

STREETLAW: Convention Against Torture

SOURCE: Original and ACLU website

DATE: March 26, 2007

TIME: 50 minutes [Note: this class works great as a follow up to a class on the Death Penalty and the 8th Amendment and this class could also work really well over two 50 minute periods or a 1.5 hour period]

I. GOALS:

- A. Students should learn the basics of authority and formulation for international law processes
- B. Students will learn about torture as defined in international law and where the United States fits
- C. Students should learn to critically analyze a legal problem through public policy arguments

II. OBJECTIVES

A. Knowledge Objective

- Learn the definition for torture under the CAT
- Learn how international law is created, how norms are formed and the types of international law
- Learn how the U.S. views the CAT and where it stands in relation to other countries in the world

B. Skill Objective

- Learn how to read and understand international treaty language
- Practice applying treaty definitions to a fact pattern
- Learn how to make policy arguments for legal outcomes

C. Attitude Objective

- Begin to feel comfort with a ‘difficult’ or ‘big’ topic like international law
- Learn about an important current event topic in international law, and feel comfortable having an opinion about it

- Have an open mind about foreign policy, the U.S. politicians are not always right and it is okay to disagree with elected officials

III. CLASSROOM METHODS

A. Mini Lecture: Sources of International Law and the CAT [8-10 minutes]

1. Pass out international law handout
2. Lecture about the sources of international law asking students to follow the flow chart and take notes
 - i. Explain the most important distinction is between whether an obligation flows from treaty law or customary international law but that both are potentially binding on a State
 1. may have to explain that “State” in our context means country
 - ii. Make it very clear that while signing a treaty makes it easy to determine who is obligated, most international law is enforced as customary international law where consent is imputed because once a norm reaches the level of custom, it’s assumed that all rational States agree and will act accordingly
3. Pass out Convention Against Torture excerpt
 - i. Ask student volunteers to hit the buzz words in FIRST, the preamble language of the treaty and SECOND, Article I and II
 - ii. Does this language sound familiar? Does it sound like anything we’ve studied under U.S. Constitutional Law?
 1. should draw parallels to 8th Amendment
4. Ask student volunteer(s) to put torture in their own words and ask clarifying questions
 - i. Would “this” be torture → replace “this” with (1) making someone stand on one foot for an hour (2) for ten hours (3) depriving someone of food for one day (4) for three days (5) calling someone bad names for three hours straight (6) for twenty hours straight (7) tying someone flat to a backboard and dunking their head under water simulating drowning
 - ii. Would something that falls under “torture” under the CAT also violate the 8th Amendment in the U.S.?

B. Triads Modified: Senate Hearing on Torture Hypothetical [25 minutes]

1. Pass out “Senate Briefing” Handout to everyone in class
2. Ask students to read the directions, the hypothetical and the questions on the sheet

- iii. FINAL THOUGHT: The U.S. has also said that when fighting a war against non-army combatants Geneva Conventions do not apply, so if CAT doesn't apply and other international standards don't apply to the U.S.; should this be okay?

