



# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

**RAIO Combined Training Program**

# INTERNATIONAL HUMAN RIGHTS LAW

## TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Program*

## **INTERNATIONAL HUMAN RIGHTS LAW**

### **Training Module**

#### **MODULE DESCRIPTION:**

This module introduces you to the fundamentals of international human rights law. You will learn about the sources of international law, including treaties and customary international law. You will also gain knowledge of core international human rights and international laws that are relevant to your cases.

#### **TERMINAL PERFORMANCE OBJECTIVE(S)**

You (the Officer) will learn the fundamentals of international human rights law, including the sources of international law and its relationship to U.S. domestic law, important international human rights instruments, and the role of international human rights in adjudications.

#### **ENABLING LEARNING OBJECTIVES**

1. Describe the sources of international law.
2. Summarize the relationship between international human rights law and U.S. domestic law.
3. Describe the role of international human rights law in protection adjudications.
4. Identify core human rights established by international instruments.

#### **INSTRUCTIONAL METHODS**

#### **METHOD(S) OF EVALUATION**

#### **REQUIRED READING**

- 1.
- 2.

**Required Reading – International and Refugee Adjudications**

**Required Reading – Asylum Adjudications**

**ADDITIONAL RESOURCES**

1. United Nations. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. G.A. Res. 39/46, U.N. GAOR, Dec. 10, 1984.
2. United Nations. *International Covenant on Civil and Political Rights*. G.A. Res. 2200A (XXI), UN GAOR, Dec. 16, 1966.
3. United Nations. *International Covenant on Economic, Social, and Cultural Rights*. G.A. Res. 2200A (XXI), UN GAOR, Dec. 16, 1966.
4. United Nations. *Universal Declaration of Human Rights*. G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

**Additional Resources – International and Refugee Adjudications**

**Additional Resources – Asylum Adjudications**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR1	Knowledge of the United Nations Commission on Human Rights (UNCHR) 1951 Convention relating to the status of refugees (2)
ILR2	Knowledge of the relevant international human rights conventions relating to refugees (2)
ILR5	Knowledge of international human rights laws and principles (2)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
2/15/2018	4. Relevance of International Law to Protection Adjudications	Updated broken link and corrected citation in footnote 13.	RAIO Training
12/20/2019	Entire Lesson Plan	Minor edits to reflect changes in organizational structure of RAIO; no substantive updates	RAIO Training

## Table of Contents

<b>1</b>	<b>INTRODUCTION .....</b>	<b>9</b>
1.1	Overview of International Human Rights Law .....	9
<b>2</b>	<b>SOURCES OF INTERNATIONAL LAW .....</b>	<b>10</b>
2.1	Introduction .....	11
2.2	Treaties .....	11
2.3	Customary International Law .....	12
2.3.1	Nature of Customary International Law .....	12
2.3.2	Sources of Customary International Law .....	12
2.3.3	Declarations and Resolutions .....	12
<b>3</b>	<b>RELATIONSHIP BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND U.S. DOMESTIC LAW .....</b>	<b>12</b>
<b>4</b>	<b>RELEVANCE OF INTERNATIONAL LAW TO PROTECTION ADJUDICATIONS.....</b>	<b>13</b>
<b>5</b>	<b>CORE INTERNATIONAL HUMAN RIGHTS.....</b>	<b>15</b>
5.1	The International Bill of Rights.....	15
5.1.1	Universal Declaration of Human Rights.....	16
5.1.2	International Covenant on Civil and Political Rights (ICCPR) (Opened for signature 16 December 1966) .....	18
5.1.3	International Covenant on Economic, Social and Cultural Rights (ICESCR) (Opened for signature on 16 December 1966) .....	18
5.2	Other Human Rights Instruments .....	26
5.2.1	UN Treaties Pertaining to Human Rights .....	26
5.2.2	Regional Treaties Pertaining to Human Rights .....	26
5.2.3	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).....	27
<b>6</b>	<b>GENEVA CONVENTIONS.....</b>	<b>30</b>
6.1	Introduction .....	30
6.2	Geneva Conventions of 1945 .....	31
6.2.1	The Four Conventions and Protocols .....	31
6.2.2	Article 3 of all Four of the Geneva Conventions.....	32

<b>7</b>	<b>INTERNATIONAL LAWS PERTAINING TO THE RIGHTS OF REFUGEES AND STATELESS PERSONS .....</b>	<b>32</b>
7.1	Introduction .....	32
7.2	International Instruments .....	33
7.3	Regional Instruments .....	33
<b>8</b>	<b>CONCLUSION .....</b>	<b>33</b>
<b>9</b>	<b>SUMMARY .....</b>	<b>33</b>
9.1	Sources of International Law .....	33
9.2	Relationship between International Law and Domestic Law .....	34
9.3	Relevance of International Law to Protection Adjudications .....	34
9.4	Core Human Rights .....	34
9.4.1	Universal Declaration of Human Rights .....	34
9.4.2	International Covenant on Civil and Political Rights (ICCPR) .....	34
9.4.3	International Covenant on Economic Social and Cultural Rights (ICESCR) .....	35
9.5	Other Human Rights Instruments .....	35
9.5.1	Convention Against Torture and Other Cruel, Degrading or Inhuman Treatment or Punishment (CAT) .....	35
9.6	Geneva Conventions .....	35
9.7	International Laws Pertaining to the Rights of Refugees and Stateless Persons .....	36
	<b>PRACTICAL EXERCISES .....</b>	<b>37</b>
	<b>OTHER MATERIALS .....</b>	<b>44</b>
	<b>SUPPLEMENT A – INTERNATIONAL AND REFUGEE ADJUDICATIONS .....</b>	<b>45</b>
	Required Reading .....	45
	Additional Resources .....	45
	Supplements .....	45
	<b>SUPPLEMENT B – ASYLUM ADJUDICATIONS .....</b>	<b>46</b>
	Required Reading .....	46
	Additional Resources .....	46

Supplements .....46



Throughout this training module, you will come across references to adjudication-specific supplemental information located at the end of the module, as well as links to documents that contain adjudication-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to the adjudications you will be performing.

For easy reference, supplements for international and refugee adjudications are in pink and supplements for asylum adjudications are in yellow.

You may also encounter references to the legacy Refugee Affairs Division (RAD) and the legacy International Operations Division (IO). RAD has been renamed the International and Refugee Affairs Division (IRAD) and has assumed much of the workload of IO, which is no longer operating as a separate RAIO division.

## 1 INTRODUCTION

### 1.1 Overview of International Human Rights Law

***Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.***

***Preamble, Universal Declaration of Human Rights***

Human rights are the rights to which all people are entitled by virtue of being human. Within the large scope of human rights, some rights are considered to be of particular significance. Although certain international instruments permit derogation of these rights “in time of public emergency threatening the life of the nation” ([ICCPR, Art 4\(1\)](#)), “all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and . . . all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis.”<sup>1</sup>

The concept of human rights and human rights principles can be traced to antiquity, *e.g.*, the Ten Commandments, the Code of Hammurabi, and the Rights of Athenian Citizens.<sup>2</sup> Although this module will not examine the origins of human rights concepts, it is important to understand and recognize that the roots of international human rights law go deep into history.

<sup>1</sup> *See, e.g.*, G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (Mar. 15, 2006).

<sup>2</sup> Weissbrodt, Fitzpatrick and Newman, *International Human Rights: Law, Policy and Process* (3d ed. 2001).

