Research Assignment 1

Your goals for this assignment are:

- To use commentary & analysis sources to find basic information on a treaty
- To use advanced search functions in secondary sources to build a basic foundational knowledge of how to research travaux préparatoires and US legislative history
- To identify and locate documents created during the treaty negotiation process (the documents that make up travaux préparatoires) and in ratification of a treaty and related laws in the US Congress (legislative history)
- To write a short analysis based on your findings.

Due: February 27 @ 4pm via Blackboard.

Research Diary: Where indicated in the questions below, include a research diary after the substantive answer. The instructions and examples are in the Assignments folder on Blackboard. Essentially, you should tell me your thought process for finding your answer - tell me what you did and why, include all correct and incorrect steps. Tell me how you think the process went - for example, after finding the answer, did you realize there was a better path you could have taken? This is designed to help you think strategically about your search process and help me see how you are thinking. Use your common sense - different questions may have very different research diaries in terms of length and/or content. One page absolute max for each diary.

Format for answers: Submit your homework via Blackboard as a Word document. For each question/subquestion, clearly delineate your answer first and then your research diary.

Search functions: Two of the questions below ask you to use multiple unique search features. Here is a list of our search features aka terms & connectors/fields & segments. Each number below is considered a unique search function. For example, using AND or OR is counted as one unique search function regardless of how many times it is used in the search.

1. AND, OR
2. /s & /p
3. /n
4. +n & pre/n
5. atleast
6. NOT & AND NOT
7. Parenthesis
8. Quotations
9. Date restrictions
10. Field searching
11. Truncation (aka root expander)
12. Wildcards
Question 1:
Using a commentary on the Vienna Convention on the Law of Treaties, briefly describe the difference between ratification, acceptance, and approval of a treaty. Be sure to identify whether the word used changes the legal effect. Include a Bluebook citation to the book. Your answer should be no more than 2-3 paragraphs. Provide a research diary. Here, I mean a book that calls itself a commentary, not a general source that provides analysis.

Question 2:
You are representing an El Salvadoran client in a US asylum claim. As part of the asylum claim, you must prove that your client has (1) a well-founded fear of persecution (2) based on past persecution or risk of persecution in the future if returned to the country of origin (3) because of the applicant’s race, religion, nationality, membership in a particular social group, or political opinion and that (4) the persecutor is a government actor and/or a non-governmental actor that the government is unwilling or unable to control. As to prong 3 - you think the best chance of success is membership in a particular social group as an El Salvadoran woman abused by her domestic partner.

There is complicated (often contradictory) guidance and judicial tests on whether gender can be considered a particular social group in the US. This is even more challenging to understand because there are so many potential resources to investigate this issue on the domestic and international level. The US asylum scheme is based in part on the Convention Relating to the Status of Refugees and its subsequent protocol. The US is not a signatory to the Convention, but it is a signatory to the 1967 Protocol which incorporates the Convention’s provisions by reference. Further, the Protocol is not considered self-executing so Congress passed the Refugee Act of 1980 to implement obligations under the Convention.


Using this information, answer the following questions.
Part I: The International Perspective

A. The first step in interpreting and applying treaties is the text. Using the text of the Convention and Protocol, is gender a particular social group? Provide citation information for the text you actually use. You may use any version of the text you would like.

B. There are many ways to interpret treaties beyond the plain text. One of those is looking to the drafting history aka travaux preparatoires. Because a collection of travaux preparatoires will include multiple documents and can be found in many places and because the original negotiations may not include subsequent developments, it is often helpful to look for commentary and analysis that provides an overview of the work or focuses on particular aspects that are helpful for us.

Using the advanced search feature on Westlaw, Lexis, or the library catalog article search, identify an article that discusses whether the Convention includes gender as a particular social group using three unique search functions. According to the article you found, does it? Here we are concerned with how the international community and the UNHCR defines it, not the US perspective. Provide a research diary; make sure you tell me why that article is reliable.

