

# Defusing the Ticking Bomb Scenario

Why we must say No to torture, always.



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**Defusing the Ticking Bomb Scenario:  
Why we must say No to torture, always**

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# Defusing the Ticking Bomb Scenario

*Defusing the Ticking Bomb Scenario* reaffirms and reinforces the absolute and non-derogable prohibition of torture and all other forms of cruel, inhuman or degrading treatment or punishment, against challenges based on the so-called ticking bomb scenario.

Torture must be seen for what it is: abhorrent and shameful. Torture is never courageous or honourable. There is good reason why torture, like genocide and slavery, became taboo in the modern era, and taboo it must remain.

## What is the Ticking Bomb Scenario?

The ticking bomb scenario is a hypothetical “**thought experiment**” that is used to question the absolute prohibition of torture. It can be formulated as follows:

“Suppose that a perpetrator of an imminent terrorist attack, that will kill many people, is in the hands of the authorities and that he will disclose the information needed to prevent the attack only if he is tortured. Should he be tortured?”

In public discussions, the scenario is often posed as a personal question to someone who is before an audience and says they are against torture. In this context it is often personalised:

“But suppose that you know of an imminent attack that will kill thousands of people and you have the perpetrator. The only way to prevent the attack is to torture him. Would you do it, yes or no?”

## Why are so many people talking about the scenario?

The ticking bomb scenario operates by manipulating the emotional reactions of the audience. It creates a context of fear and anger. It artificially tilts the circumstances to evoke sympathy or even admiration for the torturer, and hatred or indifference towards the torture victim. Its dramatic nature has made it a favourite plotline for popular television programs and action movies. It creates a powerful mental image that has to some extent captured the imagination of a portion of the global public, meaning that discussion of the scenario has taken on a momentum of its own, beyond its original explicitly legal/political context. This has made its impact a matter of grave concern, not just among human rights organisations and advocates, but among senior members of military institutions as well.<sup>1</sup>

Whatever the reason for its presentation in a given context, **the intended effect of the ticking bomb scenario is to create doubt about the wisdom of the absolute prohibition of torture.** This doubt, in turn, is usually designed to lead the audience to accept the creation of a legal exception to the prohibition, or at least to accept non-application of the criminal law against torture in particular cases. The true aim of proponents of the ticking bomb argument may be to create a broad exception while seeming to argue for a narrow one. By trying to force torture opponents to concede that torture may be acceptable in at least one extreme case, proponents of the ticking bomb argument hope to undermine

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<sup>1</sup> See, for example, the article “Whatever it Takes: the politics of the man behind ‘24’” by Jane Mayer, the *New Yorker* (19 February 2007), describing the deep concerns expressed by U.S. Army Brigadier General Patrick Finnegan, dean of the US Military Academy at West Point, about the toxic effect of the ticking bomb torture plots of the popular TV show ‘24’ on the real-life ethical judgment of the commanders-in-training he teaches.

the very idea that opposition to torture must be absolute as a matter of principle and practice. As such, the scenario has been given prominence lately by those who seek to end the taboo against torture, to make its application to prisoners suspected of involvement in terrorism seem acceptable, and to provide legal immunity for themselves and others who authorize, tolerate, order, or inflict it.

## **“NO” to any exception to the torture prohibition**

The stakes raised by the ticking bomb scenario are high: the destruction of the absolute prohibition of torture. The answer must be **a correspondingly resolute “NO” to any exception to the prohibition of torture**, no matter how narrow the circumstances are claimed to be.

.....

A **quick explanation** of this absolute “NO” could be as follows:

“First, the idea that I, you, or any other average citizen (or for that matter any government agent), with no prior experience or training in torture, could actually succeed in getting information from a terrorist (likely trained or indoctrinated to resist it) is ridiculous.

On the other hand, if you are asking me whether I, you, or anyone else in our society, should become a trained torturer desensitised to the pain and suffering of people under my control, in anticipation of some hypothetical future case, my answer is no. I don’t want to become that kind of person and I don’t want people like that in my society. Anyway, as intelligence professionals attest, we would stand a much better chance of actually getting life-saving information by using persuasion, trickery, or some other means. So, if my life depended on getting fast, accurate information, I sure wouldn’t want anyone wasting their time on torture.”