In early religious and secular writings, there are many examples of what we now know as international law. There are, for example, the detailed peace treaties and alliances concluded between the Jews and the Romans, Syrians and Spartans. The Romans knew of a *jus gentium*, a law of nations, which Gaius in the second century described as law common to all men that could be applied by Roman courts to foreigners when the specific law of their own nation was unknown and when Roman law was inapposite. Later, in the seventeenth century, the Dutch jurist Hugo Grotius (1583-1645) argued that the law of nations also established legal rules that bound the sovereign states of Europe, then just emerging from medieval society, in their relations with one another.<sup>3</sup>

Although historically human rights violations have been a significant contributing factor to the flight of refugees and remain an obstacle to their safe return home, you should remember that human rights principles apply to other migration issues as well. Thus, whether conducting protection or other adjudications, it is important for you to have a thorough understanding of human rights laws and humanitarian principles.

### ***International Human Rights Law in the RAIO Context***

***You may apply international human rights law to a variety of immigration-related issues. In the RAIO context, the primary application of international human rights law arises in the context of adjudicating protection cases. In this lesson plan, the term “protection” will be used to refer to both refugee and asylum adjudications.***

The purpose of this lesson is to:

- explain the role of international human rights law in protection adjudications
- identify the sources of international human rights law
- illustrate the relationship between international human rights law and U.S. law
- identify the core rights protected by international human rights instruments

This module discusses human rights protected by international law, focusing on those that most often arise in the protection context. You should become familiar with the types of human rights that are protected in international instruments to assist in your future adjudications.

## **2 SOURCES OF INTERNATIONAL LAW**

<sup>3</sup> Weston, Falk and Charlesworth, *An Introduction to International Law and World Order* (3d ed. 1997).

## 2.1 Introduction

International human rights law refers to the body of international law designed to promote and protect human rights at the international, regional and domestic levels. International human rights law primarily consists of treaties and customary international law. Other international human rights instruments, while not legally binding, contribute to the implementation, understanding, and development of international human rights law. This module addresses refugee protection in brief because it is discussed in greater detail in the RAIO Training Module, *Introduction to the United Nations High Commissioner for Refugees and Concepts of International Protection*.

## 2.2 Treaties

Treaties are written agreements between two or more States, whether embodied in a single instrument, or in two or more related instruments. Every treaty in force is binding upon the signatories and as such must be executed in a manner consistent with the treaty.<sup>4</sup> After a treaty is signed, it does not go into effect immediately if it requires ratification by the legislative branch of a State's government. Additionally, States are permitted to make declarations, understandings, or reservations that limit the application of a particular treaty and may also indicate that they accept the treaty with reservations regarding certain provisions.<sup>5</sup>

A treaty may be either self-executing or non-self-executing, depending upon whether domestic legislation must be enacted in order for the treaty to be judicially enforceable. Self-executing treaties are effective immediately without the need for ancillary legislation. Non-self-executing treaties are also effective immediately as a matter of internal law, but require implementing legislation to be enforceable by a private party in court.

***When the United States signed the Protocol to the Refugee Convention in 1968, a non-self-executing treaty, passage of implementing legislation in the form of the 1980 Refugee Act, some 12 years later, was required to make the treaty judicially enforceable.***

Treaties go by a variety of names, including convention, protocol, covenant and accord. The various designations generally indicate a difference in procedure, or a greater or a lesser degree of formality. You should keep in mind that all of these documents, regardless of their formal designation, are considered treaties that are binding under international law.

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<sup>4</sup> This module does not explore treaty enforcement mechanisms.

<sup>5</sup> [\*U.S. Const. Art. II § 2\*](#) provides that, with the advice and consent of two-thirds of the Senate (ratification), the President has the authority to enter into treaties with other nations.

## 2.3 Customary International Law

### 2.3.1 Nature of Customary International Law

Customary international law consists of principles that nations acknowledge as binding legal norms, in the absence of a treaty or other legal obligation.

Prior to World War II, treaties were less popular, and custom was often viewed as the principal source of international law, which primarily consisted of doctrines, principles and rules developed through the customary practice of states.<sup>6</sup>

### 2.3.2 Sources of Customary International Law

Examples of the various sources of Customary International Law include:<sup>7</sup>

- customs and practices flowing from a sense of international legal obligation<sup>8</sup>
- widely recognized general principles of law that are implemented in practice
- decisions of national and international courts
- scholarly writings and other published statements by experts in the field<sup>9</sup>

### 2.3.3 Declarations and Resolutions

Declarations and resolutions made by inter-governmental bodies are not binding law. However, they may be evidence of customary international law, which is binding on States. For example, the Universal Declaration of Human Rights does not have the binding force of a treaty on States, but some of its principles are binding customary international law.

## 3 RELATIONSHIP BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND U.S. DOMESTIC LAW

The U.S. Constitution provides that treaties, together with the Constitution and statutes, are the “supreme law” of the United States.<sup>10</sup> However, if a treaty conflicts with the Constitution, the Supreme Court has held that the Constitution supersedes any treaty.<sup>11</sup>

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<sup>6</sup> Weston, Falk and Charlesworth, *An Introduction to International Law and World Order* (3d ed. 1997).

<sup>7</sup> [Article 38 of the International Court of Justice Statutes](#).

<sup>8</sup> For example, diplomatic privileges, including immunity, are widely universally accepted as customary practice.

<sup>9</sup> See *The Paquete Habana*, 175 U.S. 677, 700 (1900); [Statute of the International Court of Justice, Art. 38\(1\)](#), 59 Stat. 1031, 1060 (1945).

<sup>10</sup> [U.S. Const. Art. VI](#).

<sup>11</sup> [Reid v. Covert](#), 354 U.S. 1 (1957).

Customary international law, in the absence of conflicting domestic law, is binding on the United States.<sup>12</sup> U.S. Courts must construe domestic statutes in a manner that is consistent with international obligations whenever possible.<sup>13</sup>

When a State becomes party to a treaty, it has the right to make reservations regarding particular provisions. The United States has issued reservations upon ratification of the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

*The United States conditioned its ratification of the Convention Against Torture (CAT) by issuing reservations and understandings limiting United States obligations under Article 16 to the prohibitions against cruel, inhuman or degrading treatment or punishment contained in the 5th, 8th and/or 14th Amendments of the United States Constitution. The United States made it clear that the CAT does not restrict or prohibit the United States from applying the death penalty so long as it is consistent with the above referenced constitutional provisions, including any constitutional period of confinement prior to the imposition of the death penalty.<sup>14</sup>*

#### 4 RELEVANCE OF INTERNATIONAL LAW TO PROTECTION ADJUDICATIONS

As noted above, principles in international human rights law can be applied to a variety of immigration-related matters. However, within the RAIO directorate, the primary application of international human rights law is to “protection” cases, namely asylum and refugee cases. Recognizing the importance of international human rights law, the United States requires that all U.S. government officials adjudicating asylum or refugee cases under section 207 or section 208 of the Immigration and Nationality Act (INA) receive special training in international human rights law.<sup>15</sup>

U.S. asylum and refugee law is rooted in international law. In 1968, the United States acceded to the 1967 United Nations Protocol Relating to the Status of Refugees (1967

<sup>12</sup> *The Paquete Habana*, 175 U.S. 677, 700 (1900); *Matter of Medina*, 19 I&N Dec. 734 (BIA 1988). “The *Paquete Habana*, *The Lola* – outlines in broad fashion the role of customary international law before American courts.”

<sup>13</sup> *Murray v. Schooner Charming Betsy*, 6 U.S. 64 (1804).

<sup>14</sup> See United Nations [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

<sup>15</sup> INA, [Section 207 \(f\)](#); [8 C.F.R. § 208.1\(b\)](#); International Religious Freedom Act (IRFA), Pub. L. No. 105-292, Section 602(a), 112 Stat. 2787 (1998).

