This is a printed version of the syllabus for The Refugee Law Reader, an on-line ‘living’ casebook (www.refugeelawreader.org). The Refugee Law Reader is a collaborative project among experts in the field that offers a fully developed course curriculum and access to over 10,000 pages of legal instruments, documents and specialist commentary.

The Refugee Law Reader has been designed to easily adapt to the wide range of teaching and research needs of professionals. This booklet aims to facilitate navigation within the web site and to assist in seeing the structure of the curriculum as a whole. It also seeks to assist users with the selective adaptation of the course structure and access to the extensive legal material available in The Reader.
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ABOUT THE READER AND ITS USE

About the Reader

January 2008

*The Refugee Law Reader: Cases, Documents and Materials* (4th edn.) is a comprehensive on-line model curriculum for the study of the complex and rapidly evolving field of international refugee law. It was initiated and is supported by the Hungarian Helsinki Committee and funded by the European Refugee Fund and the United Nations High Commissioner for Refugees (UNHCR).

The Reader is aimed for the use of professors, lawyers, advocates, and students across a wide range of national jurisdictions. It provides a flexible course structure that can be easily adapted to meet a range of training and resource needs. The Reader also offers access to the complete texts of up-to-date core legal materials, instruments, and academic commentary. In its entirety, the Refugee Law Reader is designed to provide a full curriculum for a 48-hour course in International Refugee Law and contains over 600 documents and materials.

**Structure and Content**

The Reader is divided into four sections: Introduction to International Refugee Law, The International Framework for Refugee Protection, The European Framework for Refugee Protection, and UNHCR and Other Actors Relevant to International Asylum Law. Each section contains the relevant hard and soft law, the most important cases decided by national or international courts and tribunals and a carefully selected set of academic commentaries.
To facilitate teaching and stimulate critical discussion, the Editors highlight the main legal and policy debates that address each topic, as well as the main points that should be drawn from the assigned reading. In many sections of the syllabus, readers may also access Editor’s Notes, which contain more detailed commentary and suggestions for teaching in a given subject area.

The current content of the Reader is reflective of its initial objective, which was to provide teaching and resource materials for universities in Central and Eastern Europe and neighbouring regions. Because of the depth, scope, and flexibility of the Reader, it is now being accessed in several continents for the teaching and training of refugee law by over 20,000 users. Because of its extensive use across the world, the editorial board now is engaged in the task of expanding and ‘universalizing’ The Reader. The Fifth Edition, which will be launched towards the end of 2008, will introduce new regional legal sections focusing on Latin America, Africa, and Asia. Alongside the English language publication, adapted language editions will be launched in French, Russian, and Spanish. The Editorial Board hopes that with these new developments, the Reader can move towards an effective regional approach to refugee legal education that will overcome language and geographical barriers and can effectively serve a larger community of asylum experts worldwide.

The Reader first deals with the international refugee law regime and its foundations: the 1951 Geneva Convention Relating to the Status of Refugees, the expanding mandate of UNHCR and regional developments which have a bearing on the universal perception of the rights and duties of forced migrants. The concepts and the processes are analysed in light of the formative hard and soft law documents and discussed in an up-to-date, high standard, detailed academic commentary. Issues underlying the global dilemmas of refugee law are tackled, taking into account
developments in related areas of human rights and humanitarian law, as well as research advances in the field of migration.

In addition to the examination of the classic problematique of international refugee law, the Reader also focuses on the European Framework for Refugee Protection. The Editors share the view that the developments within the Council of Europe and the European Union are critical for lawyers in both Member and Non-Member States. For many countries bordering the current and future European Union, their asylum policies in turn will, for better or for worse, be responding to, and often replicating elements of Western European asylum policy.

The evolution of the asylum regime in Europe, however, has broader ramifications well beyond the regional context described above, making it relevant to a much wider community of international legal scholars and advocates. For the institutional and political fora of the European Union, the detailed pan-European asylum system that is under construction is creating regional norms and standards in the area of asylum that have been, and will continue to be, looked to by policy makers from other continents. For those reasons, the Reader offers a serious consideration of the European context for refugee protection. It also provides an excellent collection of the central instruments that are shaping regional law and policy. They are current up until December 2007.

While we have attempted to design the Reader so that users across jurisdictions, and with varying objectives, can select their own focus for the material, it is important that central themes of the Reader should not be discarded in this a la carte approach to refugee law.

Prior to the launch of the adapted language editions of The Reader, a translated syllabus of the English edition will be made available on-line. The Reader syllabus has been translated into Spanish (downloadable in a PDF format), and French and Russian translations will be following soon.
Accessing Source Material

Over 80 per cent of the documents and materials contained in the Reader are accessible in their full text format to all users. For practical purposes, we have limited all assigned reading to English language materials.

The Reader uses James C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991) and G. Goodwin-Gill and J. McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007) as core texts. The Reader is able to provide open and full access to the assigned pages of *The Law of Refugee Status*. While it is likely that many university professors and students will have access to the Goodwin-Gill and McAdams 2007 third revised edition of *The Refugee in International Law* in their libraries or university bookshops, the Editors are aware that many of our users may not. These users, however, will still benefit from full access to the text of the assigned reading from the second edition of Goodwin-Gill’s *The Refugee in International Law* (Oxford: Oxford University Press, 1996). Hence, the Editors have included parallel citations for the 3rd and 2nd editions of *The Refugee in International Law* throughout The Reader to ensure that all can follow the core readings in the syllabus regardless of resources. The Editorial Board and the Hungarian Helsinki Committee would like to thank the authors and Oxford University Press for their invaluable support for making refugee legal education accessible across the globe.

With the very generous support of the publishers of the secondary literature that is included in the Reader, we are able to provide the professors teaching refugee law and clinics in Central and Eastern Europe and other developing regions with password-protected access to these documents. Other users who are engaged in teaching and training refugee law in a university or clinical context may also be eligible for a password to access
protected materials. More information can be obtained by contacting the Hungarian Helsinki Committee at the email listed at the bottom of the page. As there are a large number of core and extended readings that are accessible in the Reader, we recommend that the reading should only be selectively printed out. Professors may wish to assign their students segments of the assigned readings, and many of the documents, and particularly lengthy legal instruments, can be effectively reviewed on-line.

One of the significant advantages of an on-line Reader is that it is able to provide access to instruments, documents and cases in their entirety, offering a rich source of material for academic writing. It should be noted that for purposes of citation, the process of downloading articles in PDF format does not always translate the page numbers of the original publication. Hence, please consult the full citation that appears in the syllabus to ensure accuracy.