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This is only a quick answer, however. The following sections set out much more **detailed arguments**, including:

1. Exposing the fallacies in the scenario itself in order to demonstrate its misleading nature by first **exposing the hidden assumptions** of the scenario and second **debunking those assumptions**.
2. Reiterating the **toxic effect of Torture**, like its brethren **Slavery** and **Genocide**, on the societies that tolerate it.
3. Revealing **the slippery slope** towards the more widespread use of torture that any supposedly “exceptional” tolerance of torture would set us down.
4. Recalling the absolute and fundamental nature of the **legal prohibition** of torture.
5. Highlighting the ways in which the ticking bomb scenario manipulates moral and ethical judgment by obscuring the **true moral cost** of tolerating any act of torture.

### **Assumptions of the scenario**

The ticking bomb is based on a number of assumptions, some of which may be hidden or only implied when it is first presented. These **hidden assumptions should be exposed**.

For instance, the ticking bomb scenario typically supposes certainty, or near certainty, as to all of the following:

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1. A specific planned attack is known to exist.
2. The attack will happen within a very short time (it is “imminent”).
3. The attack will kill a large number of people.
4. The person in custody is a perpetrator of the attack.
5. The person has information that will prevent the attack.
6. Torturing the person will obtain the information in time to prevent the attack.



7. No other means exist that might get the information in time.
8. No other action could be taken to avoid the harm.

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The scenario also assumes:

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9. The motive of the torturer is to get information, with the genuine intention of saving lives, and nothing more.

10. It is an isolated situation, not often to be repeated.

.....

The proponent of the scenario may adjust these assumptions or otherwise make concessions in response to challenges, in order to make the scenario more realistic. Such manoeuvres can be pointed to as evidence that the scenario inevitably leads to a much wider exception to the prohibition of torture than was initially suggested, and ultimately down a disastrously “slippery slope” (described in greater detail below). In any event, the “pure” ticking bomb scenario described by these ten assumptions is the hardest case; if it can be dealt with, more realistic variations (and therefore broader exceptions) should be easier to counter.

## Debunking the assumptions

These **assumptions can be challenged** to demonstrate that any real-world “exception” to accommodate the ticking bomb scenario would actually be much broader than the artificially narrow situation initially described. In part, this is because in the real world we individually and collectively are always acting on partial information and varying degrees of uncertainty.

Demonstrating the true scope of the “exception” through debunking some or all of the assumptions (as is explained in greater detail below), reveals that **what is really being proposed is not a rare exception but a new rule permitting**

**torture**, which would take us back to the Dark Ages and the worst totalitarian societies. Ultimately, accepting the “ends justify the means” logic of any “ticking bomb” exception to the prohibition of torture, means **adopting the same moral principles as terrorism itself**.

Debunking the assumptions also demonstrates how little the idea of the pure ticking bomb scenario contributes to any serious consideration of the problem of torture, or for that matter the problem of terrorism.

The **debunking exercise** can raise the following points:

**Assumption 1: A specific planned attack is known to exist.**

**Assumption 2: The attack will happen within a very short time (is imminent).**

■ As the scenario is being presented, consciously or not, in favour of some sort of legal exception to the prohibition, precision is essential. **How “imminent” exactly, then, must an attack be to justify torture?** Hours? Days? Months?

On the one hand, to represent some type of ticking bomb scenario, the timing of attack must be far enough in the future that there is a realistic chance of doing something to stop it. On the other hand, if it is so far off in the future that the loss of life can be prevented in some other way (evacuation, for instance) then the supposed “need” for torture simply disappears. Furthermore, the more time until the attack, the greater the chance that humane interrogation methods will produce results.

**Assumption 3: The attack will kill a large number of people.**

■ Again, given that a legal exception to the prohibition of torture is at stake, precision is required. **How many lives must be at risk to justify torture?** Ten? A hundred? A thousand? 10,000? 100,000? More? Or less? Is one enough to justify torture?

