1. INTRODUCTION

To what extent are States obliged to give effect to the international prohibition on torture? Does the ban entail accessory obligations such as State compensation of the victim or the inadmissibility of evidence procured by torture? Further, do different rules apply to different organs of the State? The House of Lords (HoL) of the United Kingdom (UK) was confronted with these questions in a recent motion on the admissibility, in a domestic court, of evidence procured by torture meted out by foreign officials. The ensuing ruling is of great significance for international law because it sheds light, inter alia, on a national judicial view on the extent of State responsibility for the eradication of torture. After introducing the factual backdrop and summarising the judgment, I shall consider whether or not the Lords satisfactorily balanced the competing ideals of national security and human rights. I conclude by suggesting a different solution.

The torture ruling is a case of not inconsiderable complexity, so, for the sake of clarity, an outline of the international law on torture and the relevant domestic legislation precedes the description of the detainees’ journey through the courts.

2. INTERNATIONAL AND DOMESTIC LEGAL BACKGROUND

In terms of the international jurisprudential backdrop, all of the Law Lords accepted that torture enjoys the status of jus cogens; a norm of higher rank in the international hierarchy than treaty law and even “ordinary” customary rules. The deci-
sion of the International Criminal Tribunal for the Former Yugoslavia in *Prosecutor v. Furundzija* was cited as an authoritative explanation of the consequences of this status. The following excerpts are of particular relevance:

"States are obliged not only to prohibit and punish torture, but also to forestall its occurrence [...]. International law intends to bar not only actual breaches but also potential breaches of the prohibition against torture (as well as any inhuman and degrading treatment)".

"Furthermore, this prohibition is designed to produce a deterrent effect, in that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody must deviate [...]. At the interstate level, it serves to internationally de-legitimise any legislative, administrative or judicial act authorising torture".

The actual nature of the international consensus on the prohibition on torture has been fleshed out in the United Nations Convention against Torture (UNCAT). Article 2(2) provides: "No exceptional circumstance whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".

Article 15 of UNCAT refers to the issue in point, the use of torture evidence in proceedings: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

The HoL opined that UNCAT represented an all but universal consensus on international law.

The next step is to set out the relevant national human rights legislation before showing how the afore-mentioned international legal features are accommodated in the domestic legal landscape. Thereafter, the specific statutory regime that spawned the "foreign torture evidence" litigation will be outlined.

The Human Rights Act 1998 (HRA) partially incorporates the European Convention on Human Rights (ECHR) into UK law. The HRA itself dictates that the courts are obliged to take Strasbourg jurisprudence into account in determinations relating to convention rights and, to the extent it is possible, to interpret and

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5 Ibidem, para. 148.
6 Ibidem, para. 155.
7 In so far as it is relevant, Article 1 of UNCAT defines "torture" as "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 [...]".
8 UKHL, 2005, p. 71, para. 52.