Adapting the Reader to Specific Course Needs

Editorial recommendations for how class time should be allocated to cover each of the respective subject areas, and their sub-topics, are provided below for a 48-hour course, as well as 24- and 12-hour modules. A copy of the complete syllabus can be downloaded and adapted for teaching purposes. Each of the sections of the complete syllabus, and their respective sub-topics can be directly accessed on the site. In the chart below, each of the major topics included in the syllabus are presented. The full text of the syllabus and the relevant source material for the assigned readings can be accessed in The Reader. For more detailed directions, see the section Technical Advice below.
Recommended hours for module teaching

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**Technical Advice**

To begin, you are advised to download the complete Syllabus of the Refugee Law Reader. The complete Syllabus provides you with both a general and a detailed overview of the Reader’s structure and the documents included therein. The PDF format enables you to easily print out the Syllabus and use it as a general reference document. You can create your own syllabus or list of readings by simply copy-pasting the relevant citations into your own word processing system – the PDF format will ensure that the original form of the Syllabus remains unmodified.

To access a specific section of the Refugee Law Reader, click on the relevant section titles and subtitles in the left hand menu. The accompanying section of the Syllabus will then appear on the screen followed by the list of downloadable documents. Most of the documents
are easily available in PDF format by simply clicking on the small PDF icon under the title of the chosen document.

The vast majority of the Reader’s documents are freely downloadable; however, some documents require authorization (a password) and are limited to professors and students in Central and Eastern Europe and other developing regions. Requests for password by other users are examined on an individual basis. As the publisher of the Refugee Law Reader, the Hungarian Helsinki Committee strives to make all materials as widely available as possible, and it negotiates with international publishing houses every year to expand the circle of beneficiaries.

If you wish to identify documents by publisher, author, or title, you can do so easily by using the search engine of the Refugee Law Reader. For further guidelines on how to search the Reader, please consult the relevant text available on the search website.

**Acknowledgments**

*Each edition of The Reader expands upon the contributions of prior editors. This is particularly the case with members of the editorial board who were involved in the creation and development of the first three editions. We would like to thank:*

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Appreciation is also extended to the Irish Research Council for the Humanities and Social Sciences, whose funding for Rosemary Byrne as a Government of Ireland Research Scholar facilitated the development of the Reader.
**Reader Feedback**

One of the advantages of producing an on-line resource is the editorial capacity to update and review materials at more frequent intervals than published texts would allow. For this purpose, we would like to encourage you to send the Editors any suggestions that they may have for improving the Reader.

We would also like to include current case law as it develops within, and beyond, the current Member States. If you are aware of important jurisprudence that is available in English, French, Russian or Spanish, we would be very appreciative if this could be brought to our attention.

*Please send any correspondence to the editorial board at:*

**Hungarian Helsinki Committee**  
H–1054 Budapest, PO Box 317, Hungary  
Tel./Fax: (+36 1) 321 4327, 321 4323  
E-mail: reader@larc.info
SECTION I

Introduction to International Refugee Law: Background and Context


Main Debates
Is there a Human Right of Freedom to Move to Another Country?
Is Migration an Asset to, or a Burden for, Sending and Receiving States?
What is the Relationship between Past Movements and Present Migration Policies?

Main Points
Unlimited Exit v. Limited Entry Rights
Impacts of Regular and Forced Migration:
Migration as a Pervasive Feature of the Human Experience

a. The Concepts

Main Debates
Regular, Illegal, and Forced Migration:
Should Different Types of Migration be Subject to Different Forms of Control?

Main Points
Sociological, Demographic, Historical and Legal Perspectives on Migration
Understanding Fundamental Terms of Reference:
International Migrant
Asylum seeker
Refugee
Illegal Migrant
‘Of Concern’ to UNHCR
**Readings**

**Core**


**b. The Theories**

**Main Debates**

What are the Causes of Migration?
Is the Model of Push-Pull Factors Adequate?
Can Migratory Processes be Managed?
Does Migration Management Simply Redirect or Reclassify Migrants?

**Main Points**

Absence of a Single Theory Explaining Migration
The Start and the Continuation of a Migratory Process May Have Different Causes

Migration Management:

- Varied Tools
- Short v. Long Term Perspectives
- Often Unexpected Results

**Readings**

**Core**


Editor’s note
As the reading demonstrates, there is no single theory of migration. Theories of international migration attempt to explain migration at different levels (i.e., ranging from the individual, family, or community, to the national and global) and focus on various aspects of migration (i.e., forces that “trigger” migration or factors that sustain it). Even the most widely held convictions – about the sovereign right and the economic incentives to exclude the foreigners – may be challenged.

c. The Actual Movements

Main Debates
Is the Boat Really Full? Where?
Should Former Countries of Origin ‘Repay’ their Historic Debts by Receiving Migrants?
Does Europe Need an Immigration Policy?

Main Points
Transformation of European States from Sending to Receiving States
Absolute Number and Relative Proportion of Immigrants in Europe is Statistically Small
Lessons from Historical Data:
  • Closing One Entry Door Leads to Opening of Another
  • Migration Cannot be Halted

Readings
Core
Extended


EUROSTAT, EUROSTAT Yearbook (2005), pp. 73–78.


Editor’s note

An historical overview of migration should place a particular emphasis on post-Second World War patterns, highlighting the changes in migration policies that encouraged inward migration until the late 1970s.

Explication of trends and patterns in refugee migration should identify the changing numbers of refugees, their countries of origin, and the uneven distribution of asylum seekers among host countries.

2. The Legal and Institutional Framework for Refugee Protection

Main Debates

National Sovereignty, Migration Control, and International Obligations

Legal v. Moral Duties of Host States

For Better or for Worse: Expanding Refugee Definitions and the Rise of New Actors

Main Points

Three Major Phases of the Evolution of the International Refugee Legal Regime

Policy Responses to Different Types of Migration

Universal and Regional Definitions
**a. The Evolution of the International Refugee Regime**

**Readings**

**Core**


**Extended**


**Editor’s note**

Note the three phases of the modern international refugee regime:

1. The first phase of collective recognition of refugees, which goes up until the Second World War,

2. The second phase of transition, which occurs during and shortly after the Second World War,

3. The third phase of individual recognition and other forms of protection, which begins with the establishment of UNHCR and entry into force of the 1951 Convention, continuing to the present.
b. The Universal Standard: 
the 1951 Geneva Convention Refugee
Definition and the Statute of the UNHCR

_Treaties_  
**International**  

_Soft Law_  
Statute of the Office of the United Nations High Commissioner for Refugees,  
UN General Assembly Resolution, A/RES/428 (V), 14, 14 December 1950.

_Readings_  
**Core**  

(Editor’s note)  
For detailed analysis see also Section II.2

This section traces the recent broadening of the refugee definition and the expansion of major actors (governmental and non-governmental) that has occurred from early 1970s onwards. While the 1951 Geneva Convention provides the core legal definition of “refugee” and UNHCR remains the dominant actor in international refugee protection, readers should consider whether the appearance of new definitions undermines the consistency of the regime or leads to a more responsive international environment.

c. Contemporary Alternative Refugee Definitions

i. Africa

_Treaties_  
**Regional**  
Convention Governing the Specific Aspects of Refugee Problems in Africa,  
ii. Latin America

*Soft Law*

iii. Europe

*Soft Law*

*EU Documents*

d. Institutions and Actors in International Law Relevant to Refugee Protection

*UNHCR Documents*

*Editor’s note*
See UNCHR’s website on Donors and partners of UNHCR.
See also Section IV.
3. Overview of National Legal Framework, Institutions, and Actors

a. The Interface Between International Law and National Law

Readings
Core

b. Comparing National Systems

Readings
Core
UNHCR, ‘Reception Standards for Asylum Seekers In the European Union’ July 2000.

