

Legal Sidebar

Big Deal? U.S. Changes Stance on Cruelty Prohibition

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In connection with the presentation of the [U.S. periodic report](#) to the U.N. Committee Against Torture November 12-13, [the Obama Administration announced](#) a change in the U.S. interpretation of certain aspects of the [United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT). Most significantly, the Administration reported that it believes the ban on cruel treatment applies to certain areas overseas. Reactions have been mixed.

The United States, as a [State Party](#) to CAT, is obligated under article 16 to:

prevent in any territory under its jurisdiction ... acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture ... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

At the center of the shift is the meaning of the phrase "any territory under its jurisdiction," which also appears in several other articles of the CAT. The [Committee Against Torture](#) ("Committee"), a body of 10 independent experts tasked with monitoring the implementation of CAT, [has taken the position](#) that obligations so described are binding in any territory or facilities where the state party exercises effective control. The United States previously disagreed with that position, and [suggested](#) that the relevant U.S. obligations apply only within the territorial jurisdiction of the United States, but not to areas outside U.S. territory.

The [new interpretation](#) described by the United States holds that article 16 and other provisions with similar jurisdictional language apply "in places outside the United States that the U.S. government controls as a governmental authority." The United States clarified its belief that the obligations apply at the U.S. Naval Station at Guantanamo Bay and with respect to U.S.-registered ships and aircraft, but [declined to specify](#) the full geographical extent of the treaty obligations as a matter of law. However, the government submission to the Committee emphasized that a number of U.S. laws, including the [Detainee Treatment Act](#) and [E.O. 13491](#), prohibit without geographic limitation the mistreatment of individuals under the physical or effective control of U.S. personnel.

While some observers hail the revision as a [significant departure](#) (or at least a [modest](#) one) from the previous Administration, [others believe](#) the new definition does not close all of the perceived gaps. Specifically, [some observers argue](#) that the limitation of the ban to territories the U.S. government controls *as a governmental authority* would not have prevented the maltreatment of prisoners at the so-called CIA black sites previously operated on foreign soil, because these areas remained under the territorial jurisdiction of the host countries. [Defenders](#) of the government position point out that U.S. laws prohibiting ill-treatment of detainees would prevent such activities regardless of CAT. Some critics express a preference for a binding international legal standard covering areas under *de facto* U.S. control because national laws are subject to amendment or repeal. Moreover, it is argued, a broader interpretation of the treaty would place the United States in a better position to object to any future extraterritorial prisoner abuse by other countries. On the other hand, there was [some opposition](#) to changing the U.S. position based on concerns that recognizing the applicability of CAT could limit operational flexibility for detention operations overseas and could provide a means for detainee lawsuits against the United States.

The U.S. delegation also [announced a clarification](#) with respect to the U.S. view regarding the applicability of CAT during time of war. In particular, the Administration explained its understanding that CAT is not

superseded by the law of armed conflict; rather, it stated that the law of armed conflict takes precedence over CAT only where the two conflict. The [previous Administration took the position](#) that the law of armed conflict displaced CAT to govern detainee operations.