**Assumption 4: The person in custody is a perpetrator of the attack.**

**Assumption 5: The person has information that will prevent the attack.**

■ In the “pure” ticking bomb scenario, the person in custody is someone who is known beyond doubt to be a perpetrator of the attack and possesses information that can prevent it. This is the stuff of TV drama and Hollywood action movies, where the super-villain has a super-ego that compels him to boast and taunt his captors. In reality, the **torturers are unlikely to have such a degree of certainty that the person they are holding is a perpetrator or even has relevant information.** One of the most insidious things about torture is that, perversely, a person who has no connection to, or knowledge of, the attack is likely to suffer the deepest and longest, having no means to affect his or her fate and no hope of anything but continued torture.

Ultimately, some proponents of a “ticking bomb” exception to the prohibition of torture may be willing to go further and concede that they would allow torture of someone who ultimately is not involved in any terrorist activity, and who may turn out not to have any relevant information. Of course, the point at which any particular proponent of a ticking bomb exception would draw the line will vary, but any proponent should be pressed to say whether their proposed exception would be flexible enough to allow the torture of:

- a person who the authorities are almost certain is a perpetrator, but who denies it.
- any person who the authorities suspect of any degree of involvement.
- a person not suspected of involvement, but who has relevant information that he or she is for some reason unwilling to divulge.

- a relative who is not involved but may know, for instance, where their family member may be hiding.
- a child who may or may not know some relevant information but does not trust the authorities or has been told not to tell.
- a child who has no relevant information, but whose torture in the presence of the perpetrator is the only thing that can get him to talk.

If the proponent agrees to torture some or all of the broader range of victims described above, this can be highlighted as illustrating how **any supposedly narrow “ticking bomb” exception quickly and naturally grows to drag more and more victims into its clutches.**

**Assumption 6: Torturing the person will obtain the information in time to prevent the attack.**

■ First, the scenario assumes that the information the tortured person gives will be correct and not misinformation designed to send authorities in the wrong direction until the bomb goes off (i.e. wild goose chases). However, short timelines are integral to the scenario, and the scenario also implies that the torture will stop as soon as the interrogator believes he has the information needed to stop the attack (as he would have to do if his motives are genuine). Thus, **it seems likely that a perpetrator would be able both to stop the torture and to misdirect authorities long enough for the bomb to go off**, in which case torture is not likely to be an effective means of preventing the attack.

Second, it is important to understand that torture is not some sort of magic fix. The types of persons who would plan and execute such an attack are the very ones most likely to have been trained to withstand torture until it is too late anyway. Indeed, **professional interrogators have repeatedly emphasised that interrogation can be conducted much**

**more effectively without the use of torture, and that if they thought they had only one opportunity to succeed, they would not choose torture as their “one shot” at success.<sup>1</sup>**

Third, even assuming that torture could be effective in such circumstances, the short timelines involved would presumably mean that you would need the “best” torturers to be readily available if you intend to rely on torture to save the day. This in turn **assumes that societies facing sophisticated attacks would establish the institutional arrangements to create and maintain a professional class of torturers, and to equip them with continuously-updated torture techniques and equipment.** Grave dangers to democracy and to individual freedoms would be posed by an institutionalized professional “torture squad”. This more realistic picture of becoming prepared to torture in a ticking bomb scenario is much less palatable than the naïve idea that a “heroic Everyman” could spontaneously and on a one-time basis effectively apply torture to a supposed perpetrator, presumably trained to resist such treatment. Further, devoting resources to developing a capacity to torture in this way would only divert resources from developing greater capacity for other means of preventing such an attack.

**Assumption 7: No other means exist that might get the information in time.**

Usually the scenario is based on the premise that the torturer already knows everything about the plot except for one key piece of information that the victim, and maybe only the victim, knows. This of course naturally leads to the question of whether, having all this information, it is really possible that there are **no other leads to pursue**, including

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<sup>1</sup> See, for example: “Whatever it Takes” (cited above); the 31 July 2006 “Statement on Interrogation Practices” presented to the US Congress by twenty former interrogators; Amnesty International USA’s online Q&A session with former interrogator Peter Bauer ([www.amnestyusa.org](http://www.amnestyusa.org)).

humane methods of interrogation, search warrants, wire-taps and so on?

