**CYBER-TORTURE AS A NEW THREAT TO HUMAN RIGHTS IN DIGITAL AGE**

***Pham Thanh Son, M.A.[[1]](#footnote-1)\****

*Abstract:*The article outlines the basic perceptions about cyber-torture from the perspective of International Human Rights law and the dangerous effects of cyber-torture on human rights, in order to analyze and evaluate its necessity and solutions in the prevention and control of cyber-torture in digital age.

In a highly information and communications technology-based world, the fundamental human right and basic ethical principle is facing an increasing threat. Cyber technology is used to inflict severe mental and physical sufferings. These psychological torture methods are often used “to circumvent the ban on torture because they don’t leave any visible marks”. Some of the characteristics of cyber-space make it an environment highly conducive to abuse and exploitation, most notably a vast power asymmetry, virtually guaranteed anonymity, and almost complete impunity. States, corporate actors and organized criminals not only have the capacity to conduct cyberoperations inflicting severe suffering on countless individuals, but may well decide to do so for any of the purposes of torture. It is therefore necessary to briefly explore, in a preliminary manner, the conceivability and basic contours of what could be described as “cyber-torture”.

Analysis of this content will help to answer questions: (i) what is a cyber-torture? (ii) what kind of dangerous effects of cyber-torture on human rights from the perspective of International Human Rights law and measures to prevent and control cyber-torture in digital age?

*Key words:* human rights; cyber-torture.

**1. Definition and characteristics of cyber-torture**

There are certain types of treatment which most people will instinctively recognise as being torture. The United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment (UN Convention Against Torture, UNCAT) is on of the few international treaties that set out a definition of torture. The majority of human right treaties such as the International Covenant on Civil and Political Right (ICCPR), the European Convention on Human Rights (ECHR), the American Convention on Human Right (ACHR) and the African Charter on Human and People’ Rights (ACHPR) include a prohibition but do not contain a definition of torture and ill-treatment. Although human rights bodies may take slightly different approaches to defining torture, they are all broadly similar to the definiton adopted by UNCAT[[2]](#footnote-2).

The basic definition of torture is that contained in the UNCAT. According to Article 1, the term means: “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, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”[[3]](#footnote-3).

From this definition, it is possible to extract three essential elements which constitute “torture”: The infliction of severe mental or physical pain or suffering; By or with the consent or acquiescence of the state authorities; For a specific purpose, such as gaining information, punishment or intimidation. Torture is an emotive word, but one which should not be used lightly. As you can see from the above definition, torture is characterised and distinguished from other forms of ill-treatment by the severe degree of suffering involved. It is therefore important to reserve the term for the most objectively serious forms of ill-treatment.

Torture (whose ‘secondary’ behavior is punishment, cruel, inhumane treatment, or corporal punishment) is both a legal and an ethical and cultural issue. From a moral and cultural perspective, the UN condemns torture as one of the most inhumane and despicable acts that people commit to their fellow human beings, because torture denies their dignity and destroys physique and soul of the victims - those put in the defenseless circumstances. From a legal perspective, according to international human rights law, torture is one of the most severe forms of human rights violations and the most criticized act. According to international criminal law, torture systematically and commonly carried out depending on the context may constitute genocide, war crimes or crimes against humanity; that is, forms of international crime for which perpetrators can be prosecuted and judged in accordance with Rome Statute (1998).

A particular area of concern, which does not appear to have received sufficient attention, is the possible use of various forms of information and communication technology (cyber-technology) for the purposes of torture. Although the promotion, protection and enjoyment of human rights on the internet has been repeatedly addressed by the Human Rights Council, torture has been understood primarily as a tool used to obstruct the exercise of the right to freedom of expression on the internet, and not as a violation of human rights that could be committed through the use of cyber-technology.

Some of the characteristics of cyber-space make it an environment highly conducive to abuse and exploitation, most notably a vast power asymmetry, virtually guaranteed anonymity, and almost complete impunity. States, corporate actors and organized criminals not only have the capacity to conduct cyberoperations inflicting severe suffering on countless individuals, but may well decide to do so for any of the purposes of torture. It is therefore necessary to briefly explore, in a preliminary manner, the conceivability and basic contours of what could be described as “*cyber-torture*”.

- Cyber-technology already plays the role of an “enabler” in the perpetration of both physical and psychological forms of torture, most notably through the collection and transmission of surveillance information and instructions to interrogators, through the dissemination of audio or video recordings of torture or murder for the purposes of intimidation, or even live streaming of child sexual abuse “on demand” of voyeuristic clients[[4]](#footnote-4), and increasingly also through the remote control or manipulation of stun belts[[5]](#footnote-5), medical implants and, conceivably, nanotechnological or neurotechnological devices.

