Historically and traditionally, privacy as a concept has been regarded as an important part of being human and a necessary component of establishing human relations. International instruments list the right to privacy as one that must be protected, and the custom that has developed through the application of these instruments indicates the historical importance and legal recognition given to individual privacy as a framed concept and fundamental right. Among the sources of international law enumerated in article 38 of the Statute of the International Court of Justice, the right to privacy in certain contexts might well constitute a new norm of international law. There seems to be universal agreement that in areas such as intimate conduct, search and seizure, and data protection, the law ought to protect the individual from abuses. A survey of jurisprudence by international judicial bodies and state practice on these salient issues of privacy might help us achieve a better understanding of what are the protections as well as the restrictions on the right to privacy.

I. Search and Seizure

A. International Law and Jurisprudence

The concept that one has the right to be secure in one’s papers, letters, and what we might term “private communications,” has been legally recognized for centuries in most Western legal systems. Common characteristics of the various definitions of the search and seizure privacy right include the following: a respect for the sanctity and inviolability of the home; with some permissible limitations

514 These include: The United Nations’ Human Rights Committee (individual complaints are made to the Human Rights Committee which then assesses a complaint based on the written information provided, with the result that it may lead to a change in a state’s laws based upon the Committee’s assessment); the European Court on Human Rights; the Inter-American Commission and Court of Human Rights; and the African Commission on Human and Peoples’ Rights.

515 Edwards, supra note 453.
on the right; recognition that any interference with the right must be reason-
able and limited in time and in scope as necessary to satisfy a legitimate legal
purpose; rejection of arbitrary and unlawful interference with privacy and un-
fettered discretion to search or seize; effective external supervision of law en-
forcement authorities; balancing of law enforcement needs against the right to
privacy; judicially independent authorization of searches and seizures; and le-
gally enforceable safeguards regulating the use of police powers. The search and
seizure privacy right has appeared substantially, uniformly, and consistently in
various international instruments over the last fifty years.\textsuperscript{516} For instance, the
Convention on the Rights of the Child,\textsuperscript{517} which is the most widely ratifi ed inter-
national human rights law treaty in existence, with 192 Parties,\textsuperscript{518} confirms the
expansiveness of state practice regarding the search and seizure privacy right as
a customary international law norm. Article 16 of the Convention on the Rights
of the Child provides:

No child shall be subjected to arbitrary interference with his or her privacy, family,
home or correspondence, nor to attacks upon his or her honour and reputation. The
child has the right to the protection of the law against such interference or attacks.\textsuperscript{519}

Additionally, the majority of constitutions of the world contain search and sei-
zeure provisions.\textsuperscript{520} Even constitutions that do not contain a specifically stated
right to privacy, such as the US Constitution, might have a search and seizure
provision, such as the Fourth Amendment, which has continued to develop in
the jurisprudence.\textsuperscript{521} It has been argued that the search and seizure right to pri-
vacy has risen to the level of customary international law given that the elements

\textsuperscript{516} See generally I\textsc{an} Brown\textsc{lie}, \textsc{Principles of Public International Law} 623-32
(4th ed., Oxford Univ. Press 1990); H\textsc{enry} G. Schermers \& N\textsc{iels} M. Blokker, \textsc{International Institutional Law} §§ 1344, 1344-1389 (3d rev. ed. 1999) (discussing
interpretation and settlement of treaty disputes, and noting that “[w]hoever applies
a rule must first also interpret it, which of course requires ascertaining its mean-
ing.”); I\textsc{an} Sinclair, \textsc{The Vienna Convention on the Law of Treaties} (1973)
(discussing interpretation of treaties).

\textsuperscript{517} Convention on the Rights of the Child, \textit{supra} note 380.

\textsuperscript{518} The only two countries that have not ratified the Children’s Convention are the
United States and Somalia.

\textsuperscript{519} Convention on the Rights of the Child, \textit{supra} note 380, at art. 16.

\textsuperscript{520} See \textit{infra} Appendix: Privacy Protections in the Constitutions of Countries Around
the World.

\textsuperscript{521} The Fourth Amendment to the US Constitution recognizes:

[the right of the people to be secure in their persons, houses, papers, and effects,
against unreasonable searches and seizures, shall not be violated, and no warrants
shall issue, but upon probable cause, supported by oath or affirmation, and particu-
larly describing the place to be searched, and the persons or things to be seized.