**Assumption 8: No other action could be taken to avoid the harm.**

The ticking bomb scenario assumes that no other action can be taken to avoid the harm. This assumption may be worth questioning. In a pure ticking bomb scenario, there must not be enough time or means to evacuate the building, neighbourhood, or city under threat, whether because the attack will happen too soon or its target is too imprecisely known.

**Assumption 9: Genuine motive of the torturer?**

Even if the torturer were to begin with the genuine motive only to torture to obtain the specific piece of information, **torture corrupts**. This is in the nature of torture. For instance, a former US military interrogator in Iraq described how in applying torture to detainees he was affected by the desire for revenge and a “thrilling” feeling associated with provoking fear in others.<sup>1</sup> Proponents of the “ticking bomb” exception insist that the aim of torture is intelligence gathering, not punishment. In the real world, however, motives are not that simple. Anger, a thirst for payback and the desire “to show who’s boss” can all-too-easily take over under extreme circumstances, and it is unrealistic to assume that interrogators’ motives will be pure.

**Assumption 10: It is an isolated situation.**

As will be explained in greater detail below, it is in the nature of torture that **any authorization of torture**, whether granted in advance through legal permissions or granted post-facto by non-prosecution or other means, leads inevitably to a “slippery slope” where its **use quickly becomes much more**

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<sup>1</sup> *Washington Post*, “The Tortured Lives of Interrogators”. Monday, June 4, 2007; p. A01.

**widespread.** Especially if contemplation of the ticking bomb scenario were to lead to establishment of a legal exception, we must anticipate a **grave proliferation** of torture.

Usually the process of debunking shows that not even the *proponent* of an exception can precisely delineate the circumstances in which he or she considers torture to be “justified”. Even if the proponent could clearly describe such circumstances in ordinary language, it is even less probable that a legal exception could be crafted whose application is precisely limited to the kind of situation contemplated. Even assuming such precise legal language could be found, it is even more improbable that there could be any agreement on the scope of persons who could lawfully be tortured.

### **Arguments in Response to the Scenario as a Whole**

Once the assumptions hidden in the Ticking Bomb scenario have been exposed and challenged, several things should be clear. The scenario’s popularity of late is part of a concerted effort to create a legal exception to the prohibition against torture. The lack of precision in defining the scope of the scenario means that any such exception will necessarily be much broader than the “pure” ticking bomb scenario initially suggests.

The next step, therefore, is to set out the **reasons why any talk of an exception to the prohibition of torture must be categorically rejected.** Some of the arguments in this regard are:

1. Torture, Slavery, Genocide: Destroyers of Humanity
2. Slippery Slope
3. Legal Prohibition
4. Morality and Ethics

## 1. Torture, Slavery, Genocide: Destroyers of Humanity

Among the progressive achievements of humanity over the course of our shared history, one of the most fundamental advances was **the recognition around the world that each and every human being is indeed an individual person**, as is enshrined for instance in the Universal Declaration of Human Rights. It may seem astonishing to think that there was a time when societies generally considered it respectable, normal or tolerable for some human beings to view others as little more than animals, to be used as one needed or pleased; and indeed we should celebrate the incomprehensibility of such beliefs to most people today.

