

Breaking the Ban? The Heterogeneous Impact of US Contestation of the Torture Norm

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Abstract

Following the attacks of 9/11, the United States adopted a policy of torturing suspected terrorists and reinterpreted its legal obligations so that it could argue that this policy was lawful. This article investigates the impact of these actions by the United States on the global norm against torture. After conceptualizing how the United States contested the norm against torture, the article explores how US actions impacted the norm across four dimensions of robustness: concordance with the norm, third-party reactions to norm violations, compliance, and implementation. This analysis reveals a heterogeneous impact of US contestation: while US policies did not impact global human rights trends, it did shape the behavior of states that aided and abetted US torture policies, especially those lacking strong domestic legal structures. The article sheds light on the circumstances under which powerful states can shape the robustness of global norms.

Keywords: norms, contestation, human rights, torture, United States

Introduction

Following the attacks of 9/11, the United States contested the norm prohibiting the use of torture by adopting a policy of torturing suspected terrorists and reinterpreting its legal obligations so that it could argue that this policy was lawful. There is evidence that these actions have weakened support for the norm against torture within the United States. Since 9/11, US public opinion has shifted in favor of the use of torture and there has been a marked increase in favorable representations of torture in US popular culture (McKeown 2009; Moynihan 2009; Gronke et al. 2010; Goldman and Craighill 2014). Even more troubling, US President Donald Trump campaigned on a promise to “bring back a hell of a lot worse than waterboarding” (Johnson 2016) and, since taking office, has drafted an executive order aimed at returning to Bush-era policies and appointed Gina Haspel—an official deeply involved in the Bush administration’s rendition and torture program—to lead the US Central Intelligence Agency. Although human rights advocates,

members of Congress, and important parts of the US national security establishment have pushed back against these developments, and the Trump administration has yet to implement any torture policies, all of this evidence indicates that many Americans no longer believe that torture is taboo (Allard et al. 2016).¹

It is less clear whether or not US contestation has had an impact on the robustness of the norm against torture at the international level. We conceptualize the core of the antitorture norm as consisting of two parts contained in Article 1 of the Convention against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT) (United Nations 1984).² First, it prohibits public officials from car-

- 1 See, for example, the open letter from members of the national security establishment, Allard et al. “Defending the Honor of the US Military from Donald Trump” (2016).
- 2 The text of the CAT is available at <http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>.

rying out or consenting to intentional acts that cause severe pain or suffering, inflicted for the purpose of obtaining information, or punishing, intimidating, or coercing an individual or third party. Second, it is one of a small number of norms deemed “nonderogable,” meaning that there are no circumstances under which states may deviate from their obligation not to torture.³ The prohibition on torture is also recognized by most jurists as *jus cogens*, that is, a peremptory norm of international law from which no derogation is permitted. Thus, part of the core of the torture norm is that there are no exceptions to the rule.

In order to explain the consequences of US actions, it is necessary to specify how the United States challenged the torture norm. At first glance, it appears that US contestation took the form of what Deitehoff and Zimmerman, in the framing article, call “applicatory contestation”—contestation was primarily about whether torture could be used against certain kinds of people in situations of extreme urgency, specifically “terrorists” during the so-called “war on terror.” Indeed, prior research claims that US practices contested only the torture norm’s “content, practice, and meaning-in-use as an established human rights norm—not the validity of the norm itself” (Birdsall 2016, 181).

Upon closer examination, however, it is clear that US actions masked a deeper attempt to contest the norm itself, a policy we call *covert validity contestation*. Despite public claims that it did not torture, the Bush administration challenged the United States’ accepted legal obligations and implemented a clandestine policy of torture at US detention facilities overseas.⁴ The United States engaged covertly with other states in implementing this policy, facilitating norm violations by a wide range of actors. Meanwhile, to protect its officials from the possibility of prosecution, the Bush administration promulgated legal arguments that, in effect, justified derogation from a nonderogable norm. US actions, therefore, struck at the core of the norm itself, in both discourse and practice.

3 See the International Covenant on Civil and Political Rights, article 4.2, where the prohibition on torture is listed as one of the nonderogable articles of the treaty (United Nations 1966). See also CAT, article 2.2 (United Nations 1984).

4 We do not have the space here to document our claim that US behavior was in violation of the prohibition on torture and inhuman treatment; a large body of official reports and secondary literature document US violation of the norm, including, most recently, the report on the CIA detention and interrogation program by the US Senate Select Committee on Intelligence (2014).

The theoretical framework discussed in the framing article suggests diverse expectations in regard to the impact of US covert validity contestation on the robustness of the antitorture norm. On the one hand, the fact that the most powerful state in the system contested the norm, and that it was joined by a diverse group of other states, suggests that contestation would undermine norm robustness. On the other hand, process and structural factors—such as the fact that the norm against torture is highly legalized, precise, institutionalized, and embedded in the dense environment of human rights law—suggest that the antitorture norm might be resilient to such contestation. This article explores these dynamics.

We argue that the impact of the covert validity contestation by the United States was heterogeneous: it weakened the norm against torture in some states and strengthened it in others.⁵ This heterogeneous impact is explained by regime type and the *expectation* of enforcement. Applying the theoretical framework from the framing article to the case of US torture reveals three broad trends. First, some highly democratic states confronted the US for its discourse and practice, thereby affirming the norm and their own commitment to it. This trend is especially strong in states with robust enforcement mechanisms that led them to respond to US actions in systematically different ways than states that lacked these mechanisms.⁶ In places where the norm against torture was more institutionalized and legalized, both regionally and domestically, many states responded to US contestation by defending the norm against torture. Second, some states publicly affirmed the validity of the norm against torture by chastising the United States as hypocritical while simultaneously continuing to engage in torture themselves. In this case, US behavior provided new cover for old practices, but did not necessarily lead to more torture. Finally, states that collaborated actively with the US rendition and torture program appear to have engaged subsequently in more abuse of human rights. Thus, while we generally agree with prior research that the antitorture norm is “rhetorically strong but practically weak” (Brunnée and Toope 2010, 269), our analysis uncovers how US contestation resulted in both the

5 We focus on the impact of US contestation of the antitorture norm on public officials around the world, but US contestation may also have made an impact on insurgent groups such as Islamic State of Iraq and the Levant, but that is beyond the scope of this article.

6 Our analysis emphasizes the role of domestic-level enforcement in shaping norm robustness; for a related discussion of international-level enforcement, see the article in this issue by Richard Price.

torture norm's resilience and intimations of its gradual weakening.

The remainder of this article proceeds in three parts. First, we provide an overview of past US positions on the norm against torture and explain how the United States went about contesting the norm during the Bush administration. Second, to evaluate whether or not the robustness of the norm declined after US contestation, we assess all four of the dimensions of norm robustness from the framing article, both prior to and after US contestation. This provides both quantitative and qualitative evidence of how other countries responded to US contestation. Finally, we consider which of the factors proposed in the framing article help explain the outcomes we identify and conclude by noting how current events may shape the robustness of the torture norm in the future.

