

# Compendium of Law Relevant to Acts Associated with the Process of Extraordinary Rendition

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Please note: page numbers associated with names of victims refer to the document, *Extraordinary Rendition and Torture Victim Narratives*, which contains narrative descriptions of the experiences of individuals transported on Aero planes.  
<http://www.law.unc.edu/documents/academics/humanrights/extraordinaryrenditionandNC.pdf>.

## 1. Extreme Physical Pain

- Description of the acts associated with the process of Extraordinary Rendition:
  - Tied to a wall and forced to stand for over an hour while movements restricted, in handcuffs
    - Pg. 27, Al Hajj
  - Binding hands/shackling
    - Pg. 45, Mohammed al-Asad
    - Pg. 90, Mohammed Saad Iqbal Madni
    - Pg. 99, Mohammed El-Zari
    - Pg. 116, Jamil Qasim Saeed Mohammed
    - Pg. 316, Khaled Sheikh Mohammed
    - Pg. 348, Jamil el-Banna
    - Pg. 373, Abu Zubaydah
    - Pg. 400, Bisher al-Rawi
  - Slicing/Tearing off clothing
    - Pg. 46, Mohammed al-Asad
    - Pg. 82, Mustafa Salim Ali el-Madaghi
    - Pg. 90, Mohammed Saad Iqbal Madni
    - Pg. 99, Mohammed El-Zari
    - Pg. 156, Abd Al-Salam Al-Hilah
    - Pg. 348, Jamil el-Banna
  - Sexual Assault/Rape—See Sexual Assault/Sexual Pain (Section II) below
    - Pg. 72, Ramzi bin al-Shibh
    - Pg. 99, Mohammed El-Zari
    - Pg. 419, Khaled El-Masri
  - Forced/thrown/chained onto planes
    - Pg. 46, 47 Mohammed al-Asad
    - Pg. 59, Salah Nasir Salim Ali Qaru
    - Pg. 90, Mohammed Saad Iqbal Madni
    - Pg. 99, Mohammed El-Zari

- Pg. 159, Abd Al-Salam Al-Hilah
    - Pg. 247, Walid bin Attash
  - Painful Physical Restrictions/Strapped down
    - Pg. 46, 47 Mohammed al-Asad
    - Pg. 90, Mohammed Saad Iqbal Madni
    - Pg. 348, Jamil el-Banna
    - Pg. 373, Abu Zubaydah
  - Forcibly put into a diaper—See Mental Pain (Section III) below
    - Pg. 72, Ramzi bin al-Shibh
    - Pg. 82, Mustafa Salim Ali el-Madaghi
    - Pg. 99, Mohammed El-Zari
    - Pg. 129, Mohamedou Ould Slahi
    - Pg. 373, Abu Zubaydah
    - Pg. 419, Khaled El-Masri
  - Taped hood/hooded around head
    - Pg. 46, 47 Mohammed al-Asad
    - Pg. 59, Salah Nasir Salim Ali Qaru
    - Pg. 99, Mohammed El-Zari
    - Pg. 116, Jamil Qasim Saeed Mohammed
    - Pg. 129, Mohamedou Ould Slahi
    - Pg. 156, Abd Al-Salam Al-Hilah
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    - Pg. 348, Jamil el-Banna
    - Pg. 373, Abu Zubaydah
    - Pg. 400, Bisher al-Rawi
    - Pg. 420, Khaled El-Masri
  - Physically beaten
    - Pg. 90, Mohammed Saad Iqbal Madni
    - Pg. 227, Yanus Rahmatullah
    - Pg. 247, Walid bin Attash
    - Pg. 419, Khaled El-Masri
  - Forced injections without consent/medical purpose
    - Pg. 227, Yanus Rahmatullah
    - Pg. 400, Bisher al-Rawi
- **International Law**
  - These laws are applicable to North Carolina, political subsidiaries of the United States and Aero by virtue of the United States ratifying treaties, pursuant to the United States Constitution Article II, § 2, clause 2 (“He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur”) and Article VII, (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be

the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”). Constitutionally, therefore, these treaties are applicable to the United States. Customary international law, otherwise known as the “law of nations,” is applicable to the United States through the Alien Tort Statute, which domesticates “law of nations.” (18 U.S.C. 1350).