Several further realizations followed from this fundamental understanding. Believing in human dignity required that dignity be accorded to every human being. **Certain ways of treating others were also recognized as being fundamentally incompatible with their recognition as individual persons, as human beings, and as such never justified.**

In order to consolidate this foundation of progressive discovery and recognition of the humanity of one another, practices such as slavery, genocide and torture were absolutely prohibited by international law. The fundamental incompatibility of any of these practices with the recognition of another person as a human being, means they can never be tolerated without shattering the common edifice of humanity on which human society itself is based. **Torture, Slavery, Genocide: each of these acts always denies not only the dignity but the very humanity of its victims.**

Genocide cannot be justified by claiming, perhaps even truthfully, that one will only apply it once, or only if forced to by some kind of extreme emergency. Slavery cannot be justified by claiming it is instituted in the pursuit of a greater good. Just as no one could justify the enslavement of a



people as necessary to the survival of another, and no one could justify a genocide even to prevent another larger genocide, **anyone who attempts to justify torture in the name of saving lives is assaulting the common humanity of us all.** We must **treat them with shame and revulsion as we would any proponent of genocide or slavery.**

## **2. The Slippery Slope**

Any legal exception created to accommodate a “ticking bomb” scenario would inevitably lead us down a slippery slope, at the bottom of which **torture becomes arbitrary and unpunished, or widespread and systematic, or both.** The ultimate result of any exception to the prohibition of torture is the erosion of democratic institutions and the destruction of any open, free and just society. At the end of the day, we have much more to lose by creating a legal exception to accommodate some future ticking bomb scenario, than we do by maintaining the absolute prohibition of torture even if that means assuming some hypothetical risk. This is because arguments about **the ticking bomb hypothetical are not truly about what we *would* do in some imagined future, it is about the kind of society we want to live in *today* and every day.**

If it exists in reality at all, the pure ticking bomb scenario is vanishingly rare. It does not correspond to the reality of the vast majority of events, where a plot is foiled before the intended attack becomes imminent, or the attack takes place, but there was no perpetrator in custody immediately beforehand who could have revealed information to avert the attack. Further, since the ticking bomb scenario is often raised in the context of threats represented by organised networks of terrorists, it is worth recognizing that any attack planned by a network is likely to be designed to succeed even if one of

their members is taken into custody. This only emphasises how rarely all the improbable assumptions of the pure ticking bomb scenario could coincide. If such situations are so rare, does it make sense to twist our system of international and national laws to accommodate them, even assuming one agreed with the calculus posed by the pure hypothetical (which, for the reasons explained earlier, we do not)?

It is in the nature of law that **creating exceptions to deal with largely unknown future risks can undermine the effectiveness of the underlying prohibition in the present.** This is in part because the exception must be cast in broad terms to encompass the specific facts of any such theoretical situation should it appear in the real world. Yet, casting the exception so broadly means that it comes to be applied to situations much different from those for which it was originally intended. Legislative bodies are also extremely risk-averse when it comes to public safety, and can be expected over time to gradually increase the scope of any exception, as has been the case with virtually every counter-terrorism measure enacted since 2001. Torture in particular has an extremely corrosive social effect. Law as an institution cannot accommodate any exception to the prohibition of torture without the prohibition itself quickly becoming ineffective. **Creating a legal exception to the prohibition of torture can be expected to open the flood gates to much more widespread use of torture in practice.**

Further, since it is not realistic to expect near-certainty about the various elements of the scenario in any real-world situation, any exception based on the ticking bomb scenario would presumably allow torture to be carried out based on various degrees of suspicion. As the degree of certainty required declines, the likelihood that people who are not involved at all will be tortured based on mistaken identity, or for having been at the “wrong place at the wrong time”, increases.

History also shows that any tolerance of torture leads to its proliferation, in respect of other types of “evil” as serious as the “ticking bomb” evil, and in respect of its use for purposes other than obtaining information.

The establishment of a legalised exception in a single State would also cause international proliferation. **If States that purport to be world leaders on human rights express their tolerance of torture, even in narrow circumstances, other States will take this as their cue to continue or expand their own use of torture against their own populations,** in a much broader range of circumstances than the ticking bomb scenario. It is not hard to see the huge reduction in diplomatic leverage that would result for a State that goes from being a “torture prohibitionist” to simply being a less enthusiastic torturer.

Further, **using torture ourselves allows other countries to more easily justifying using torture against our own soldiers and nationals.** It is no wonder, then, that many military leaders themselves strongly object to any tolerance of torture among their own forces.