- Cyber-technology can also be used to inflict, or contribute to, severe mental suffering while avoiding the conduit of the physical body, most notably through intimidation, harassment, surveillance, public shaming and defamation, as well as appropriation, deletion or manipulation of information.

- With the advent of the Internet, State security services in particular have been reported to use cybertechnology for the systematic surveillance of a wide range of individuals and for direct interference with their unhindered access to cyber technology. Electronic communication services, social media platforms and search engines provide an ideal environment both for the anonymous delivery of targeted threats, sexual harassment and extortion and for the mass dissemination of intimidating, defamatory, degrading, deceptive or discriminatory narratives.

Individuals or groups systematically targeted by cybersurveillance and cyberharassment are generally left without any effective means of defence, escape, or self-protection and, at least in this respect, often find themselves in a situation of “powerlessness” comparable to physical custody.

Likewise, the generalized shame inflicted by public exposure, defamation and degradation can be just as traumatic as direct humiliation by perpetrators in a closed environment. As various studies on cyber-bullying have shown, already harassment in comparatively limited environments can expose targeted individuals to extremely elevated and prolonged levels of anxiety, stress, social isolation and depression, and significantly increases the risk of suicide. Arguably, therefore, much more systematic, government-sponsored threats and harassment delivered through cybertechnologies not only entail a situation of effective powerlessness, but may well inflict levels of anxiety, stress, shame and guilt amounting to “severe mental suffering” as required for a finding of torture.

More generally, in order to ensure the adequate implementation of the prohibition of torture and related legal obligations in present and future circumstances, its interpretation should evolve in line with new challenges and capabilities arising in relation to emerging technologies not only in cyberspace, but also in areas such as artificial intelligence, robotics, nanotechnology and neurotechnology, or pharmaceutical and biomedical sciences, including so-called “human enhancement” [[6]](#footnote-6).

**2. Cyber-torture from the perspective of International Human Rights law**

The United Nations Convention Against Torture in 1984 (UNCAT) defines torture at length. The components of this definition can be summarised as: severe physical or mental pain or suffering; that it is inflicted intentionally in order to obtain information, a confession, inflict punishment, to intimidate or to coerce, ‘or for any reason based on discrimination of any kind’; and is carried out by, at the instigation of, or with the consent or acquiescence of, someone acting in an official capacity.

 How to ascertain when these criteria are met, especially given that “severe” is not defined and that suffering can be difficult for victims to describe, has proven challenging for international human rights courts.

It is particularly relevant to discussions of cyber-torture that UNCAT explicitly acknowledges that the suffering caused by torture can be physical or mental, such as exposing prisoners to extreme heat or extreme cold, physical violence and the prolonged enforcement of uncomfortable or painful positions known as “stress positions”. Not only do these primarily physical methods have a psychological or mental effect on those who are exposed to them, but other methods of torture are primarily psychological in character. These include threatening the prisoner with execution and with aggressive dogs. Torture therefore can be, and often is, mental as well as physical in its methods and effects.

Media coverage of controversial interrogation techniques used by western states in the War on Terror has equated, and at times confused, interrogation with torture. Being clearer about what practices are being discussed will benefit analysis of the impact and legality of these practices.

Seeking information by conducting interrogation does not always involve torture. As the UNCAT definition reminds us, torture is not always motivated by a desire to gain information from the person being subjected to torture: revenge has been exacted on prisoners who a capturing army believed - accurately or otherwise - were responsible for the death of their comrades; and sadism has motivated individual prison guards, for example. For actions to constitute torture as defined by UNCAT, the intentionality behind the action is key. The purpose of torture is to obtain information or a confession, to punish, intimidate or coerce, or it is carried out “for any reason based on discrimination”.

Human rights law is based on acceptance of the idea that everyone has certain rights by virtue of being human. The European Convention on Human Rights and Fundamental Freedoms (ECHR), for example, states that everyone’s right to life shall be protected by law and that no one “shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”. The ECHR prohibits slavery and forced labour, and protects the rights to liberty, security, respect for private and family life, and freedom of thought, amongst others. Article 3 of the ECHR reads, “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

The landmark case in establishing the interpretation of the term ‘torture’ in the ECHR was the European Court of Human Rights’ 1978 judgment[[7]](#footnote-7). Having considered a group of five interrogation techniques used against terror suspects in Northern Ireland in 1971, the Court found that these techniques had caused ‘if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation’. These five interrogation techniques consisted of being hooded with a black pillowcase, exposure to loud, continuous white noise, stress positions, limited food and water, and limited sleep. It is noteworthy that these techniques were found by medical professionals to have induced psychological trauma as well as physical effects, and that the Court, too, acknowledged these effects in their judgment[[8]](#footnote-8).