From Advocate to Adversary: The United States and the Norm against Torture

Prior to US contestation under the Bush administration, the global norm against torture was somewhat robust, as measured by the dimensions of norm robustness in the framing article. By 2000, 147 countries had ratified the International Covenant on Civil and Political Rights (ICCPR) and none specifically rejected the core feature that the antitorture norm was nonderogable.⁷ The CAT had high and rising levels of treaty ratification by the time US contestation began in the early 2000s. More than 120 countries had ratified the treaty by 2000, and almost two-thirds of those countries had done so in the 1990s. Only seven of those ratifiers had reservations taking advantage of opt-out clauses that could seriously undermine the object of the treaty.⁸ Despite widespread ratification of CAT, behavioral compliance and implementation of the norm was problematic. Reports by governments and nongovernmental organizations (NGOs), as well as various measures of government human rights practices,

revealed that many states continued to torture, and few institutional mechanisms were in place to limit this behavior.

There was also little contestation of the norm against torture in the United States before 2001. The United States ratified a number of treaties that imposed international legal obligations to refrain from torture and inhuman and degrading treatment under any circumstances, including the Geneva Conventions of 1949, the ICCPR, and the CAT. The United States was deeply involved in drafting these treaties and worked to make the prohibition on torture and cruel and degrading treatment more precise and enforceable (Burgers and Danelius 1988). The administration of George H. Bush submitted the CAT treaty to the Senate in 1990 and supported ratification, and a bipartisan coalition in the Senate worked to ensure ratification in 1994.

After ratification, the Congress implemented the convention in domestic legislation.⁹ In 1999, in its initial report to the United Nations (UN) Committee against Torture, the US government said:

Torture is prohibited by law throughout the United States. It is categorically denounced as a matter of policy and as a tool of state authority. Every act constituting torture under the Convention constitutes a criminal offence under the law of the United States. . . . *No exceptional circumstances may be invoked as a justification of torture.* (Committee Against Torture 2000, emphasis added)

Prior to 2002, high-level US policy makers did not explicitly condone or justify torture, nor did they suggest that the norm's application was limited to certain types of individuals or circumstances. This changed with the onset of the so-called war on terror. After 9/11, the Bush administration engaged in active, strategic, and costly efforts to deconstruct the norm while seeking to conceal its actions from detection and protect its officials from the possibility of punishment for breaking the law.

The Bush administration made three main arguments that had grave implications for the antitorture norm in a series of legal memos and reports prepared by the Department of Justice and the Defense Department between August 2002 and September 2003. These are sometimes now referred to as the "torture memos." The first

7 One country, Trinidad and Tobago, reserved against article 4.2 of the ICCPR, without referencing any specific objection to any of the seven articles listed there as nonderogable.

8 Afghanistan (1987), China (1986), Israel (1991), Poland (1984), and Saudi Arabia (1997) all took advantage of language in article 28.1 permitting a country to declare that it does not recognize the competence of the Committee against Torture. Botswana (2000) and the United States (1994) both included reservations saying they were bound by the obligations of the treaty only insofar as the definition of terms torture and cruelty corresponded to those in their constitutions.

9 After ratifying the Convention against Torture, Congress enacted a new federal antitorture statute to implement the requirements of the convention (18 U.S.C. § 2340 et seq.). It makes torture a felony and permits the criminal prosecution of alleged torturers in federal courts in specified circumstances.

argument held that the Geneva Conventions did not apply to the conflict in Afghanistan. Because the Geneva Conventions grant individuals absolute protection from torture, the decision that they did not apply to a specific conflict was understood by some to imply that torture was permitted. The second argument involved reinterpreting the definition of torture so that the United States could use its preferred interrogation techniques. The Bybee memorandum of August 1, 2002, advanced a definition of torture that was contrary to the language of the law and common sense.¹⁰ The third argument relied on a controversial constitutional position claiming that the president had the authority to supersede international and domestic law to authorize torture. This argument runs contrary to the concept of nonderogability, which is at the core of the torture norm.

Each of these arguments was contested from within and from outside the Bush administration. As a result of this contestation, the Office of the Legal Counsel withdrew the torture memos in 2004 and replaced them with memos more consistent with international law (Goldsmith 2007). In this sense, the Bush administration's treatment of the antitorture norm can be viewed as changing over time. But despite these changes, the practice of torture and cruelty continued in secret prisons and other detention centers around the world until late 2007 (SSCI 2014, 163–70). Moreover, the Bush administration demanded and secured legislation that provided retroactive immunity for past torture for all US officials.¹¹

During this period, from late 2001 through early 2009, the US Central Intelligence Agency (CIA) ran a clandestine program known as the Rendition, Detention, and Interrogation (RDI) program, which involved the kidnapping, disappearance, extrajudicial detention, and torture of suspected terrorists in the war on terror (Singh 2013). It is estimated that this program held at least 119 prisoners and entailed the active cooperation of forty foreign governments plus Hong Kong (Singh 2013; SSCI 2014; see Appendix A). Nevertheless, Bush administration officials asserted repeatedly that the United States did not torture and that it was in full compliance with all applicable law. When controversy erupted in Europe over the program in 2005, for instance, Secretary of State Condoleezza Rice contended that the United States did not “permit, tolerate, or condone torture under any cir-

cumstances” (Kessler and White 2005; Rice 2005). In early 2006, the US government established an interagency group of experts that would travel globally to defend US “detainee policies” at public events. The government also issued agency-wide talking points aimed at establishing that US interrogation policies did not violate US legal commitments (Department of State 2007; Department of State 2009b).

Did US Contestation Weaken the Norm against Torture?

In order to assess the impact of US policies on the international norm against torture, we focus our analysis on the four dimensions of norm robustness developed in the framing article: concordance, third-party reactions, compliance, and implementation.

Concordance

Concordance refers to belief in a norm's legitimacy, including beliefs in the legitimacy of the institutions tasked with monitoring or implementing the norm. If US discourse and actions eroded the norm against torture, we would expect to see less general belief in the norm's legitimacy and, in particular, greater acceptance of the notion that counterterrorism policies qualify as an exception to the norm.

One measure of concordance is the number of treaty ratifications and the level and quality of opt-out clauses. Three specific treaties address the norm against torture: the CAT, which is global in scope, and two regional conventions, the Inter-American Convention to Prevent and Punish Torture and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. These treaties continued to receive ratifications after US contestation began, and no state withdrew its ratification of any of the three conventions. Each convention's rate of ratification waned over time, but this is to be expected after many of the “easy” countries had already ratified and only harder cases remained. In the European case, for example, by 2006 all forty-seven members of the Council of Europe had ratified the European Convention for the Prevention of Torture. Although forty states still have not yet ratified the CAT, half of these countries are relatively new or decolonized small island states, which says more about limited state capacity than a concerted coalition contesting torture. In short, US contestation does not appear to have shaped patterns of treaty ratification.

The ratification dynamics of opt-out clauses in the CAT did change somewhat in the new millennium. After

10 Harold Koh has argued that the Bybee Memorandum of August 1, 2002, “offers a definition of torture so narrow that it would have exculpated Saddam Hussein” (2005, 654).