- Rome Statute of the International Criminal Court.
  - If considered “law of nations,” then it is applicable to the United States through the Alien Tort Statute, which domesticates “law of nations.” (18 U.S.C. 1350).
  - Art. 7. Crimes Against Humanity.
    - Including torture, enslavement, imprisonment, enforced disappearance of persons, and severe deprivation of physical liberty under crimes against humanity.
  - Art. 8. War Crimes
    - Including torture, unlawful deportation or transfer or unlawful confinement, and willfully causing great suffering under war crimes, among others.
- Convention Against Torture.
  - The Convention Against Torture (CAT) is applicable as an international treaty against the United States, North Carolina, and Aero, because the United States ratified the CAT in Oct. 1994, and became an active obligation on Nov. 20, 1994. The United States “made a declaration pursuant to article 21, paragraph 1, recognizing the competence of the Committee against Torture, on a reciprocal basis, to receive and consider a State party’s claims that another State party is not fulfilling its obligations under the Convention.” Consideration of Reports Submitted by United Nations, State Parties Under Article 19 of the Convention, Oct. 15, 1999. <https://www.state.gov/documents/organization/100296.pdf>. Further, both 18 U.S.C § 2340 and The Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) were enacted to implement the Convention Against Torture in the former, and specifically Art. 3 of CAT in the latter.
  - Art. 1
    - Defining torture
  - Art. 2
    - Requiring state parties to take legislative action to prevent torture
  - Art. 3
    - Prohibiting the return or extradition of a person to another place where that person will be subjected to torture.

- Art. 4
  - Requiring state parties to ensure all acts of torture will be criminal offenses.
- Art. 5
  - Establishing jurisdiction over offenses.
- Art. 6
  - Requiring state parties to take legal measures to take offenders into custody.
- Art. 7
  - Requiring state parties to submit an offender's case to competent authorities.
- Art. 11
  - Requiring state parties to systematically review interrogation procedures to prevent torture.
- Art. 12
  - Requiring state parties to implement a prompt and impartial investigation into acts of torture
- Art. 13
  - Giving victims of torture the right to have their case impartially examined by competent authorities.
- Art. 14
  - Requiring state parties to give victims an enforceable right to fair and adequate compensation.
- Universal Declaration of Human Rights
  - While the United States has not signed and ratified the Universal Declaration of Human Rights as an official treaty, the Universal Declaration falls into the category of customary international law. Customary international law, otherwise known as "law of nations," has been domesticated under the Alien Tort Statute, 28 U.S.C. § 1350. Through the Alien Tort Statute, the Universal Declaration of Human Rights is therefore applicable to North Carolina, its political subsidiaries, and Aero.
  - Art. 3
    - Everyone has the right to life, liberty, and security of person.
  - Art. 5
    - Prohibiting torture, or inhuman or degrading treatment or punishment.
  - Art. 6
    - Everyone has the right to recognition everywhere as a person before the law.
  - Art. 8
    - Assuring right to effective remedy for rights violations
  - Art. 9

- Prohibiting arbitrary arrest, detention, or exile
    - Art. 10
      - Assuring right to fair and public hearing by independent and impartial tribunal.
    - Art. 11
      - Assuring right to presumed innocent.
  - International Covenant on Civil and Political Rights (ICCPR)
    - The ICCPR is applicable as an international treaty against the United States, North Carolina, and Aero, because the United States ratified the ICCPR on June 8, 1992. It made the reservation regarding article 7 that “the United States considers itself bound by article 7 to the extent that ‘cruel, inhuman, or degrading treatment or punishment’ means the cruel and unusual punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”
    - Art. 7
      - Prohibiting torture, inhuman or degrading treatment or punishment.
    - Art. 9
      - Affirming that everyone has a right to liberty and security of person.
    - Art. 10
      - Ensuring those deprived of liberty be treated humanely and with respect.
- **Federal Law**
    - 8th Amendment—Cruel and Unusual Punishment
    - Federal Torture Statute of 1994 (18 U.S.C. § 2340-2340A)
      - Providing for punishment for anyone who commits or attempts to commit torture, which is defined as an act “specifically intended to inflict severe physical or mental pain or suffering.”
    - War Crimes Act of 1996 (18 U.S.C. § 2441)
      - Providing for punishment for anyone who commits a war crime, which includes torture, cruel or inhuman treatment, among others.
    - Alien Tort Statute (28 U.S.C. § 1350) (1948)
      - The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. It also incorporates the Torture Victim Protection Act (see below).
    - Torture Victim Protection Act (Public Law 102-256)

