Committee intends to assert that bilateral extradition treaties should contain a savings clause aimed at the CAT, the United States recommends that the Committee consider the utility of such a clause and examine the practice of States Parties to the CAT in this regard. For example, the United States does not include such a clause in its bilateral extradition treaties. However, as a matter of practice, we have not interpreted our bilateral extradition treaties to require extradition when a particular extradition would be inconsistent with Article 3 of the CAT. We suggest that the Committee should consider how States Parties understand and apply their extradition treaties. **Paragraph 25** would be unnecessary, if, like the United States, other States Parties do not understand their bilateral extradition treaties to require extradition when Article 3 of the CAT is implicated.

* 1. **Paragraph 29**

23. The United States disagrees with the legal and logical premise of this paragraph. Evidence of prior exposure of an individual or similarly situated family members to CIDTP, although relevant evidence in an Article 3 determination, does not always constitute an indication that the individual is at risk of torture for purposes of an assessment under Article 3. That is especially so where there has been an intervening, material change in country conditions in the receiving state. As a result, the United States recommends that **paragraph 29** clarify that prior exposure to CIDTP “may constitute” an indication of risk of torture, depending on the individual’s particular circumstances.

* 1. **Paragraph 30**

24. As a general matter, the United States notes that not all the factors enumerated in this paragraph will be relevant in every Article 3 assessment, given the particularized and personal nature of these assessments. Thus, the United States suggests changing “State parties should consider, in particular” in **paragraph 30** to “State parties should consider, as appropriate, within the context of all relevant circumstances.”

25. With regard to **paragraph 30(a)**, the United States disagrees with the implication that many of the specific examples cited should be treated as evidence of a risk of torture regardless of the context. For example, the fact that an individual was previously detained in the receiving State and alleges that he/she was not given notice of the reason for that arrest in a language that he/she understood does not typically provide evidence that the individual would be subjected to torture upon transfer to that State.

26. With regard to **paragraphs 30(a)(iv-v)**, the United States notes that these paragraphs go beyond what is required by the International Covenant on Civil and Political Rights (ICCPR), and as a result should not be cited by the Committee as evidence of denial of a “fundamental guarantee.”[[10]](#footnote-10) As a result, the United States recommends their deletion.

27. With regard to **paragraphs 30(c)** and **30(m)**, the United States notes that these subparagraphs include actions by private individuals over which the State does not exercise control, which the State has not instigated, and/or to which the State has not consented or acquiesced (including certain kinds of gender-based violence or sexual violence). The definition of torture in Article 1 of the CAT only includes actions “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.” As a result, mistreatment that would not constitute torture under the definition provided in Article 1 of the CAT because it is inflicted by a private individual without instigation, consent, or acquiescence of the State does not provide evidence that an individual is in danger of being subjected to torture post-transfer within the meaning of Article 3.[[11]](#footnote-11) Although in **paragraph 30(c)** the Committee inserts “amounting to torture” later in the paragraph, there is some potential for misinterpretation here. The United States therefore recommends that **paragraph 30(c)** be revised to reference “whether […] the person has been or would be a victim of violence, including gender based/sexual violence, that constitutes torture under the definition provided in Article 1 of the Convention.” We also recommend that **paragraph 30(m)** be revised to reference “reprisals amounting to torture or extrajudicial killing have been or would be committed against him/her, members of the family, or witnesses of his/her arrest or detention,” deleting the rest of the paragraph.

28. The United States recommends that **paragraph 30(f)** distinguish more clearly between treatment or punishment constituting torture under customary international law, and treatment or punishment constituting torture according to the recommendations of the Committee or under the jurisprudence of other mechanisms, whose definitions may not be legally binding on any or all States Parties.

29. With regard to **paragraphs 30(g-j)**, the United States notes that these paragraphs refer to general allegations or evidence of certain violations by the receiving State that might not always be relevant in a particularized, personal determination of risk of torture for an individual. For example, the articles of the Geneva Conventions referred to in **paragraphs 30(i)** and **30(j)** contain numerous provisions that apply to certain transferees and that do not relate to risk of torture. As a result, the United States would recommend narrowing these paragraphs where any such violations “would be relevant to an assessment of the risk of torture.”