Extended
SECTION II

International Framework for Refugee Protection

1. Principles and Concepts of Refugee Protection

Main Debates
The Scope of Beneficiaries – Adequacy of the Convention Refugee Definition
Duration of Protection – For How Long is a State Legally Obliged to Protect Refugees?
Temporary Protection v. Durable Solutions
Human Rights Protection v. Migration Control
Asylum v. Extradition and other Criminal Law Measures
Implications of Extraterritorial Policies as an Alternative or a Threat to Asylum

Main Points
International Refugee Protection as a Surrogate to National Protection, Resulting from the Failure of the State to Protect Human Rights
Non-refoulement and Different Forms of Asylum
Standards of Protection and Refugee Rights
Increasing Importance of Core International Human Rights Instruments for Refugee Protection

a. Asylum

Soft Law
Declaration on Territorial Asylum, UN General Assembly Resolution, A/RES/2312 (XXII), 14 December 1967.

UNHCR Documents
Readings
Core

Extended

Editor’s note
See also Sections II.1.b. and II.1.c.
Cf. 1951 Convention Arts. 32, 33.

b. Non-refoulement

Treaties
International
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 85, Art. 3.

Soft Law
UNHCR EXCOM, ‘Non-refoulement’, Conclusion No. 6 (XXVIII), 1977.

UNHCR Documents

Readings
Core


**Readings**

**Extended**


**c. Non-discrimination**

**Treaties**

**International**


**Readings**

**Core**

Extended

d. Family Unity

Treaties
International

Soft Law
UNHCR EXCOM, ‘Family Reunion’ Conclusion No. 9 (XXVIII), 1977.
UNHCR EXCOM, ‘Family Reunification’ Conclusion No. 24 (XXXII), 1981

UNHCR Documents

Readings
Core
Editor’s note
See Section II.3.a.iii (Convention on the Rights of the Child).
See also Section III.1.b (case-law under ECHR Art. 8).

e. Durable Solutions

UNHCR Documents
UNHCR, ‘Agenda for Protection’, October 2003, pp. 68–75.

Readings

Core

Editor’s note
See Section II.2.j (cessation of refugee status being one of the durable solutions as foreseen by the 1951 Refugee Convention).
f. International Cooperation

Readings
Core


Extended

Editor’s note
See Section IV.

2. The 1951 Geneva Convention

a. Historical Context

Main Debates
Relationship Between the Strategic Political Objectives of Western States in 1951 and the Scope of the 1951 Geneva Convention Definition
Does the Focus on Civil and Political Rights in the 1951 Geneva Convention Definition Offer an Adequate Understanding of the Need for International Protection?
Main Points
The Evolution of the Refugee Definition from:
- A Historical Context
- Juridical to Social to Individualist Perspectives
- The Specific to the Universal
1951 Geneva Convention Refugee Definition v. Other Contemporary Definitions

Readings
Core

Editor’s note
It is instructive to identify and analyse the refugee definitions in international instruments between 1922 and 1946 in comparison to that of the 1951 Geneva Convention.
It is useful to identify the values (civil and political rights) highlighted in the 1951 definition and those that are not (social and economic rights) as a means of generating a broader discussion about the wisdom, practicality, and political implications of the choices made in adopting the 1951 Geneva Convention definition.

i. Prior Definitions: Group Specific; Geographically and Temporally Limited

Soft Law

Readings
Core
ii. 1951 Geneva Convention: Universal Applicability; Optional Geographical and Temporal Limits

Soft Law

Readings
Core

iii. Expansion via the 1967 Protocol

Treaties

Soft Law

b. Definition

Main Debates
Interpretive Method: Original Intent v. Evolving Interpretation – Should There Be a “Fixed” or “Expanding” Meaning?
Re-Defining Refugee: Controversies over Expanding the Definition to Meet Protection Needs Not Foreseen in 1951.
**UNHCR Documents**

**Editor’s note**
A discussion of whether the definition of refugee should be modernized should consider whether gender, sexual orientation, or other characteristics should be added to the enumerated grounds of persecution.
See Section III.2.b.ii (b) Council Directive 2004/83 of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and content of the protection granted.

i. Alienage

**Main Debates**
Requirement that Refugees Be Outside of their State of Nationality v. Need for Protection
Should the Internally Displaced Receive Refugee Protection?

**Main Points**
1951 Geneva Convention Applies to a Subset of Forced Migrants
Underlying Legal and Practical Motivations of State Parties for Requirement that Refugees Cross International Borders
UNHCR v. State Party Views on International Protection Needs: UNHCR Assists to IDPs

**Readings**
**Core**
Editor’s note

In 1951, the conceptual scope of international law was much more limited than it is today. Many then viewed international law as limited to duties between states that lacked the competence to impose duties on states regarding their own nationals. There is also a sort of common sense notion that those who are outside of their own borders and fear persecution by authorities within their own state are quite clearly and visibly in need of international protection. The requirement that individuals must be outside their own state in order to qualify as a refugee accomplished multiple goals:

(1) It reduced the number of forced migrants that the international community needed to address.

(2) It prevented states from shifting responsibility for large parts of their own populations to the international community.

(3) It prevented states from violating the territorial sovereignty of other states on the pretext of responding to a refugee problem.

(4) It furnished a prominent example of the limited reach of international legal obligations and duties.

(a) Outside the Country of Nationality

Soft Law


(b) Owing to Fear Is Unable or Unwilling to Avail Self of Protection of Country of Nationality

Soft Law

(c) **Dual or Multiple Nationality**

*Soft Law*

(d) **Stateless**

*International Treaties*

*Soft Law*

*Readings*

*Core*
ii. Well-founded Fear

Main Debates
The Well-founded Fear Requirement:
Demonstration of Objective v. Subjective Fears

Main Points
Subjective v. Objective Fear
Interpretation by State Parties
Major Focus in Refugee Determinations is on the Risk of Future Persecution
Assessing the Risk of Persecution in the Future Cannot be Done in the Abstract

Soft Law

Cases
R. v. Secretary of State for the Home Department ex parte Sivakumaran, (1988) 1 All ER 193 (HL) (UK judicial decision analysing objective element)
INS v. Cardoza – Fonseca, 480 US 421 (1987) (US judicial decision stating that one in ten probability of harm can constitute well-founded fear)

Readings
Core

Extended

Editor’s note
Many State Parties interpret this term to require showings of both subjective and objective fear.
Debates surrounding the interpretation of the well-founded fear requirement centre upon whether there is a need to demonstrate two elements: 1) the asylum seeker’s subjective emotion of fear and 2) the objective factors which indicate that the asylum seeker’s fear is reasonable; or whether the inquiry should be solely the objective assessment of the situation, limiting protection only to those who objectively risk persecution.

