



ISOLATIONISM EXPOSED: THE EVOLUTION OF THE CRUEL, INHUMAN, AND DEGRADING TREATMENT STANDARD IN THE UNITED STATES SINCE 2001

*William Vidal**

I. INTRODUCTION

A policy storm has hovered over the standard of torture since Congress declared the “war on terror.”¹ The series of bills, amendments, and revisions prompted by the Administration of President Bush have left the public and the academic community in disarray and has cast a veil on the international norm of torture. The international community did not agree on a definition of torture until the adoption of the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) on December 10, 1984.² Following the adoption of the Convention Against Torture, the policy debate shifted from defining torture to implementing and interpreting the Convention. With the “war on terror” and the departure from conventional warfare arose a need to set the boundaries of intelligence interrogations.³ This need brought another shift in the policy debate on torture and presented the first major challenge to the Convention Against Torture by a Western democracy. The debate on the scope of permissible interrogation techniques does not focus on what constitutes torture but on what is cruel, inhuman, and degrading treatment. Throughout the “war on terror,” the Bush Administration has readily admonished torture. What is at issue is the relatively unexplored and vague parameters of Article 16 of the Convention Against Torture, which bans cruel, inhuman, and degrading treatment.⁴ Within this new debate, the central issues are: what constitutes cruel, inhuman, and degrading treatment; what is the threshold difference between torture and cruel, inhuman, and degrading treatment; and is the United States bound by Article 16 of the Convention Against Torture.

This paper traces the evolution of the United States’ definition of cruel, inhuman, and degrading treatment and demonstrates that fueling the policy storm hovering over the standard of torture since 2001 is an intent by the Bush Administration to repudiate the international safeguards against cruel,

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¹ Authorization for Use of Military Force, 115 Stat. 224 (2001). The Supreme Court in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) confirmed Congress’ authorization as a declaration of war that triggered the President’s war powers.

² 136 Cong. Rec. S17486-01 (daily ed. Oct. 27, 1990) (statement of Assistant Legislative Clerk). The United Nations General Assembly adopted unanimously the Convention Against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment on December 10, 1984.

³ President Discusses Creation of Military Commissions to Try Suspected Terrorists (Sep. 6, 2006), <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>.

⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984), at Art. 16.