Protocol), which incorporates the 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention). The fundamental treaty obligation to protect refugees is Article 33 of the Refugee Convention, which prohibits the *refoulement*<sup>16</sup> of a refugee to a country where the refugee would be persecuted.<sup>17</sup> For more information on international refugee law, please refer to RAIO Training Module: *Overview of UNHCR and Concepts of International Protection*.

The U.S. Supreme Court, federal courts, and the Board of Immigration Appeals (BIA) have all recognized that it may be appropriate in certain cases to consider international law when adjudicating requests for asylum and withholding of removal.<sup>18</sup> Courts have consulted publications of the United Nations High Commissioner for Refugees (UNHCR), which plays a supervisory role under the Protocol, for guidance on issues related to protection.<sup>19</sup> It is clear, however, that existing U.S. law supersedes international law, but international law or other guidance may inform U.S. practice.<sup>20</sup>

Additionally, you may consider the Geneva Conventions when determining whether an act is a legitimate act of war, or persecution. The Geneva Conventions are often referred to as the law of war or the law of armed conflict, and enumerate basic protections for the individual in times of war and armed conflict. The Geneva Conventions are part of a body of law referred to as international humanitarian law.

You should first consult U.S. law for guidance on evaluating a protection claim before seeking guidance from international law. If there is no binding U.S. law addressing the specific legal issue, you may reference international law to help determine whether an applicant meets the definition of a refugee.

***International human rights law may provide guidance in the following situations:***

<sup>16</sup> *Refoulement*- The return by a State, in any manner whatsoever, of an individual to the territory of another State in which his or her life or liberty would be threatened, or he or she may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or would run the risk of torture. *Refoulement* includes any action having the effect of returning the individual to a State, including expulsion, deportation, extradition, rejection at the border, extra-territorial interception and physical return. Glossary on Migration, International Organization for Migration, (2004) p. 52.

<sup>17</sup> Article 33 of [the Refugee Convention](#) is often referred to as the “*non-refoulement*” provision. The United States Supreme Court has held that this obligation applies only to refugees within the territory of the United States. See [Sale v. Haitian Centers Council, Inc.](#), 509 U.S. 155 (1993).

<sup>18</sup> See [INS v. Cardoza-Fonseca](#), 480 U.S. 421, 107 S.Ct. 1207 (1987); [Perkovic v. INS](#), 33 F.3d 615 (6th Cir. 1994); [Matter of Acosta](#), 19 I&N Dec. 211 (BIA 1985).

<sup>19</sup> Guidance from the UNHCR includes the [Handbook on Procedures and Criteria for Determining Refugee Status](#), Guidance Notes, Guidelines on International Protection, advisory opinions on specific cases and issues, and UNHCR Executive Committee Conclusions.

<sup>20</sup> The United States Supreme Court has previously looked to international law when faced with an issue on the interpretation of the Immigration and Nationality Act. See [INS v. Aguirre-Aguirre](#), 526 U.S. 415, 426-27 (1999).

- *Evaluating whether particular acts constitute persecution (serious human rights violations).*
- *Evaluating whether punishment for a particular crime constitutes persecution or legitimate prosecution.*
- *Evaluating whether a crime is considered “political.”*

## 5 CORE INTERNATIONAL HUMAN RIGHTS

### 5.1 The International Bill of Rights

When a State becomes a party to an international human rights treaty, it assumes obligations and duties under international law to respect and protect human rights and to refrain from certain acts.

Three of the most important international instruments pertaining to human rights are collectively known as the International Bill of Human Rights:

- The Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

There are differences among States in how categories of rights are weighed, based on the domestic balance between state, community, and individual rights. Culture and religion also affect States' view of these categories of rights. However, the international community has agreed that there are certain human rights and freedoms so fundamental to human dignity that States have entered into agreements to ensure non-derogation of those rights.

The specific rights enumerated in various human rights instruments can be divided into several categories:

- **Individual security rights:** protects individuals against crimes such as murder, massacre, torture, and rape
- **Due process rights (5th and 14th Amendment to the United States Constitution):** protects individuals against abuse of the legal system, such as imprisonment without trial, trial with a jury, and excessive punishment
- **Liberty rights (1st and 4th Amendment to the United States Constitution):** protects freedom of belief, freedom of religion, freedom of movement, freedom to assemble, and freedom of association
- **Political rights:** protects an individual's liberty to participate in politics, including activities such as communicating, protesting, voting, and serving in political office

- **Equality rights:** protects equal citizenship, equality before the law, and non-discrimination
- **Social rights:** protects the right to access education for all citizens and prevents severe poverty or starvation

Subsequent international human rights treaties have expanded upon the Universal Declaration of Human Rights. Some States have adopted instruments at the regional level reflecting human rights concerns specific to that region. Many States have also adopted constitutions and other laws which formally protect basic human rights and incorporate some of the categories listed above. In the [International Human Rights Matrix](#), below, further examples are provided that correlate to the International Bill of Rights.

### 5.1.1 Universal Declaration of Human Rights

#### *Background*

In the aftermath of World War II, Eleanor Roosevelt spearheaded the U.S. involvement in the creation of the United Nations, as well as the drafting of the Universal Declaration of Human Rights (UDHR). Eleanor Roosevelt's diplomatic efforts with the Soviet Bloc countries in particular assisted greatly in the final acceptance of the UDHR. On December 10, 1948 the United States voted in favor of the resolution to adopt the Declaration before the United Nations General Assembly.

As the cornerstone of the international human rights movement, the UDHR was drafted as 'a common standard of achievement for all peoples and nations.' It was the first time in history that one document designated the basic civil, political, economic, social and cultural rights to which all humans are entitled. It has since been widely accepted by the international community as the fundamental standard of human rights that all States should respect and protect.<sup>21</sup>

#### *Legal Force*

Many scholars assert that all of the rights enumerated in the UDHR have become customary international law.

Unlike other non-binding international human rights declarations, the UDHR is so broadly accepted around the world that it established common human rights norms. Virtually every international human rights instrument references the UDHR, as do many declarations adopted unanimously or by consensus by the U.N. General Assembly.<sup>22</sup>

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<sup>21</sup> From the Universal Declaration of Human Rights Homepage, found at [the United Nations Human Rights: Office of the High Commissioner for Human Rights](#) website.

<sup>22</sup> Hannum, [The Status of the Universal Declaration of Human Rights in National and International Law](#), 25 Ga. J. Int'l & Comp. L. 287, 290 (1995/1996). Hurst Hannum, Associate Professor of International Law, The Fletcher School of Law and Diplomacy, Tufts University, wrote this article based on a report he prepared as Rapporteur of the Committee on the Enforcement of International Human Rights Law of the International Law Association.



Nevertheless, others have argued that, while certain of the rights identified in the UDHR may constitute customary norms, other rights, especially certain economic and cultural rights, have not achieved this same status.<sup>23</sup>

A comparison of Articles 14 and 24 of the UDHR illustrates the disparity in recognition between various human rights as customary norms. Article 14, the right to seek asylum, is considered a customary norm, adhered to by most States. Article 24, however, provides that everyone has the right to rest in leisure, including reasonable limitation of working hours and periodic holidays with pay, a fundamental human right which has clearly not achieved the same status as its counterpart.

### *The Right to Seek Asylum*

You should pay particular attention to certain rights preserved in the UDHR, one of which is the right to seek asylum, explained below.<sup>24</sup> Please see the [International Human Rights Matrix](#), below, for additional rights contained in the UDHR.