**The use or tolerance of torture by a democratic government as a counter-terrorism measure blurs the moral distinctions between such a government and the terrorists,** at least in the eyes of populations in third states. It is precisely the terrorists’ attempt to justify inhuman acts in the name of some greater good, that forms the basis for criticism of their actions by governments. It also feeds into the claim of terrorists that democratic governments only pretend to live by strong principles, and readily abandon them when it suits them. Finally, torture itself can radicalize both its victims and their sympathisers. All of this only makes it easier for terrorist networks to recruit new members and win the sympathy or support of local populations, which could

eventually simply lead to more attacks, presumably feeding the argument for more torture to be used in response.

Every minute that is spent contemplating and planning for the use of torture as a counter-terrorism measure is also a minute not spent on building capacity to use other means to prevent attacks. Over time, focussing on coercive techniques that frequently generate unreliable or useless information distracts resources away from the development and deployment of other more appropriate investigation techniques. **Reliance on torture as an investigative technique in some circumstances tends to lead to dependence on torture as a general practice.**

Finally, we must recognize that being prepared to use torture, even in exceptional circumstances, implies certain institutional arrangements that seem fundamentally inconsistent with the kind of society most people desire. We can anticipate clandestine interrogation centres staffed with interrogators trained in torture techniques (presumably in some sort of torture academy). On our streets we would walk amongst men and women who have been encouraged to override their natural revulsion at causing pain and suffering to another human being helpless to defend himself. Researchers and entrepreneurs would work to discover and produce ever more horrific torture equipment and techniques. In the past these types of institutional arrangements have been associated with the Nazis, with other fascist states and totalitarian societies and dictatorships. What would it say about our society if we were to adopt the same techniques that were central to theirs? What kind of company do we wish to keep?

### 3. The Legal Prohibition

The **absolute prohibition** of torture and other cruel, inhuman and degrading treatment or punishment is included in **every relevant international treaty** and is a norm of general (customary) **international law binding on all States**. **No exception** or derogation to the prohibition is permitted in any circumstances, even emergencies.

Torture is a **crime under international law** for which States have agreed every perpetrator must ultimately be brought to justice no matter where in the world he is found.

Neither “ticking bomb”-type circumstances nor any other claim to have acted with good motives can ever be a valid basis to exempt a person from criminal responsibility for torture. **Necessity, self-defence, and other justification defences are not permitted** in any case of torture, no matter how extreme or grave the circumstances.<sup>1</sup> Even in the unlikely circumstances of the ticking bomb scenario, torturers must not be exonerated from legal responsibility for their crimes; otherwise, pleas of “I thought it was necessary” would thereafter rob the law against torture of any real force.

However, a separate question is the specific sentence appropriate to any individual case of torture. From a human rights perspective it is important to make sure that each sentence is individualized to the circumstances of the offence and the convicted person, keeping in mind that all sentences in torture cases must take into account the grave nature of all such acts.<sup>2</sup>

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<sup>1</sup> Article 2(2) and (3) of the UN Convention against Torture: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture. An order from a superior officer or a public authority may not be invoked as a justification of torture.”

<sup>2</sup> Article 4(2) of the UN Convention against Torture.

#### 4. Morality and Ethics

Expression by the countries of the world of our fundamental shared moral values can be found in the Universal Declaration of Human Rights and other Declarations by the United Nations General Assembly.

The fifth article of the **Universal Declaration of Human Rights** states that “**No one** shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>1</sup>

This prohibition is reinforced by article two of the **UN General Assembly Declaration against Torture**, which says:

**Any** act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article three of the Declaration against Torture eliminates any doubt that the nations of the world have already long rejected the moral logic of the “ticking bomb scenario”:

Exceptional circumstances such as a state of war or a threat of war, internal political instability **or any other public emergency** may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

As was noted earlier, the substance of these Declarations have also become part of international law, and there is no question that **any use of torture in a ticking bomb situation is a violation of international law and a crime under international law**. However, even leaving aside the question of international legality, there are solid moral and ethical

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<sup>1</sup> Emphasis in this and the following quotations is added.

grounds for rejecting any act of torture in a ticking bomb situation or any attempt to legalise torture under any circumstances under national law.

