

2014/22: Should torture be used on suspected terrorists?

What they said...

'We tortured some folks...And we have to as a country take responsibility for that so that hopefully we don't do it again in the future'

United States President Barack Obama

'Had I not authorised waterboarding on senior al Qaeda leaders, I would have had to accept a greater risk that the country would be attacked'

United States President George W Bush

The issue at a glance

On December 9, 2014, the United States Senate's Select Committee on Intelligence released a redacted (censored) version of the executive summary of its comprehensive investigation into the CIA's detention and interrogation program.

The comprehensive report has come to be known as the 'CIA Torture Report'.

The committee's investigation began in 2009 and three years later resulted in a 6,300 page report with 35,000 footnotes.

The CIA's security concerns about releasing the full report led to a compromise which saw the White House and the committee agree to the release of a redacted version of the executive summary that was 500 pages in length.

The report provides details about the CIA's 'enhanced interrogation' techniques, including waterboarding, sleep deprivation and the use of stress positions, techniques that human rights groups have described as torture.

President Obama has used the release of this executive summary to acknowledge that torture had been used and to hope that this would not happen again.

Others continue to dispute the use of the word 'torture' to describe CIA practices and claim that the interrogation techniques employed were justified and appropriate as a means of combating terrorism.

(The CIA is the United States Central Intelligence Agency. It is one of the principal intelligence-gathering agencies of the United States federal government.)

Background

The United States use of torture in the 'War on Terror'

(The information found below has been extracted from a number of Wikipedia entries.

The full entry on 'Torture and the United States' can be accessed at http://en.wikipedia.org/w/index.php?title=Torture_and_the_United_States&redirect=no

The full entry on 'Abu Ghraib torture and prisoner abuse' can be accessed at http://en.wikipedia.org/wiki/Abu_Ghraib_torture_and_prisoner_abuse

The full entry on 'Guantanamo Bay detention camp' can be accessed at http://en.wikipedia.org/wiki/Guantanamo_Bay_detention_camp

The full entry on 'Black site' can be accessed at http://en.wikipedia.org/wiki/Black_site

United Nations definition of 'torture'

The United Nations convention against torture defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind...'

Certain practices of the United States military, civilian agencies such as the CIA, and private contractors have been condemned both domestically and internationally as torture. A fierce debate regarding non-standard interrogation techniques exists within the United States civilian and military intelligence

community, with no general consensus as to what practices under what conditions are acceptable. These practices have resulted in a number of deaths. According to Human Rights First, at least as many as eight detainees have been tortured to death in United States custody in Iraq and Afghanistan.

Conflicting definitions of torture

In 2003 and 2004 there was substantial controversy over the 'stress and duress' or 'enhanced interrogation' methods that were used in the United States War on Terrorism, which had been sanctioned by the United States Executive branch of government at Cabinet level.

Some techniques within the "stress and duress" category, such as water boarding, have long been considered as torture, by both the United States government and human rights groups.

In its annual 'Country Reports on Human Rights Practices', the United States State Department has described the following practices as torture: stripping and blindfolding of prisoners; subjecting prisoners to prolonged sun exposure in high temperatures and tying of hands and feet for extended periods; sleep deprivation and 'suspension for long periods in contorted positions'; sleep deprivation and solitary confinement; prolonged standing and isolation.

On the other hand, the legal definition of torture produced by the United States Justice Department tightly narrowed the term, defining as torture only actions which 'must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death', and argued that actions that inflict any lesser pain, including moderate or fleeting pain, do not necessarily constitute torture.

Legal liability of those using 'enhanced interrogation techniques'

The Bush administration told the CIA in 2002 that its interrogators working abroad would not violate United States prohibitions against torture unless they 'have the specific intent to inflict severe pain or suffering', according to a previously secret Justice Department memo released on 24 July 2008. The interrogator's 'good faith' and 'honest belief' that the interrogation will not cause such suffering protects the interrogator, the memo adds, 'Because specific intent is an element of the offense, the absence of specific intent negates the charge of torture.'