Whether viewed as two elements or one, the major focus on showing a risk in the future must consider all the circumstances, the context and the conditions that have occurred in the past, and must evaluate the degree of likelihood of the actions and threats that might take place in the future.

N.B. Many commentators and tribunals confuse the discussions of subjective and objective elements of fear with concerns about credibility and consistency of the asylum seekers’ narratives.

See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted and opened for signature, ratification and accession by UN General Assembly Resolution 39/46 of 10 December 1984, entered into force 26 June 1987, in accordance with Article 27 (1), Section 4).

iii. Persecution

Main Debates
Accountability Theory v. Protection Theory
Must Persecution Include Punitive Intent?

Main Points
Persecution by Non-State Actors
The Threshold for Persecution:
  • Discrimination
  • Prosecution under Laws of General Application
  • Threats to Life, Liberty or Bodily Integrity without Punitive Intent (i.e., FGM)

Editor’s note
The debate between the accountability theory v. the protection theory centres upon whether refugee status is limited to those who fear persecution by groups for whom the
state is accountable or whether it is available to those who need protection from all sources of persecution on account of the five enumerated grounds. For EU definition, see Section III.2.b.ii (b) Joint Position 4 March 1996 of the Council of the European Union on the harmonized application of the definition of the term ‘refugee’ in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees (96/196/JHA) and see Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted, Art. 2–10, 13.

(a) Acts of Persecution

Soft Law

Cases
(NZ administrative decision using international law principles to interpret the term ‘persecution’)
Independent Federal Asylum Senate, (IFAS/UBAS) [Austria], Decision of 21 March 2002, IFAS 220.268/0-X1/33/00
(Austrian administrative appellate decision concluding that female genital mutilation constitutes persecution)
Pitcherskaia v INS, 118 F 3d 641 (9th Cir 1997) (US judicial decision holding that forced treatment in psychiatric institution without intent to punish can constitute persecution)
Korablina v INS, 158 F 3d 1038 (9th Cir 1998) (US judicial decision finding cumulative discrimination against Jewish woman in Ukraine constitutes persecution)
UK Court of Appeal Adan and Aitseguer, 23 July 1999 [1999] 3 WLR 1274 UK House of Lords Regina v Secretary of State for the Home Department ex parte Adan; Regina v Secretary of State for The Home Department ex parte Aitseguer,
Judgments of 19 December 2000), [2001] 2 WLR 143. (UK judicial decision upholding asylum for applicants fearing persecution by non-state actors)

Readings
Core

(b) Agents of Persecution

Soft Law

UNHCR Documents

Readings
Core
(c) *Five Grounds: Race, Religion, Nationality, Social Group, Political Opinion*

**Main Debates**
Flight from General Civil War: Can Violent Insecurity Give Rise to the Possibility of Persecution based upon the Specified Grounds?
Widespread Repressive Practices: What is the Relationship between the Individual and the Group?
Conscription: In What Circumstances Can Coerced Military Service Constitute Persecution?
Whose Political Opinion is Relevant: The Persecutor, the Persecuted or Both?

**Main Points**
Broad Interpretation of Concepts of Race, Religion and Nationality
Public Religious Activity v. Private Worship
Religious Objections to Military Service
Multiple Factors in Social Group Definition: Immutable Characteristics, Involuntary Associations, Shared Values, Voluntary Associations, Pariah Status
Social Groups and Gender-Related Persecution
Types of Expression of Political Opinion – Including Neutrality

**Treaties**

**International**
International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, Arts. 2, 12, 18, 19, 26, 27.

**Regional**
**Soft Law**
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief, UN General Assembly Resolution, A/RES/36/55, 25 November 1981.

**UNHCR Documents**

**Cases**
**Core**
*R. v. Immigration Appeal Tribunal ex parte Shah; Islam v Secretary of State for the Home Department*, (1999) 2 AC 629. (UK judicial decision holding Pakistani women accused of adultery feared persecution based on their social group)
*Matter of Kasinga*, 21 Immigration & Nationality Decisions 357 (BIA 1996). (US administrative decision recognising as a social group women who fear female genital mutilation)
Aguirre-Cervantes v. INS, 242 F 3d 1169 (9th Cir 2001). (US judicial decision granting asylum to a Mexican woman based on physical abuse by father)

Bolanos-Hernandez v. INS, 767 F 2d 1277 (9th Cir 1984). (US judicial decision holding neutrality in El Salvador can be a political opinion)

Ciric and Ciric v. Canada, 2FC 65 (1994). (Federal Court of Canada holding refusal to serve in Serbian army in 1991 constituted protected political opinion)

Klinko v. Canada, 184 (2000) DLR 4th 14. (Federal Court of Appeal of Canada holds that public complaints about widespread corrupt conduct can constitute political opinion)

Chen Shi Hai (an infant) v. The Minister for Immigration and Multicultural Affairs, (2002) 162 ALR 577. (Australian High Court holds child born in violation of the one-child policy faces persecution based on social group)

Extended

Federal Administrative Court (German), 15 March 1988, 9 C 378.86, Volume 79, Collection of Decisions143 (German judicial opinion recognising Iranian homosexual faces persecution based on social group)

Ahmad and Others v Secretary of State for the Home Department, (CA) (1990) Imm AR 61. (UK judicial decision on persecution of Ahmadiyas in Pakistan)

Refugee Review Tribunal, 7 July 1994 RRT Reference N93/01843. (Australian decision on persecution of Christians in China)

Dobrican v. INS 77, F 3d 164 (7th Cir 1996). (US judicial decision on religious objections to military service by Jehovah’s Witness in Romania)

Attorney General v. Ward, [1993] 2 SCR 689 (Supreme Court). (Canadian judicial decision on social group)

Metropolitan Court (Hungary), 28 February 2000. (Judicial decision ordering new refugee procedure in order to analyse in depth Serbian draft evader)

Metropolitan Court (Hungary), 9 February 1999. (Judicial decision providing protection, but not refugee status, to ethnic Hungarian who disobeyed Yugoslav conscription order)

Barraza-Rivera v. INS, 913 F2d 1443 (9th Cir 1990). (US judicial decision holding that desertion from Salvadoran military in 1984 to avoid assassination duty constituted protected political opinion)
Guo Chun Di v. Carroll, 824F Supp 858 (ED Va 1994). (US judicial opinion finding opposition to China’s population control policy is political opinion)

Readings

Core


Extended


Editor’s note
It should be noted that many forms of persecution may be related to overlapping grounds under Article 1.
It may be useful to think about the scope of protected activities under the 1951 Geneva Convention:

- Religion: Does, or should, it include non-traditional religious beliefs? Anti-religious beliefs? Satanism?
- Political opinion: Does, or should, it include racist or anti-semitic political statements?
- Gender-related persecution and persecution based on sexual orientation: Tends to be viewed as issues of social group — may also implicate religious grounds as well as political opinion. See Section 2.c.i. for further resources concerning gender-related persecution.
- Persecution related to military conscription: Tends to be viewed as issues of political opinion, but may also implicate religious grounds.

c. Groups with Special Needs

Treaties

Editor's note
It is desirable to stress the impact that the elements of the Convention definition have on women, children, and the elderly throughout the examination of most of the topics covered in the Reader.
Special needs of individuals can have a great impact both on access to the asylum procedure and on standards of treatment.

i. Women

Main Debates
Are Women, as a Majority of the Population, a Social Group Under the 1951 Convention?
Do Laws or Harsh Customs Imposed Upon Women Warrant International Protection?
Treaties

UNHCR Documents
UNHCR EXCOM, ‘Refugee Women and International Protection’, Conclusion No. 64 (XLI), 1990.
UNHCR EXCOM, ‘Refugee Protection and Sexual Violence’, Conclusion No. 73 (XLIV), 1993.