Article 14 of the UDHR provides:

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Of particular note is that while Article 14 provides that individuals have the right to seek and enjoy asylum, it has not been interpreted to mean that everyone has the right to be granted asylum. Article 14 was carefully worded to protect States' sovereign right to control the entry of aliens into their territory.<sup>25</sup>

<sup>23</sup> See, e.g., [Restatement of the Foreign Relations Law of the United States \(Third\)](#) § 701, Reporters' Notes 4-6 (1987).

<sup>24</sup> Art. 14, [Universal Declaration of Human Rights](#). G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

<sup>25</sup> See Martin, "Refugees and Migration," United Nations Legal Order, Vol. 1, Schachter and Joyner, eds. (Cambridge: Cambridge University Press 1995).

### *Expansion and Implementation*

On October 5, 1977 the United States signed both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and ratified the ICCPR on June 8, 1992. The ICCPR and the ICESCR implement and expand protection of the rights set forth in the UDHR.

#### **5.1.2 International Covenant on Civil and Political Rights (ICCPR) (Opened for signature 16 December 1966)**

The ICCPR proscribes certain conduct by States in order to protect civil and political rights of individuals or groups of individuals. Some of the rights that often arise in the context of protection adjudications and that are addressed in the ICCPR are listed in the [International Human Rights Matrix](#) below.

It is important to remember that not all human rights violations constitute persecution. Some [human rights violations](#) constitute persecution on their own, while others might constitute persecution only when considered along with other factors or cumulatively. A more detailed discussion about the grounds for persecution can be found in the RAIIO Training Modules: *Refugee Definition* and *Definition of Persecution and Eligibility Based on Past Persecution*.

Certain rights listed in the ICCPR known as non-derogable rights. These are rights deemed so important that they must be protected under all circumstances, even in time of public emergency that threatens the life of the nation. No derogation or violation of these rights is permitted.

#### **5.1.3 International Covenant on Economic, Social and Cultural Rights (ICESCR) (Opened for signature on 16 December 1966)**

In contrast to the provisions in the ICCPR, the provisions in the ICESCR are generally viewed as goals to which the parties agree to aspire. Article 2 provides that the States party to the ICESCR should undertake steps, to the maximum of available resources, to achieve progressively the full realization of the rights recognized by the ICESCR. A few key economic, social, and cultural rights are listed on the International Human Rights Matrix, below.

<b>International Human Rights Matrix<sup>26</sup></b>
<b>Core Rights</b>

<sup>26</sup> This is a non-exhaustive list.

Right	Category	Reference
The right to seek asylum from persecution	Due process	Article 14, Universal Declaration
The right to have access to the courts and legal system	Due process	Article 10, Universal Declaration
Freedom from discrimination on account of, inter alia, sex, race, religion, or ethnicity	Equality	Article 7, Universal Declaration
The right to cultural expression	Liberty	Article 27, Universal Declaration
<b>Non-Derogable Rights</b>		
Right	Category	Reference
The right not to be arbitrarily deprived of life	Individual	Article 6, ICCPR
The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, or to be subjected, without free consent, to medical or scientific experimentation	Individual	Article 7, ICCPR
The right not to be held in servitude or slavery	Individual	Art 8, paras 1&2, ICCPR
The right not to be imprisoned merely on the ground of inability to fulfill	Due process	Art 11, ICCPR

a contractual obligation		
The right not to be convicted of an offense on account of an act or omission which did not constitute a criminal offense, under national or international law, at the time it was committed	Due process	Art 15, ICCPR
The right to the recognition as a person before the law	Equality	Art 6, ICCPR
<p>The right to freedom of thought, conscience, and religion including:</p> <p>The right to have or adopt a religion of one's choice and freedom, either individually or in community with others and in public or private, to manifest a religious belief in worship observance, practice and teaching;</p> <p>The right not to be subject to coercion that would impair freedom to have or adopt a religion or belief of one's choice.</p>	Liberty	Art 18, ICCPR
<b>Rights Related to Arrest and/or Detention</b>		
<b>Right</b>	<b>Category</b>	<b>Reference</b>
An arrest or detention cannot be arbitrary, and any	Due process	Art 9, ICCPR

deprivation of liberty must be in accordance with established law and procedures		
At the time of arrest, the person arrested must be informed of the reasons for the arrest and promptly informed of any charges against him or her	Due process	Art 9, ICCPR
A person arrested on criminal charges must be brought promptly before an official authorized by law to exercise judicial power and shall be entitled to trial within reasonable time	Due process	Art 9, ICCPR
Anyone deprived of liberty by arrest or detention is entitled to take proceedings before a court to decide, without delay, on the lawfulness of the detention and to order the individual's release, if the detention is unlawful.	Due process	Art 9, ICCPR
<b>Rights Related to Custody</b>		
<b>Right</b>	<b>Category</b>	<b>Reference</b>
A person deprived of liberty must be treated with humanity and respect for the inherent dignity of the human person	Individual	Art 10, ICCPR

Accused individuals must be segregated from convicted individuals (barring exceptional circumstances)	Due process	Art 10, ICCPR
<b>Rights Related to Trial</b>		
<b>Right</b>	<b>Category</b>	<b>Reference</b>
All persons shall be equal before courts and tribunals	Equality	Art 14, ICCPR
The right to a fair and public hearing by a competent, independent and impartial tribunal established by law (note, however, that there are many exceptions listed as to when the public may be barred from the hearing)	Due process	Art 14, ICCPR
When charged with a crime, the right to be presumed innocent until proven guilty.	Due process	Art 14, ICCPR
Due process rights when charged with a crime: right to be clearly informed of charges, to have time to prepare a defense, to be tried without undue delay, to be present at the trial, to defend oneself, to have legal counsel, to examine witnesses, to have free assistance of an interpreter, if needed, and the right not	Due process	Art 14, ICCPR

to be compelled to testify against oneself		
Right for individuals convicted of a crime to have the conviction and sentence reviewed by a higher court	Due process	Art 14, ICCPR
No one shall be liable to be tried or punished again for an offense for which the individual has already been finally convicted or acquitted in accordance with the law and penal procedure of the convicting country.	Due process	Art 14, ICCPR
<b>Economic Rights</b>		
<b>Right</b>	<b>Category</b>	<b>Reference</b>
The right to the enjoyment of just and favorable conditions of work, including fair wages and equal pay for equal work, and safe and healthy working conditions	Social	Art 7, ICESCR
The right to an adequate standard of living, including food, clothing and housing	Social	Art 11, ICESCR

<b>Social Rights</b>		
<b>Right</b>	<b>Category</b>	<b>Reference</b>
The right not to be forced into marriage	Individual	Art 10, ICESCR
Education rights including the right to free primary education and the progressive introduction of free secondary and higher education	Social	Art 13, ICESCR
<b>Cultural Rights</b>		
<b>Right</b>	<b>Category</b>	<b>Reference</b>
The right to take part in cultural life	Social	Art 15, ICESCR
The right to enjoy the benefits of scientific progress and its applications	Social	Art 15, ICESCR
<b>Other Important Rights in the Protection Context</b>		
<b>Right</b>	<b>Category</b>	<b>Reference</b>
The right to be free to leave any country including one's own and the right not to be arbitrarily deprived of the right to enter one's own country	Liberty	Art 12, ICCPR



Freedom from arbitrary or unlawful interference with privacy, family, home or correspondence	Liberty	Art 17, ICCPR
The right to hold opinions without interference and the right to freedom of expression	Liberty	Art 19, ICCPR
The right to peaceful assembly	Liberty	Art 21, ICCPR
The right to freedom of association with others, including the right to form and join trade unions	Liberty	Art 22, ICCPR
The right to marry and found a family	Social	Art 23, ICCPR
The right not to be forced to enter into marriage	Social	Art 23, ICCPR
The right of children to be protected from discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status	Equality	Art 24, ICCPR
The right of minority groups to enjoy their own culture, to profess and practice their own religion, and to use their own	Liberty	Art 27, ICCPR

language		
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## 5.2 Other Human Rights Instruments

In addition to the International Bill of Rights, there are other human rights treaties and universal instruments, including regional treaties. Listed below are some examples of these instruments. The legal status of each instrument listed below varies as there are some which the United States has not yet ratified.