Torture at Abu Ghraib

During the war in Iraq that began in March 2003, personnel of the United States Army and the Central Intelligence Agency committed a series of human rights violations against detainees in the Abu Ghraib prison in Iraq. These violations included physical and sexual abuse, torture, rape, sodomy, and murder. The abuses came to light with reports published in late 2003 by Amnesty International and the Associated Press. The incidents received widespread condemnation both within the United States and abroad, although the soldiers received support from some conservative media within the United States.

The United States Department of Defense removed seventeen soldiers and officers from duty, and eleven soldiers were charged with dereliction of duty, maltreatment, aggravated assault and battery. Between May 2004 and March 2006, these soldiers were convicted in courts-martial, sentenced to military prison, and dishonourably discharged from service. Two soldiers were sentenced to ten and three years in prison. The commanding officer of all detention facilities in Iraq was reprimanded and demoted to the rank of colonel. The prison has now been closed.

Torture at Guantanamo Bay

The Guantanamo Bay detention camp, also referred to as Guant namo, G-bay or GTMO, is a United States military prison located within Guantanamo Bay Naval Base, which fronts on Guant namo Bay in Cuba. At the time of its establishment in January 2002, Secretary of Defense Donald H. Rumsfeld said the prison camp was established to detain extraordinarily dangerous persons, to interrogate detainees in an optimal setting, and to prosecute detainees for war crimes. Detainees captured in the War on Terror, most of them from Afghanistan and much smaller numbers later from Iraq, the Horn of Africa and South Asia were transported to the prison.

Current and former detainees have reported abuse and torture, which the Bush administration denied. In a

2005 Amnesty International report, the facility was called the 'Gulag of our times'. In 2006, the United Nations called unsuccessfully for the Guantanamo Bay detention camp to be closed. In January 2009, Susan J. Crawford, appointed by Bush to review Department of Defense practices used at Guantanamo Bay and oversee the military trials, became the first Bush administration official to concede that torture occurred at Guantanamo Bay on one detainee.

The International Committee of the Red Cross (ICRC) inspected the camp in June 2004. In a confidential report issued in July 2004 and leaked to The New York Times in November 2004, Red Cross inspectors accused the United States military of using 'humiliating acts, solitary confinement, temperature extremes, use of forced positions' against prisoners. The inspectors concluded that 'the construction of such a system, whose stated purpose is the production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and a form of torture.' The United States Government reportedly rejected the Red Cross findings at the time.

A 2013 Institute on Medicine as a Profession report concluded that health professionals working with the military and intelligence services 'designed and participated in cruel, inhumane and degrading treatment and torture of detainees'. Medical professionals were ordered to ignore ethical standards during involvement in abusive interrogation, including monitoring of vital signs under stress-inducing procedures. They used medical information for interrogation purposes and participated in force-feeding of hunger strikers,

Secret detention facilities or 'black sites'

In military terminology, a 'black site' is a location at which an unacknowledged black project is conducted. Recently, the term has gained notoriety in describing secret prisons operated by the United States Central Intelligence Agency (CIA), generally outside of United States territory and legal jurisdiction. The term includes those facilities that are controlled by the CIA and used by the United States government in its War on Terror to detain alleged unlawful enemy combatants. United States President George W. Bush acknowledged the existence of secret prisons operated by the CIA during a speech on September 6, 2006. Many European countries have officially denied hosting black sites to imprison suspects and no country has confirmed hosting black sites. However, a European Union (EU) report adopted on February 14, 2007, by a majority of the European Parliament stated that secret detention centres were operated in Poland and Romania. They are believed to operate in a number of other jurisdictions.

The legal status of detainees

Black sites are embroiled in controversy over the legal status of the detainees held there, the legal authority for the operation of the sites (including the collaboration between governments involved), and full (or even minimal) disclosure by the governments involved.

An important aspect of black site operation is that the legal status of black site detainees is not clearly defined. In practice, inmates in black sites have no rights other than those given by the captors.

Internet information

On December 17, 2014, NBC News produced a report titled 'Senate Report Finds CIA Interrogation Tactics Were Ineffective'

The report gives an overview of the findings of the Senate Select Committee on Intelligence. The report focuses particularly on the apparent ineffectiveness of the interrogation methods used.

