

and the civil war in El Salvador. The United States was politically involved in the resolution of these conflicts, which included grants of amnesty.

Amnesty is usually called for at the end of such turmoil to help the society forget the past and move forward to heal the wounds and repair the damage. Historically, however, where blanket amnesties are given and no one is brought to justice for human rights violations, the turmoil will often arise again. Unless justice is done, or at least the truth of what occurred is revealed, those who were victims will carry around the feeling that their human dignity has been violated and nothing has been done about it. They will seek their own vengeance, leading to more violence. Therefore, an alternative is needed to allow the people to feel that such abuses have been revealed and acknowledged, even if no one is punished. Various methods, such as truth commissions, can be established to get to the truth of what happened. The post apartheid South African Truth Commission is an example of such a process.

In the United States, amnesty also refers to an immigration law and program enacted in 1986. The “Amnesty Law,” or the Immigration Control and Reform Act, forgave the illegal entry or overstay of all illegal aliens who had lived in the United States since 1981 or were agricultural workers who had worked for a certain period. The amnesty program allowed such aliens to become legal residents of the United States. Other amnesties have occurred in U.S. history, for example, the amnesty of draft dodgers in the Vietnam War.

See Also Terms: 3, 151, 155, 156, 272, 283.

14. ANTI-SEMITISM

Definition: A hostile, intolerant, or discriminatory attitude against Jews as a racial or religious group. Also used to characterize the acts or statements manifesting such an attitude, usually in a hateful and injurious manner. Actually, the true and full meaning of the word refers to such an attitude against *anyone* of Semitic origin, which includes Arabs as well as Jews, since both groups are Semites. In the United States, however, most people associate this attitude specifically with Jewish people.

Significance: Anti-Semitic attitudes by themselves may not be human rights violations, because they are part of personal beliefs. However, certain actions manifesting anti-Semitic attitudes can be characterized as hate crimes, and if committed by a government or its agents, can be violations of human rights. Such anti-Semitic actions might include defacing synagogues, desecrating cemeteries or physically beating a Semitic person.

The following articles of the ICCPR would come into play in such cases: Article 2.1, non-discrimination on the basis of race, religion, national origin; Article 6, the right to life; Article 7, prohibition of torture, cruel, inhuman, or degrading punishment; Article 9, liberty and security of person; Article 14, equality before courts and tribunals; Article 17, prohibition of unlawful interference with privacy, family, honor and reputation; Article 18, freedom of religion; Article 19, freedom of expression; Article 20.2, prohibition of advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence; Article 24, prohibition of discrimination against children based on race or religion; Article 25, voting and participating in public affairs; Article 26, equal protection of the law; Article 27, the rights of ethnic and religious minorities to enjoy their culture and profess and practice their own religion. See Document 8.

Many anti-Semitic acts would also be prohibited under CERD, Articles 2–4, as a violation of human rights in the context of racial discrimination. See Document 23. Anti-Semitism is a violation of human rights because it treats certain people differently from other people solely on the basis of their race, religion or ethnic group. As history has shown, in its ultimate manifestation, anti-Semitism could lead to genocide and the destruction of those who are Semitic, such as was attempted during the Holocaust.

The international community and human rights organizations have expressed their belief that the key to eliminating anti-Semitism is to teach human rights to everyone. This education will

result in increasing tolerance of “the other,” regardless of race, religion, ethnic origin or any other such characteristic.

In 2004, the U.S. Congress passed the Global Anti-Semitism Review Act. See Document 101. This obligated the State Department to monitor and report on acts of anti-Semitism. It resulted in a specific office being established in the State Department to do this work. Since that time there has been a step up in anti-Semitism awareness and activity by the U.S. government. The U.S. government now has a Special Envoy to Monitor and Combat Anti-Semitism.

See Also Terms: 22, 28, 33, 35, 55, 77, 78, 86, 87, 100, 130, 139, 140, 143, 144, 145, 151, 179, 188, 190, 216, 228, 235, 237, 255, 260, 261, 324.