### 5.2.1 UN Treaties Pertaining to Human Rights

- [\*Convention on the Elimination of All Forms of Discrimination against Women\*](#) (CEDAW) (18 December 1979) was signed by the United States on July 17, 1980 but has not yet been ratified
- [\*International Convention on the Elimination of All Forms of Racial Discrimination\*](#) (CERD) (21 December 1965) was signed by the United States on September 28, 1966 and was ratified on October 21, 1994
- [\*Convention on the Prevention and Punishment of the Crime of Genocide\*](#)<sup>27</sup> (9 December 1948) was signed by the United States on December 11, 1948 and ratified on November 25, 1988. Genocide is defined in the Convention as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:
  - killing members of the group
  - causing serious bodily or mental harm to members of the group
  - deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
  - imposing measures intended to prevent births within the group
  - forcibly transferring children of the group to another group
- [\*Convention on the Rights of the Child\*](#) (2 September 1990) was signed by the United States on February 16, 1995, but not ratified
- [\*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\*](#) (CAT) (10 December 1984) was signed by the United States on April 18, 1988 and ratified on October 27, 1990, but did not take effect until October 21, 1994. For more detailed information, see section below on CAT.

### 5.2.2 Regional Treaties Pertaining to Human Rights

<sup>27</sup> For the purposes of determining inadmissibility, the INA adopts the definition of genocide as developed in the Convention. [INA § 212\(a\)\(3\)\(E\)\(ii\)](#)

- [\*American Convention on Human Rights\*](#) [also known as the Pact of San Jose, Costa Rica] (22 November 1969) signed by the United States on June 1, 1977, but not ratified.
- [\*African \[Banjul\] Charter on Human and Peoples' Rights\*](#) (27 June 1981)
- [\*Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms\*](#) (4 November 1950) and its Protocols

### 5.2.3 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The United States became party to the Convention Against Torture (CAT) on October 21, 1994.

#### *Definition of Torture*

Article 1 defines “torture” for purposes of the CAT 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, 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.<sup>28</sup>

#### *States Parties' Obligations*

States that are party to the CAT are required to fulfill the following obligations:

- take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction (Art. 2)
- not expel, return, or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subject to torture (Art. 3)
- make torture a punishable offense; take into custody individuals who torture; and submit cases of torture to the proper authorities for prosecution (Arts. 4-7)

#### *U.S. Ratification*

The United States Senate ratified the CAT on October 27, 1990. The Senate Resolution consenting to ratification of the CAT offers a number of reservations and

<sup>28</sup> [\*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\*](#) (27 June 1987).

“understandings” regarding the United States’ obligations under the CAT.<sup>29</sup> President Clinton deposited the United States instrument of ratification with the United Nations Secretary General on October 21, 1994. For a discussion on the definition of “torture” as modified by the U.S. “understandings,” see RAIO Training Modules, *Refugee Definition and Definition of Persecution, and Eligibility Based on Past Persecution* (which notes that torture inflicted on account of a protected ground always rises to the level of persecution) and the Asylum Division lesson plans on *Reasonable Fear of Persecution and Torture Determinations* and *Credible Fear*.

### *No Exceptions*

Article 2 of the CAT provides no exceptions for the use of torture, stating specifically that “[n]o 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,” nor may an order from a superior officer of public authority be invoked as justification.

### *Non-Return to Country of Torture*

As noted above, Article 3 of the CAT prohibits the expulsion, return, or extradition of a person to a country where there are substantial grounds for believing that the person would be in danger of being tortured. This provision is very similar to the non-*refoulement* obligation (Article 33) in the 1951 Convention relating to the Status of Refugees (Refugee Convention), but with some important distinctions, as described below.

- **Motive for Torture Irrelevant**—unlike the non-*refoulement* duty in the Refugee Convention, the CAT does not require that the threat of torture be tied to any of the five grounds identified in the refugee definition, or any other ground.
- **Public Official or Person Acting in an Official Capacity** – the severe pain or suffering must be inflicted by or at the instigation of or with the consent or acquiescence of a public official.<sup>30</sup>
- **No Bars to Withholding**—the CAT contains no bars to protection based on criminal or terrorist conduct. For instance, an “aggravated felon” is not barred from obtaining protection under Art. 3, if the individual can establish that it is more likely than not that he or she would be tortured if deported to another country.
- **Standard of Proof**—the United States has adopted an important “understanding” of Article 3. The United States understands the phrase, “where there are substantial grounds for believing that he would be in danger of being subjected to torture” in Article 3 to mean “if it is more likely than not that he would be tortured.”<sup>31</sup> Thus, the

<sup>29</sup> [Senate Executive Report, 101-30](#) (1990).

<sup>30</sup> [8 C.F.R. § 208.18\(a\)\(1\)](#).

<sup>31</sup> [Senate Executive Report, 101-30](#) (1990).

standard of proof required for protection under Article 3 is identical to the standard of proof required to obtain withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA) (based on likelihood of persecution).

- **Forward Looking**—there is no protection offered based on past torture alone. Evidence of past torture may be substantial evidence of the likelihood of future harm but the applicant must show a risk of torture in the future.
- **No Provisions for Adjustment of Status**—the United States’ regulations implementing the CAT do not allow those individuals granted protection under Article 3 of the CAT to adjust their status to permanent residence. Furthermore, an individual granted such protection could be returned to his or her country of nationality at such time as the likelihood of torture is diminished.

### *Implementation*

On October 21, 1998, President Clinton signed legislation that required the Department of Justice to promulgate regulations to implement the United States’ obligations under Article 3 of the CAT, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution to ratify the CAT.<sup>32</sup>

Pursuant to the statutory directive, the U.S. Department of Justice published an interim regulation that allows individuals to seek protection under the CAT.<sup>33</sup>

The definition of torture is relevant to your work because harm rising to the level of torture is always persecution, provided it is on account of one of the five protected grounds for asylum and refugee status determinations.

An individual must be granted withholding of removal under the CAT if it is more likely than not the individual would be tortured in the country to which the individual would be removed, and no mandatory bars to withholding apply (including conviction of an aggravated felony, persecution of others, terrorist activities.) Withholding of removal is country specific, which means the individual could be removed to a third country, so long as he or she would not be tortured there.<sup>34</sup>

An individual who cannot be granted withholding of removal because a mandatory bar applies must be granted deferral of removal if it is more likely than not the individual

<sup>32</sup> Section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998 ([Pub. L. 105-277](#)). Prior to this, the INS considered requests for protection under Article 3 through an informal process, in which asylum officers conducted interviews and the INS Office of General Counsel made determinations on whether protection was required.

<sup>33</sup> [64 Fed. Reg. 8478](#) (February 19, 1999).

<sup>34</sup> [8 C.F.R. § 208.16\(c\) and \(d\)](#).

would be tortured in the country to which he or she has been ordered removed. Deferral of removal is more easily terminated than a grant of withholding of removal.<sup>35</sup>

You do not make decisions on eligibility for withholding or deferral of removal under the CAT. Within RAIO, officers are tasked with conducting “credible fear of torture” and “reasonable fear of torture” screenings in certain administrative removal cases. Those who are found to have a reasonable fear of torture are referred to an immigration judge to apply for withholding or deferral of removal under the CAT.<sup>36</sup> You are conducting a screening determination rather than an ultimate determination on eligibility. In a “reasonable fear of torture” screening where CAT applies, you will determine only if there is a reasonable fear of torture or not. You will not determine eligibility under CAT. Additional information about CAT screenings can be found in the Asylum Division Training Module: *Reasonable Fear of Persecution and Torture Determinations*.