The full text of this report can be accessed at <http://www.nbcnews.com/storyline/cia-torture-report/senate-report-finds-cia-interrogation-tactics-were-ineffective-n264621>

On December 14, 2014, The Conversation published a comment by Peter Finn, lecturer in Politics at Kingston University.

The comment is titled 'Abuse revealed in "torture report" reflects broader trends from the Iraq War' and considers the widening pattern of violence that has marked the progress of the 'War on Terror'.

The full text of this comment can be found at <http://theconversation.com/abuse-revealed-in-torture-report-reflects-broader-trends-from-the-iraq-war-35394>

On December 13, 2014, The Conversation published a comment by Simon Reich, Professor in The Division of Global Affairs and The Department of Political Science at Rutgers University.

The comment is titled 'The Senate "torture report": a mirror in which we can see ourselves'

It analyses the long-term implications of not acknowledging the inappropriateness of the use of torture.

The full text can be accessed <http://theconversation.com/the-senate-torture-report-a-mirror-in-which-we-can-see-ourselves-35462>

On December 11, 2014, The Conversation published an analysis titled 'Americans are deeply divided about torture'

The article considers the range of opinion within the United States on the use of torture.

The full text can be accessed at <http://theconversation.com/americans-are-deeply-divided-about-torture-35350>

On December 11, 2014, The Conversation published a comment by Rosa Freedman, Senior Lecturer (Law) at University of Birmingham. The article was titled 'Human rights have always been marred by hypocrisy - but the CIA report is a new low'

The full text can be accessed at <http://theconversation.com/human-rights-have-always-been-marred-by-hypocrisy-but-the-cia-report-is-a-new-low-35388>

On December 12, 2014, NBC News published a report on former vice president Dick Cheney's defence of the CIA's interrogation techniques.

The full text of this report can be accessed at <http://www.msnbc.com/msnbc/cheney-slams-senate-torture-report-says-practices-were-effective>

On December 10, 2014, the ABC's opinion site, The Drum, published a comment by Matthew Beard titled 'Inside the mind of a torturer'. The piece considers the psychological damage done to those who inflict torture.

The full text of the comment can be accessed at <http://www.abc.net.au/news/2014-12-10/beard-cheney-defends-torture/5957372>

A group of former CIA employees responded to the Senate committee report in defence of the actions the Agency took. They have established an Internet site on which to present their arguments.

The site can be accessed at <http://ciasavedlives.com/>

On December 9, 2014, the Senate Select Committee Report on Intelligence (otherwise known as the Report on CIA Torture) was released. It is a redacted (censored) version of the original report.

It can be accessed at <http://www.intelligence.senate.gov/study2014/sscistudy1.pdf>

On December 9, 2014, the response of the CIA Director, John Brennan, to the Senate Select Committee Report on Intelligence was released. The director acknowledges some of the findings of the Select Committee and challenges others.

The full text of the Director's response can be accessed at https://www.cia.gov/library/reports/CIAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf

On August 2, 2014, Buzz Feed News published a report on President Barack Obama's reaction to the CIA's use of torture.

The full text of this report can be found at https://www.cia.gov/library/reports/CIAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf

In 2009 The Social Issues and Policy Review published an article by research psychologists Mark A. Costanzo, Claremont McKenna College and Ellen Gerrity, Duke University.

The article is titled 'The Effects and Effectiveness of Using Torture as an Interrogation Device: Using

Research to Inform the Policy Debate'

The authors conclude that torture adversely affects both victim and torturer and does not produce reliable information.

The full text can be accessed at https://www.cgu.edu/pdf/files/sbos/costanzo_effects_of_interrogation.pdf

On May 26, 2004, The Wall Street Journal published a comment by John Yoo, professor of law at the University of California, Berkeley, School of Law.

The piece is titled 'Terrorists Have No Geneva Rights'

The full text can be accessed at <http://www.aei.org/publication/terrorists-have-no-geneva-rights/>

Arguments in favour of using torture on suspected terrorists

1. Terrorists pose a very grave risk to national safety

The severity of the threat which the United States continued to face after the September 11 2001 terrorist attacks has been presented as a justification of the interrogation methods employed by the CIA.