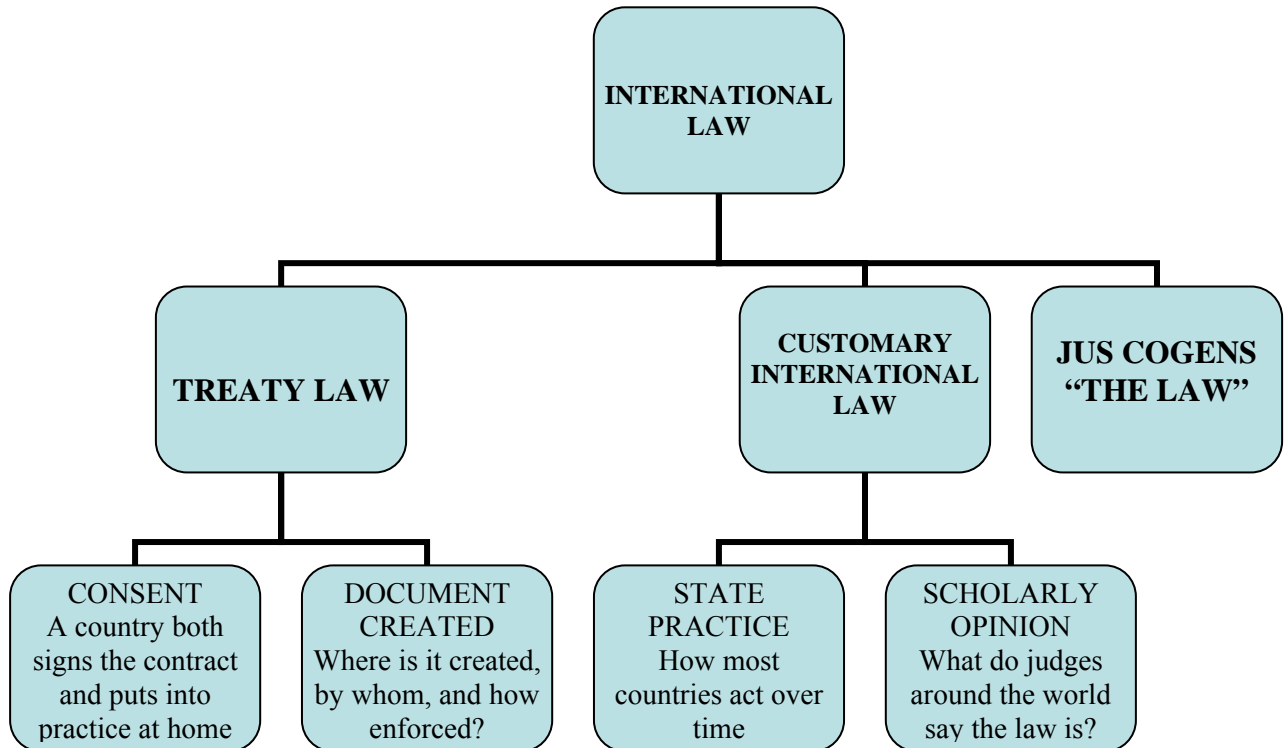
IV. EVALUATION

- A. Participation in the active part of the lecture
- B. Participation in the Senate Hearing in assigned role
- C. Homework assignment

V. ASSIGNMENT

- A. Write one page on how you would instruct your Senator about either ratifying the CAT or NOT and whether certain reservations should be included in the ratification package or not.

International Law Formation and Authority



- **Treaty Law:** If a State (country) has not signed a treaty and ratified it, meaning taken some step to put it in practice at home, then that State *has not consented* to be bound by its terms
- **Customary Intl. Law:** Even if State A has not signed a treaty, if every other State in the world, or most states have signed the treaty, then this would be evidence that most countries think the treaty is a good thing. So even if State A has not signed the treaty, its principles may become binding.
- **Jus Cogens:** There are some laws or types of laws that every State in the world would agree to, and therefore are binding on every State without evidence of consent (via treaty) or state practice (customary international law). An example would be slavery.

CONVENTION AGAINST TORTURE and Other Cruel, Inhuman or Degrading Treatment or Punishment

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)),

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

Part I

Article 1

1. For the purposes of this Convention, torture 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.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances 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.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

**Interrogation of Terrorist Suspects
Review by Senate Committee on International Relations
Sub-Committee on Justice in Foreign Affairs**

Senators: Please review the enclosed factual summary in anticipation of today's hearing on the use of coercive interrogation techniques by U.S. agents when attempting to collect information from suspected terrorists and other detained persons.

The hypothetical should be read in light of the attached Convention Against Torture and brief Primer on International Law Formation and Authority. You will also hear oral arguments from your colleagues on the issues presented, both for and against. In light of all of this information, please answer the questions following the hypothetical.

HYPOTHETICAL SCENARIO

The U.S. Central Intelligence Agency (CIA) and the U.S. State Department in a coordinated effort just raided a terrorist group in North Africa. They have determined four things:

- (1) The group has organized and carried out bombings of U.S. embassies in the past year
- (2) The group has planned another attack and a bomb is planted somewhere in Morocco
- (3) Only the two leaders of the group know the location of the bomb, AND
- (4) An informant has told officials that the bomb is set to go off in three days and that at least 300 innocent lives are at stake.

The CIA and State Department have contacted Congress and assure them that if they are allowed to use moderate torture in order to coerce the two terrorist leaders then they FOR SURE can get the information necessary to locate the bomb and save at least 300 lives. The CIA has used food and sleep deprivation and forced standing against a wall for hours on end in the past with much success but may also try simulated drowning if necessary.

QUESTIONS:

- 1. Would these techniques be considered torture under the CAT definition?**
- 2. Since the U.S. ratified the CAT with reservations, is the U.S. bound by all its terms?**
- 3. Is any level of torture okay? What practices are acceptable?**
- 4. Would this situation be an exception to the rule? Should there be an exception?**

IN SUPPORT OF USE OF TORTURE IN THIS CASE:

The Convention Against Torture (CAT) is an international treaty and therefore is only binding on those countries that have signed it and consented to it. The U.S. has signed the treaty and consented to it only so long as certain reservations are met. In no way does the U.S. argue that the CAT is not a valid treaty or that there are certain principles that are binding on the U.S. because they are so important to lawful society. This is very important in this case.