In addition to the International Bill of Rights and Convention Against Torture, there are additional core human rights treaties and other universal instruments relating to human rights, some of which are outlined above. The legal status of these instruments varies: declarations, principles, guidelines, standard rules and recommendations have no binding legal effect, but such instruments have an undeniable moral force and provide practical guidance to countries in their conduct. As stated in the section above, all treaties are binding for those countries that ratify or accede to them. Therefore, when researching a human rights instrument in the context of a specific case being adjudicated, it is important to determine the position that the United States has in relation to the instrument; whether it has been signed and ratified, and what, if any, reservations have been made by the United States. You should review the non-exhaustive list of human rights instruments provided [here](#) and become familiar with these provisions.

For information on the status of ratification of selected instruments, click [here](#).

## 6 GENEVA CONVENTIONS

### 6.1 Introduction

The Geneva Conventions were especially designed for the protection of individuals in times of war or armed conflict. Their application to protection law is important because many refugees and asylees have fled countries that are engaged in civil war. An understanding of international norms governing the conduct of combatants may assist you in evaluating whether the harm an applicant has experienced in the context of warfare may be considered persecution or is harm incidental to armed conflict.

<sup>35</sup> [8 C.F.R. § 208.17](#).

<sup>36</sup> [8 C.F.R. § 208.31](#).

Familiarity with the Geneva Conventions will also enable you to determine whether applicants who served as combatants have taken actions that violate international law.

While the Geneva Conventions may provide guidance in evaluating asylum and refugee eligibility, the BIA has held that neither the Fourth Geneva Convention nor customary international law provides potential relief from deportation that can be sought over and above that which is provided by the INA.<sup>37</sup>

## 6.2 Geneva Conventions of 1945

The most important international instruments governing conduct during warfare are the Geneva Conventions of 1949. With the exception of Article 3 in each convention, the Geneva Conventions apply to international armed conflict, that is, war between two or more nations. The Protocols, however, apply to civil war and colonial domination.

### 6.2.1 The Four Conventions and Protocols

- [\*Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field\*](#) (1949)
- [\*Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea\*](#) (1949)
- [\*Geneva Convention Relative to the Treatment of Prisoners of War\*](#) (1949)
- [\*Geneva Convention Relative to the Protection of Civilian Persons in Time of War\*](#) (1949)
- [\*Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of International Armed Conflicts \(Protocol I\)\*](#) (1977)

Protocol I applies specifically to “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.” Art. 1, para. 4.

- [\*Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts \(Protocol II\)\*](#) (1977)<sup>38</sup>

Protocol II expands on Article 3, common to all four of the Geneva Conventions, and applies to armed conflicts that take place in the territory of a contracting party “between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement [the] protocol.” Art. 1, para. 1

<sup>37</sup> [\*Matter of Medina\*](#), 19 I&N Dec. 734 (BIA 1988)

<sup>38</sup> In [\*Matter of Medina\*](#), 19 I&N Dec. 734, 736, n. 3 (BIA 1988), the BIA noted that the Protocol was signed by the United States and 101 other nations and that President Reagan submitted it to the Senate on January 29, 1987, but it has not been ratified. For a list of current countries that have signed, ratified or acceded to the Protocol, see U.N. Treaties [website](#).

## 6.2.2 Article 3 of all Four of the Geneva Conventions

You are more likely to encounter refugees and asylum-seekers who come from countries where civil war or some other form of internal strife has affected the civilian population than countries involved in international armed conflict. Therefore, Article 3, which applies in the case of internal armed conflict (i.e., civil war), is the most relevant to protection adjudications.

The provisions governing conduct during armed conflict may provide guidance in evaluating the harm an applicant experienced in the context of the conflict and whether the harm constitutes persecution or harm incidental to armed conflict. Additionally, these provisions may help to define persecutory activities if the applicant was a combatant.

Relevant portions of Article 3 include, but are not limited to the following:

- persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* [out of combat] by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria
- Prohibition of the following acts with respect to the above-mentioned persons:
  - violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
  - taking of hostages
  - outrages upon personal dignity, in particular humiliating and degrading treatment
  - passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples

Article 3 also requires the collection and care of the wounded and sick.

## 7 INTERNATIONAL LAWS PERTAINING TO THE RIGHTS OF REFUGEES AND STATELESS PERSONS

### 7.1 Introduction

There are a number of international instruments establishing and defining basic standards for the treatment of refugees, the most important of which are the 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol Relating to the Status of Refugees (Refugee Protocol). The Refugee Convention sets out the rights of refugees and establishes the standards for their treatment in the countries that receive them. The Refugee Protocol was drafted to remove the geographic and time limitations of the Convention, which was drafted in the post-World War II context.



The history, principles and foundation of international refugee law, including the instruments pertaining to refugees and stateless persons, will be discussed in greater detail in the RAIO module, *UNHCR Overview and Concepts of International Protection*. In this module, you will find a non-exhaustive list of potentially useful instruments that may be relevant in your work.

## 7.2 International Instruments

- [Convention Relating to the Status of Refugees](#) (28 July 1951)
- [Convention Relating to the Status of Stateless Persons](#) (28 September 1954)
- [Convention on the Reduction of Statelessness](#) (30 August 1961)
- [Protocol Relating to the Status of Refugees](#) (31 January 1967)
- [U.N. Declaration on Territorial Asylum](#) (14 December 1967)

## 7.3 Regional Instruments

- [Organization of African Unity \(OAU\) Convention Governing the Specific Aspects of Refugee Problems in Africa](#) (10 September 1969)
- [Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Community](#) (Dublin Convention) (19 August 1997)
- [Convention on Territorial Asylum](#) (28 March 1954) (OAS)
- [Cartagena Declaration on Refugees](#) (22 November 1984)

## 8 CONCLUSION

This lesson plan is designed to provide you with information on the fundamental principles of international human rights law and its relevance in protection adjudications, as well as a basic understanding of humanitarian law and the sources of international law. You are not expected to know all of the international rights documents or principles that could arise in the context of protection adjudications, but you should be familiar with the core human rights instruments and the rights they protect. When adjudicating a protection case, you may consider if any international law instrument can help you evaluate eligibility for the benefit sought.

## 9 SUMMARY

### 9.1 Sources of International Law

International law is comprised of treaties and customary law. Customary international law consists of principles that nations acknowledge as binding legal norms, even without a treaty. Declarations and Resolutions are not binding law, but may be evidence of customary international law. There are many other types of documents from international fora that may provide guidance on the legal issues.

## **9.2 Relationship between International Law and Domestic Law**

Treaties are part of the “supreme law” of the land. Customary international law is part of the U.S. law where it does not conflict with existing domestic laws.

## **9.3 Relevance of International Law to Protection Adjudications**

Asylum and refugee law is rooted in international law. If there is no U.S. law addressing a specific legal issue, international law may assist in determining how the United States should interpret the issue. International law may assist you in evaluating, among other things:

- whether particular acts constitute persecution
- whether punishment for a particular crime constitutes persecution or legitimate prosecution
- whether a crime is considered political

## **9.4 Core Human Rights**

The most important international instruments pertaining to human rights are collectively known as the Universal Bill of Human Rights. The Universal Bill of Human Rights includes the following:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

### **9.4.1 Universal Declaration of Human Rights**

Some scholars assert that all of the rights enumerated in the UDHR have become customary international law. States around the world have broadly accepted the UDHR and its provisions, resulting in the establishment of common human rights norms.