Cases
Core
R. v. Immigration Appeal Tribunal ex parte Shah; Islam v Secretary of State for the Home Department, (1999) 2 AC 629. (UK judicial decision holding Pakistani women accused of adultery feared persecution based on their social group)
Matter of Kasinga, 21 Immigration & Nationality Decisions 357 (BIA 1996). (US administrative decision recognising as asocial group women who fear female genital mutilation)
Aguirre-Cervantes v. INS, 242 F 3d 1169 (9th Cir 2001). (US judicial decision granting asylum to a Mexican woman based on physical abuse by father)

Extended
Matter of S-A, Interim Decision 3433 (BIA 2000) (US administrative decision granting asylum to Moroccan woman based on physical and emotional abuse by father)
In re JJ, Immigration Court York, PA 10 April 2001, Judge Van Wyke. (US administrative decision granting asylum to Spanish Roma fearing forced return to abusive marriage)
**Readings**

**Core**


**Extended**


**Editor’s note**

See Section II.2.b.iv for resources concerning gender-related persecution and its intersection with persecution based on membership in a particular social group.
ii. Children

Main Debates
How Should Asylum Systems Adapt to Respect the ‘Best Interests of the Children’
Child Soldiers: Should They Be Excluded or Protected?

Main Points
Large Number of Unaccompanied Children Seeking Asylum
State Guidelines
Need to Take Account of Youth, Immaturity, and Special Needs

Treaties

UNHCR Documents
UNHCR, ‘Guidelines on Policies and Procedures in Dealing with Unaccompanied
UNHCR EXCOM, ‘Refugee Children and Adolescents’, Conclusion No. 84
(LXVIII), 1997.

Readings
Core
Save the Children and UNHCR, ‘Separated Children in Europe Programme
Save the Children and UNHCR, ‘Separated Children in Europe Programme

Extended
S. Maloney, ‘Transatlantic Workshop on ‘Unaccompanied/Separated Children:
Comparative Policies and Practices in North America and Europe’, Journal of
Immigration and Refugee Board (Canada), ‘Child Refugee Claimants: Procedural
Editor’s note
NB: There is controversy around claims submitted by child soldiers, who may be denied protection based upon acts they performed under orders.
See also Section II.3.a.iii for resources concerning child refugees and Section III.2.b.i. (a) Council Resolution of 26 June 1997 on Unaccompanied Minors who are Nationals of Third Countries, OJ C 221, 19 July 1997.

iii. Elderly

UNHCR Documents

d. Exclusion from Convention Refugee Status

Main Debates
Exclusion v. Protection for Conscripts Acting under Superior Orders
Should Different Exclusion Criteria Apply to Child Soldiers?

Main Points
Already Receiving Protection
Undeserving of International Protection
War Crimes and Coercion: Child Soldiers

Treaties
Soft Law

UNHCR Documents

Cases
Refugee Review Tribunal, RRT Reference N96/12101, 25 November 1996 (Australian administrative decision ruling that asylum seeker from Liberian rebel group that committed many atrocities should not be excluded because he acted under duress)
Zacarias Osorio Cruz, Immigration Appeal Board Decision, M88-20043X CLIC Notes 118.6 25, March 1988 (Canada) (Mexican army deserter who reported political executions was not excluded, despite his participation in killings)

Readings
Core

Extended


**Editor’s note**

Some claimants are excluded because they are already receiving protection from other UN agencies, such as UNRWA. Those claimants residing in another state with the rights and obligations of a national of that state are also excluded. Others are excluded because they are deemed unworthy of protection having committed:

1) serious non-political crimes
2) crimes against peace, war crimes, or crimes against humanity
3) acts contrary to the purposes of the UN

**e. Internal Protection Alternative**

**Main Debates**

Internal Flight Alternative v. Internal Protection Alternative

Should Barriers to Access to Protection and to Secure an Existence Matter?

Who has the Burden of Proof?

**Main Points**

Absence of Persecution in One Region v. Access to Genuine Protection

Factors that Affect Practical Access to Protection Elsewhere Within Country of Origin: Logistical, Linguistic, Familial, Financial, etc.

**Soft Law**


**UNHCR Documents**

**Cases**

*New Zealand Refugee Appeal*, No. 71684/99 of 29 October 1999 (decision of the Refugee Appeals Authority adopting the IPA principles of Michigan Guidelines)

*Rasaratnam v. Canada*, F.C.J. No. 1256 of 1990 (Canadian Court of Appeal decision holding that IPA requires no possibility of persecution in area of potential relocation rather than not unreasonable to seek refuge there)

*Duzdkiker v. Minister for Immigration and Multicultural Affairs*, FAC 390 of 2000 (Australian Federal Court decision applying IPA test of real protection and reasonableness of relocation)

**Readings**

**Core**


**Extended**


**Editor’s note**

Consider the impossibility in many national contexts for people to move from one area to establish a life in another region without family or other ties, financial resources, or skills.

