

UNHCR's Regional Office in Washington

- U.S. Protection
- Caribbean Protection
- Resettlement



Learning objectives

- Provide an overview of UNHCR
- Describe sources of international law
- Describe the role of international law in U.S. asylum adjudications

International Law 101



What is International Law?

Principles, Components, Sources and Principles in the Practice

Identifying legal norms: Business Law or more?

Distinction of state and non-state actors

International law: Theoretical or practical? Is it really a system that is not subject to legal force in the way that national law is?

Using International Law to Support Asylum Claims in the U.S.

UNHCR: What We Do

• Provide international protection & assistance to refugees, displaced persons, stateless persons, and returnees



UNHCR: Who We Are

• Established in 1950

• Part of the United Nations system

• Headquarters in Geneva, Switzerland

• 113 offices in 100 countries

• 2015 budget: \$4.5 billion

• 2015 staff: 28,000

• 2015 budget: \$4.5 billion

• 2015 staff: 28,000

Who We Serve

• Refugees

• Stateless persons

• Returnees

• Displaced persons

• Asylum seekers

• Stateless persons

• Returnees

• Displaced persons

• Asylum seekers

• Stateless persons

• Returnees

• Displaced persons

• Asylum seekers

• Stateless persons

• Returnees

• Displaced persons

• Asylum seekers



UNHCR's Regional Office in Washington

- U.S. Protection
- Caribbean Protection
- Resettlement



Learning objectives

- Provide an overview of UNHCR
- Describe sources of international law
- Describe the role of international law in U.S. asylum adjudications

International Law 101



What is International Law?

Principles, Components, Sources and Principles in the Practice

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Identifying key sources of international law

Using International Law to Support Asylum Claims in the U.S.

UNHCR: What We Do

Provide international protection & assistance to refugees, displaced persons, stateless persons, and returnees

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

Protect and promote statelessness and assist the rights of stateless persons

UNHCR: Who We Are

Specialized UN agency

Established in 1950

Part of the UN system

Headquartered in Geneva

Operates in over 110 countries

Has 61 regional offices

Has 115 country offices

Has 287 field offices

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members

Has 1,000 staff members



Learning objectives

- Provide an overview of UNHCR
- Describe sources of international law
- Describe the role of international law in U.S. asylum adjudications

UNHCR: Who We Are

- Created By the UN General Assembly in 1950
- Primary international organization mandated to protect refugees internationally since 1951
- Authority stems from *1951 Convention Relating to the Status of Refugees & 1967 Protocol*



UNHCR: What We Do

- Provide international protection & assistance to refugees
- Seek permanent, durable solutions for refugees
- Prevent and reduce statelessness and protect the rights of stateless people



Who We Serve

- Refugees
- Asylum-seekers
- Stateless persons
- Internally displaced persons
- Returnees
- Others of Concern

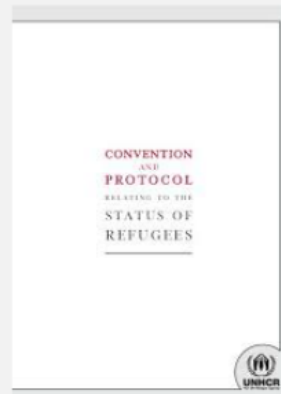


Refugee Definition

Any person who:

“Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality, and being outside the country of his former habitual residence . . . is unable or, owing to such fear, is unwilling to return to it.”

Article 1(A)(2) of the Refugee Convention



UNHCR's Regional Office in Washington

- U.S. Protection
- Caribbean Protection
- Resettlement

US Protection Unit

- Ensure access to territory
- Protect access to asylum
- Detention as a last resort
- Statelessness



US Protection Unit

- Ensure access to territory
- Protect access to asylum
- Detention as a last resort
- Statelessness



International Law 101



What is International Law?

Treaties, Conventions, Covenants and Protocols to the Treaties

- Binding agreements between two or more nations

Declarations and Resolutions

- *Non-binding* instruments that contain statements of principles or concerns that reflect the considered views of nations, including binding provisions.

Customary Law

- Practices or principles so broadly accepted that nations acknowledge them as binding even without a treaty

Bodies of International Law

**Prohibition against
Torture**

**Human Rights
Law**

**Humanitarian Law- the
Law of Armed Conflict**

Main Bodies of International Refugee Law

- 1951 Convention on the Status of Refugees
- 1967 Protocol

Address: Who is a refugee, his or her rights and responsibilities, and the legal obligations of States.