It is worth distinguishing the question of **what moral response society should take** in anticipation of a realistic ticking bomb scenario, from the question of **what any individual person would or would not in fact do** were they to find themselves in such circumstances. The way in which the ticking bomb scenario is most often posed is designed to blur these lines, and this is one of its most dangerous and insidious effects.

Of course, for many people the answer to the question “what should society morally expect of me” and “what should I morally do” will be the same: torture is absolutely prohibited as a matter of morals and ethics, and so no torture must be applied or tolerated no matter how great the costs. **People may find the basis for an absolute moral prohibition against torture, at both the personal and societal level, in any of a range of sources:** the same universal and absolute commitment to human dignity from which the UN human rights declarations emanate; or personal systems of ethics; or religious faith; or military doctrine; or elsewhere.

That any of these sources of moral and ethical belief might lead a person to reject the use of torture in the ticking bomb scenario, in both societal and personal moral terms, should not be surprising given the many aspects that make torture particularly terrible:

- It is among the worst kinds of suffering a person can inflict on another. Many people would rather die than undergo torture.
- The tortured captive is helpless. A person who has no information is entirely unable to affect his or her fate and faces only continued torture.

- The victim's human dignity has been reduced to nothing, his body and mind treated as a mere means.
- The society that tolerates or endorses the act thereby tolerates or endorses one person intentionally depriving another of the totality of his human dignity, degrading the society itself.
- The consequences of torture are often lifelong.
- Torture is intimately associated with the most horrific and oppressive governments that human history has ever known.
- Torture is the concentrated essence of tyranny, one person tyrannizing another – the breaking of a person's will by inflicting pain. Our society cannot tolerate tyranny, it is the opposite of our society.
- Most normal human beings feel an intense physical revulsion in witnessing or even imagining the mutilation or infliction of severe pain on others.
- The torturer himself may be corrupted, psychologically damaged, degraded and deprived of dignity by the acts, with consequent harm to his family and others around him.

Nor should we be surprised that the personal moral commitment against torture of many people would imply that they accept the risk that many others could lose their lives as a result. While protecting human lives is important, most people believe there is more to human existence than simply preserving individual lives. Indeed, people consciously choose to sacrifice their own lives all the time for the preservation of a way of life. The core international human rights treaties and the laws of war codify the principle that there are some things so morally reprehensible that they cannot



be used even when the life of a nation is at stake, and torture is expressly listed among those things.

But one need not believe that as a matter of personal ethics he or she would never use torture even in the pure ticking bomb scenario, in order to reject any attempt to justify torture as morally acceptable at the societal level. The utilitarian calculation that lies within the pure “ticking bomb scenario” manipulates the moral intuition of audiences by making obvious only some of the consequences of torturing or not torturing, while hiding other consequences that are equally or more grave. When these **hidden consequences** are brought into the equation, it becomes clearer that creating any exception to the absolute legal and moral rule against torture, would lead to practical and moral consequences that vastly outweigh any theoretical moral “injustice” that could arise from convicting an individual torturer in such circumstances.

For example, the scenario hides from the audience the reality that creating an exception would, as it has in all historical precedents, lead to a **proliferation of torture** over time. Thus, we must no longer weigh the suffering of one or a few potential perpetrators in any utilitarian calculus, we must add the suffering of these many hundreds or thousands or more other, potentially completely uninvolved, future victims. We must weigh the **corrosive effect on society** of accepting the risk of torturing individuals who have no connection to terrorism, through cases of mistaken identity such as those that have already come to light in the revelations about international renditions to torture. We must consider the consequences of preparing ourselves to use torture: creating a **professional class of torturers, training and equipping them**. We must add to the scenario the **long-term effect of adopting the methods of terrorists**, which

would likely include an increase in the number of terrorist attacks, in so far as our use of torture could lead to the expanded recruitment of new members of terrorist networks, or less willingness of foreign populations to cooperate with efforts to prevent future acts of terrorism. For instance, people who otherwise would provide us information about planned attacks may be reluctant to do so if they fear this will led to further interrogation through torture of themselves or others, or resent our use of torture against others they know or with whom they identify. There are other intangible but grave effects on a society whose government promotes or tolerates the intentional infliction of suffering on those whose bodies it controls: Torture is a poison, and once even a small amount of this poison is injected into the society's lifeblood it will spread and corrupt the flesh until the entire patient is consumed.