A group of former CIA employees responded to the Senate committee report in defence of the actions the Agency took. They have established an Internet site on which to present their arguments. There they claim, 'This was a time we had solid evidence that al Qaida was planning a second wave of attacks against the U.S.; we had certain knowledge that bin Laden had met with Pakistani nuclear scientists and wanted nuclear weapons; we had reports that nuclear weapons were being smuggled into New York City; and we had hard evidence that al Qaida was trying to manufacture anthrax. It felt like a "ticking time bomb" every single day.'

The group further explains, 'In this atmosphere, time was of the essence. We had a deep responsibility to do everything within the law to stop another attack. We clearly understood that, even with legal and policy approvals, our decisions would be questioned years later. But we also understood that we would be morally culpable for the deaths of fellow citizens if we failed to gain information that could stop the next attacks.' President George W Bush in his 2011 memoir 'Decision Points' defended the use of 'enhanced interrogation' techniques. President Bush stated, 'I knew that an interrogation program this sensitive and controversial would one day become public. When it did, we would open ourselves up to criticism that America had compromised our moral values.

I would have preferred that we get the information another way. But the choice between security and values was real. Had I not authorised waterboarding on senior al Qaeda leaders, I would have had to accept a greater risk that the country would be attacked. In the wake of 9/11, that was a risk I was unwilling to take. My most solemn responsibility as president was to protect the country. I approved the use of the interrogation techniques.'

Even President Barack Obama, who is opposed to the use of torture, has acknowledged, 'I understand why it happened. I - I think it - it's important when we look back to recall how afraid people were after the twins towers fell and the Pentagon had been hit and the plane in Pennsylvania had fallen and people did not know whether more attacks were imminent, and there was enormous pressure on our law enforcement and our national security teams to try to deal with this.'

2. Terrorists do not adhere to international codes of military conduct and are not protected by them

It has been claimed that terrorists are not conventional military combatants, that they do not operate under international wartime conventions and so they do not have the protections that apply to prisoners of war. The Geneva Conventions are the principal statements of appropriate conduct between combatants that are signatories to these Conventions and are engaged in a formally declared war. John Yoo, professor of law at the University of California, Berkeley, School of Law, writing for the Wall Street Journal and published on May 26, 2004, stated, 'The conflict with al Qaeda is not governed by the Geneva Conventions, which apply only to international conflicts between states that have signed them. Al Qaeda is not a nation-state, and its members-as they demonstrated so horrifically on Sept. 11, 2001-violate the very core principle of the laws of war by targeting innocent civilians for destruction.'

Professor Yoo went on to explain further, 'The reasons to deny Geneva status to terrorists extend beyond pure legal obligation. The primary enforcer of the laws of war has been reciprocal treatment: We obey the

Geneva Conventions because our opponent does the same with American POWs. That is impossible with al Qaeda. It has never demonstrated any desire to provide humane treatment to captured Americans. If anything, the murders of Nicholas Berg and Daniel Pearl declare al Qaeda's intentions to kill even innocent civilian prisoners.'

Professor Yoo concluded, 'It is also worth asking whether the strict limitations of Geneva make sense in a war against terrorists. Al Qaeda operates by launching surprise attacks on civilian targets with the goal of massive casualties. Our only means for preventing future attacks, which could use WMDs, is by acquiring information that allows for pre-emptive action. Once the attacks occur, as we learned on Sept. 11, it is too late. It makes little sense to deprive ourselves of an important, and legal, means to detect and prevent terrorist attacks while we are still in the middle of a fight to the death with al Qaeda.'

A similar point was made by former vice president Dick Cheney in an interview given on December 10, 2014. Cheney stated, 'The terrorists were not covered by the Geneva Convention. They were unlawful combatants. And under those circumstances, they were not entitled to the normal kinds of courtesies and treatment you would accord to those [who were lawful combatants.]

3. Terrorists do not respond to conventional modes of interrogation

It has been claimed that many terrorist suspects are highly resistant to conventional forms of interrogation. The British police, for example, claim that some hardened criminals and terrorist suspects may simply refuse to talk.