### **9.4.2 International Covenant on Civil and Political Rights (ICCPR)**

The ICCPR proscribes certain conduct by States in order to protect civil and political rights of individuals or groups of individuals. Certain rights listed in the ICCPR are known as non-derogable rights, which means that these rights are so important that they must be protected under all circumstances, even in times of public emergency.

### 9.4.3 International Covenant on Economic Social and Cultural Rights (ICESCR)

Provisions in the ICESCR are generally viewed as goals to which parties agree to aspire. Parties to the ICESCR agree to take steps to the maximum of available resources to guarantee rights regarding standards of living, employment, education, scientific and cultural rights, and certain social rights.

## 9.5 Other Human Rights Instruments

In addition to the International Bill of Human Rights, there are other core human rights treaties and universal instruments, including regional treaties.

### 9.5.1 Convention Against Torture and Other Cruel, Degrading or Inhuman Treatment or Punishment (CAT)

The United States became party to the Convention Against Torture (CAT) on October 21, 1994. The CAT permits no exceptional circumstances justifying the use of torture. States that are party to the CAT must take effective legislative, administrative, judicial, or other measures:

- to prevent acts of torture in any territory under its jurisdiction
- to prevent the expulsion, return, or extradition of an individual to another state where the individual is more likely than not to be subject to torture
- to make torture a punishable offense, take into custody individuals who torture, and submit cases of torture to the proper authorities for prosecution

In contrast to the 1951 Convention relating to the Status of Refugees, the CAT:

- requires action, consent, or acquiescence by a public official
- requires custody and specific intent
- gives no weight to the public official's motive for torture
- has no bars
- has an identical standard of proof required to obtain withholding of removal
- is only forward looking, and offers no protection on past torture alone
- has no provisions permitting individuals subject to CAT to adjust status

## 9.6 Geneva Conventions

The four Geneva Conventions and their two Protocols are the most important conventions governing conduct in the context of armed conflict. Article 3, which is common to all four conventions, governs internal armed conflicts (*i.e.*, civil war). Article 3 prohibits certain acts of violence against individuals who are not involved in the hostilities or have laid down their arms, and requires care for the sick and wounded.

## **9.7 International Laws Pertaining to the Rights of Refugees and Stateless Persons**

There are a number of basic international instruments that establish and define basic standards for the treatment of refugees. The most significant are the 1951 United Nations Convention relating to the Status of Refugees, and its 1967 Protocol relating to the Status of Refugees.

## PRACTICAL EXERCISES

### Practical Exercise # 1

- **Title: Human Rights Matrix Scenarios**
- **Instructions:**

Read the three scenarios below and respond to the following questions for each fact pattern:

- Are there violations of human rights in this case?
- If yes, which human rights categories according to the International Human Rights Matrix were violated?
- How could you convert the category of human rights violation(s) into a protection claim?

#### **Scenario #1 Anna's sister**

Anna is from a Pakistani tribal background where forced marriages are common. When she was young, she saw her sisters and brother being forced into marriages. She has seven sisters and three of them got married at the same time. When one of her sisters refused to marry, she witnessed her father put an axe to her sister's throat. All her sisters had to go through with the marriages and today none of the arranged marriages has worked out.

One of her sisters was raped by her husband resulting in her becoming pregnant with her first child. Her parents didn't consider the forced intercourse to be rape because under their cultural law, the husband is seen to have a right over his wife. Anna's sister is now divorcing her husband and trying to rebuild her life, which has resulted in Anna's parents disowning Anna's sister.

#### **Scenario #2 Ismael**

When Ismael was 14, he was recruited into the Sierra Leone Army. He remained a soldier for almost three years. He is currently studying in the U.S.

In his testimony, he described his first combat experience. "When we got there we were in an ambush, the rebels were attacking where we were in a bush. I did not shoot my gun at first, but when you looked around and saw your schoolmates, some younger than you, crying while they were dying with their blood spilling all

over you, there was no option but to start pulling the trigger. I lost my parents during the war, they told us to join the army to avenge our parents."

**Scenario #3 Michal**

Michal belongs to an ethnic minority living in a state that is a former republic of the Soviet Union. At his birth his family name was spelled in Russian in official documents. Following the end of the Soviet rule in his country, he has sought unsuccessfully to have his name officially recorded in his passport in accordance with the spelling reflecting his ethnicity. His application was rejected on 24 December 2009 on the ground that the national legislation on the writing of names and family names in passports of citizens of his host county stipulates that for individuals born there names must be spelled according to local orthography.

**Practical Exercise # 2**

- **Title: Human Rights Violations**
- **Instructions:**

Complete the table below by listing violations of human rights for each country. Identify whether the group believes the human rights violations are serious enough to flee the country and seek international protection?

Reference the *Amnesty International Annual Report* for country research.

Country	Violation of human rights/category	Do you consider the violation serious enough to force someone to flee the country and seek international protection?
Brazil		

Spain		
Egypt		

**Practical Exercise # 3**

- **Title: Human Rights Law in Adjudicating a Claim**
- **Instructions:**

Read through the fact patterns below and be prepared to discuss each scenario in terms of the following questions:

- Does the harm suffered by the applicant violate fundamental human rights?
- Which human rights are implicated? Locate the appropriate articles of the international agreements.
- Which violations are most likely to be relevant to asylum adjudication, i.e. those that cause an individual to abandon his or her country and seek asylum?

**Fact Pattern 1**

Mohamed is a young Iraqi who is a member of the Shi'a Muslim community of southern Iraq. The Shi'as had long been viewed with suspicion from the Sunni-dominated former central government of Saddam Hussein because of their traditional links with the Shi'a population of neighboring Iran. The Iraqi Government routinely denied Shi'a the opportunity to participate in Friday religious prayers and many of the Shi'a religious leaders had been murdered by the regime.

Mohamed was a religious student affiliated with the al Hawza religious seminary, which was considered by the former Iraqi government to promote opposition to the regime. In addition, his older brother Mustafa was a member of the Daawa Party, a Shi'a religious organization banned by the former Iraqi regime. In 1989, his brother

had been arrested and jailed.

Following the end of the Gulf War in February 1991, the Shi'a in southern Iraq rose up against Saddam Hussein. Mohamed, then only 15 years old, took part in the uprising, and helped to free his older brother Mustafa from detention. One week later, the Iraqi army moved in to put down the rebellion. During the fighting that ensued, Mohamed helped carry the wounded and also took up arms, killing at least one Iraqi soldier. The Iraqi regime mercilessly crushed the rebellion, capturing and killing thousands of perceived opponents, including women and children. His brother fled the country, eventually obtaining asylum in Sweden.

Authorities soon came to Mohamed's home and forced him and his family into a van. They were taken to a security center in town to be separately interrogated. Mohamed and his father were detained in a small cell with about 20 other prisoners. He was beaten and questioned about his involvement with the Intifada, and the whereabouts of his brother. He and his mother were released a week later, but his father "disappeared." Every few months, Mohamed would be called into the police station and interrogated about his brother's whereabouts. He was often beaten. Although Mohamed wanted to leave Iraq, he feared being caught and punished for trying to leave the country without permission, which he knew he would never receive.

Finally, Mohamed decided to take the risk and leave the country. He fled to Turkey, where he was granted refugee status by UNHCR. His rights in Turkey, however, were very restricted. He was not authorized to work and was not entitled to any public welfare. In 2000, he decided to travel to the United States, where his uncle lived and applied for asylum in the US.

You are considering the case in the year 2000.