The Court judged, however, that these techniques ‘did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood’. Human rights standards have changed since 1978 and that if faced with the same evidence in much more recent years the Court would judge that these techniques did amount to torture. Certain of the ECHR’s rights can be waived in times of emergency threatening the life of the nation. The prohibition of torture is not one of these rights: the ECHR’s prohibition can never be put to one side.

Traditionally threatening people by telling them that they or their families will be killed, or threatening them with losing money or their credit have been used as means of causing pain for the reasons given in the definition of torture. Comparing this with cyber phishers’ modi operandi reveals many similarities. The majority of phishing websites and emails threaten their victims by stating that not following the attackers’ instruction would cause huge debt, a big unpaidinvoice, or a serious court case, hence many of them can meet the pain and intentionality elements of torture. It is not difficult to see how the intentions behind these phishing campaigns can be to obtain information, to punish, to intimidate or coerce. All the examples of cyber methods identified above primarily caused mental suffering. In some instances this leads the victim to inflict physical suffering on themselves. Consideration can – and should – also be given to whether cyber methods can directly cause physical suffering.

Although there is no reliable evidence of cyber-physical suffering yet, the fast adoption of the Internet of Things and Internet of Nano Things devices which provide nano-sized smart devices that are planted in the human body to monitor and control elements essential to life would bring opportunities to conduct physical cyber torture. Implantable smart medical devices such as Pacemakers and Implantable Cardiac Defibrillators are known to have many security and privacy vulnerabilities that could potentially be abused to cause severe physical pain.

There is already evidence of a correlation between cyberbullying, cyber phishing campaigns, digital privacy invasion and online identity fraud on the one hand and the pain, suffering and intentionality elements of the UNCAT definition of torture on the other. Understanding the frequency and size of these attacks may help in getting a good view of the importance of the cyber torture issue. Over half a billion personal information records were stolen in 2015 which can be potentially abused to cause severe issues for individuals. The risk of large companies’ employees being targeted by threatening phishing emails reached 1 in 40.5 in 2015 while the number of forensic investigation cases that detect hacked Internet of Things devices continue to increase. The element of the UNCAT definition of torture that it is more difficult to prove is being met by cyber activities is the specification that torture is something done “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. In other words, this legal definition of torture is only met when it is carried out by someone working for the state in some way. Cyberbullying, for instance, does not always meet this element of the definition of torture. It is perfectly plausible, however, that cyberbullying could be carried out in an official capacity.

In the cyber world, tracks can be hidden easily, making it difficult to establish who is responsible for attacks. What cannot be disputed, however, is that states do have the capacity to conduct the kinds of cyber activities identified as meeting the severity of suffering threshold given in the definition of torture. Further, it is easy to imagine cases where they would also have the motivation for engaging in cyber-torture, therefore satisfying all three elements of the definition of torture[[9]](#footnote-9)..

Freedom from Cyber Torture: The Missing Element of Human Rights Discussion As established by the European Court of Human Rights in 1978 torture is suffering of particular intensity and cruelty. It is clear that cyber activities can satisfy this element of the definition of torture. The other elements of the UNCAT definition of torture can also align with cyber practices in that they can cause severe pain or suffering that is intentionally inflicted for purposes including punishment, intimidation, coercion or “any reason based on discrimination’ and that they can be carried out ‘by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

 Cyber-torture is a possibility and is highly likely to happen. The correlation between cyber activities and torture does not contest the definition of torture as established by international human rights law and associated jurisprudence. Instead, it highlights a need to think differently about torture. No longer should we conceptualise torture as something that takes place solely when the torturer and victim are in close physical proximity to one another. The cyber dimension as discussed here highlights that torturer and victim can be physically distant. The victim does not need to be a physical prisoner of a torturer to be exposed to torture. This is not entirely new: phone calls and letters might have been used to conduct torture in the past. Cyber and its quality of being widespread, however, expands the reach of torturers.

**3. The need and solutions for cyber-torture prevention**

The Special Rapporteur's thematic report made an important contribution to a holistic understanding of torture and called upon all States to fully investigate all alleged cases of torture and safeguard the human rights of every individual. The report further provided States with an opportunity to recognize whether its current practice tended to deny, neglect or misinterpret psychological torture. Torture could not be justified under any circumstance and all States were bound to the prohibition of torture under customary international law. Therefore, the necessary solutions in the prevention and combat of cyber-torture are as follows:

*- Firstly*, the issue of psychological torture was very complex, but need to be aware affirmed that there was no difference between the physical and psychological or mental forms of torture.