11 Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd-1(b)).

2000, over forty additional countries ratified the CAT, for a total of 162 State Parties in 2017. Of these new ratifiers, a higher percentage—ten countries—took advantage of an opt-out clause in CAT that permits countries to declare that they do not recognize the competence of the Committee Against Torture. This suggests some additional challenges to the belief in the legitimacy of this institution tasked with monitoring and implementing the norm. In addition, four countries refused to accept CAT's definition of torture when it came into conflict with their constitutions or domestic law, as the United States had done earlier when it ratified CAT in 1994. US reservations to CAT may have provided some cover and language to these countries.

What is quite interesting, however, is that third-party reactions to these reservations were strengthened after 2000. Few objections were made regarding the use of opt-out clauses before 2000. After 2000, twenty-six countries issued formal objections to reservations that appeared to undermine the purpose of the treaty. In particular, in what appeared to be a concerted effort, a number of mainly European states objected to such reservations by Pakistan, the United Arab Emirates, Laos, Fiji, Botswana, the United States, Qatar, Bangladesh, Thailand, and Vietnam. In the case of Qatar, these reservations were withdrawn, perhaps as a result of the objections.¹² Comparing this scenario to the period before 2001, it does not appear that concordance with the norm declined globally as a result of US contestation.

Third-Party Reactions

Third-party reactions to norm violations and contestation include both discursive and material sanctioning. If US actions and those of states that participated with the United States in contesting the norms against torture actually undermined the norm, we would observe third-party reactions that were either passive or that applauded violations. In contrast, if US actions did not weaken the norm against torture, we would observe other states sanctioning the United States and its allies discursively and materially. Evidence suggests the latter was often the case.

To evaluate how third parties responded to US violations, we began with the database of 251,287 State Department diplomatic cables leaked through Wikileaks in 2010 and 2011. This database has several notable strengths. The data in Wikileaks is granular, global, and

candid. It describes the time and place of US diplomatic interactions, noting who did and said what to whom often in private, off-the-record settings. Officials might be expected to be slightly more forthcoming about their beliefs in such settings, as opposed to in statements issued before the Human Rights Council (HRC). The bulk of the leaked cables—172,469 to be precise—cover the period of 2004 to 2008 when controversy over US noncompliance was at its peak. The Wikileaks diplomatic cables thus offer a unique starting point for understanding state reactions to US noncompliance.¹³

One of the primary trends revealed in the cables is the discursive rejection of the Bush administration's position on torture by the United States' closest allies. European states led the pushback; however, it took a few years before they came to coordinate their efforts effectively. At first, pushback was bilateral in nature and focused on US legal positions. For instance, from at least August 2002 through August 2003, Dutch officials raised the status of noncombatants and due process at Guantanamo Bay at every bilateral discussion of human rights (*US Embassy The Hague 2003b*). However, these efforts appear to have had little impact on US policies, and European officials quickly grew tired of broaching the topic. By 2004, many were so frustrated by US noncompliance that they avoided raising the topic with US officials in formal settings (*US Embassy Brussels 2004*).

Pushback grew more coordinated following the Abu Ghraib controversy, the leaking of the infamous torture memos, and news reports of secret US-run detention facilities in eastern Europe. International institutions began to play a critical role in coordinating state and NGO efforts to pressure the United States on its torture policies. For instance, during the first Organization of Security and Cooperation in Europe meeting dedicated to human rights and the fight against terrorism in Vienna in 2005, European delegates and American NGOs focused discussion on US behavior. When confronted, however, the United States stuck with its strategy of denying

12 These reservations and objections can be found on the UN Treaty Website for CAT at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-9.en.pdf>.

13 Conclusions drawn from Wikileaks on this topic must also be viewed in light of the two key limitations: first, the database contains no cables classified as top secret, and second, the database as a whole is neither geographically nor temporarily representative. Cables from some countries, like the Netherlands and Turkey, are represented consistently across the study period; however, cable traffic from other countries is skewed toward the post-2006 period. Therefore, the database does not reflect the totality of the impact of US noncompliance on its diplomatic relations, and data must be crosschecked with other sources.

that it violated the torture norm, claiming that its actions were lawful under the Geneva Conventions ([Department of State 2009a](#)). Similar confrontations with similar outcomes occurred during US-EU human rights consultations in Brussels that same year ([US Embassy Brussels 2005](#)).

In late 2005 and early 2006, the Parliamentary Assembly of the Council of Europe and the European Union (EU) Parliament launched investigations into the secret detention and illegal transfer of detainees by the United States in Europe. Both inquiries released a series of reports in 2006 and 2007 documenting the complicity of European states in the United States' rendition and torture program ([The Rendition Project 2017](#)).¹⁴ These investigations uncovered evidence that Poland and Romania hosted secret detention sites and that a number of other European states were complicit in the US rendition, detention, and interrogation program.¹⁵ Although these investigations carried no prosecutorial authority and were dismissed as inaccurate by officials in implicated countries, they laid the groundwork for subsequent investigations by human rights activists and legal cases brought before the European Court of Human Rights, as discussed below.

Despite this mounting evidence, the European Union initially failed to take a strong public stance on non-compliance by the United States and some of its own members. Although some EU officials spoke publicly of the need for counterterrorism efforts to comply with internationally accepted standards of human rights, EU ministers' confrontations with the United States remained private and tepid.¹⁶ For example, during a EU-US ministerial meeting in Vienna in 2006, European officials raised their concerns about the CIA's rendition program with US Attorney General Alberto Gonzales, but never issued a public statement ([Kinzelbach and Kozma 2009](#), 612). It was not until after President Bush's pub-

lic acknowledgement of the United States' secret detention program in September 2006 that the EU issued a public statement on the issue. However, the EU's eventual statement, issued in December 2006 by the General Affairs and External Relations Council, garnered little public attention given that it was buried within a larger set of conclusions and couched in opaque diplomatic language ([Council of the European Union 2006](#); [Kinzelbach and Kozma 2009](#), 610–13).

Pushback continued to be stronger in some bilateral settings and focused on US legal positions. Norway, for instance, a non-EU ally, confronted the United States publicly. In his first meeting with US Ambassador Benson Whitney in January 2006, the new Norwegian Foreign Minister Jonas Gahr Støre contended that US interests would be better served if detainees were treated as POWs under the Geneva Conventions ([US Embassy Oslo 2006a](#)). "No one is outside the law," Støre contended. Two months later, Støre presented a formal diplomatic note articulating Norway's views on the legal issues concerning detainees ([US Embassy Oslo 2006c](#)).¹⁷ In presenting the note, Støre stated his belief that the United States had hurt its campaign against terrorism and its international image by not applying international law appropriately. Similar efforts were made by Swiss State Secretary Michael Ambuehl ([US Embassy Bern 2006b](#)). The Dutch government even went so far as to commission a study concerning legal debates in the war on terror and circulated the report at the UN in New York ([US Embassy The Hague 2009a](#); [US Embassy The Hague 2009b](#)).