15. APARTHEID

Definition: A legally enforced social and political system of nearly complete racial separation between a dominant race and dominated race or races.

Significance: This term was used to describe the system in South Africa prior to 1993, wherein the whites created a forced separation between whites and blacks and other nonwhites. This systematic, enforced racial segregation was condemned by nearly every country and in the 1970s was considered by the international community to be an international crime, as an offense against all persons. Though South Africa no longer has apartheid, the term has come to be used in human rights circles for the systematic forced segregation of races, ethnic groups or even religious groups. The idea is that the dominant group wishes to exist separately from the dominated group while still controlling the latter group.

Apartheid is characterized by treating certain races as unequal and as lesser than the dominant group. It is forced racial discrimination, typically resulting in persons of the dominated race being forced to live in separate parts of the state or city. It usually results in the dominated race receiving very few government benefits, having to use separate public facilities, and not mixing with the dominant race. It may include a lack of political power, even a lack of the right to vote or hold office. It usually allows for very limited exercise of civil and political rights. The U.S. now condemns apartheid. In its own history, however, it sanctioned the same kind of discrimination at one time. This situation was rectified through the abolition of slavery and subsequently through the Civil Rights Acts. One does still hear claims that the U.S. policy of putting Native Americans on reservations is a form of apartheid.

See Also Terms: 22, 33, 34, 40, 45, 55, 63, 86, 100, 102, 122, 124, 144, 145, 151, 152, 167, 169, 181, 182, 184, 188, 195, 205, 216, 228, 235, 237, 260, 261, 277, 283, 316.

16. ARBITRARY ARREST/DETENTION

Definition: Arbitrary arrest occurs when a person is taken into custody by the government authorities (federal, state or local) without a proper, well-founded, lawful basis for doing so. Arbitrary detention means keeping a person in detention or custody without taking steps to prosecute or release. Thus, the victim of arbitrary detention appears to be in the position of being held indefinitely, without charges and criminal prosecution.

Significance: In general, arbitrary arrest or detention denies the person his or her rights to “liberty and security of person” and “due process of law.” Government may only deprive a person of physical liberty if it is done pursuant to law. In the U.S. context, this usually requires probable cause under the Fourth Amendment and due process of law under the Fifth Amendment to the U.S. Constitution. Because there is no legal justification for a detention that is characterized as arbitrary, it is a violation of one’s constitutional rights. Under international human rights law, it is also a violation of international human rights norms because, therein, everyone has a right to liberty and security of person. That means everyone has a right to move around freely, believing

that government will not interfere with his or her freedom without having a legal ground to do so, such as evidence that the person committed a crime. Arbitrary detentions are often made simply to harass people that authorities do not like; sometimes they are made merely because authorities suspect that the people are engaged in unlawful activity, though they do not have sufficient evidence to prosecute them.

Under Article 9 of the ICCPR, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” This article sets forth the procedural human rights of arrested and detained persons. Thus, because of the U.S. ratification of the ICCPR, arbitrary arrests and detentions committed in the United States are a violation of international human rights norms.

Arbitrary arrests and detentions are not done solely where the victim is suspected of having committed a crime. It may possibly apply, for example, in the case of a mentally ill street person being institutionalized against his will for too long, or in a so-called administrative detention, wherein police round up and detain people, more for fear of possible future criminal activity without any legitimate factual basis, rather than for having committed a crime. Any type of depriving a person of physical liberty can bring into play this human rights norm.

Arbitrary detentions have occurred in U.S. history. One example is the Japanese internment after Pearl Harbor. Even though at that time those internments were done pursuant to law, it was later determined that such legal basis was not valid. Another example is the detention of Cuban Marielitos, who were criminals sent out of Cuba by the Cuban government to come into the United States. Because they could not be sent back to Cuba, they were housed in prisons around the United States with no criminal charges filed against them and no criminal prosecutions having been commenced. Where such detentions last an unjustifiably long time, as determined by a court, they are referred to as “prolonged arbitrary detentions.”