There needed to be a definition of psychological torture within national legislation, and it was noted that some countries already had psychological torture incorporated in their national anti-torture acts. Countries also had prevention mechanisms, national human rights commissions, and special units that were assessing the rights of detainees and reporting on torture.

*- Secondly*, need to be ware the importance of clarifying the distinction between permissible non-coercive investigative techniques and prohibited coercive interrogation as a manner of preventing both physical and psychological torture was welcomed. Cyber-torture as an emerging area of concern. It was worth exploring the impact of technological and communication advances and their impact on psychological torture. It was acknowledged that torture could occur in many different contexts, and both international and national efforts had to focus on the prevention of torture. The use of torture in the fight against terrorism should also be looked at thoroughly. Growing incidents of psychological torture were being meted out to migrants and refugees, ostensibly for security reasons; these were alarming and had to be looked into. All States, particularly the members of the Human Rights Council, were further invited to extend a standing invitation to all Special Procedures.

*Thirdly*, in enhancing normative, institutional and policy frameworks in relation to the prohibition of torture and ill treatment, appropriate policy tools were essential. There is a need to establish zero tolerance policies for torture and abuse. States had to be given adequate support, technical assistance, flexibility and sufficient time to develop national mechanisms. Relevant remedies had to be put in place to support victims of torture and States had to be supported in strengthening accountability and remedy mechanisms. In this context, the importance of the United Nations Voluntary Fund for the Victims of Torture was underscored.

*- Fourthly,* States and human rights groups must acknowledge the strong possibility that cyber-torture either is happening or will happen. Torture is forbidden by international human rights law, states have an obligation to ensure their employees are not engaged in, consenting to or acquiescing to cyber-torture. As well as having this forward-looking obligation, they should ensure that disciplinary action is taken against those found to have already engaged in, consented to or acquiesced to cyber torture. Human rights groups such as Amnesty International, who continue to campaign against torture, have a key role to play in raising states’ awareness of what is taking place in their country’s name.

*- Fifthly,* greater awareness amongst the medical profession and amongst those who are in a position to refer victims for restorative treatment will increase the frequency with which victims of cyber torture are offered appropriate medical support. Cyber-torture has implications for the medical practitioners who treat victims of torture. It is important that victims of all forms of torture who want to receive treatment for what they have experienced can access appropriate, timely treatment and expertise.

*- Finally,* understanding of the means by which torture can be conducted must keep pace with cyber developments in order that successful efforts can be made to keep cyber space free from torture.

In a highly information and communications technology-based world, cyber-technology is used to inflict severe mental and physical sufferings. Some of the characteristics of cyber-space make it an environment highly conducive to abuse and exploitation, most notably a vast power asymmetry, virtually guaranteed anonymity, and almost complete impunity. States, corporate actors and organized criminals not only have the capacity to conduct cyberoperations inflicting severe suffering on countless individuals, but may well decide to do so for any of the purposes of torture. It is therefore necessary to briefly explore, in a preliminary manner, the conceivability and basic contours of what could be described as “cyber-torture”, especially cyber-torture from the perspective of International Human Rights law, that word can be seen the need and solutions for cyber-torture prevention.

**P.T.S**

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1. \* Faculty of Law - People's Security Academy; PhD Candidate - School of Law, Vietnam National University, Hanoi.

This paper is part of the doctoral thesis titled “Improving Vietnamese law on prevention and fighting of torture – Hoàn thiện pháp luật Việt Nam về phòng, chống tra tấn” that PhD Candidate Pham Thanh Son is working on at the School of Law, Vietnam National University, Hanoi. [↑](#footnote-ref-1)
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3. United Nations - UNO (1984), *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [↑](#footnote-ref-3)
4. See A/HRC/28/56, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, para.71 [↑](#footnote-ref-4)
5. See A/RES/72/178, Resolution adopted by the General Assembly on 19 December 2017 - The human rights to safe drinking water and sanitation , para.51 [↑](#footnote-ref-5)
6. See World Report on “Torture and other cruel, inhuman or degrading treatment or punishment”, Pro. Nils Melzer - the UN Special Rapporteur on Torture (2020). This report included a definition of “Cybertorture,” the Crime Against Humanity where millions of targeted victims worldwide are remotely assaulted with Electromagnetic Weapons in actions directed via computer, often from Supercomputers. [↑](#footnote-ref-6)
7. Ireland v. The United Kingdom. [↑](#footnote-ref-7)
8. See A Torture-Free Cyber Space: A Human Right, Samantha Newbery and Ali Dehghantanha (2017), http://usir.salford.ac.uk/43421/ [↑](#footnote-ref-8)
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