BOOK REVIEW

REVIEW OF TACKLING TORTURE: PREVENTION IN PRACTICE (MALCOLM D. EVANS, BRISTOL UNIVERSITY PRESS, 2023)[1]

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In November 2023, Professor Malcolm Evans joined the Subcommittee on Prevention of Torture (SPT), and from February 2011 to December 2020 he acted as its Chair. In Tackling Torture: Prevention in Practice, Evans shares an insider's perspective of the work of that body and the difficulties it faces on a daily basis. The book is not meant to be an academic work, nor is it a memoir; rather, it could be said it's a mix of both genres. Evans combines an account of his experience as the Chair of the SPT –a body composed of 25 independent experts from various regions of the world, which are periodically elected by States parties to the OPCAT– with legal analysis, in a way that illustrates how the legal norms under consideration are applied in practice. As expected, the focus is on those legal norms related to the prevention of torture at the international level, particularly the Optional Protocol to the Convention Against Torture (OPCAT). The result of this mixed approach is certainly illuminating, as the reader will learn not only about the content of the OPCAT but also about how it actually works in the real world.

The volume is divided in two halves: the first one titled "The Solution" and the second one, "The Problem". This structure can seem counterintuitive at first; after all, the usual thing to do is to start by diagnosing what the problem is and only then offer a solution to that problem. But this initial perplexity dissipates once we dig into the book and realize that the "solution" is actually the intended solution, or that which is supposed to work, whereas the "problem" consists in the shortcomings associated with putting that solution into practice. Hence, the chapters of the first half focus on how the OPCAT came to be and what its content is, how the SPT is comprised, and what the role of the SPT is and what is its relation to the National Preventive Mechanisms (NPM). The second half, in contrast, explores the application of the OPCAT in practice and

1) Evans, M. D. (2023). Tackling torture: Prevention in practice. Policy Press.

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the actual work the SPT does, highlighting its complexities, contributions, and limitations.

The first chapter delves into the question "What is torture?" Evans starts by pointing out the absolute character of the prohibition against torture in international law: the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights, among other instruments, unambiguously express that no-one shall be subjected to torture. Yet, they do not specify what torture is. In contrast, the 1984 UN Convention against Torture does provide a definition, given that it requires states to make torture a criminal offense under their domestic law. It follows that it must be specified what torture is, for otherwise states could define torture in the way it suits them so that their legislation complies with the Convention.

Evans mentions that, according to this definition, torture requires (a) the infliction of 'severe pain or suffering'; (b) that such pain is inflicted intentionally; (c) that such pain is inflicted for a purpose; and (d) that the person inflicting that pain, or responsible for the infliction of that pain, was 'a public official or other person acting in an official capacity'. This definition is consistent with the criteria developed by the European Commission of Human Rights in the 1969 Greek case, which makes a distinction between torture and inhuman and degrading treatment. In practice –Evans says– it is assumed that this distinction is based upon the severity of the treatment. Thus, a certain treatment is appropriately labeled "torture" if it reaches a certain level of severity. Even though international law also prohibits inhuman and degrading treatment, the relevance of the distinction can be found in the interest of states to avoid the special stigma that torture carries.

Evans criticizes this criterion, for he thinks that it can lead to "false negatives"; i.e., cases that are excluded from the definition of torture even though they are, actually, instances of torture. This problem is exemplified in the US Torture Memos, which claimed that the types of treatment the Unites States was inflicting to prisoners in Guantánamo were not severe enough to be called torture: they were only inhuman or degrading treatment. To avoid these implications –Evans argue–, it is better to trace the distinction in terms of the purpose of a given treatment; not its severity. Accordingly, what is relevant to label a certain treatment as torture is not that it reaches a certain level of severity but that it is being deliberately applied for a particular purpose, such as to extract information, to force a confession or to punish. He adds: "it is not the severity of the treatment but the context in which that treatment was meted out that distinguishes torture from inhuman treatment." (p. 27).

In the following chapter, Evans explores the problem of thresholds. Even if it is agreed that what makes torture unique is its particular purpose, the labeling of a certain act as 'inhuman' or 'degrading' presupposes that a certain threshold of severity has been crossed. Not every harmful treatment qualifies as being inhuman or degrading. However, there is not one single criterion to determine when that threshold has been crossed. In certain occasions, it is a clear that a particular treatment is an act of torture –as it is the case when a police officer subjects a detainee to electric shocks. But sometimes the issue is not so clear and it may require a deeper discussion, as it happened in the 2015 case of Bouyid v. Belgium, in which the Grand Chamber of the European Court ruled that the slapping in the face of two young men by a police officer did not

reach the threshold of severity needed to be considered degrading treatment. After engaging with the problematic nature of thresholds, Evans focuses on the obligation to prevent torture established by the Convention against Torture as well as rulings of the Inter-American Court (in the Velázquez Rodríguez case) and the International Court of Justice (in the Bosnia Genocide case). This obligation mandates that states take the necessary measures to effectively prevent torture, the content of which may vary from case to case. Therefore, it is less important that states comply with general guidelines or abstract principles than it is that they actually prevent acts of torture from taking place in practice.

