

# Forced Migration

## Class 11: non-refoulement/CAT

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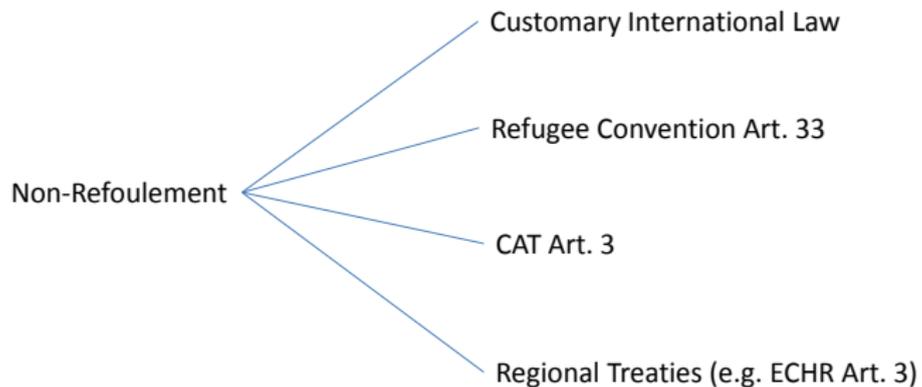
Non-refoulement

CAT

US Implementation

# Non-refoulement

## Sources of Law



# Non-refoulement

## Convention Against Torture

### Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

# Non-refoulement

## Convention Against Torture

**Article 1.1** For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

# Non-refoulement

## Foreign Affairs Reform and Restructuring Act of 1998

**(a) Policy.** It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.

**(b) Regulations.** Not later than 120 days after the date of enactment of this Act [Oct. 21, 1998], the heads of the appropriate agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.

# Non-refoulement

## US Senate understandings

[I]n order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering . . .

# Non-refoulement

## US Senate understandings

. . . mental pain or suffering refers to prolonged mental harm caused by or resulting from:

1. the intentional infliction or threatened infliction of severe physical pain or suffering;
2. the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
3. the threat of imminent death; or
4. the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

# Non-refoulement

## US Senate understandings

That with reference to Article 1 of the Convention, the United States understands that the term “acquiescence” requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.

# Non-refoulement

## US Senate understandings

That the United States understands the phrase, “where there are substantial grounds for believing that he would be in danger of being subjected to torture,” as used in Article 3 of the Convention, to mean “if it is more likely than not that he would be tortured.”

# Non-refoulement

## US regulations

**8 C.F.R. § 208.19** Definition of torture (combining language of CAT and Senate understandings).

**8 C.F.R. § 208.16** Procedure for granting withholding of removal under CAT (and including same exclusions as under INA § 241(b)(3)).

**8 C.F.R. § 208.17** Procedure for granting deferral of removal under CAT, for those excluded under § 208.16.

# Non-refoulement

Comparison of US forms of protection