Obligation on States to safeguard against non-refoulement.

UNHCR Interpretive Guidance

- UNHCR Handbook
- UNHCR Guidelines on International Protection
- UNHCR Eligibility Guidelines



UNHCR Interpretive Guidance

- UNHCR Handbook
- UNHCR Guidelines on International Protection
- UNHCR Eligibility Guidelines



International Refugee Law in the United States

U.S. acceded to the *1967 Protocol* in 1968



The U.S. is obligated to comply with its provisions and safeguard the protection of refugees

Domestic Refugee Law

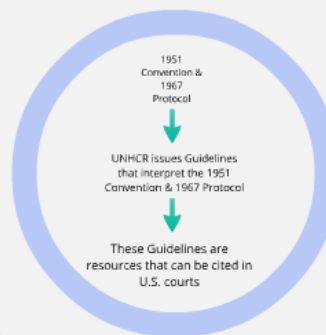
- Congress enacted the **Refugee Act of 1980** expressly to "bring United States refugee law into conformance with the 1967 Protocol" *INS v. Cardoza-Fonseca*.
- The Refugee Act should be interpreted and implemented in a manner consistent with the *1951 Convention* and its *1967 Protocol*

Domestic Refugee Law

- Congress enacted the **Refugee Act of 1980** expressly to "bring United States refugee law into conformance with the 1967 Protocol" *INS v. Cardoza-Fonseca*.
- The Refugee Act should be interpreted and implemented in a manner consistent with the *1951 Convention* and its *1967 Protocol*

Relevance of UNHCR Guidance

- "[the] Supreme Court has consistently turned [to UNHCR] for assistance in interpreting [U.S.] obligations under the Refugee Convention." *N-A-M v. Holder* (Henry, J., concurring)
- *Cardoza-Fonseca*: the Handbook provides "significant guidance"



1951
Convention &
1967
Protocol



UNHCR issues Guidelines
that interpret the 1951
Convention & 1967 Protocol



These Guidelines are
resources that can be cited in
U.S. courts

How to use international law in the U.S.

- Courts have looked to UNHCR guidance to interpret specific legal questions.
- Courts have also looked to UNHCR reports in examining conditions in the asylum seekers country of origin.



Relevant Guidance for Different Types of Claims

UNHCR Guidelines on International Protection

No. 1: Gender Related Persecution

- Gender-related forms of persecution (FGM, domestic violence, sexual violence)
- Gender sensitive approach to interpreting the Convention grounds
- Interpreting PSG to encompass gender/harassment/political opinion to encompass views on gender roles



No. 2: "Membership of a Particular Social Group"

- UNHCR's definition of PSG- broader than U.S. approach:
- "Protected characteristic" OR "social perception"
- Harm from non-state actors and proving the causal link

No. 8: Child Asylum Claims

- Child-sensitive interpretation of the refugee definition:
- Child specific forms of persecution
- Agents of persecution in child claims
- Procedural safeguards for child asylum claims



No. 9: Sexual Orientation and/or Gender Identity

- International human rights law protecting equality and non-discrimination
- Common forms of persecution in LGBTI claims
- Interpreting religion, PSG, and political opinion in LGBTI asylum claims



UNHCR Guidelines on International Protection

No. 1: Gender Related Persecution

- Gender-related forms of persecution (FGM, domestic violence, sexual violence);
- Gender-sensitive approach to interpreting the Convention grounds;
 - Interpreting PSG to encompass gender/sex;
 - Interpreting political opinion to encompass views on gender roles.



No. 2: "Membership of a Particular Social Group"

- UNHCR's definition of PSG- broader than U.S. approach;
 - "Protected characteristic" OR "social perception"
- Harm from non-state actors and proving the causal link.

No. 8: Child Asylum Claims

- Child-sensitive interpretation of the refugee definition;
 - Child specific forms of persecution;
 - Agents of persecution in child claims;
- Procedural safeguards for child asylum claims.



No. 9: Sexual Orientation and/or Gender Identity

- International human rights law protecting equality and non-discrimination;
- Common forms of persecution in LGBTI claims;
- Interpreting religion, PSG, and political opinion in LGBTI asylum claims.