Peter Clarke, a former head of counterterrorism at the London Metropolitan Police, stated in 2008, 'The vast majority of terrorist suspects maintain their right to silence... the walls of Paddington Green police station rarely reverberate with outpourings of guilt and contrition.'

Arnold Steinberg, in an article published in *The Jewish Journal* on March 23, 2006, encouraged his readers to consider the fact that many terrorists did not respond to conventional questioning and that more extreme measures may be needed in order to gain life-saving information.

Steinberg wrote, 'Consider the case of an Al Qaeda terrorist who did not respond for months to conventional interrogation. His interrogators eventually manufactured a fraudulent photograph of his wife and two children, with the Arabic caption, "They need their father's love." He broke, providing valuable information.'

In an article published in *City Journal* in December, 2005, Heather MacDonald explains that some of the al Qaeda fighters had received resistance training. In 2002 the United States acquired a seized al-Qaeda manual which coached terrorists in how to resist interrogation.

MacDonald quotes an interrogator from Guantanamo Bay who stated, 'The jihadists would tell you, "I've divorced this life, I don't care about my family."' Many of the usual bases for appeal when interrogating suspects are claimed to not be present in terrorist suspects.

A United States interrogator, Joe Martin, has explained the psychological effect of stress which, he claims, is to induce uncertainty in the mind of a detainee about the level of coercion an interrogator might use.

Martin states, 'Let's say a detainee comes into the interrogation booth and he's had resistance training. He knows that I'm completely handcuffed and that I can't do anything to him. If I throw a temper tantrum, lift him onto his knees, and walk out, you can feel his uncertainty level rise dramatically. He's been told: "They won't physically touch you," and now you have. The point is not to beat him up but to introduce the reality into his mind that he doesn't know where your limit is.'

4. Torture is an effective mode of interrogation

The CIA and others who have used torture generally defend the value and the accuracy of the information it illicit. The CIA, in response to the Senate committee report criticising the worth of the information obtained through torture, stated that information gleaned from detainees in CIA custody 'substantially advanced the Agency's strategic and tactical understanding of the enemy in ways that continue to inform counterterrorism efforts to this day'.

A group of former CIA employees responded to the Senate committee report in defence of the actions the Agency took. They have established an Internet site on which to present their arguments. There they claim, 'The report defies credulity by saying that the interrogation program did not produce any intelligence value. In fact, the program led to the capture of senior al Qaida leaders, including helping to find Osama bin Ladin,

and resulted in operations that led to the disruption of terrorist plots that saved thousands of American and allied lives.'

On July 27, 2013, the Director General of the Central Intelligence Agency, John Brennan, replied to the Senate committee report regarding the supposed inaccuracy of the information obtained through torture. Brennan stated, 'In particular, the Agency disagrees with the Study's unqualified assertions that the overall detention and interrogation program did not produce unique intelligence that led terrorist plots to be disrupted, terrorists to be captured, or lives to be saved.'

The Chief Director then referred to appendices to his response which support the claims he makes about the value of the information received.

Similar claims have been made by former United States vice president Dick Cheney. Mr Cheney stated of the Senate report criticising the United States' use of enhanced interrogation techniques, 'The report's full of crap. It did in fact produce actionable intelligence that kept us safe from attacks.'

5. The CIA's use of torture was authorised and overseen

Defenders of the CIA's use of 'enhanced interrogation' techniques have argued that the interrogation was not unauthorised or unsupervised. They argue that the program had presidential authorisation, was approved at other points along the United States chain of command and that its operation was adequately overseen.

A group of former CIA employees responded to the Senate committee report in defence of the actions the Agency took. They have established an Internet site on which to present their arguments. There they claim, 'We, as former senior officers of the Central Intelligence Agency, created this website to present documents that conclusively demonstrate that the program was: authorized by the President, overseen by the National Security Council, and deemed legal by the Attorney General of the United States on multiple occasions... CIA relied on their policy and legal judgments. We deceived no one.'

On July 27, 2013, the Director General of the Central Intelligence Agency, John Brennan, replied to the Senate committee report regarding the supposedly unauthorised and unsupervised nature of CIA interrogation procedures. Brennan stated, 'Regarding the Study's claim that the Agency resisted internal and external oversight and deliberately misrepresented the program to Congress; the Executive Branch, the media, and the American people, the factual record maintained by the Agency does not support such conclusions.'