30. With regard to **paragraphs 30(k-l)**, the United States does not agree that a sending State could refuse to transfer an individual on the grounds that the receiving State has a law permitting application of the death penalty in a manner consistent with international law, particularly in instances where the death penalty would not be pursued against that individual. The United States does not agree that the existence of a law permitting use of the death penalty in a State makes that State more likely to torture a particular individual, especially if that individual would not be subject to the death penalty upon transfer. Finally, the United States does not agree that a “prolonged period … of death row detention” necessarily creates a risk of torture, particularly if that delay is largely driven by an individual’s access to a robust appellate process.[[12]](#footnote-12) The United States therefore recommends that **paragraph 30(k)** be amended to refer only to deportation to a State “where there is substantial grounds for believing that the death penalty will be applied to the transferee and in a manner that is considered as a form of ….” The United States further recommends deletion of **paragraph 30(l)** as unnecessary.

31. With regard to **paragraph 30(o)**, the United States disagrees with using the term “fundamental child rights,” as there is no hierarchy among the rights of the child. We also recommend deleting the phrase “or indirectly,” since recruitment of a person under age 18 as a combatant not participating directly in hostilities is not necessarily a violation of the child’s human rights.[[13]](#footnote-13) In addition, the language on “providing sexual services” should be modified to correspond to abuses and violations defined in the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography.

* 1. **Paragraphs 31-32**

32. The United States reiterates the views expressed with regard to **paragraphs 30(c)** and **30(m)** above, and notes that actions by a private, non-State actor that are not at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity do not constitute torture for purposes of the CAT. Accordingly, the United States recommends that **paragraph 31** be deleted or revised to reflect the need for official instigation, consent, or acquiescence in order for an anticipated future action in the receiving State to constitute torture for purposes of Article 3, and to limit the scope of this paragraph to torture rather than all CIDTP.

33. Further, Article 3 imposes obligations only on States Parties to the CAT and not on non-State actors, such as international organizations, except in circumstances in which their actions can be attributed to a State Party under principles of State responsibility. As a result, the United States recommends that **paragraph 32** be revised to clarify that it reflects a best practice or recommendation of the Committee rather than a statement of legal responsibility.[[14]](#footnote-14)

* 1. **Paragraph 37**

34. There is no requirement under Article 3 on States Parties to enact specific domestic processes to ensure compliance, including in particular that any decision related to Article 3 must be subjected to independent review. Article 3 does not require judicial review of all refoulement decisions. As the Committee itself has recognized, States can choose the measures through which they fulfill Article 3, so long as they are effective and consistent with the object and purpose of the Convention.[[15]](#footnote-15) The United States recommends that the Committee carefully consider the practice of States Parties in this regard. The United States is also concerned that the “without obstacles of any nature” language in **paragraph 37** is overly broad.

* 1. **Paragraphs 40-42**

35. The United States respects the Committee’s authority to determine its own procedures for hearing individual communications under Article 22 of the CAT, but believes that the reversal of the burden of proof outlined in **paragraph 40** is not well-grounded in principle and could detract from the fairness of proceedings under Article 22 vis-à-vis States Parties.[[16]](#footnote-16) The same is true of the draft articulation of “benefit of the doubt” in **paragraph 55**, which is not clearly defined and which could also negatively affect the fairness of such proceedings without further clarity on its application. The United States does not read “administrative and/or judicial procedures” in **paragraph 41** to refer to terms of art under domestic law.

* 1. **Paragraph 45**

36. The United States notes that the phrase “situations conducive to genocide” used in **paragraph 45** is not well-defined, making it unclear what action or practice is being recommended. In addition, the United States disagrees with the Committee’s inclusion of a state of armed conflict as part of the list of per se “gross, flagrant, or mass violation of human rights,” and disagrees with the implication that a state of armed conflict necessarily affects an individual’s risk of being subject to torture if returned to the State concerned. The mere fact that a receiving State is engaged in an armed conflict – potentially on the territory of another State altogether, or thousands of miles away from the territory where the individual is to be transferred – does not, in the view of the United States, provide relevant evidence on its own for a sending State’s Article 3 assessment.