### **Fact Pattern 2**

Naw is a 25 year-old asylum-seeker from Burma. He was a student activist in Rangoon, the capital of Burma, and helped to organize a number of student marches protesting human rights abuses committed by the military regime. They also protested the Government's refusal to allow free and fair elections. In 1995, a major protest march took place, involving thousands of demonstrators. The Government declared a state of emergency and used force to stop the protests. Many people were killed. Naw was arrested and interrogated for four days. During this time he was kept in a small, dark cell, and was not allowed any food. After his release, the Government refused to allow him to attend the state university, even though he could afford the state tuition.

In 1996, a pro-democracy leader was assassinated, resulting in violent demonstrations in the street. In an effort to bring world-wide attention to the human rights situation in Burma, Naw boarded a domestic airplane flight with two boxes



of detergent. After the plane took off, he told the pilot that they had a bomb and demanded that he fly the plane to Thailand. Many passengers were afraid at first, but later realized that Naw intended them no harm. When the plane landed in Thailand, Naw demanded that the Burmese Government hold free and fair elections, which the Burmese Government refused to do. Naw soon released all of the passengers unharmed and surrendered. He was sentenced to five years in prison in Thailand for the hijacking, but was pardoned after three years.

While in Thailand, Naw occasionally returned to Burma to see his family, or to help the opposition movement. He never stayed for longer than a week, moving from house to house to make sure he was not discovered. In 2002, Naw began receiving death threats in Thailand. Fearing for his life, he bought a false passport and traveled to the United States, where a friend of his was working. He immediately requested asylum when he arrived.

### **Fact Pattern 3**

The applicant is a 40-year-old married, male native and citizen of Afghanistan. The applicant and his father began helping the mujahidin in 1981. The applicant and father donated food and medicine while he helped the mujahidin by posting up mujahidin fliers two to five times a month. His older brother had been an actual member of the mujahidin since 1981 and was serving as a driver, transporting weapons and the wounded. His brother lived with the mujahidin on the outskirts of Kandahar but would come home for a visit after dark once a month.

After his brother came home for one of his brief visits, someone reported his brother's presence to the authorities. The following morning agents from KHAD, the Afghan secret police, came to his house looking for his brother after he had already departed. The agents immediately handcuffed the applicant and his father and then searched the house. The agents then beat him and his father with the butts of their guns and asked where the applicant's brother was. He and his father were blindfolded and taken to a KHAD building.

The applicant was held without a trial and was not informed of any charges against him. Applicant was then subjected to interrogation sessions. He indicated that the first session began with nonviolent questioning about who gave him the mujahidin fliers, where his brother was, and where the mujahidin who supplied the fliers were. He stated that the KHAD agents thereafter subjected him to sleep deprivation, beatings, and electric shocks applied to his fingers. He said that he was often rendered unconscious by the abuse and would wake up back in his cell. According to the applicant, the interrogations occurred once or twice a week.

After 3 months at KHAD, he was transferred to a prison. He advised that at the prison he was no longer interrogated. He was kept locked in a cell with two other people and was allowed out of his cell only once a day for a meal. The applicant related that after he had been in prison for 10 months he was sent involuntarily to

the army. He stated that he deserted after 4 months in the army because he did not want to fight against other Moslems. The applicant left the army he and went to Pakistan with the help of the mujahidin. One of his father's friends who was in Pakistan provided the money which he used to travel to the United States.

#### **Fact Pattern 4**

The applicant is the son a Christian minister in China. In the fall of 1966, when the Cultural Revolution began, the applicant's father became a target of the Red Guards. He was forbidden from continuing his ministry and his income was terminated. Near the end of the year, the Red Guards ransacked the respondent's home, destroying walls and furniture and confiscating papers and personal effects. The applicant's father became a prisoner in the building of the Young Men's Christian Association.

The applicant was 8 years old when the Cultural Revolution began. When his home was ransacked in late 1966, he was locked in a room with his grandmother and kept there for over 6 months. He was not allowed to attend school and was interrogated on a continuing basis. When he cried, the Red Guards kicked and bit him and deprived him of food. In mid-1967, he was released from the house arrest and returned to school. Because of his family background, he was abused and humiliated. On one occasion, he fell asleep during a speech regarding the need to criticize one's parents. Rocks were thrown at him. They struck his head and he suffered a serious loss of blood. His injuries required a month of intensive treatment.

In 1970, and again in 1972, the applicant was sent to rural villages for reeducation. He was harshly treated and denied medical care for a bad cut to his leg in 1970, and for a month-long high fever he suffered in 1972, which was caused by abusive treatment. From 1973 to 1975, the respondent endured a number of exiles designed to "reeducate" him. During this time, he was forced to do labor in the fields.

#### **Fact Pattern 5**

The applicant is a 27-year-old native of Punjab, India and a devout Sikh. Since the early 1980s, a part of the Sikh community in Punjab has been fighting to establish a Sikh state independent of India. Beginning in February 1988, Sikh separatists repeatedly demanded assistance in their campaign from the unwilling family of the applicant. They forced themselves into the home of the applicant's family, ate their food, and slept under their roof. The Indian police learned of the apparent support of the family for the separatists and arrested the applicant in June 1989. Despite the applicant's assurances that he did not support the separatists, the police interrogated and beat him for two-and-a-half hours, until he lost consciousness. The police then revived him with water and resumed the beatings. They kept him detained for two days.

The Sikh separatists continued to visit the applicant's home at least once every six weeks. In January 1990, the police arrested him again and imprisoned him for six days. On each of the six days, the Indian police tightened a wide leather belt around his torso until he lost consciousness. The police finally released applicant when the leaders of his village intervened on his behalf. After the applicant's release, the separatists continued to visit his house. Fearing that the police would arrest and torture him again, applicant fled from his home to stay with relatives in another part of India. While staying with his relatives, he received letters from his family that stated that the police had returned to his house.

Applicant decided to flee India for the United States when he learned that the police had interrogated and beaten his brothers.

### **Fact Pattern 6**

The applicant is a Yugoslavian citizen, who was discriminated against because of his Hungarian extraction. He was trained as a chef, and, after completing trade school, was employed as a chef in various hotels and inns. Following the Hungarian revolution in 1957, the applicant was approached by officials of the Yugoslavian secret police and asked to mingle among the Hungarian refugees and inform the police of the activities of the Hungarian underground. He refused to do so.

Because of this refusal the Yugoslavian secret police contacted his employers and caused him to lose several jobs as a chef, and to be turned away when seeking employment while others less qualified were hired. It became impossible for him to obtain employment in the occupation for which he was trained. Eventually, he secured a job as a cook on a merchant vessel because the growing Yugoslavian merchant marine was unable to secure qualified personnel. He sought asylum when he reached the United States.

### **Fact Pattern 7**

Applicant is a citizen of China. Applicant and his wife were forced to flee from their commune because they had two children and did not agree to stop having more children. He stated that he disagreed with China's family planning policies because "in the countryside, especially in the farming areas, we need more children." He indicated that the Government wanted him to go to a clinic to be sterilized, that he thought the operation would harm his body, that he did not want to be sterilized, and that if he returned to China he would be forced to submit to the operation. His wife was ordered to submit to a sterilization operation after the birth of their second child but was able to postpone the operation due to illness.

**OTHER MATERIALS**

There are no Other Materials for this module.

**SUPPLEMENT A – INTERNATIONAL AND REFUGEE ADJUDICATIONS**

The following information is specific to international and refugee adjudications. Information in each text box contains adjudication-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>International and Refugee Adjudications Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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**SUPPLEMENT B – ASYLUM ADJUDICATIONS**

The following information is specific to asylum adjudications. Information in each text box contains adjudication-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>Asylum Adjudications Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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