Once these factors are added into the equation, the utilitarian balance implicit in the ticking bomb scenario is no longer artificially weighted in favour of torture. Thus, **even those who approach the scenario from a utilitarian, rather than an absolute, moral perspective, must morally reject any legalisation of any act of torture.** In short, the response of society to any attempt to justify torture must always be to insist that torture is never morally justified.

## **Conclusion**

We return, then, to where we began. The absolute and non-derogable prohibition of torture and all other forms of cruel, inhuman and degrading treatment or punishment, must be unwaveringly promoted, not only in the face of challenges based on the so-called "ticking bomb scenario", but everywhere that torture or talk of torture still lurks.

Torture is of the same species as genocide and slavery. The political and legal projects that have become associated with the ticking bomb scenario must be rejected in precisely the same way we would meet any proposal for the use of genocide or slavery: with condemnation, shame, abhorrence, and a resounding and absolute “NO”.

## **Association for the Prevention of Torture**

The Association for the Prevention of Torture (APT) is an independent non-governmental organisation based in Geneva. It was founded by the Swiss banker and lawyer, Jean-Jacques Gautier, in 1977.

The APT envisions a world in which no one is subjected to torture or cruel, inhuman or degrading treatment or punishment, as promised by the Universal Declaration of Human Rights.

The APT focuses on the prevention of torture, rather than denunciations of individual cases or the rehabilitation of victims. This strategic focus on prevention enables the APT to collaborate with state authorities, police services, the judiciary, national institutions, academics and NGOs that are committed to institutional reform and changing practices.

To prevent torture, the APT focuses on three integrated objectives:

### **1. Transparency in institutions**

To promote outside scrutiny and accountability of institutions where people are deprived of their liberty, through independent visiting and other monitoring mechanisms.

### **2. Effective legal frameworks**

To ensure that international, regional and national legal norms for the prevention of torture and other ill-treatment are universally promoted, respected and implemented.

### **3. Capacity strengthening**

To strengthen the capacity of national and international actors concerned with persons deprived of their liberty by increasing their knowledge and commitment to prevention practices.

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## **Defusing the Ticking Bomb Scenario: Why we must say No to torture, always**

In popular films and television series, on talk shows and news, in academic journals and political debates, the possible use of torture to prevent a terrorist attack in a hypothetical “ticking bomb scenario” is a hot topic. The dramatic nature of the scenario, and the artificially simple moral answers it seems to offer, have helped it make a significant impression on public audiences. Yet this scenario ultimately seeks to destroy the hard-won absolute prohibition of torture under international and national laws. In presenting certain acts of torture as justifiable, even desirable, in distorting reality and manipulating emotions and ethical reasoning, in leading well-intentioned societies down a slippery slope to legalised and systematic torture, the ticking bomb scenario represents a grave threat to global anti-torture efforts.

This brochure provides the general public, human rights advocates, academics and governments with essential arguments against any proposed “ticking bomb” exception to the prohibition of torture. It exposes the misleading and flawed hidden assumptions of the scenario, and emphasises the toxic effect of torture, like slavery and genocide, on societies that tolerate it. It recalls the fundamental and absolute nature of the prohibition under international law, and describes how the scenario manipulates moral and ethical judgment by obscuring the true moral cost of tolerating any act of torture.

As part of a series of activities to mark its 30th anniversary, the Association for the Prevention of Torture (APT) convened a meeting of experts in June 2007 to discuss responses to the ticking bomb scenario, which subsequently provided the basis for this text. The APT is an international non-governmental organisation working worldwide to prevent torture and other cruel, inhuman or degrading treatment or punishment.

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