Our analysis of third-party reactions complements and extends analysis done by others, including [Keating \(2014\)](#). Keating examines public statements in response to US contestation of the antitorture norm to argue that the number of international actors willing to contest the torture norm increased during the Bush administration ([Keating 2014](#), 16). We examine additional documents and focus on private settings where actors might be more forthcoming. Our general conclusions are similar to those reached by [Keating \(2014\)](#): the Bush administration's contestation of the antitorture norm did not lead to an international norm cascade in favor of its position. Our analysis, however, also identifies some additional troubling trends.

While many Western governments pushed back discursively against the United States' torture policies, some other states responded opportunistically by citing US practices to justify their own misdeeds. In 2004, a EU official said that the Sudanese government had "borrowed

14 The investigations, known respectively as the Fava and Marty Investigations, are available for download through the Rendition Project: <http://www.therenditionproject.org.uk/documents/eur-complicity.html>.

15 These states included Germany, the UK, Spain, Ireland, Greece, Cyprus, and Italy, among others.

16 For instance, Javier Solana, the EU High Representative for the Common Foreign and Security Policy, told the European Parliament in May 2006: "The position of the European Union is clear: states must ensure that any measures they take to combat terrorism complies with their obligations under international law, in particular international human rights, refugee, and humanitarian law" ([Solana 2006](#)).

17 [US Embassy Oslo \(2006c\)](#) contains the full text of the Støre's diplomatic note.

the US concept of ‘illegal combatants,’ as developed and applied to Guantanamo, to justify some of its current actions” (US Embassy Brussels 2004). More recently, following a coup attempt in April 2014 in Comoros, the government and military detained alleged mercenaries and Comoran nationals and submitted them to, in their own words, “enhanced interrogation techniques” (Gabor Rona, email to author, November 17, 2015). When questioned by international observers, government ministers justified their actions saying that these were enemy combatants not entitled to the same legal protections as citizens (*ibid.*). US actions thus both actively facilitated and provided a pretext for human rights violations by other states.

Some states began to cite US violations to undermine the legitimacy of a broad range of international mechanisms meant to safeguard human rights. In 2006, for instance, Sudanese President Omar al-Bashir cited US behavior when justifying his refusal to allow UN peacekeepers into Darfur (US Embassy Khartoum 2006). US unwillingness to grant full access to Guantanamo to the UN Special Rapporteurs, moreover, became a key point of tension between the United States and its European allies. In 2005, Dutch Ministry of Foreign Affairs Special Ambassador for Human Rights Piet de Klerk argued that these refusals “strengthen the hand of other countries that deny access to the UNHCR Special Rapporteurs” (US Embassy The Hague 2005a). “[T]he use of the [United States] as an excuse by Sudan and others to justify their misdeeds” prompted European officials to raise these concerns during human rights consultations with the United States in 2005 (US Embassy Brussels 2005). This suggests that European officials were worried about the impact of US contestation on weakening the norm.

Nevertheless, acceptance of the validity of the norm against torture remained widespread even among countries that frequently violate the norm. In multilateral fora, states often cited US transgressions to deflect criticism of their own human rights records. In the annual debate on human rights in the UN General Assembly’s Third Committee in 2007, for example, China, Iran, North Korea, Syria, and Cuba each argued that the United States had no standing to speak on these issues because of its own human rights violations (US Embassy New York 2007). US torture practices also came into play during the debate on the creation of the UN Human Rights Council in 2006. In response to the United States arguing in favor of preconditions to membership, Cuba asked rhetorically “how the United States can demand conditions for entry into the HRC, alleging US troops were mistreating prisoners in [Guantanamo] and Abu Ghraib” (US Em-

bassy New York 2006). In neither of these occasions did states respond by suggesting that the norm against torture was weakening; rather, they accepted its validity, but questioned the qualification of the United States to speak on the matter.

Commenting on a report on prisoners in Guantanamo Bay in 2006, for instance, China’s minister of foreign affairs said that China attached great importance to the Geneva Conventions and thought the United States should “handle the prisoners held in Guantanamo Bay in line with international law” (US Embassy Beijing 2006). Similar positions are found in the coverage of US actions by state-sponsored media in countries that frequently employ torture (e.g., US Embassy Damascus 2006; US Embassy Tunis 2006). While such propaganda often serves the instrumental purpose of rallying domestic support or deflecting US diplomatic efforts, by condemning US actions these messages also affirm the validity of the norm against torture.

Several states went beyond discursive reactions to adopt policies with material implications for the United States. For example, even though the Dutch Army was eager to contribute troops to Operation Enduring Freedom in Afghanistan, the political leadership of the Dutch Ministries of Foreign Affairs and Defense were concerned about the potential domestic political consequences if a member of the Taliban or al-Qaeda were captured by Dutch Special Forces and ended up in Guantanamo Bay (US Embassy The Hague 2003a; US Embassy The Hague 2003c). These concerns held up the deployment of Dutch troops for nearly two and a half years and damaged coalition efforts in Afghanistan (Dempsey 2005). Even after deploying troops, concerns about renditions, detainee abuse, and deteriorating public support for the war complicated subsequent Dutch deployments (US Embassy The Hague 2005b).

After voting to deploy troops, the Dutch Parliament maintained pressure on the Dutch government to ensure that any prisoners apprehended in Afghanistan were protected by the Geneva Conventions and not turned over to US forces (US Embassy The Hague 2005c). In meetings in April 2005, Dutch officials sought a joint statement with the US Department of Defense expressing that both countries believe detainees should be granted humane treatment in accordance with the principles of the Geneva Conventions (US Embassy The Hague 2005a). When these efforts failed, the Dutch began to work around the United States in Afghanistan in order to ensure the humane treatment of detainees. The Dutch, along with the UK, Canada, and Denmark, signed bilateral agreements with the government of Afghanistan guaranteeing their access, as well as that of the ICRC, to detainees

they turned over to the Afghan government (US Embassy Kabul 2006).¹⁸ The Dutch also came to an agreement with the Australians, whereby Australian officials would turn detainees over to the Dutch who would subsequently treat them as their own detainees. This made it so that detainees fell under the Dutch's bilateral agreement with the Afghan government (US Embassy Kabul 2007). All of these arrangements were ad hoc measures meant to limit the damage done by US noncompliance.

Other countries reacted by limiting policy cooperation with the United States. The Finnish Parliament, for example, delayed ratifying a 2004 US-EU Extradition Treaty (US Embassy Helsinki 2005b; US Embassy Helsinki 2006) and a Mutual Legal Assistance Treaty (US Embassy Helsinki 2005a) until 2007 because of concerns that US policies might violate Finnish constitutional guarantees (US Embassy Helsinki 2007). Swiss officials similarly explained limits to counterterrorism cooperation with the United States in 2006, claiming that US detainee policies were unpopular with the Swiss public (US Embassy Bern 2006b). Concerned that the rendering of suspected terrorists through British airports might violate domestic law, the UK began requiring that requests be submitted by the US Embassy for all intelligence flights transiting the UK. This ensured that the British government could “fully consider whether sensitive missions might put the UK at risk of being complicit in unlawful acts” (US Embassy London 2008). The Irish government also began to interpret certain legal arrangements more broadly in order to justify searching US military aircraft transiting through Shannon International Airport (US Embassy Dublin 2006). And, as late as 2009, the US Embassy in Nairobi reported that legal cases stemming from US use of torture had “a severe effect on what counterterrorism tools are available to the UK authorities” (US Embassy Nairobi 2009).