Post 9/11 this issue surfaced repeatedly in the war on terrorism measures taken by the U.S. government, specifically the detention of many terrorism suspects, primarily those detained in Guantanamo. Almost all were detained without any charges and some were held just because it was believed that they possessed information which would help U.S. counter terrorism measures.

Even though done in pursuance of this goal the detentions were arbitrary so long as the U.S. detained them without charge and without access to lawyers and court. The proof of the arbitrariness of the detention was that even until the new President ordered the closure of Guantanamo hardly any of the over 600 detainees had been charged with any criminal wrongdoing and only a few were convicted of any crime. Because of the amount of time spent in such detention this qualified as a prolonged arbitrary detention as to most detainees. This violated the ICCPR, Article 9, which was at all times applicable to Guantanamo, though the U.S. government denies its extraterritorial application.

See Also Terms: 11, 12, 17, 20, 24, 48, 59, 81, 82, 85, 90, 93, 120, 122, 124, 134, 136, 144, 145, 151, 152, 167, 169, 177, 179, 184, 193, 195, 196, 239, 248, 252, 254, 255, 272, 275, 283, 309, 316.

17. ARREST

Definition: Any physical denial of freedom of movement by the government for purposes of detaining a person suspected of having committed a crime. An arrest begins the process of a person being brought physically before law enforcement authorities and courts so as to read and face charges of criminal conduct and, if found guilty, to be punished for such crimes.

Significance: Under international human rights law, freedom is the rule and any limitation on liberty and freedom of movement is the exception and must be legally justified by the state. The first duty of the state is respect for and protection of the human rights of all persons within its jurisdiction. Under the U.S. Constitution, freedom from physical restraint is a substantive due process right guaranteed by the Fifth and Fourteenth Amendments. The state may not arrest or otherwise exercise physical restraint on anyone unless it has a valid legal basis for doing so.

ASYLUM

Article 3 of the UDHR states that “Everyone has the right to life, liberty and security of person.” Security of person corresponds to freedom from unreasonable search and seizure under the Fourth Amendment to the U.S. Constitution. Article 9 states that “No one shall be subjected to arbitrary arrest, detention or exile.” Under Article 11 everyone charged with a criminal offense is presumed innocent. See document 6.

Article 9 of the ICCPR, binding on the United States, states that “everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.” That article goes on to state the particular human rights held by someone arrested. Article 10 sets forth the right of all persons deprived of their liberty to be “treated with humanity and with respect for the inherent dignity of the human person.” Article 14 sets forth human rights required for a fair and just criminal process, known as procedural due process, or criminal defendant’s rights, in the U.S. Constitution. See Document 8.

The criminal arrest and prosecution-related provisions of both the UDHR and ICCPR were modeled on the U.S. Constitution’s Bill of Rights.

See Also Terms: 3, 11, 12, 16, 24, 33, 34, 49, 59, 81, 82, 90, 93, 117, 122, 124, 134, 145, 153, 155, 156, 161, 167, 175, 177, 179, 184, 193, 195, 196, 234, 238, 248, 252, 283, 309, 316.

18. ASYLUM

Definition: Asylum is legal protection from human rights violations constituting persecution, committed by the government of a person’s own country. It is provided by another country to a person who is not its citizen but who flees to that country to escape the persecution. The asylum seeker requests such protection because of past persecution or a well-founded fear of future persecution based on the person’s race, nationality, religion, political opinion or membership in a particular social group.

Significance: Under Article 14 of the UDHR, everyone has the right to seek and enjoy asylum. This does not mean that everyone has the right to be granted asylum but only the right to apply for it. See Document 6.