In His 2011 memoir 'Decision Points', President George Bush claims that he was aware of the interrogation techniques employed by the CIA and considered them legal. President Bush states, 'On March 28, 2002...At my direction, Department of Justice and CIA lawyers conducted a careful legal review. They concluded that the enhanced interrogation program complied with the Constitution and all applicable laws, including those that ban torture...'

The CIA has directly disputed claims that it conducted its interrogation practices without notifying and therefore without the knowledge of those bodies responsible for its oversight.

In its response to the report of the Senate Select Committee on Intelligence (SSCI) the CIA stated, 'CIA briefed SSCI members and staff on rendition, detention and interrogation issues 35 times from 2002-2008. There were 30 similar briefings to the HPSCI (Permanent Select Committee on Intelligence) and 20 notifications provided to both committees during this period.'

Arguments against using torture on suspected terrorists

1. Torture is a cruel and inhumane form of treatment

The United States Senate report on the use of torture on suspected terrorists by the CIA has specified many of the cruel and inhumane practices employed.

Examples of brutality by CIA interrogators cited in the report include the November 2002 death from hypothermia of a detainee who had been held partially nude and chained to a concrete floor at a secret CIA prison. Other instances include detainees who were deprived of sleep for up to 180 hours, at times with their hands shackled above their heads, and subjected to 'rectal feeding' or 'rectal hydration' without any documented medical need.

The report describes one secret CIA prison, whose location is not identified, as a 'dungeon' where detainees were kept in total darkness, constantly shackled in isolated cells, bombarded with loud noise or music, and

given only a bucket in which to relieve themselves.

At one secret CIA site, detainees were subjected to what was known as a 'rough takedown': CIA officers would scream at a detainee, drag him out of his cell, cut off his clothes, bind him with tape, put a hood over his face and drag him down a corridor while slapping and punching him.

Another example is given of a man, who, during his interrogation, wore a collar made from a towel which was used to slam his head into walls. He was kept in stress positions or in a coffin-shaped box and waterboarded regularly as medical staff stood by to keep him alive. Waterboarding involves pouring water over a cloth covering a restrained victim's face, causing the individual to experience the sensation of drowning. Such procedures are referred to as 'enhanced interrogation'. This man was subjected to these techniques for nearly 24 hours a day for 19 days. He had already been held in complete isolation for 47 days.

According to a summary of the report provided to reporters, the most aggressive techniques were used 'in combination and nonstop', including keeping detainees awake for as long as 180 hours, standing or in stress positions.

2. Torture is in violation of national and international law

Torture is prohibited under international laws and conventions. The United States is a signatory to the Geneva Convention which seeks to regulate behaviour in wartime.

Article 17 of the Third Geneva Convention, which applies to prisoners of war, states 'No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever.'

The United States is also a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention states, 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.'

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

An order from a superior officer or a public authority may not be invoked as a justification of torture.'

The position adopted by the United Nations is completely unequivocal. It allows no external threat to the wellbeing of a country or its citizens as a justification for the use of torture. It also notes with regard to the individual perpetrator of torture that no order from a superior or public official can be allowed to act as exoneration for those who commit torture.

Among other provisions the Convention also states, 'Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.' Thus the United Nations convention defines the person who has been tortured as the victim of an injustice and obliges the offending State to make amends to that person.

Amnesty International has similarly declared that 'Accountability...requires that the United States provides redress to those individuals who have suffered abuses at the hands of the US government, including those unlawfully detained, unlawfully rendered to torture, and those tortured and abused in US custody.'

Torture is legally prohibited under title 18 of the Code of Laws of the United States. The definition of torture used is as follows: 'torture' means an act committed by a person acting under the cover of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from - (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

A lack of jurisdiction has been used to prevent United States nationals who commit torture overseas being punished under American law; however, critics of torture note that however difficult it may be to punish American torturers, the practice is illegal under their country's laws.

3. Torture is usually covert and is difficult to control

It is claimed that torture is usually conducted secretly without oversight and thus readily escalates to become more severe over time.