Fears that US policies might legally implicate foreign officials motivated Irish officials to question the integrity of US diplomatic assurances. In 2004, Keith McBean, the Chief of International Security Policy at the Irish Department of Foreign Affairs, explained to a US official that, “were a plane to include Shannon in an itinerary that also included transporting prisoners, GOI lawyers might be forced to conclude that the GOI itself was in violation of torture conventions” (US Embassy Dublin 2004a). In a follow up meeting in December of that year between the Irish prime minister and Senators McCain and Graham,

McCain pledged to relay the prime minister's concerns to the Bush administration underscoring “how very important it is that the [United States] not ever be caught in a lie to a close friend and ally” (US Embassy Dublin 2004b).

Significantly, no states responded to US contestation by proclaiming the death of the norm against torture or by applauding the practice of torture. Nevertheless, our core finding is still fundamentally ambiguous: states that torture appear emboldened, but nevertheless publicly condemn the United States for its own actions. While the validity of the norm against torture remains widespread, its facticity is a more complicated story.

Compliance

Compliance involves the degree to which the behavior of actors is consistent with a particular norm. If US contestation undermined global compliance with the global norm against torture, we would observe an increase in the use of torture by other states following the period between 2002, when the US initiated the use of torture at Guantanamo, and 2004, when the Abu Ghraib photos and the torture memos were made public.

In order to assess global patterns of compliance with the norm prohibiting torture, we draw on the CIRI Human Rights Data Project and its specific torture measure (Cingranelli, Richards, and Clay 2014).¹⁹ CIRI provides a physical integrity index that measures state practices for torture, extrajudicial killing, political imprisonment, and disappearances.²⁰ Each of these four component practices are measured for each country-year on a 0–2 scale—ranging from scores corresponding with no reported violations to systematic violations—and then summed together to form the composite physical integrity index. The CIRI data is coded from the annual human rights reports produced by Amnesty International and the US Department of State. Note that in all figures we have inverted the scale of the CIRI score such that higher scores signify more abuse of human

18 After the United States, Canada, and the UK, the Netherlands apprehended and turned over the most detainees to Afghan authorities from October 2006 through May 2007 (US Embassy Kabul 2007).

19 There are other scales of torture, such as Oona Hathaway's Torture Data, but since it only exists for the period 1985 to 1999, we cannot use it to consider development in the post-2001 period, our major concern here. Likewise, the Conrad and Moore ill-treatment and torture measure only exists for 1995 to 2005, so it is also less useful for the current period.

20 In order to make interpreting data more intuitive, we have inverted the CIRI index such that higher scores are associated with more human rights abuses in each of the figures below.

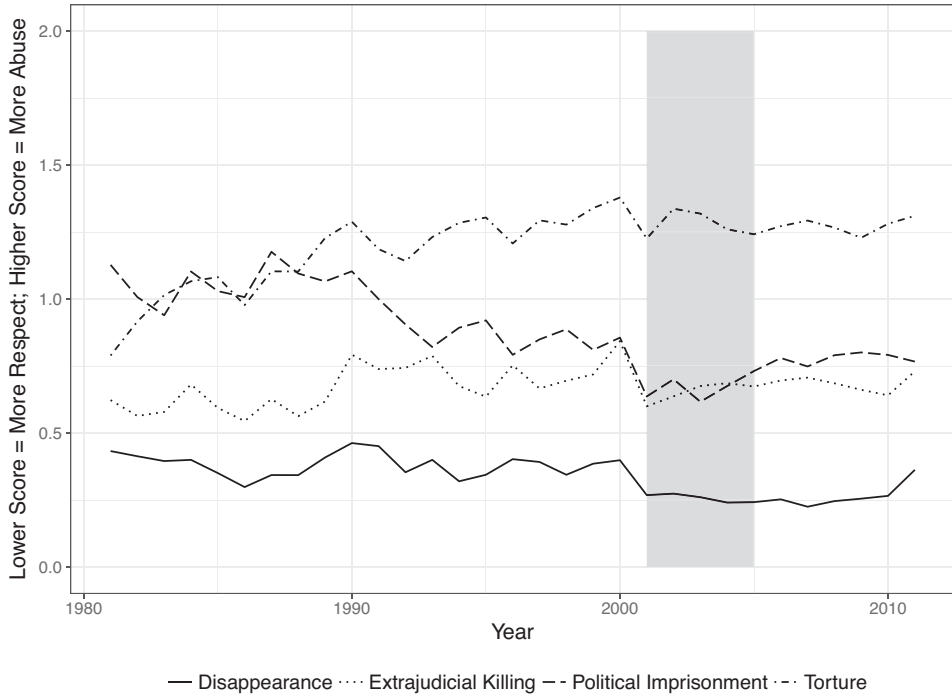


Figure 1. CIRI Physical Integrity Rights Scores, 1981–2011.

rights and lower scores denote more respect of human rights.

Figure 1 below shows the average component scores for torture, killing, disappearance, and imprisonment for the 202 countries in the CIRI dataset from 1981 to 2011.

The shaded region marks the period of 2001–2005 when states began cooperating in the US rendition, detention, and interrogation program.

Figure 1 shows that state use of torture has increased over time, while some other state practices, such as the use of political prisoners, have decreased. But most of the increase in the average level of torture occurred from 1981 to 1990, and the level has been relatively flat since 2000, perhaps even decreasing slightly. This suggests that global compliance with the antitorture norm is not in decay or death, but in stasis. At first glance, this pattern of state behavior seems paradoxical. It suggests a worsening of state practice of torture in the period from 1981 to 1990 when the norm was not being contested by the United States and relatively unchanged practices in the period after 2000 when the norm was under attack.²¹

21 In fact, the period before 1990 might mark a high point for the norm against torture. The Convention Against Torture was first opened for signature, ratification, and

Inherent biases in the CIRI dataset cannot explain this finding.²²

Next, we compare the practices of those states that cooperated with the CIA’s rendition, detention, and interrogation program to those that did not. This analysis produces a somewhat different picture. In 2013, the Open Society Justice Initiative (OSJI) identified fifty-three countries plus Hong Kong that assisted in some capacity with the CIA program (Singh 2013). Among these, forty states participated actively with the United States and thirteen assisted solely with flight logistics, that is, permitting overflights, stopovers, or refueling.²³ Active

accession by the UN General Assembly in 1984 and first entered into force in 1987.

22 Some argue that the CIRI physical integrity rights scale suffers from a systematic bias due to information effects and changing standards of accountability. But, these biases cannot explain stasis or improvement in human rights practices over time and, therefore, does not complicate our analysis. Furthermore, these biases affect all countries evenly within a given year, allowing for comparisons of groups of countries over specific periods (Clark and Sikkink 2013; Fariss 2014).