* 1. **Paragraphs 46 and 48**

37. The United States is concerned that the use of the phrase “any of the indications” in **paragraph 46** may imply that the presence of a single factor from the list in **paragraph 30** would lead the Committee to find a violation of Article 3. This appears to be inconsistent with the Committee’s assertion that determinations under Article 3 must be individualized, and should take into account all relevant factors for a particular individual. Moreover, **paragraph 30** itself presents the factors as “non-exhaustive pertinent examples of human rights situations which *may* constitute an indication of a risk of torture” (emphasis added), rather than factors that would each automatically indicate a risk of torture. As noted in our comments above on **paragraph 30**, we urge the Committee to make **paragraph 30** even clearer that the presence of any such factors should be considered as part of a holistic determination. The United States recommends that the Committee revise this paragraph for consistency to ensure the Committee’s view that determinations under Article 3 be personal rather than automatic, and to reflect that a determination under Article 3 should be made on a case-by-case basis, taking all relevant circumstances into account.

38. The United States reiterates this comment with regard to **paragraph 48**. The United States recommends that the Committee revise the first sentence of this paragraph for clarity; it is difficult to discern the exact purpose of the sentence, and it appears to be circular in nature. In particular, it is not clear what the phrase “by itself” is intended to communicate, especially to the extent that the “risk” in question is the overall risk of torture, and not one specific factor indicating a risk of torture.

* 1. **Paragraph 49**

39. The United States recommends that the Committee revise **paragraph 49** for clarity or delete it as unnecessary. Although the United States agrees that there could be circumstances in which the assertion expressed in the paragraph would be true, this idea is encompassed in the principle – one that is already articulated throughout the draft General Comment - that an Article 3 determination must be personal and particularized, taking into account all relevant factors at the time the determination is made. The United States therefore recommends that the Committee reconsider its inclusion of this paragraph.

* 1. **Paragraphs 50-51**

40. The United States is of the view that **paragraphs 50** and **51** are too categorical and do not sufficiently account for all circumstances relevant to a specific, individualized determination of a risk of torture. For example, a sending State may take into account whether an individual being transferred will be held in detention in a particular facility that has less effective torture prevention mechanisms than other facilities, or will reside in a local or regional jurisdiction that may have less effective torture prevention mechanisms than other jurisdictions, thereby creating a greater risk of torture than if the individual were to be held in a different facility or region. The United States believes that such factors are legitimate considerations as part of a determination of whether there are substantial grounds for believing that the individual would be in danger of being subjected to torture, and recommends that the Committee revise these paragraphs to account for a more holistic approach to the personal, particularized determination under Article 3 for each individual.

* 1. **Paragraph 53**

41. The United States recommends, consistent with the comments provided above concerning **paragraph 20**, that the Committee consider including questions in **paragraph 53** related to the existence, content, and reliability of any diplomatic assurances provided by the receiving State as factors relevant to the determination of whether there are substantial grounds for believing that a particular individual would be in danger of being subjected to torture. As a matter of practice, many States Parties to the CAT, including the United States, take this factor into account as part of their assessments under Article 3.

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42. The U.S. Government concludes these Observations with a statement of its appreciation for the work of the Committee Against Torture. The United States fully appreciates the Committee’s continuing efforts to advise States Parties on issues related to their implementation of the treaty and looks forward to its continuing dialogue with the Committee.