Analysis of internal protection alternatives does not end when there is an absence of persecution in a certain region, but must proceed to assess the realistic likelihood of access to protection.
f. Reception

**UNHCR Documents**

**Cases**
R (on the applications of Adam, Tesema, and Limbuela) v Secretary of State for the Home Department (2004), 2004 EWCA 540, All ER (D) 323, Judgments of 21 May 2004 (UK judicial decision holding failure to provide shelter and assistance to destitute asylum seekers violates Article 3, European Convention on Human Rights)

*Editor’s note*
For further resources, see Section III.2.b (iii).

g. Detention

**International Treaties**

**UNHCR Documents**

Soft Law

Readings
Core

Extended

h. Recognition as a Refugee

Main Debates
Accelerated Procedures v. 1951 Geneva Convention and International Standards

Main Points
Minimum Standards for Refugee Status Determination
Prima Facie Recognition
Burden of Persuasion
Linguistic, Psychological, and Cultural Barriers to Credibility Assessment
Frequent Absence of Documentary or Corroborative Evidence
Impact of Absence of Legal Representation
Impact of Barriers of Communication for:
  • Asylum Seekers v. Advocates
  • Asylum Seekers and Decision Makers

Editor’s note
An analysis of the minimum standards for refugee status determination should identify and interpret the sources of law that establish these standards.

i. Procedures

Soft Law

UNHCR Documents

Cases
The Minister of Home Affairs v. Watchenuka, 10 November 2003. (South African Supreme Court of Appeal judicial decision regarding rights of asylum seekers prior to determination of refugee status)

Readings
Core
ii. Establishing the Facts

Soft Law

Readings
Core

(a) Standards of Proof

UNHCR Documents

Cases
INS v. Cardoza-Fonseca 480 US 421 (1987). (US judicial decision stating that one in ten probability of harm can constitute well-founded fear)

(b) Credibility

Readings
Core

Extended

(c) Special Issues

Soft Law

UNHCR Documents

Readings

Core

Extended
i. Rights and Obligations of Refugees

Main Debates
Should Refugees Enjoy the Rights of Citizens?

Main Points
Comparison with Rights of Other Non-Nationals

Readings
Core

Editor’s note
Those with refugee status generally have legal rights as great or greater than many other non-citizens who are lawfully present in the host state.

j. Cessation of Refugee Status

Main Debates
What Should be the Standard of Proof to Show a Change of Circumstances?
Who Carries the Burden?

Main Points
Gaining or Re-gaining National Protection
Changed Circumstances
Risk of Short-Term Trips to Homeland

Soft Law
UNHCR EXCOM, ‘Cessation of Status’, Conclusion No. 69 (XLIII), 1992.
**UNHCR Documents**

UNHCR, ‘Note on Cessation Clauses’, 30 May 1997.
UNHCR, Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses), February 2003.

**Readings**

**Core**


**Editor’s note**

Refugee Status may cease for among the following reasons:

1) acts voluntarily taken by refugees, such as the voluntary return to live at the site where persecution was earlier feared

2) changed circumstances in the home country that eliminate the fear of persecution

3) short-term trips to homelands that may be triggered by family illness or other compelling circumstances, yet may indicate that persecution is no longer feared
3. Other Forms and Instruments of Protection

a. Universal Human Rights Instruments

Main Debates
To What Extent Can International Human Rights Law Fill Existing Gaps in Refugee Protection?
Legally Binding Protection Norms v. Discretionary State Practices
How Can International Human Rights Treaties Provide Protection without Enforcement Powers?

Main Points
Universal Instruments for Human Rights Protection
Complementarity between 1951 Geneva Convention and Other Human Rights Instruments
International Monitoring Bodies and their Protection-Related Practices

Editor’s note
See also Section III.1

i. Universal Declaration of Human Rights; The UN International Convenant for Civil and Political Rights

Treaties

Soft Law
Human Rights Committee, General Comment No. 20.: Article 7. (Prohibition of torture or cruel, inhuman or degrading treatment or punishment), October 3, 1992.
Vienna Declaration, UN World Conference on Human Rights, June 1993, para. 23.

**Human Rights Committee Cases**

*C. v. Australia*, HRC, Views of 28 October 2002, no. 900/1999, (lengthy detention causing mental illness of applicant and deportation to Iran constitutes a violation of Articles 7 and 9)

*Torres v. Finland*, HRC, Views of 2 April 1990, no. 291/1988 (failure of state to provide alien in detention for more than five days a right of access to the court proceedings for judicial review of the lawfulness of his detention constitutes a violation of Article 9)


**Readings**

**Core**


**Extended**


Editor’s note

Although there are only a small number of Human Rights Committee (HRC) opinions concerning asylum seekers, the HRC, in its Concluding Observations on State Party reports frequently addresses the circumstances of asylum seekers and refugees in their assessment of State Party compliance with specific articles under the ICCPR. This offers another channel for asylum rights advocacy.

ii. The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Treaties
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 85, Arts. 1, 3, 10, 16.

Soft Law

Cases
Core
V.L. v. Switzerland, CAT 262/2005, 20 November 2006. (late disclosure in asylum proceedings of rape does not impair claimant’s credibility)
Agiza v. Sweden, CAT 233/2003, 20 May 2005. (non-refoulement under CAT absolute even in context of national security concerns; insufficient diplomatic assurances obtained by sending country)
Mutombo v. Switzerland, CAT 13/1993, 27 April 1994. (no violation where applicant has established existence of gross violations of human rights in country of return, absent sufficient evidence of the applicant’s ‘personal risk’)
Aemei v. Switzerland, CAT 34/1995, 9 May 1997. (activities carried out by receiving state may also give rise to risk of being subjected to torture)

Extended
For a comparative analysis of national case law see Matter of J-E-23 Immigration & Naturalization Decisions 291, (BIA 2002). (detention in Haitian prison is not torture when legally sanctioned).


Readings
Core

Extended

Editor’s note
Recent jurisprudence from CATC reflects a return by the Committee of greater degree of scrutiny of State Party submissions. Since the publication of Doerfel’s article in 2005 and May 2007, the CATC has found 9 violations of Article 3.
iii. The UN Convention on the Rights of the Child

*Treaties*

*Soft Law*
UNHCR EXCOM, ‘Refugee Children and Adolescents’, No. 84 (XLVIII), 1997.

*UNHCR Documents*

*Readings*

*Core*

*Editor’s note*
See Section III.2.b.i (a). Council of the European Union Resolution on Unaccompanied Minors Who are Nationals of Third Countries

iv. The Geneva Conventions and Protocols: Minimum Standards in Times of War

*Treaties*
Fourth Geneva Convention Relative to the Protection to Civilian Persons in
Time of War, 12 August 1949, 75 U.N.T.S. 287, Arts. 27, 35, 44, 45, 46, 70
(special protection for women)
Additional Protocol II to the Geneva Conventions, 8 June 1977, 1125 U.N.T.S. 609.

Soft Law
UNHCR EXCOM, ‘Conclusion on the civilian and humanitarian character of
asylum’, Conclusion No. 94 (LIII), 2002.
UNHCR EXCOM, ‘Military Attacks on Refugee Camps and Settlement in
Southern Africa and Elsewhere’, Conclusion No. 27 (XXXIII), 1982.
UNHCR EXCOM, ‘Military Attacks on Refugee Camps and Settlement in
Southern Africa and Elsewhere’, Conclusion No. 32 (XXXIV), 1983.
UNHCR EXCOM, ‘Military and Armed Attacks on Refugee Camps and
Settlements’, Conclusion No. 45 (XXXVII), 1986.
UNHCR EXCOM, ‘Military or Armed Attacks on Refugee Camps and
Settlements’, Conclusion No. 48 (XXXVIII), 1987.