- § 2(b)(1). Providing for civil liability for those who subject other individuals to torture, which is defined as any act which causes pain and suffering, among other specific examples.
  - 18 U.S.C. § 242. Deprivation of Rights Under Color of Law
    - Prohibits subjecting persons to punishment or pain due to that person's status as an alien, their race, or color.
  - 18 U.S.C. § 1201. Kidnapping
    - Prohibits seizing, confining, abducting, or holding a person through willful transport in interstate or foreign commerce.
  - 42 U.S.C. 21D. Detainee Treatment.
    - Prohibiting cruel, inhuman, or degrading treatment of those under control of the United States government.
- **State Law**
  - N.C. Gen. Stat. § 14-32.4. Assault Inflicting Serious Bodily Injury; Strangulation; Penalties.
    - Prohibits infliction of serious bodily injury (which includes injuries that create a substantial risk of death, or serious permanent physical damage).
  - N.C. Gen. Stat § 14-39. Kidnapping.
    - Includes confining, restraining, or removing a person from one place to another without that person's consent.
  - N.C. Gen. Stat. § 14-43.3. Felonious Restraint.
    - Prohibits restraint of another without that person's consent and transports that person.
  - N.C. Gen. Stat. § 99D-1. Interference with Civil Rights.
    - Prohibits conspiracies, motivated by race, religion, ethnicity, or gender, to interfere with a right secured by the United States and/or North Carolina constitutions or laws.
  - North Carolina Constitution Art. I § 19.
    - No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

## 2. Sexual Assault/Sexual Pain

- Description of the acts associated with the process of Extraordinary Rendition:
  - Threats of rape, detainees being subjected to "rectal exams," resulting in anal fissures and chronic hemorrhoids
    - Pg. 289, Mustafa Ahmad al-Hawsawi
  - Insertion of suppositories

- Pg. 99, Mahammed El-Zari
    - Pg. 275, Ahmed Agiza
    - Pg. 314, Khaled Sheikh Mohammed
    - Pg. 572, Ammar al-Baluchi
  - Insertion of fingers
    - Pg. 37, Sharqawi Abdu Ali Al Hajj
    - Pg. 448, Binyam Mohamed
    - Pg. 460, Mohamed Farag Ahmad Bashmilah
  - Insertion of other objects
    - Pg. 419, Khaled El-Masri
    - Pg. 519, Mamdough Habib
  - Enemas
    - Pg. 316, Khaled Shekh Mohammed
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- Rome Statute of the International Criminal Court
  - Signed but not ratified by the United States. If considered "law of nations," then it is applicable to the United States through the Alien Tort Statute, which domesticates "law of nations." (18 U.S.C. 1350).
  - art. 7. Crimes Against Humanity.
    - (g)—Prohibiting rape and any other form of sexual violence of comparable gravity.
  - Art. 8. War Crimes.
    - (b)(xxii)—Prohibiting the same acts from Art. 7(g) in "international armed conflict."