Everyone has the right to be free from persecution in their own country or in the country where they permanently reside. If individuals have their human rights violated by their own country, they have the right to flee to another country and there ask that government to protect them from their own country. Other states have the right to protect the rights of a person when that person’s own state will not. Asylum will only be granted to someone who qualifies as a “refugee.” The definition of a “refugee” under international law is set forth in Article 1 of the 1951 Refugee Convention. See Document 36.

The United States has not ratified the Refugee Convention but has ratified the 1967 Protocol to that treaty that incorporates and expands the convention definition. In the United States, asylum is granted under the Refugee Act of 1980, federal legislation that implements that 1967 Protocol. See Document 37. A refugee under U.S. law (see 8 U.S.C.A., sec. 1101(a) (42)) is a person who is outside of his own country, or of the last country in which he resided, and is unable or unwilling to avail himself of the protection of that country because of past persecution (which is a violation of human rights), or a well-founded fear of future persecution on account of race, nationality, religion, membership in a particular social group, or political opinion.

Those who flee a country because of generalized violence or to find a better economic situation are not considered eligible for asylum, because they do not qualify officially as “refugees.” A person can also become a refugee while in another country when the situation changes in her own country and those changes cause her to be afraid to return to that country for fear of human rights violations against her.

A grant of asylum is discretionary with the host state. There is no automatic right to be granted asylum, only the right to apply for asylum. A state can choose, in its discretion, not to grant asylum. However, if a state denies asylum it nonetheless may not, under the principal of *non-refoulement*, expel

or return an alien in any manner to a border (“frontier”) of a territory where her life or freedom would be threatened on account of her race, religion, nationality, membership in a particular social group, or political opinion.

Americans often speak about asylum using the term “political asylum.” They use this term almost interchangeably with asylum. Actually, asylum can be of five different types, depending on the basis for receiving asylum. These are race, religion, political opinion, nationality, or membership in a particular social group. So it is incorrect to speak merely of “political asylum” or to use that term to refer to all forms of asylum. Of course, political asylum is the most commonly found basis for a person seeking asylum, because most often persons flee their country after being involved in political activity that their government sought to stop by violating the person’s human rights.

Prominent examples of persons seeking asylum in the United States include the Vietnamese of the late 1970s–1980s, Haitian refugees of the early 1990s, the Chinese who fled China for fear of forced abortion or sterilization in the mid-1990s, the Eastern European dissidents who fled here during the Cold War, and Iraqi Christians, who came to this country in the aftermath of the Iraqi invasion in 2004.

Many immigrants have come to the United States fleeing persecution in other countries. As a matter of fact, the United States was founded by peoples fleeing countries in Europe where religious and ethnic rights were being violated. This is made clear in the Declaration of Independence. See Document 1.

See *Haitian Centre for Human Rights v. United States* for an interesting case filed against the United States regarding the United States stopping Haitian refugees on the high seas in the early 1990s.

See Also Terms: 11, 12, 13, 20, 33, 37, 51, 70, 73, 79, 109, 122, 124, 125, 144, 145, 146, 151, 152, 155, 156, 167, 169, 177, 179, 184, 185, 195, 219, 235, 238, 239, 240, 249, 253, 254, 259, 263, 265, 272, 283, 287, 293, 294, 302, 309, 316.

19. ATROCITY

Definition: An act or a series of acts usually committed by human beings against other human beings that is particularly and completely brutal, wicked, barbaric and revolting in a civilized world. Sometimes these acts are committed by governments against their own people; sometimes they are committed by private, nongovernmental groups and persons.

Significance: An atrocity is a situation where many different human rights are violated such as: the right to life, freedom from torture, cruel, degrading and inhuman treatment and even genocide. Because atrocities so greatly harm human beings and so greatly shock the human conscience, they are to be condemned as violations of human rights. They may constitute international crimes if they were committed during an armed conflict, or crimes against humanity if committed at other times against the civilian population. Examples in an American context would include the My Lai massacre and the Oklahoma Federal Building bombing.