**UNHCR Guidelines
on International
Protection**

No. 1: Gender Related Persecution

- Gender-related forms of persecution (FGM, domestic violence, sexual violence);
- Gender-sensitive approach to interpreting the Convention grounds;
 - Interpreting PSG to encompass gender/sex;
 - Interpreting political opinion to encompass views on gender roles.



No. 2: "Membership of a Particular Social Group"

- UNHCR's definition of PSG- broader than U.S. approach;
 - "Protected characteristic" OR "social perception"
- Harm from non-state actors and proving the causal link.

No. 8: Child Asylum Claims

- Child-sensitive interpretation of the refugee definition;
 - Child specific forms of persecution;
 - Agents of persecution in child claims;
- Procedural safeguards for child asylum claims.



No. 9: Sexual Orientation and/or Gender Identity

- International human rights law protecting equality and non-discrimination;
- Common forms of persecution in LGBTI claims;
- Interpreting religion, PSG, and political opinion in LGBTI asylum claims.



Citations to UNHCR in U.S. Courts

- Case examples
 - *Zhang v. Ashcroft* (9th Cir): used Handbook to support view that excessive discrimination can be considered persecution
 - *Mejilla-Romero v. Holder* (1st Cir): relying on UNHCR's Guidelines on Child Asylum Claims
 - *Escobar v. Holder* (7th Cir): cited to UNHCR report on conditions in Colombia

Case Example

Felix is a citizen of Guatemala. In 2009, gang members killed his father outside of his father's church. Felix's cousin witnessed the murder and agreed to testify against the gang; however, she was killed the day before the hearing. Felix's sister has also received threats from gang members, even though she neither witnessed the attack nor agreed to testify against the gang. Felix argues that he fears persecution because of the gang's vendetta against his family.

Rios v. Lynch, 807 F.3d 1123 (9th Cir. 2015)

Elements of an Asylum Claim

- (1) he is outside of his country of nationality or former habitual residence;
- (2) he fears persecution (the "subjective element");
- (3) such fear of persecution is well-founded (the "objective" element);
- (4) such persecution is "for reasons of race, religion, nationality, membership of a particular social group or political opinion"; and
- (5) owing to such fear, he does not wish to return to his country of nationality or former habitual residence.

Relevant UNHCR Guidance

- *Guidelines on International Protection No. 2: Membership in a Particular Social Group*-stating that "families" may constitute a PSG
- *UNHCR Gang Guidance Note*: discussing "family members" as a group that may be routinely targeted by gangs
- *UNHCR Handbook*: explaining that the "well founded fear" analysis must take into account surrounding circumstances



Questions?



Upcoming Webinars

In the next few months, UNHCR will be hosting webinars on:

- Children's claims;
- Women's claims;
- LGBTI claims;
- Claims from Central America

Please check our website for updated information:

<http://www.unhcr.org/en-us/attorney-resources.html>

UNHCR's Regional Office in Washington

- U.S. Protection
- Caribbean Protection
- Resettlement



Learning objectives

- Provide an overview of UNHCR
- Describe sources of international law
- Describe the role of international law in U.S. asylum adjudications

International Law 101



What is International Law?

Principles, Customary, Conventions and Protocols in the Treaties

• Binding agreement between two or more countries

• Not binding rule unless that country voluntarily or is forced to follow the international rule of conduct, including binding precedents.

• International law

Using International Law to Support Asylum Claims in the U.S.

UNHCR: What We Do

• Provide international protection & assistance in refugee displacement, identify solutions for refugees

• Promote and restore statelessness and protect the rights of stateless people



UNHCR: Who We Are

• Created by the international community in 1950

• 107 member states

• 100+ offices worldwide

• 100+ staff members

• 100+ million people served

• 100+ million people served

• 100+ million people served

• 100+ million people served

• 100+ million people served

• 100+ million people served

• 100+ million people served

• 100+ million people served

• 100+ million people served

• 100+ million people served

Who We Serve

• Refugees

• Stateless persons

• Internally Displaced Persons

• Returnees

• Asylum seekers

• Stateless persons

• Internally Displaced Persons

• Returnees

• Asylum seekers

• Stateless persons

• Internally Displaced Persons

• Returnees

• Asylum seekers