The U.S. applauds the definition of torture in the treaty, but the interpretation of that definition is what is important. The U.S. however expressly conditioned its consent to be bound by the CAT on the understanding that the terms “cruel, unusual and inhumane treatment” contained in Article 1 mean the same thing as provided by the Constitution. Therefore, if an activity is lawful under the Constitution (5th, 8th and 14th Amendments), then it cannot violate the terms of the CAT. The U.S. government does not torture, instead a very closely monitored process of recommending and approving techniques for interrogation is reviewed in light of the CAT and other law. In fact, the U.S. government passed the Detainee Treatment Act in 2005 which outlaws engaging in or authorizing all forms of cruel or inhumane treatment or torture by soldiers and other officials questioning terrorist suspects.

This is also important to note; that the detainees are terrorist suspects. The U.S. is at war and a country at war has always been afforded the right to defend itself. Yet, because terrorists are not a country, but individuals, the only way to combat individuals is to deal with individuals. Just like any suspect for murder or robbery would be subject to interrogation, so too is a terrorist suspect. And, just like any suspect for murder or robbery, coercive but lawful tactics may be employed in order to get a confession or other information. Making someone stand on one leg for a long time may be coercive, but it is not torture; the individual may merely suffer fatigue and fall over. Even if he hits his head and suffers a concussion, his small discomfort, if the suspect talks, is a small price to pay for saving innocent American lives. Other countries that do not have the same level of terrorist problems, coming from every corner of the globe, do not understand the important need for an international legal norm that allows exception. The U.S. can ill-afford the reality of another 9/11, especially if it is within our power to prevent it.

THINK ABOUT THE PROBLEM. USING THE CAT DEFINITION AND THE EXTRA FACTS ABOVE, WHAT WOULD YOU SAY TO THE SENATE COMMITTEE IN ORDER TO APPROVE TORTURE TECHNIQUES IN THIS CASE:

- 1. What arguments are most helpful above?**
- 2. Can you expand on any of these policy arguments, or create examples that would help paint a better picture for a Senator?**
- 3. What responses or arguments can you anticipate from the other side? Can you defend against them?**

AGAINST ALL TORTURE FOR ANY REASON:

The United States has failed its obligations under international law and the Convention Against Torture (CAT) both inside and outside the U.S. Because the CAT came out of a long line of treaties advocating a broad protection of human rights, the definition of torture contained in Article 1 was intended to be broad and supplement domestic laws. In this respect, there is a presumption that if an act could fall under the definition, then it does fall under the treaty definition, unless really good evidence shows otherwise. The U.S. has not presented this “really good evidence” to overcome a presumption of torture in their treatment of SUSPECTED terrorists after September 11th.

The U.S. has chosen to apply the definition very narrowly and argues that it cannot apply when the act in question takes place outside the United States. Since the U.S. interrogates suspects all over the world, any violations would not “count” under this reading of the torture definition. Yet, it is clear from documents produced by the United States government that detained suspects have been subjected to torture through interrogations, which includes sleep deprivation, denial of food and water, intimidation by dogs, simulated drowning and stripping prisoners naked while committing extreme and severe verbal abuse targeting race and religion.

Certainly suspected terrorists should be interrogated, but not in a way that completely undermines the basic principles of law. Nowhere under international law or U.S. domestic law, is it permitted to use these severe techniques in order to get a confession or other information. Moreover, often these detainees are subjected to these interrogations without an attorney present and without being informed that they don’t have to talk. These are fundamental and basic protections afforded all suspects of crimes in the United States as guaranteed by the 4th and 5th Amendments.

These actions should show that it is NEVER okay to pursue torture to gain a confession. This is a firm line in international law that the United States should not be allowed to cross.

THINK ABOUT THE PROBLEM. USING THE CAT DEFINITION AND THE EXTRA FACTS ABOVE, WHAT WOULD YOU SAY TO THE SENATE COMMITTEE IN ORDER TO PREVENT ALL FORMS OF TORTURE?

- 1. What arguments above are most helpful?**
- 2. Can you expand on any arguments, or create examples of some of these principles that might help paint a better picture for the Senators?**
- 3. What responses from the other side can you anticipate and defend against?**