23 Hong Kong is also identified by the OSJI report as actively participating with the US program, but it is not

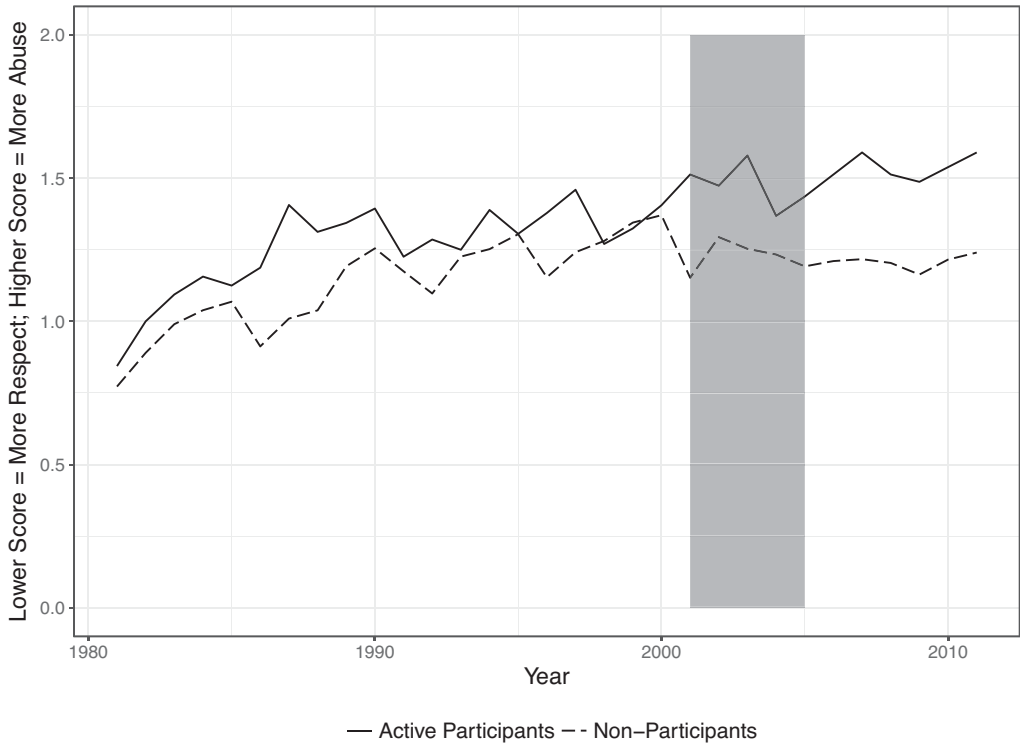


Figure 2. CIRI Torture Score by Participation, 1981–2011.

participating countries are those that helped the United States by assisting in kidnapping, hosting a black site, or torturing a prisoner on behalf of the United States (see Appendix A for a list of active participating states identified by the OSJI report.) Figure 2 plots trends in the CIRI torture scores for these forty active participants relative to the other states in the CIRI dataset. As in the previous figure, the shaded regions mark the period of 2001–2005 when states began cooperating with the US program.

Figure 2 suggests that countries that were actively participating with the United States have increased levels of torture relative to countries not involved with the US RDI policies. This finding is especially striking because it does not appear that the United States was soliciting more cooperation from states known to torture, on average, in the years immediately before 2001. Difference-of-means tests shows that the differences in the average torture scores of these groups is statistically insignificant in the years before the beginning of US contestation, suggesting that the practices of participating states in the years be-

included in the CIRI dataset and is therefore dropped from our analysis.

fore 2001 were not different, on average, from states that did not cooperate. This fact makes the divergent trends in practices of participating and nonparticipating states following the 2001–2004 period all the more noteworthy.

Two explanations may account for these divergent trends. One possibility is that publicity surrounding state cooperation with US policies might have led to higher monitoring and reporting of torture and other human rights violations. A mismatch between reporting and changing CIRI scores, however, suggests this is not the most likely explanation. For instance, even though the Council of Europe published an inquiry in 2007 detailing the complicity of several European states, CIRI torture scores for states outside of Europe account for the spike observed in 2006–2007.²⁴ A reporting effect, if present, appears weak.

24 With the sole exception of Romania, this jump is caused by increased CIRI torture scores for non-European states: Algeria, Yemen, Malaysia, Jordan, Malawi, Saudi Arabia, United Arab Emirates, and Mauritania.

A more likely possibility is that collaboration with the United States offered a *carte blanche* or green light for increased use of torture or other physical integrity abuses. This proposition is addressed elsewhere.²⁵ Some qualitative evidence suggests how cooperation with the US RDI program could impact state compliance with the antitorture norm. Collaboration appears to have provided some states with a green light to torture. Following their collaboration with the CIA, Ethiopia, Kenya, and Somalia began using rendition, secret detention, and torture in order to deal with security situation stemming from the fall of Mogadishu and to combat the Ogaden National Liberation Front and the Oromo Liberation Front (*Human Rights Watch 2008*). The Gambian government allowed US officials to render two individuals, Bisher al-Rawi and Jamil el-Banna, from The Gambia in 2002. Four years later, in the aftermath of an alleged coup attempt, the Gambian government arrested at least twenty-eight individuals, keeping them in incommunicado detention and subjecting some to torture (*Amnesty International 2006*). When confronted by a US official over these abuses, the Speaker of The Gambian National Assembly retorted that “the world is different since 9/11 and Al Qaeda, and when it comes to matters of national security and the safety of the population, extraordinary measures must occasionally be taken.” The Speaker then compared the policies of The Gambia to those of the United States at Guantanamo Bay (*US Embassy Banjul 2006*).

Syria was yet another country that collaborated with US rendition policy. Even though there are multiple reasons for the worsening of torture in Syria during this period, Syrian officials used US abuses to deflect high-level human rights diplomacy. In late December 2007, US Senator Arlen Specter and Representative Patrick Kennedy visited Damascus for meetings with President Assad and Foreign Minister Walid Muallem. In both meetings, Representative Kennedy raised US concerns about the jailing of Syrian opposition figures. In the first meeting with Muallem, the tenor of the conversation turned acrimonious when Kennedy threatened to send a letter protesting the arrests. Muallem responded by suggesting he send a letter of his own citing “Abu Ghraib, Guantanamo, and US ‘flying prisons’” (*US Embassy Damascus 2007*).

Implementation and Enforcement

The definition of implementation of the antitorture norm, in our mind, should involve not just how the norm is included in domestic, regional, and international institutions and adopted into domestic law, but also the degree to which such changes led to enforcement

and accountability. If US contestation was successful in weakening the norm against torture, we would observe a rolling back of laws, policies, and organizations tasked with implementing the torture ban. If US contestation were mainly ineffective, we would observe continued progress in the implementation of the torture ban as well as efforts by mechanisms already in place to enhance legal enforcement of the norm and criminal accountability for its violation.