- (e)(vi)—Including the Art. 7(g) acts within “other serious violations of the laws and customs applicable in armed conflicts not of an international character.”
  - International Covenant on Civil and Political Rights (ICCPR)
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    - § 2(b)(1). Providing for civil liability for those who subject other individuals to torture, which is defined as any act which causes pain and suffering, among other specific examples.
  - 18 U.S.C. § 242. Deprivation of Rights Under Color of Law
    - Prohibits subjecting persons to punishment or pain due to that person’s status as an alien, their race, or color.
  - 18 U.S.C. § 1201—Kidnapping
    - Prohibits seizing, confining, abducting, or holding a person through willful transport in interstate or foreign commerce.
  - 42 U.S.C. 21D. Detainee Treatment.
    - Prohibiting cruel, inhuman, or degrading treatment of those under control of the United States government.
- **State Law**
  - N.C. Gen. Stat. § 14-27.33. Sexual Battery.
    - Includes sexual contact by force and against another’s will, or against a physically helpless person.
  - N.C. Gen. Stat. § 14-27.26. First-Degree Forcible Sexual Offense.
    - Includes all sexual acts involving the employment or display of deadly weapon, infliction of personal injury, or with the aiding and abetting by one or more persons.
  - N.C. Gen. Stat. § 14-27.27. Second-Degree Forcible Sexual Offense
    - Includes all sexual acts with someone physically helpless

- N.C. Gen. Stat § 14-39. Kidnapping.
  - Includes confining, restraining, or removing a person from one place to another without that person's consent.
- North Carolina Constitution Art. I § 19.
  - No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

### 3. Mental Pain, Terror and Humiliation

- Description of the acts associated with the process of Extraordinary Rendition:
  - Solitary Confinement
    - Pg. 23, Al Hajj
    - Pg. 81, Mustafa Salim Ali el-Madaghi
  - Sensory deprivation/ blindfolded, kidnaped without any knowledge of where they were being taken or their location after movement.
    - Pg. 43, Mohammed al-Asad
    - Pg. 71, Ramzi bin al-Shibh
    - Pg. 81, Mustafa Salim Ali el-Madaghi
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    - Pg. 348, Jamil el-Banna
    - Pg. 400, Bisher al-Rawi
    - Pg. 420, Khaled El-Masri
  - Photographed while victim naked
    - Pg. 82, Mustafa Salim Ali el-Madaghi
    - Pg. 419, Khaled El-Masri
  - Forced to wear a diaper
    - Pg. 72, Ramzi bin al-Shibh
    - Pg. 82, Mustafa Salim Ali el-Madaghi
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#### 4. Location of the Acts Are Irrelevant

- Extraordinary Renditions were conducted outside of the United States in locations all over the globe. The location of these acts, although outside of the United States, has no bearing on whether laws that prohibit extraordinary rendition were violated.
- **International Law**
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Article VII, (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”). Constitutionally, therefore, these treaties are applicable to the United States. Customary international law, otherwise known as the “law of nations,” is applicable to the United States through the Alien Tort Statute, which domesticates “law of nations.” (18 U.S.C. 1350).

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- The Convention Against Torture (CAT) is applicable as an international treaty against the United States, North Carolina, and Aero, because the United States ratified the CAT in Oct. 1994, and became an active obligation on Nov. 20, 1994. The United States “made a declaration pursuant to article 21, paragraph 1, recognizing the competence of the Committee against Torture, on a reciprocal basis, to receive and consider a State party’s claims that another State party is not fulfilling its obligations under the Convention.” Consideration of Reports Submitted by United Nations, State Parties Under Article 19 of the Convention, Oct. 15, 1999. <https://www.state.gov/documents/organization/100296.pdf>. Further, both 18 U.S.C § 2340 and The Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) were enacted to implement the Convention Against Torture in the former, and specifically Art. 3 of CAT in the latter.

- Art. 5(1)

- Assuring state parties establish jurisdiction over acts taken when the offenses are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State.

- Art. 6

- Requiring state parties to take offenders into custody.

○ Rome Statute of the International Criminal Court

- If considered “law of nations,” then it is applicable to the United States through the Alien Tort Statute, which domesticates “law of nations.” (18 U.S.C. 1350).

- Art. 7. Crimes Against Humanity.

- Including torture, enslavement, imprisonment, enforced disappearance of persons, and severe deprivation of physical liberty under crimes against humanity.