The next chapters deal with how the OPCAT came to be, focusing on the political background and the negotiations that led to its establishment (Chapter 3); what the OPCAT requires (Chapter 4); what is the role of the SPT and how it is implemented (Chapter 5); and the relationship between the SPT and the NPM (Chapter 6). In these chapters, Evans examines the text of the OPCAT through a dual lens which include, on the one hand, an interpretation of its text (with an emphasis in how its different articles ought to be harmonized and how some of its key words should be interpreted) and, on the other, an explanation of the reasons –and the fortuitous occurrences– that led to its implementation.

A recurring topic throughout the book is the preventive focus of the OPCAT and the bodies it establishes (the SPT and the NPM). The states parties to the OPCAT grant the SPT the right to visit places of detention within their borders and interview the detainees held in them. At the same time, the OPCAT requires states to establish National Preventive Mechanisms, which complement the work of the SPT and are, in turn, assisted by it. During its country visits, SPT members talk to Government officials and custodial staff and make recommendations based on what they found. These findings are then summarized in a report, which remains confidential unless the visited country authorizes its release. This dynamic helps to explain the forward-looking nature of the SPT and the NPM: their role is to contribute to the elimination –or, at least, amelioration– of torture, not to hold to account those responsible for acts of torture which have already been committed. Their focus is thus on prevention; not on accountability. In the light of this, it is crucial for the success of the work of these organisms that the visited countries have the will to do what it takes to prevent torture; without this intention, there is not much that SPT and NPM can do.

The second part of the book ("The Problem") centers on the obstacles the SPT must ordinarily face when fulfilling its mission. Chapter 7 ("Visits: An Insider's Story") describes the shortcomings of a typical SPT visit: inhospitable accommodation, lack of food, rotten food, hostile authorities, difficulties in going from one place to the other, and so on. Chapter 8 ("Accepting the Unacceptable") takes a look at how, in many of the visited places, the relevant authorities acted as if the horrid conditions in which detainees were held were acceptable, even when it was clear as water that they were not. The following chapter ("Excusing the Inexcusable") focuses on a slightly different reaction from the authorities: that of making an excuse to explain, or to avoid responsibility altogether, as to why the detainees were treated the way they were. A particularly revealing episode of this tendency happened when the SPT members visited a prison in which all the prisoners were held in a single cell, even when there were other –larger– cells available, which, to

make things even worse, remained empty. The excuse put forward by the prison officials was that they only had one padlock for the cell where the detainees were cramped; they didn't have additional padlocks to keep the other cells closed, and the one they did have only worked in that particular cell. Something as easy as getting a handful of padlocks could have solved the issue; yet the relevant authorities did not seem to care. When the SPT members returned to their hotel, they passed an endless array of shops which sold, among other things, padlocks.

Chapter 10 ("Prescribing the Inappropriate") resumes one of the book's main topics: What does prevention require? Given that the mandate of the SPT is to effectively prevent torture, there are no universal recipes which can be relied upon. Every case requires a particular response, in virtue of the specific problem that needs to be solved. This means that, sometimes, the proposed solutions may seem inappropriate under general guidelines or standards. For instance, if computerized prison records are not dully kept because of frequent electricity shortages, the solution might be to acquire a generator; if prison staff takes part in a wide-ranging bribery scheme that includes the detainees themselves, a possible answer may be to start paying them better...Evans illustrates the specificity of every problem –and its corresponding solution– with these and other examples.

The second to last chapter examines the "fictions" upon which the entire OPCAT system rests; that is, those background assumptions that are taken as a given when it comes to designing and establishing a normative system of prevention, but which are actually far from the truth. One of these assumptions, for instance, is that a key safeguard against torture is that the prisoners' next of kin are informed of their detention. Evans recalls a visit to a police station which was attached to a small prison, where he and fellow SPT members asked the staff whether the families of the two or three prisoners had been informed of their detention. Given the blank stare from the prison staff, they went on to explain the importance of doing this as a preventive safeguard, but the reaction they got was still the same. What the members of the SPT ignored at the time was that in small towns such as that one it was relatively common that the detainees, who had been drinking all night before being imprisoned, were brought to the police station by their own family, so that they would sober up while in there. What may, in principle, be mandatory –to reach the detainee's family– was, thus, redundant. Another assumption that was frequently debunked was that all the professionals that play a relevant role in the criminal justice system (judges, prosecutors, lawyers, doctors, and so on) would act in a professional manner –in many cases, they didn't. But perhaps the most worrisome fiction –Evans concludes– consists in assuming that just because a state has ratified a treaty or voted for a set of standards concerning the treatment of detainees, it actually intends to do something about it. The sad truth is that, sometimes, they don't.

Notwithstanding these difficulties, the book ends on an optimistic note. Evans concludes that, despite its limitations, the SPT and the NMP have made a meaningful contribution to the prevention of torture and ill-treatment of detainees, and continue to do so. However, he also acknowledges that there is still a lot that can be done, and suggests a number of specific measures that could be adopted to make the work of those bodies even more effective.

For those interested in the UN system of prevention of torture and ill-treatment of persons deprived of their freedom –and, particularly, the OPCAT and the SPT–, Tackling Torture is a must-read. But it will also be of interest to a larger public concerned with international law and human rights in general. Evans has written a thorough but accessible book, which does not spare criticism to the institutions and officers responsible for the perpetuation of one of the most urgent tragedies of the modern world, while keeping a humane and compassionate stance towards those most affected by it. His experience at the front of the SPT is a virtuous example of using the law for a greater good. ◆