UNHCR Documents
UNHCR, ‘Note on the Protection of Refugees in Armed Conflict Situations’,
4 October 1982.
UNHCR, ‘Note on Military and Armed Attacks on Refugee Camps and Settle-

Readings
Core
S. Jaquemet, ‘The Cross-Fertilization of International Humanitarian Law and
International Refugee Law’, International Review of the Red Cross, vol. 843
J.P. Lavoyer, ‘Refugees and internally displaced persons: International human-
itarian law and the role of the ICRC’, International Review of the Red Cross,
Editor’s note
Within the context of an overall refugee curriculum for clinical teaching, this topic may be given less emphasis than the universal instruments discussed above.

b. Special Forms of Protection: Subsidiary Protection and Humanitarian Status

Main Debates
Adequacy of the 1951 Geneva Convention in the Context of the Various Forms of Forced Displacement: Are Additional (International or Regional) Instruments Needed to Secure Protection for Victims of Generalised Violence, Armed Conflict etc.? Should there be a ‘Sliding Scale’ of Protection and Entitlements?

Main Points
The Need for a Wider Scope of Beneficiaries, and for Establishing the Protection Standards to be Accorded for Persons in Need of Subsidiary Protection.

UNHCR Documents

Readings
Core
c. Temporary Protection

Main Debates

Main Points
Temporary Protection Is Not an Alternative to Convention Protection, but a Precursor to it (or to Subsidiary Protection) – until Individual Procedures Are Carried Out or Group Recognition Occurs

UNHCR Documents

Readings
Core

Extended


Editor’s note
See Sections II.2.h, II.2.i, and II.2.j.
See also Section III.2.b.iv.
SECTION III

European Framework for Refugee Protection

1. The Council of Europe and Refugee Protection

a. Legal and Policy Framework for Refugee Protection

Main Debates
Should the Council of Europe Play a Greater Role in Standard Setting in the Area of Asylum in a Wider Pan-European Context?

Main Points
Binding v. Non-Binding Regional Instruments
Committee of Ministers Recommendations v. Parliamentary Assembly Resolutions
Establishing Harmonization between EU and Non-EU States

Treaties
Regional Core
European Agreement on the Abolition of Visas for Refugees, 20 April 1959, E.T.S. 031.
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26 November 1987, E.T.S. 126.
**Extended**

European Convention on Nationality, 6 November 1997, E.T.S. 166.

**Soft Law**

**Council of Europe: Committee of Ministers**


Soft Law

Council of Europe: Parliamentary Assembly


**Soft Law**

**Commissioner for Human Rights**

Commissioner for Human Rights ‘Recommendation CommDH (01) 1 Concerning the Rights of Aliens Wishing to Enter a Council of Europe Member State and the Enforcement of Expulsion Orders’, 19 September 2001.  

**Readings**


**Editor’s note**

The Committee of Ministers is empowered to make recommendations to Members States on matters for which the Committee has agreed a “common policy”. Recommendations of the Parliamentary Assembly contain proposals addressed to the Committee of Ministers, the implementation of which is the competence of national governments. Resolutions of the Parliamentary Assembly embody decisions on policy issues and have no binding effect.
b. The European Convention on Human Rights and Fundamental Freedoms

**Main Debates**
Refugee Protection under Regional v. Universal Treaties
Has the European Court of Human Rights (ECtHR) Exhibited Too Much or Too Little Deference to National Refugee Decision-Making Processes?

**Main Points**
Scope of Protection under Article 3 (Art. 3) of the ECHR v. Articles 1 and 33 of the 1951 Convention
Effective Remedies for Rejected Asylum Seekers under the ECHR
Expulsion
Family Reunification
Detention

**Treaties**
**Regional Core**

**Cases**
**Core**
**Art. 3 – prohibition of torture, inhuman or degrading treatment or punishment**
*Soering v. UK*, ECtHR Judgment of 7 July 1989 (holding extradition from UK to USA of German national charged with capital crime and at risk of serving on death row would be a violation of Art. 3, recognising the extra-territorial effect of the ECHR provisions)
*Chahal v. UK*, ECtHR judgment of 15 November 1996 (holding that deportation of a Sikh separatist to India on national security grounds would be in breach of ECHR Art. 3, as he would face real risk of being subjected to treatment contrary to Art. 3; the prohibition in Art. 3 is absolute also in expulsion cases, and the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration)
Ahmed v. Austria, ECtHR judgment of 17 December 1996 (reconfirming the absolute nature of Art. 3; deportation of a Somali convicted of serious criminal offences would therefore be a violation of Art. 3, as the applicant was under the risk to be subjected to inhuman and degrading treatment by non-state agents upon expulsion)

Hilal v. UK, ECtHR judgment of 6 March 2001 (expulsion of Tanzanian opposition party member, having previously suffered serious ill-treatment in detention, would be contrary to Art. 3; no ‘internal flight alternative’ found to be viable in his case)

Jabari v. Turkey, ECtHR judgment of 11 July 2000 (holding violation of Art. 3 in case of deportation that would return a woman who has committed adultery to Iran; Art. 13 violated as well due to the lack of an effective remedy with suspensive effect to challenge the rejection of her asylum claim)

Cruz Varas and others v. Sweden, ECtHR judgment of 20 March 1991 (recognizing the extra-territorial effect of Art. 3 similarly applicable to rejected asylum seekers; finding no Art. 3 violation in expulsion of Chilean national denied asylum, noting that risk assessment by State Party must be based on facts known at time of expulsion)

Vilvarajah and others v. UK, ECtHR judgment of 30 October 1991 (finding no breach of Art. 3 although applicants claimed to have been subjected to ill-treatment upon return to Sri Lanka; this had not been a foreseeable consequence of the removal of the applicants, in the light of the general situation in Sri Lanka and their personal circumstances; a mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Art. 3, and there existed no special distinguishing features that could or ought to have enabled the UK authorities to foresee that they would be treated in this way)

H.L.R. v. France, ECtHR judgment of 29 April 1997 (finding no violation of Art. 3 in case of expulsion of the applicant to Columbia, as there was no relevant evidence of risk of ill-treatment by non-state agents; thereby recognising that ill-treatment caused by such actors would fall within the scope of Art. 3 if the authorities are not able to obviate the risk by providing adequate protection)

D. v. UK, ECtHR judgment of 2 May 1997 (applicant suffering from advanced stages of a terminal HIV/AIDS illness; expulsion to the country of origin, known for its lack of medical facilities and appropriate treatment in case, and
where he would have no family or friends to care for him, would amount to inhumane treatment prohibited by Art. 3; the Court stressed the very exceptional circumstances of the case and the compelling humanitarian considerations at stake)

_S.C.C. v. Sweden_, ECtHR admissibility decision of 15 February 2000 (expulsion to the country of origin, known for the availability of HIV/AIDS treatment, in case of relatively well-off applicant in early stage of illness, with close relatives residing in her homeland, does not give rise to compelling humanitarian considerations)

_Bensaid v. UK_, ECtHR judgment of 6 February 2001 (high threshold set by Art. 3, according to which a schizophrenic suffering from psychotic illness does not face a sufficiently real risk after his return to Algeria; not compelling humanitarian considerations as required under Art. 3, once the necessary treatment is available in the country of destination)