- Art. 8. War Crimes

- Including torture, unlawful deportation or transfer or unlawful confinement, and willfully causing great suffering under war crimes, among others.
- International Covenant on Civil and Political Rights (ICCPR)
  - The ICCPR is applicable as an international treaty against the United States, North Carolina, and Aero, because the United States ratified the ICCPR on June 8, 1992. It made the reservation regarding article 7 that “the United States considers itself bound by article 7 to the extent that ‘cruel, inhuman, or degrading treatment or punishment’ means the cruel and unusual punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”
  - Art. 7
    - Prohibiting torture, inhuman or degrading treatment or punishment.
  - Art. 9
    - Affirming that everyone has a right to liberty and security of person.
  - Art. 10
    - Ensuring those deprived of liberty be treated humanely and with respect.
- Universal Declaration of Human Rights
  - While the United States has not signed and ratified the Universal Declaration of Human Rights as an official treaty, the Universal Declaration falls into the category of customary international law. Customary international law, otherwise known as “law of nations,” has been domesticated under the Alien Tort Statute, 28 U.S.C. § 1350. Through the Alien Tort Statute, the Universal Declaration of Human Rights is therefore applicable to North Carolina, its political subsidiaries, and Aero.
  - Art. 3
    - Everyone has the right to life, liberty, and security of person.
  - Art. 5
    - Prohibiting torture, or inhuman or degrading treatment or punishment.
  - Art. 6
    - Everyone has the right to recognition everywhere as a person before the law.
  - Art. 8
    - Assuring right to effective remedy for rights violations
  - Art. 9
    - Prohibiting arbitrary arrest, detention, or exile

- Art. 10
    - Assuring right to fair and public hearing by independent and impartial tribunal.
  - Art. 11
    - Assuring right to presumed innocent.
- **Federal Law**
  - The Federal Torture Statute of 1994 (18 U.S.C. § 2340A)
    - Specifically accounts for actions taken outside of the US.
  - War Crimes Act of 1996 (18 U.S.C. § 2441) (1996)
    - Specifically accounts for actions taken outside of the US.
  - 18 U.S.C. § 1201. Kidnapping
    - Prohibits seizing, confining, abducting, or holding a person through willful transport in interstate or foreign commerce.
  - 42 U.S.C. 21D. Detainee Treatment.
    - Prohibiting cruel, inhuman, or degrading treatment of those under control of the United States government, regardless of physical location.
  - Alien Tort Statute (28 U.S.C. § 1350) (1948)
    - The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.
- **State Law**
  - North Carolina Constitution Art. I § 19.
    - No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

## 5. Conspiracy

- The North Carolina laws prohibiting conspiracy are clearly applicable to North Carolina, its political subdivisions, and Aero, as the conspiracy agreements themselves were done in North Carolina, which does not require an overt act in order to qualify as a conspiracy under the law (see *State v. Davenport*, 227 N.C. 475, 470 (1945)). Here, the agreement to partake in extraordinary rendition, likely in the form of an agreement to provide transportation for the renditions, and these agreements had to have taken place in North Carolina, as Aero is a North Carolina-headquarter corporation, and the planes originated in North Carolina.

- **Federal Law**

- Federal Torture Statute of 1994 (18 U.S.C. § 2340-2340A)
  - § 2340A(c). Accounting for conspiracies.
- War Crimes Act of 1996 (18 U.S.C. § 2441)
  - § 2441 Common Article 3 Violations (1)(A)-(H)—Including conspiracy within definitions of torture and inhuman punishment.
- 18 U.S.C. § 1201(c)—Kidnapping
  - Prohibits seizing, confining, abducting, or holding a person through willful transport in interstate or foreign commerce.
- Alien Tort Statute (28 U.S.C. § 1350) (1948)
  - The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

- **State Law**

- N.C. Gen. Stat. § 99D-1. Interference with Civil Rights
  - Prohibits conspiracies, motivated by race, religion, ethnicity, or gender, to interfere with a right secured by the United States and/or North Carolina constitutions or laws.
- State v. Gallimore, 272 N.C. 528, 508 (1968)
- State v. Davenport, 227 N.C. 475 (1945)
- North Carolina Constitution Art. I § 19.
  - No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

## 6. Nationality of Victim Is Irrelevant

- Extraordinary Renditions were conducted on victims who were not United States citizens. The nationality of the victim is irrelevant to a determination of whether the laws that prohibit extraordinary rendition were violated.
- **International Law**
  - These laws are applicable to North Carolina, political subsidiaries of the United States and Aero by virtue of the United States ratifying treaties, pursuant to the United States Constitution Article II, § 2, clause 2 (“He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur”) and Article VII, (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be

the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”). Constitutionally, therefore, these treaties are applicable to the United States. Customary international law, otherwise known as the “law of nations,” is applicable to the United States through the Alien Tort Statute, which domesticates “law of nations.” (18 U.S.C. 1350).