C. Remember that commentaries may address travaux preparatoires. Identify a compiled travaux preparatoires and/or a commentary of the Convention and Protocol. Does it address gender and if so, how? Several variations on how to find such a resource are in the GlobaLex reading on travaux.

D. In class, we discussed the importance of familiarizing ourselves with the website of the organization that produced or monitors a treaty. Does the UNCHR have any documents on its website indicating whether they consider gender a particular social group under the Convention? If you find multiple, choose the best one and tell me how you know it’s the best. Provide a research diary.

E. Based on the information you found in the above A-D, can gender be considered a particular social group? Why or why not? Do you think we can argue that our client is a member of a particular social group as an El Salvadoran woman abused by her domestic partner? Remember we are focusing on the international perspective. Your answer should be no more than three paragraphs and include support solely from the documents you identified in A-D. If you do not have enough information to answer the question, tell me what else you could do to find an answer.
Part II: The US Perspective

A. To interpret treaties and statutes in the US, we first look at the text. We’ve already looked at the convention texts. Using the text of the Refugee Act of 1980, is gender a particular social group? In what title (number and name) is the Act codified in the United States Code, https://www.westlaw.com/Document/I51EA4AB0C7E911DE9636FDC4E9AB25B4/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0? If you need a refresher on how to find the text of acts and the process of codification, be sure to stop by the reference desk and ask a librarian.

B. In the US, treaties are transmitted to the Senate for advice and consent, first through the Committee on Foreign Relations, then to the body as a whole. This is done using a treaty document: “[t]he text of a treaty as submitted to the Senate by the executive branch, as well as letters of transmittal from the President and the Secretary of State, and accompanying background documentation.” https://www.congress.gov/help/legislative-glossary#t For non-self-executing treaties, corresponding implementing legislation may be passed by Congress as a whole (as is the case with us here). This means that when you want to find legislative history information for a treaty in the US, you may be looking for the documents produced during the advice and consent process AND documents produced in the normal legislative process for the implementing legislation. (For a refresher on the legislative process, see https://www.congress.gov/legislative-process.)

As with travaux préparatoires, we often look to legislative history for interpretation and background/historical information. In either case, I recommend you look for commentary and analysis that provides an overview of the work or focuses on particular aspects that are helpful for us. When dealing specifically with interpretation, you always want to look for how US courts interpret treaties and statutes (which is often discussed in commentary & analysis).

Knowing this, use the advanced search feature on Westlaw, Lexis, or the library catalog article search to identify an article that discusses whether the Convention and/or the Refugee Act include gender as a particular social group in the US today using three unique search functions. According to the article you found, does it? Include a research diary; make sure you tell me why that article is reliable.

C. Outside of commentary & analysis, a compiled legislative history helps us identify congressional documents. These may take the form of indexes (as you’ll see in Question 3), published commentary and analysis (like books or journal articles), or may exist in databases. To see an example of a compiled legislative history, go to the database Legislative Insight. Find the legislative history for the Refugee Act of 1980. On this page
find the conference report from the Senate Judiciary Committee, S. Rpt. 96-590. *Conference reports are created after the House and Senate compromise on different versions of a bill; they are often considered the most influential type of legislative history document.* In S. Rpt. 96-590, find the section on asylum and withholding of deportation on page 20. What does this tell us about how we should interpret the asylum provisions?

**Question 3:**

*Commentary & analysis can also operate as finding aids by giving us the citations of the original documents produced in the legislative process so we can quickly find and read the actual documents.* Read the foreword in the attached PDF of Christian L. Wiktor, *Treaties Submitted to the United States Senate: Legislative History, 1989-2004* (2006). Then read the entry for the Hague Protocol (Sept. 28, 1955). Find a version of the following documents on the databases listed so you can practice using these sources. Provide a screenshot.

A. Treaty Doc. 107-14 - Congress.Gov  
B. S. Ex. Rept. 108-8 - Search using Google; how do you know the source you choose is reliable in less than 3 sentences.  
D. Treaty Doc. 106-45 - ProQuest Congressional