US contestation did not appear to contribute to weakening of the norm across a variety of implementation factors, especially those concerning the creation of international and domestic mechanisms meant to advance the norm against torture. Patterns concerning the ratification of the Optional Protocol to the CAT (OPCAT), the designation of National Preventative Mechanisms (NPMs) to monitor state compliance with the Optional Protocol, and the issuance of standing invitations to the UN special procedures, including the Special Rapporteur on Torture, all appear unaffected by US policies. States first began issuing standing invitations to the UN special procedures in 1999. Notably, the number of states having issued such invitations increased dramatically during the period that the United States was contesting the norm against torture; from 2 standing invitations in 1999, to 32 in 2001, 94 in 2011, and 117 in 2017 (*United Nations 2018*).²⁶ Had US contestation undermined implementation of the norm against torture, we would have observed a decrease in the rate that states were issuing standing invitations. However, this is not the case.

Trends concerning the ratification of the OPCAT and the designation of NPMs also show no sign that US contestation lessened the implementation of the norm against torture (*Association for the Prevention of Torture 2018*).²⁷ Even though these mechanisms were first implemented after the United States began contesting the norm against torture (making before and after comparisons impossible), these mechanisms were implemented rapidly beginning in 2003, with thirty-eight countries designating NPMs and sixty-one having ratified OPCAT by 2011. The quick initial spread of these mechanisms aligns well with the ratification patterns of the CAT we saw above.

26 Data on the issuance of standing invitations is from: Office of the High Commissioner, “Standing Invitations,” United Nations Human Rights, available at: http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx.

27 Data on the ratification of the OPCAT and the designation of NPMs is from: Association for the Prevention of Torture, “OPCAT Database,” available at: <http://www.ap.t.ch/en/opcat-database/>.

25 See Schmidt and Sikkink (2018).

Had US policies undermined these mechanisms meant to prohibit torture, we would have observed fewer countries implementing the OPCAT and designating NPMs. However, this too is not the case.

Enforcement mechanisms played a key role in formulating states' reactions to the US use of torture. States engaged in pushback not only because of principled opposition to torture but also because they had an *expectation* that there could be legal and political accountability for torture, either in domestic or regional courts, or from domestic publics.

Legal and political accountability were the primary motivations for many states that pushed back the most forcefully against US contestation. The case described above on Dutch, Finish, Irish, and UK reactions to US policies are some examples. Several states were concerned that US actions would implicate their officials in unlawful activities, exposing their governments to legal and political risks, and as such adopted policies to mediate these dangers. Where the possibilities for accountability have been strongest, such as in Europe, the norm against torture has been the most resilient to US contestation. Western leaders were prescient to anticipate the legal issues that would arise from cooperating with the United States. In the years since US torture policies became public knowledge, domestic and foreign prosecutions have been launched against US officials and officials of other states that cooperated with the United States.

Canadian federal courts, for instance, found that Canadian Security Intelligence Service officials acted illegally when interrogating Omar Khadr, a prisoner held at Guantanamo, and ordered the release of interrogation videos (US Embassy Ottawa 2008). Canadian courts later attempted to compel the Canadian government to seek Khadr's repatriation (US Embassy Ottawa 2009a,b); however, these decisions were ultimately overturned by the Canadian Supreme Court even though it ruled that the Canadian government had violated Khadr's constitutional rights (US Embassy Ottawa 2010). A similar case arose concerning case files on former Guantanamo prisoner Binyam Mohammed. In 2010, the London Court of Appeals ordered the UK government to release Mohammed's case files, despite pleas from the government that revelations of US renditions and torture would damage intelligence cooperation between the United States and UK (US Embassy Islamabad 2010). Spanish courts similarly abrogated a sentence against a terror suspect after ruling that evidence gained from US interrogations was inadmissible (US Embassy Madrid 2006a).

Swiss prosecutors opened and then suspended an investigation into US rendition flights. In Autumn 2006, Swiss prosecutors announced the findings of an initial

investigation into whether or not Swiss airspace was violated during US rendition flights (US Embassy Bern 2006a). In February 2007, the Swiss Federal Council opened a criminal investigation into the issue (US Embassy Bern 2007). The investigations generated considerable media attention, undermining US standing in Swiss public opinion. In November 2007, however, the Swiss court dismissed the investigations (Bruppacher 2008).

Throughout this period, Italian, Spanish, Swiss, and German prosecutors coordinated efforts to prosecute US officials involved in rendition and torture (US Embassy Madrid 2006b; US Embassy Madrid 2007). For its part, the United States worked to obstruct or failed to cooperate with criminal proceedings in France, Spain, and Italy (Bond et al. 2014, 11). The sole successful criminal prosecution of US officials occurred in Italy in November 2009 (Donadio 2009). The trial in absentia resulted in convictions of twenty-three Americans and two Italians for kidnapping an Egyptian terror suspect off the streets of Milan and sending him to Egypt where he was tortured. An Italian judge ruled that what the US government called "extraordinary rendition" fit the Italian criminal code definition of "kidnapping" (Armando Spataro, pers. interview, October 14, 2008; Sikkink 2011).

The coordinated work of a transnational network of activists and international organizations in the United States and Europe assisted these accountability efforts. The Center for Constitutional Rights and the European Center for Constitutional and Human Rights filed cases in both France and Germany against Donald Rumsfeld, former CIA Director George Tenet, and other high-level US officials for torture, although these cases have not prospered (Wolfgang Kalleck, pers. interview, June 6, 2010). These organizations also participated in two foreign cases against US officials in Spanish courts, including one against the six Bush administration lawyers who wrote the memos providing the legal justification for the use of torture—Alberto Gonzales, John Yoo, Jay Bybee, David S. Addington, William Haynes, and Douglas Feith—and a second case involving Guantanamo detainees (Center for Constitutional Rights 2017). Spurred by news reports suggesting the operation of secret detention facilities in Eastern Europe (e.g., Priest 2005) and building on the work of the Council of Europe and the European Parliament, a transnational group of activists, academics, and lawyers from organizations such as Reprieve, the Rendition Project, Interrights, the Open Society Justice Initiative, and the Helsinki Foundation for Human Rights painstakingly collated flight records in Europe and used requests under freedom of information acts to link Poland, Lithuania, and Romania to US rendition policies (Raphael et al. 2015; Irmina Pacho,

pers. interview, September 14, 2015). This research led to cases before the European Court of Human Rights that implicated the governments of Poland, Macedonia, Romania, Lithuania, and Italy.