- Convention Against Torture.
  - The Convention Against Torture (CAT) is applicable as an international treaty against the United States, North Carolina, and Aero, because the United States ratified the CAT in Oct. 1994, and became an active obligation on Nov. 20, 1994. The United States “made a declaration pursuant to article 21, paragraph 1, recognizing the competence of the Committee against Torture, on a reciprocal basis, to receive and consider a State party’s claims that another State party is not fulfilling its obligations under the Convention.” Consideration of Reports Submitted by United Nations, State Parties Under Article 19 of the Convention, Oct. 15, 1999. <https://www.state.gov/documents/organization/100296.pdf>. Further, both 18 U.S.C § 2340 and The Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) were enacted to implement the Convention Against Torture in the former, and specifically Art. 3 of CAT in the latter.
  - Art. 5
    - Implicitly keeping the national identity of the victim irrelevant in section (a).
- Rome Statute of the International Criminal Court
  - If considered “law of nations,” then it is applicable to the United States through the Alien Tort Statute, which domesticates “law of nations.” (18 U.S.C. 1350).
  - Art. 7. Crimes Against Humanity.
    - Including torture, enslavement, imprisonment, enforced disappearance of persons, and severe deprivation of physical liberty under crimes against humanity.
  - Art. 8. War Crimes
    - Including torture, unlawful deportation or transfer or unlawful confinement, and willfully causing great suffering under war crimes, among others.
- International Covenant on Civil and Political Rights (ICCPR)
  - The ICCPR is applicable as an international treaty against the United States, North Carolina, and Aero, because the United states ratified the ICCPR on June 8, 1992. It made the reservation regarding article 7 that “the United States considers

itself bound by article 7 to the extent that ‘cruel, inhuman, or degrading treatment or punishment’ means the cruel and unusual punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”

- Art. 7
  - Prohibiting torture, inhuman or degrading treatment or punishment.
- Art. 9
  - Affirming that everyone has a right to liberty and security of person.
- Art. 10
  - Ensuring those deprived of liberty be treated humanely and with respect.
- Universal Declaration of Human Rights
  - While the United States has not signed and ratified the Universal Declaration of Human Rights as an official treaty, the Universal Declaration falls into the category of customary international law. Customary international law, otherwise known as “law of nations,” has been domesticated under the Alien Tort Statute, 28 U.S.C. § 1350. Through the Alien Tort Statute, the Universal Declaration of Human Rights is therefore applicable to North Carolina, its political subsidiaries, and Aero.
  - Art. 3
    - Everyone has the right to life, liberty, and security of person.
  - Art. 5
    - Prohibiting torture, or inhuman or degrading treatment or punishment.
  - Art. 6
    - Everyone has the right to recognition everywhere as a person before the law.
  - Art. 8
    - Assuring right to effective remedy for rights violations
  - Art. 9
    - Prohibiting arbitrary arrest, detention, or exile
  - Art. 10
    - Assuring right to fair and public hearing by independent and impartial tribunal.
  - Art. 11
    - Assuring right to presumed innocent.
- **Federal Law**
  - Detainee Treatment Act of 2005 (42 U.S.C. 21(D))

