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

- 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

- *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
  - Sexual orientation or gender identity
  - Marital status
  - Pregnancy or potential pregnancy
  - Criminal activity
  - Political opinion

- No. 2: "Membership of a Particular Social Group"
  - UNHCR Guidelines on PEGID (Particular Social Group)
  - “Imputed Political Opinion”

- No. 3: "Dishonest Activity"
  - Dishonest behavior under international law

- No. 4: Sexual Orientation and/or Gender Identity
  - Persecution on the basis of sexual orientation
  - Persecution on the basis of gender identity

- No. 5: Child Abuse
  - Treatment of minors in the context of the crime
  - Risk of abuse due to the claim

- No. 6: Threats against Life
  - Imminent threat to life
  - Risk of death or serious injury

- No. 7: Recognition of a Person
  - Rights of the individual
  - Recognition of status or identity

- No. 8: Protection of Victims
  - Protection measures
  - Rights of the individual

- No. 9: "Membership of a Particular Social Group"
  - UNHCR Guidelines on PEGID

- No. 10: "Imputed Political Opinion"
  - Imputed political opinion
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. 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.

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.
UNHCR Guidelines on International Protection
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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
  - *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
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