In its judgments against European states that cooperated with US torture and rendition policy, the European Court of Human Rights has made perhaps the strongest challenge to US torture policy. Even though these cases could only be brought against European states and not the United States, as a matter of law and fact, they left little doubt as to the illegality of US practices. In the first case, a Grand Chamber judgment in the case of *El-Masri v. the former Yugoslav Republic of Macedonia*, the European Court held unanimously that, among other violations of the European Convention of Human Rights, the government of Macedonia had violated article 3 that prohibits torture and inhuman or degrading treatment. The court found in particular that the treatment of Khaled El-Masri by a CIA rendition team at the Skopje Airport “amounted to torture” and that by transferring El-Masri to US officials the Macedonian government exposed him to the risk of further torture and mistreatment (European Court of Human Rights 2012). In 2015, The European Court confirmed its ruling in the combined cases of *al-Nashiri v. Poland* and *Abu Zubaydah v. Poland* that Poland illegally allowed the CIA to operate a secret torture prison on its territory in 2002 and 2003. The court ordered Poland to pay \$250,000 to the two plaintiffs for torture committed by the CIA, prompting some outrage that Poland was being held responsible for US crimes. Similar rulings were issued against Italy, Romania, and Lithuania (European Court of Human Rights 2018). With these cases and the release of the Senate Select Committee on Intelligence’s torture report in December 2014, the movement for accountability for US torture continues slowly (Gladstone and Mackey 2014).

Assessing the Robustness of the Torture Norm: Actors, Processes, and Structures

This analysis reveals that US contestation did not impact concordance with or implementation of the torture norm. It did, however, shape compliance and third-party reactions to violations, especially among nondemocratic states that aided and abetted US torture. Actor-related factors are key to understanding these dynamics.

The United States is a uniquely powerful state in the international system and, as such, presents an exceptionally strong challenge to the robustness of the norm against torture. The United States also had a large pool of states from which to solicit partners in implementing its torture program. Amnesty International reported in 2014 that 141 countries in the world engaged in torture, in-

cluding many that have ratified the CAT (Amnesty International 2014). Still, it is not clear that the United States and its partners in torture were necessarily “more powerful” than the group of norm supporters, especially since some powerful states like China did not actively contest the norm but actually criticized the United States for its violations. Nevertheless, the extent to which contestation led to weakening of norm robustness was primarily the result of these actor-level factors. That the United States, acting alongside such a large coalition of states, was unsuccessful in undermining the norm against torture across all four dimensions of norm robustness speaks to the resilience of the norm.

Process- and structure-related factors are also instructive. An important process-related factor is that no actors contested the validity of the norm prohibiting torture overtly. Almost all actors, including the United States, claimed they did not torture, although we have argued that the United States engaged in covert validity contestation given the norm’s nonderogable status. The fact that actors never overtly contested the validity of the norm itself suggests its robustness has not been weakened beyond repair. Structure-related factors were also key to shaping states’ responses to US violations of the torture ban, especially the degree to which the torture ban was institutionalized, precise, legalized, and embedded in a dense normative environment. The norm was most resilient to US contestation in democratic countries where implementation was strongest.

In addition to these factors, we find an additional key explanatory variable: the *expectation* of norm enforcement and accountability. A recurrent theme in our qualitative evidence is that public officials were motivated to resist US policies because they expected that complicity would expose them to future legal or political risks. Where there was a higher likelihood for legal enforcement, including both state and individual criminal accountability, actors were more resistant to US contestation. The expectation of enforcement and accountability appears greatest in democratic states; therefore, regime type was also a factor shaping responses to US contestation. Even among the forty countries that participated actively with the US torture program, democratic participating states did not exhibit worsening human rights practices (Schmidt and Sikkink 2018). Thus we stress not just the level of legalization of the norm, but the degree to which institutionalization of the norm involves the expectation of enforcement and accountability.

Conclusion

We have argued that although US contestation of the norm against torture appeared to be applicatory

contestation, it was actually a more insidious form of covert validity contestation. US actions presented a direct challenge to the laws, treaties, and values that constitute the core of the norm against torture, especially its status as a nonderogable norm. The consequences of US actions have been varied. The most problematic trend identified is that states that participated with the United States in its torture program later showed increased levels of physical integrity rights violations compared to states that did not participate in the program. Collaboration with the US torture program appears to have provided a permissive green light for the increased use of torture. Nevertheless, resistance to US contestation by democratic states and the ongoing validity of the norm in public discourse, even from states that routinely violate the norm, suggests that the norm against torture is not dying.

But US actions have damaged the torture norm's robustness by injecting a greater degree of legal and cultural acceptance for the situational use of torture and by disregarding the obligation of accountability. Even though the Obama administration rescinded key legal memoranda and stopped the practice of torture, it sought no accountability for past US actions. This failure to enforce the United States' normative commitments has contributed to continued weakness of the norm against torture in the United States and elsewhere. It is still too early to evaluate the effects of Trump administration's positions on torture. Even though President Trump has advocated for a return to the use of torture, the Trump administration has not enacted these policies, in large part because of push-back by the US military and the foreign policy establishment, including from Secretary of Defense James Mattis. President Trump has, however, appointed Gina Haspel director of the CIA in 2018, despite her history of overseeing the use of torture at US secret prisons in the war on terror and her role in destroying evidence documenting these instances of torture. It remains to be seen what impact the Trump administration's policies will have on the robustness of the norm against torture.

The special issue as a whole argues that norm entrepreneurs should reconsider their excessive focus of legal institutionalization as the main way to promote norm robustness. This article finds that the expectation of enforcement of the norm against torture, not merely its institutionalization, has been essential to preventing the norm's weakening. Many countries that resisted US policies were driven by the fear that US actions could implicate their own officials in unlawful activities. The International Criminal Court (ICC) decided in 2017 to open an investigation into possible war crimes and crimes against humanity committed in Afghanistan since May 2003. As part of this investigation, the ICC could open cases con-

cerning crimes committed by US personnel on Afghan soil, including widespread torture. While it remains to be seen how the ICC case develops, our research suggests that, by reinforcing the expectation of enforcement and accountability, such investigations can go a long way in ensuring the ongoing robustness of the norm prohibiting torture.

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Supplementary Information

Supplementary information is available at the *Journal of Global Security Studies* data archive.

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Appendix A: States that Participated Actively in the CIA RDI Program

Active Participants

1. Afghanistan (2001)	15. Iran (2002)	29. Saudi Arabia (2003)
2. Albania (2004)	16. Italy (2002)	30. Somalia (2002)
3. Algeria (2004)	17. Jordan (2001)	31. South Africa (2003)
4. Australia (2001)	18. Kenya (2003)	32. Sweden (2001)
5. Azerbaijan (2001)	19. Libya (2004)	33. Syria (2001)
6. Bosnia-Herzegovina (2001)	20. Lithuania (2002)	34. Thailand (2002)
7. Canada (2002)	21. Macedonia (2003)	35. Turkey (2002)
8. Djibouti (2003)	22. Malawi (2003)	36. United Arab Emirates (2002)
9. Egypt (2001)	23. Malaysia (2004)	37. United Kingdom (2001)
10. Ethiopia (2002)	24. Mauritania (2001)	38. Uzbekistan (2002)
11. The Gambia (2002)	25. Morocco (2002)	39. Yemen (2005)
12. Georgia (2002)	26. Pakistan (2001)	40. Zimbabwe (2003)
13. Germany (2001)	27. Poland (2002)	
14. Indonesia (2002)	28. Romania (2002)	

Note: The year in parentheses is the first year that the OSJI report documents the country participating in the RDI program. The end of the countries involvement is not always documented, but the program was officially ended by President Obama in January 2009.