1. The United States has informed the Committee of its views on the territorial scope of certain articles of the CAT, including in its recent presentation to the Committee on its Third-Fifth Periodic Report on November 12-13, 2014, and in its One-Year Follow-Up Report to the Committee dated November 27, 2015 (available at https://www.state.gov/j/drl/rls/250342.htm). [↑](#footnote-ref-1)
2. As indicated previously to the Committee, this position was based on the specific text and negotiating history of Article 3, as well as statements made during the U.S. ratification process. This interpretation was further supported by the U.S. Supreme Court’s interpretation of similar language in Article 33 of the Refugee Convention in a decision that predated U.S. ratification of the Convention Against Torture, which held that the terms “expel” and “return (‘refouler’)” referred only to governmental actions that occur on U.S. sovereign territory. *Sale v. Haitian Ctrs. Council, Inc*., 509 U.S. 155, 177-87 (1993). Given that Article 3 was largely patterned on Article 33 of the Refugee Convention, and uses these same terms, the United States reads them in the same way in this context. Nothing in the negotiating history suggests that the drafters intended for the provision to apply extraterritorially, and indeed concerns were expressed about the border control implications of Article 3 that echo similar concerns expressed during the Refugee Convention negotiations. *See, e.g.*, Report of the Working Group on a Draft Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 42, U.N. Doc. E/CN.4/L.1470 (Mar. 12, 1979). Moreover, there were several indications that, at the time of ratification, the United States contemplated Article 3 as only applying within its sovereign territory. *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Message from the President, S. Treaty Doc. No. 100-20 (1988). [↑](#footnote-ref-2)
3. The United States notes that the use of “**or** on board a ship or aircraft” in this paragraph creates the impression that ships and aircraft are not considered “territory under [the State’s] jurisdiction” but rather constitute a new, non-territorial category. The United States has taken the view that U.S.-flagged ships and aircraft qualify as “territory under [U.S.] jurisdiction” for purposes of the CAT, and are therefore covered by the CAT provisions that use this territorial language. Article 3 of the CAT, however, does not use this territorial language. [↑](#footnote-ref-3)
4. Draft **paragraph 10** indicates that Article 3 applies to territories under foreign military occupation. The United States agrees that a time of war does not suspend the operation of the CAT, which continues to apply even when a State is engaged in armed conflict. The law of armed conflict and the CAT contain many provisions that complement one another and are in many respects mutually reinforcing. In accordance with the doctrine of lex specialis, where these bodies of law conflict, the law of armed conflict would take precedence as the controlling body of law with regard to the conduct of hostilities and the protection of war victims. However, a situation of armed conflict does not automatically suspend nor does the law of armed conflict automatically displace the application of the CAT. The United States also agrees that occupied territory would likely be considered “territory under [a State’s] jurisdiction” for the purposes of the CAT if the occupying power exercises the requisite control as a governmental authority in the occupied territory. However, including because Article 3 does not use the phrase “territory under its jurisdiction” to define its territorial scope, we have taken the position that Article 3 applies only to expulsion, return, or extradition from the sovereign territory of the United States. [↑](#footnote-ref-4)
5. The United States reiterates its understanding upon ratification of the CAT that “the phrase, ‘where there are substantial grounds for believing that he would be in danger of being subjected to torture,’ as used in Article 3 of the Convention, [means] ‘if it is more likely than not that he would be tortured.’” [↑](#footnote-ref-5)
6. For consistency, the United States recommends that **paragraph 53(g)** repeat the language used in **paragraph 12** regarding whether the complainant “would face further deportation to a third State...”. [↑](#footnote-ref-6)
7. This comment also applies to **paragraph 30(a)(iii)**. [↑](#footnote-ref-7)
8. This comment also applies to **paragraphs 30(a)(iv-v)** and **paragraph 53(d)**. [↑](#footnote-ref-8)
9. *See, e.g.,* U.S. understanding on the CAT: “That the United States understands that the definition of torture in Article 1 is intended to apply only to acts directed against persons in the offender’s custody or physical control.” [↑](#footnote-ref-9)
10. Additionally, the United States reiterates its understanding upon ratifying the CAT that “with reference to Article 1 of the Convention, the United States understands that noncompliance with applicable legal procedural standards does not per se constitute torture.” [↑](#footnote-ref-10)
11. This comment also applies to **paragraph 45**. [↑](#footnote-ref-11)
12. The United States reiterates its understanding upon ratifying the CAT that “international law does not prohibit the death penalty, and [the United States] does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.” [↑](#footnote-ref-12)
13. Under the Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict, a State Party may lawfully recruit persons under age 18 (but not younger than 15) into the armed forces, as long as such recruitment is voluntary and conditioned on parental consent, the State Party takes all feasible measures to ensure that the recruited person does not take a direct part in hostilities prior to attaining the age of 18. [↑](#footnote-ref-13)
14. The United States also recommends that the Committee consider clarifying the term “military operation programs,” which may be unclear in context. [↑](#footnote-ref-14)
15. UN Committee Against Torture, General Comment No. 2 on implementation of Article 2 by States Parties, CAT/C/GC/2, at ¶6 (24 January 2008), *available at* <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=1&DocTypeID=11>. [↑](#footnote-ref-15)
16. The United States does not view this paragraph as implicating the domestic practice of States Parties. The United States also notes that it does not read **paragraph 42** as recommending different procedures for persons in “particularly vulnerable situation[s],” since entitlement to Article 3 protection under the CAT exists regardless of whether an individual is in a particularly vulnerable situation. [↑](#footnote-ref-16)