The circumstances under which torture generally takes place involve components which led to these practices becoming progressively more extreme. The Senate report reveals that United States orchestrated torture sites, referred to as 'black sites', were established in a number of foreign jurisdictions. Their operations were not made public and they were unavailable to media scrutiny. The official oversight of the interrogation techniques used there was inadequate. It has been claimed that circumstances such as these lend themselves to accelerating abuse.

In an opinion piece published in The Sydney Morning Herald on December 10, 2014, the author, Mick O'Malley summarised the findings of the United States' Senate report. He stated, 'There was little oversight and no methodology, according to the report, just a network of prisons in unnamed countries in which unnamed agents and contractors abused suspects of crimes for intelligence of questionable value.'

According to the report, as the program went on, even the CIA headquarters lost control of field agents, who began using enhanced interrogation without approval.

It has been suggested that some of the interrogators became desensitised to what they were doing and used increasingly brutal techniques with growing frequency. One detainee who was tortured was backed up against the wall and a box laid on the floor to look like a coffin.

Whenever the suspect denied having certain information, the interrogators grabbed or slapped his face. On the first evening, he was waterboarded, as a result of which he coughed, vomited and had spasms.

Subsequent sessions accelerated the routine, progressing more quickly to waterboarding.

4. Torture is not an effective interrogation device

Torture is not generally regarded as a useful form of interrogation as, under the duress of severe physical and psychological mistreatment, suspects are prone to make false statements.

It has further been suggested that less aggressive techniques are likely to be more effective.

According to the Senate report, the CIA's own records found that seven of 39 detainees subjected to especially aggressive interrogation yielded no intelligence, and that others provided useful information without being subjected to the harsh techniques. Other detainees who were harshly interrogated made up information.

The Senate committee said that it had reviewed 20 of the most commonly cited examples of successes attributed by the CIA to enhanced interrogation. It found each of those examples wrong.

In 2008 a group made up of fifteen former interrogators and intelligence officials who had served with the CIA, the FBI and the United States military released a set of principles to guide effective interrogation practices at the conclusion of a meeting convened by Human Rights First in Washington. One of the group's conclusions was 'Non-coercive, traditional, rapport-based interviewing approaches provide the best possibility for obtaining accurate and complete intelligence.'

Information resulting from torture has been regarded with suspicion for a long time. Two American research psychologists, Mark Costanzo and Ellen Gerrity, quoted one CIA operative who participated in torture during the Vietnam War as stating, 'We had people who were willing to confess to anything if we would just stop torturing them.' Costanzo and Gerrity further note that the United States Army Field Manual explains that strategically useful information is best obtained from prisoners who are treated humanely, and that information obtained through torture has produced faulty intelligence.

5. Torturing suspected terrorists fosters terrorism

Opponents of the use of torture on suspected terrorists maintain that such procedures are actually counterproductive in that they increase hostility toward the United States and make it more difficult to attract supporting coalitions. They further suggest that such behaviour helps enemies of the United States to

encourage young, disaffected people to join them as terrorists in actions against America.

After the Senate report was released, the United States president, Barack Obama, stated, '[Torture techniques]were not only inconsistent with our values as nation, they did not serve our broader counterterrorism efforts or our national security interests. Moreover, these techniques did significant damage to America's standing in the world and made it harder to pursue our interests with allies and partners.'

In 2008 a group made up of fifteen former interrogators and intelligence officials who had served with the CIA, the FBI and the United States military released a set of principles to guide effective interrogation practices at the conclusion of a meeting convened by Human Rights First in Washington. One of the group's conclusions was 'The use of torture and other inhumane and abusive treatment...has caused serious damage to the reputation and standing of the United States. The use of such techniques also facilitates enemy recruitment...and deprives the United States of the standing to demand humane treatment of captured Americans.'