Such acts are usually characterized by excessive and indiscriminate physical violence, such as a mass murder, and are often acts of hate targeting members of an ethnic group, such as the Holocaust genocide. Atrocities are often referred to in the more extreme instances as “man’s inhumanity to man,” and in spite of great technological advances in the world today they still continue to occur. International atrocities of recent times include the Rwanda genocide of 1994, the Srebrenica (Bosnia) Massacre of 1995, and Kosovo in the late 1990s. These instances all violated international human rights norms and involved the United States in either peacekeeping, peace brokering, or international humanitarian relief assistance, as well as in dealing with them in the U.N. Security Council.

When those guilty of committing atrocities go unpunished, a “culture of impunity” is created and sows the seeds for future atrocities by way of revenge. The response to atrocities must include restoring the rule of law through justice according to human rights law, and it must include

adequate investigation, prosecution, and reparations for and rehabilitation of surviving victims or their families.

See Also Terms: 11, 12, 20, 26, 33, 34, 35, 48, 53, 56, 63, 64, 70, 71, 72, 85, 101, 110, 111, 117, 124, 130, 132, 143, 144, 145, 151, 152, 153, 177, 181, 182, 200, 201, 228, 235, 238, 271, 272, 281, 289, 298, 300, 302, 394, 309, 317, 318, 319, 320.

B

20. BASIC HUMAN RIGHTS

Definition: This term refers to those human rights that are generally considered necessary or essential to the well-being and human dignity of the individual person. In concept, when basic human rights are guaranteed, those rights help to assure the primary material and nonmaterial needs of human beings so that people can lead a dignified life.

Significance: Basic human rights are the most fundamental requirements for human beings to live a life consistent with their human dignity. Therefore, these rights are given absolute precedence, or priority, in both national and international law and policy. There is no universally accepted list of these rights because they vary somewhat in different cultural contexts. They would include, however, the right to life, food, shelter and medical treatment, and freedom from torture, cruel, degrading and inhuman treatment and punishment, and freedom of religion, freedom of expression, and freedom from slavery.

All human rights are considered equal, interdependent, interrelated and indivisible in theory. However, the term “basic human rights” is used to designate certain human rights that are simply too basic *not* to be respected. Basic human rights mentioned generally in the American Declaration of Independence include life, liberty and the pursuit of happiness. It states that the first and foremost duty of government is to protect the basic human rights of people within its jurisdiction. The United States was created by people who sought to create a place where basic human rights were protected for all. Protecting basic human rights has always been a goal of U.S. law and policy.

Basic human rights are set forth in the following international human rights instruments: UDHR, ICCPR, and ICESCR, though the term basic human rights is narrower than all of the substantive rights set forth in them. It is an abstract concept and not easy to define clearly, but it is often used in human rights discourse. See Documents 6, 8, 16.

See Also Terms: 11, 12, 24, 33, 34, 35, 56, 70, 75, 90, 92, 100, 116, 120, 122, 124, 136, 144, 145, 160, 167, 177, 179, 180, 184, 195, 213, 242, 252, 283, 309, 316.

21. BEARER

Definition: The person who possesses, or who holds, a legal (human) right and has the right and power to take steps to protect or vindicate such a right. In international human rights law it is the individual human being and not the state who is the bearer (also called “holder”) of the human right for protection of his or her human dignity.

Significance: The key to understanding the international human rights movement is to understand that it is built on the individual person as the bearer of human rights, based on each person’s inherent human dignity. Historically, state sovereigns (rulers or governments) have most often believed that human rights were bestowed by them on the individuals under their rule. This concept only worked well for the individual if the sovereign happened to be benevolent. Often, however, rights were given and taken away from people on the whim of the sovereign. A classic example of the kinds of horrors that can occur with this approach to rights is the Holocaust of World War II. Under the Third Reich, the laws were changed so that the rights of Jews and other