- § 2000dd (a). Specifically accounts for the irrelevance of the victim’s nationality.
  - War Crimes Act of 1996 (18 U.S.C. § 2441) (1996)
    - Does not specify the necessary nationality of a victim—they must merely be a victim.
  - Federal Torture Statute of 1994 (18 U.S.C. § 2340-2340A)
    - Specifically provides for jurisdiction “irrespective of the nationality of the victim.”
  - Alien Tort Statute (28 U.S.C. § 1350)
    - Specifically provides for a cause of action for those who are not citizens of the United States.
  - 18 U.S.C. § 242. Deprivation of Rights Under Color of Law
    - Prohibits subjecting persons to punishment or pain due to that person’s status as an alien, their race, or color.
  - 18 U.S.C. § 1201. Kidnapping
    - Prohibits seizing, confining, abducting, or holding a person through willful transport in interstate or foreign commerce.
  - 42 U.S.C. 21D. Detainee Treatment.
    - Prohibiting cruel, inhuman, or degrading treatment of those under control of the United States government.
- **State Law**
  - North Carolina Constitution Art. I § 19.
    - No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

## 7. Offender is a US National

- In all of these cases, at least one of the participants in the torture of these people were U.S. nationals. It is therefore imperative that laws apply to the perpetrators as U.S. nationals, although the torture did not take place on U.S. soil.
- **International Law**
  - These laws are applicable to North Carolina, political subsidiaries of the United States and Aero by virtue of the United States ratifying treaties, pursuant to the United States Constitution Article II, § 2, clause 2 (“He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur”) and Article VII, (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or

which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”). Constitutionally, therefore, these treaties are applicable to the United States. Customary international law, otherwise known as the “law of nations,” is applicable to the United States through the Alien Tort Statute, which domesticates “law of nations.” (18 U.S.C. 1350).

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  - Art. 5(1)(b)
    - Specifically providing for jurisdiction when the “alleged offender is a nation of [the] State.”
- International Covenant on Civil and Political Rights
  - The ICCPR is applicable as an international treaty against the United States, North Carolina, and Aero, because the United States ratified the ICCPR. These laws are applicable to North Carolina, political subsidiaries of the United States and Aero by virtue of the United States ratifying treaties, pursuant to the United States Constitution Article II, § 2, clause 2 (He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur) and Article VII, (This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding).

Constitutionally, therefore, these treaties are applicable to the United States.

- Art. 2.3
  - Assuring state parties provide remedies to those whose rights have been violated, and that those claiming remedies have their rights determined by competent judicial, administrative, or legislative authorities.
- Art. 5
  - Clarifying that nothing in the ICCPR gives a state, group, or person the right to engage in acts aimed at the violation of the rights stated in the ICCPR.
- Rome Statute of the International Criminal Court
  - If considered “law of nations,” then it is applicable to the United States through the Alien Tort Statute, which domesticates “law of nations.” (18 U.S.C. 1350).
  - Art. 7. Crimes Against Humanity.
    - Including torture, enslavement, imprisonment, enforced disappearance of persons, and severe deprivation of physical liberty under crimes against humanity.
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- Prohibiting arbitrary arrest, detention, or exile
  - Art. 10
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  - Art. 11
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- **Federal Law**
  - Federal Torture Statute of 1994 (18 U.S.C. § 2340-2340A)
    - Specifically accounts for when the alleged offender is a national of the United States.
  - Alien Tort Statute (28 U.S.C. § 1350) (1948)
    - The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. It also incorporates the Torture Victim Protection Act (see below).
  - Torture Victim Protection Act of 1991 (106 Stat. 73, Pub. Law 102-256) (1992)
    - Accounts for individuals acting under the apparent authority of any foreign nation.
  - 18 U.S.C. § 242. Deprivation of Rights Under Color of Law
    - Prohibits subjecting persons to punishment or pain due to that person's status as an alien, their race, or color.
  - War Crimes Act of 1996 (18 U.S.C. § 2441) (1996)
    - Specifically providing for liability when the person committing a war crime is a member of the Armed Forces of the United states or a nation of the United States.
  - 18 U.S.C. § 1201. Kidnapping
    - Prohibits seizing, confining, abducting, or holding a person through willful transport in interstate or foreign commerce.
  - 42 U.S.C. 21D. Detainee Treatment.
    - Prohibiting cruel, inhuman, or degrading treatment of those under control of the United States government.
- **State Law**
  - North Carolina Constitution Art. I § 19.
    - No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.