Two American research psychologists, Mark Costanzo and Ellen Gerrity, have noted that in 2003, after the release of the Abu Ghraib photos, a reporter asked a young Iraqi man about the reasons for the rise in violence against United States soldiers. The young man's response emphasised the need for revenge. He was quoted as saying, 'It is a shame for foreigners to put a bag over their heads, to make a man lie on the ground with your shoe on his neck...This is a great shame for the whole tribe. It is the duty of that man, and of our tribe, to get revenge on that soldier-to kill that man. Their duty is to attack them, to wash the shame. The shame is a stain, a dirty thing-they have to wash it. We cannot sleep until we have revenge.' Costanzo and Gerrity concluded that torture 'generates intense hatred and desire for vengeance against the perpetrators, radicalising even ordinary people with no strong political views'.

Further implications

The conflict between morality and national security which is at the centre of debate over whether torture should be used in the interrogation of suspected terrorists is a difficult one to resolve. From an ethical perspective, inflicting extreme 'stress and duress' on someone held in custody is wrong. The advocates of such behaviour claim it is justified by the greater wrong (injury to an innocent civilian population or injury to one's own soldiers) that it is seeking to prevent.

The issue is found in all military conflicts, where protecting one's nation is used to legitimise behaviours that would otherwise be deemed both immoral and illegal. Drawing an ethical line around actions taken when countries are at war is problematic, particularly while the conflict is being played out and countries see themselves as faced with a threat to their survival.

The Geneva Conventions are an attempt to regulate the behaviour of combatants, both in relation to enemy combatants and to civilian populations. There is a significant element of reciprocity in these Conventions. Those participating in a declared war expect that their opponents will treat their captured soldiers with the same respect they have undertaken to demonstrate toward captured enemy soldiers. Similarly, each side expects that civilian populations will not be deliberately injured, killed or otherwise mistreated. It is obvious that these conventions have not always been abided by in many formally declared conflicts in recent times, particularly with regard to the treatment of civilian populations. The immediate brutality of war can override ethical considerations.

Conflicts involving terrorists present even greater problems. Terrorism grows out of an inequality of military power. Groups who conduct terrorist activities generally do so because they do not have the military strength to engage in conventional warfare. Thus, in what is dubbed the 'War on Terror', Islamist extremists commit terrorist acts because they do not have the military forces or equipment that would enable them to declare formal war on those they see as their enemy. In this case they are not even acting on behalf of a particular nation state. Their actions are therefore almost inevitably outside the ambit which regulations such as the Geneva Conventions would authorise. They aim to achieve maximum impact from minimum military capability and so often target civilians. The 'war' they conduct has never been formally declared and is not played by any recognisable set of rules.

In responding to terrorist attacks, most particularly that of September 11, some Western powers, including the United States, seem to have been ready to compromise the rules of conduct that it is hoped will mitigate wartime atrocities. The number of civilian deaths inflicted on Iraq is a case in point. (This case is

particularly distressing given that it has since been established that Iraq was not involved in the precipitating terrorist outrage.)

The use of 'enhanced interrogation' techniques is only one dimension of this 'war'. The way out of this moral quagmire is not readily apparent as extreme measures tend to foster reciprocal action.

Newspaper items used in the compilation of this issue outline

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<http://www.canberraitimes.com.au/comment/tabloid-morality-gave-torture-a-firm-foothold-20141212-124yhx.html>

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http://newsstore.fairfax.com.au/apps/viewDocument.ac;jsessionid=751D09A602868F50B72A5878A26FBB88?sy=afr&pb=all_ffx&dt=selectRange&dr=1month&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=brs&cls=20981&clsPage=1&docID=AGE1412132MNDK4MQONA

AUST, December 13, 2014, page 24, comments by Tom Switzer, 'Good Country loses its moral authority' and, by former CIA staff and others, 'Necessary interrogations saved lives'.

<http://www.theaustralian.com.au/opinion/good-country-loses-its-moral-authority-over-interrogation-program/story-e6frg6zo-1227154445934>

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AGE, December 11, 2014, page 20, comment / personal experience (with Spooner cartoon) by Eric Fair, 'I was an interrogator at Abu Ghraib. I tortured'.

<http://www.theage.com.au/comment/i-was-an-interrogator-at-abu-ghraib-i-tortured-20141210-1246qf.html>

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<http://www.theaustralian.com.au/opinion/editorials/flaws-in-cia-torture-report/story-e6frg71x-1227155862085>