_Venkadajalasarma v. Netherlands_, ECtHR judgment of 17 February 2004 (current situation in Sri Lanka makes it unlikely that Tamil applicant would run a real risk of being subject to ill-treatment after his expulsion from the Netherlands)

_Mamatkulov and Askarov v. Turkey_, ECtHR judgment of 4 February 2005 (evidence insufficient to find a violation of Art. 3 by the applicants’ extradition from Turkey to Uzbekistan; the extradition constituted Turkey’s non-adherence to the Court’s indication of interim measures under Rule 39 of the ECHR Rules of Procedure, thereby violating ECHR, Art. 34)

_Said v. Netherlands_, ECtHR judgment of 5 July 2005 (asylum seeker held to be protected against refoulement under Art. 3; the Dutch authorities had taken the failure to submit documents establishing his identity, nationality, or travel itinerary as affecting the credibility of his statements; the Court instead found the applicant’s statements consistent, corroborated by information from Amnesty International, and thus held that substantial grounds had been shown for believing that, if expelled, he would be exposed to a real risk of ill-treatment as prohibited by Art. 3)

_N. v. Finland_, ECtHR judgment of 26 July 2005 (asylum seeker held to be protected against refoulement under Art. 3, despite the Finnish authorities’ doubts about his identity, origin, and credibility; two delegates of the Court
were sent to take oral evidence from the applicant, his wife and a Finnish senior official; while retaining doubts about the credibility on some points, the Court found that the applicant’s accounts on the whole had to be considered sufficiently consistent and credible; deportation would therefore be in breach of Art. 3)

*Bader v. Sweden*, ECtHR judgment of 8 November 2005 (asylum seeker held to be protected against refoulement due to a risk of flagrant denial of fair trial that might result in the death penalty; such treatment would amount to arbitrary deprivation of life in breach of Art. 2; deportation of both the asylum seeker and his family members would therefore give rise to violations of Articles 2 and 3)

*Aoulmi v. France*, ECtHR judgment of 17 January 2006 (high threshold set by Art. 3, in particular if deporting state has no direct responsibility for the potential infliction of harm due to substandard health services in country of origin; not proven that the applicant could not receive adequate medical treatment upon expulsion to Algeria; the binding nature of Rule 39 indications was reconfirmed, hence deportation despite such indication was held to violate Art. 34)

*D. and others v. Turkey*, ECtHR judgment of 22 June 2006 (deportation of woman applicant in view of the awaiting execution of severe corporal punishment in Iran would constitute violation of Art. 3, as such punishment would inflict harm to her personal dignity and her physical and mental integrity; violation of Art. 3 would also occur to her husband and daughter, given their fear resulting from the prospective ill-treatment of D)

*Mayeka and Mitunga v. Belgium*, ECtHR judgment of 12 October 2006 (the arrest, detention and subsequent deportation of a 5 year old child, transiting Belgium in order to join her mother living as a refugee in Canada, held to be in violation of Articles 3, 5, and 8; breaches of Art. 3 were found both due to the conditions of the child’s detention, the conduct of the deportation of the child to DR Congo, and the resulting distress and anxiety suffered by her mother)

*Salah Sheekh v. Netherlands*, ECtHR judgment of 11 January 2007 (asylum seeker held to be protected against refoulement under Art. 3; there was a real chance that deportation to ‘relatively safe’ areas in Somalia would result in his
removal to unsafe areas, hence there was no ‘internal flight alternative’ viable; the Court emphasised that even if ill-treatment be meted out arbitrarily or seen as a consequence of the general unstable situation, the asylum seeker would be protected under Art. 3, holding that it cannot be required that an applicant establishes further special distinguishing features concerning him personally in order to show that he would be personally at risk.

**Extended**

**Article 3 – prohibition of torture, inhuman or degrading treatment or punishment**

*Gomes v. Sweden*, ECtHR admissibility decision of 7 February 2006 (application declared inadmissible; the complaints of risk of death penalty, life imprisonment and torture held to be manifestly ill-founded due to the contradictory information given by the applicant to the Swedish authorities, and the lack of documents substantiating his allegations)

*Ayegh v. Sweden*, ECtHR admissibility decision of 7 November 2006 (application declared inadmissible; the authenticity of documents invoked by the applicant was in dispute, and she was found not to have established a real risk to her life or physical integrity if deported to Iran; if the benefit of the doubt is to be given to asylum seekers, they must provide satisfactory explanation when the veracity of their submissions is questioned)

**Article 1 – territorial scope of applicability**

*Al-Adsani v. UK*, ECtHR judgment of 21 November 2001 (state not responsible for torture that has taken place outside the Council of Europe member state jurisdiction, even in case of an applicant of dual British/Kuwaiti citizenship; any positive obligation deriving from ECHR Articles 1 and 3 could extend only to the prevention of torture)

**Article 5 – deprivation of liberty**

*Saadi v. UK*, ECtHR judgment of 11 July 2006 (detention of an asylum seeker to facilitate the examination found to be justified under Article 5 (1) (f); informing the applicant’s lawyer of the reason for the detention of his client after 76 hours of detention was incompatible with the requirement under Article 5 (2) to provide such information promptly)
**Article 9 – right to freedom of religion**

Z. and T. v. UK, ECtHR admissibility decision of 28 February 2006 (application declared inadmissible; the Court not ruling out the possibility that, in exceptional circumstances, there might be protection against refoulement on the basis of Art. 9 where the person would run a real risk of flagrant violation of that provision in the receiving state)

**Article 13 – right to effective remedy**

Conka v. Belgium, ECtHR judgment of 5 February 2002 (the detention of rejected Roma asylum seekers before deportation to Slovakia constituted a violation of Art. 5; due to the specific circumstances of the deportation the prohibition against collective expulsion under Protocol 4 Art. 4 was violated; the procedure followed by the Belgian authorities did not provide an effective remedy in accordance with Art. 13, requiring guarantees of suspensive effect)

Gebremedhin v. France, ECtHR judgment of 26 April 2007 (holding that the particular border procedure declaring ‘manifestly unfounded’ asylum applications inadmissible, and refusing the asylum seeker entry into the territory, was incompatible with Art. 13 taken together with Art.3; emphasising that in order to be effective, the domestic remedy must have suspensive effect as of right)

**Readings**

**Core**


**Extended**


*Editor’s note*


Compare the beneficiaries under the ECHR in contrast to the 1951 Geneva Convention.

The ECHR can be invoked by a much wider range of individuals, including refused asylum-seekers, beneficiaries of Temporary Protected Status and non-Convention refugees.

To compare the absolute protection offered under Article 3 of the ECHR with Articles 1 (f) and 33 of the 1951 Geneva Convention, see Section II.2.b.iii.

The practice of the European Court of Human Rights has led to an extended protection expanding the ambit of the non-refoulement principle — see also Section II 1.c.

2. The European Union

a. The Evolving EU Acquis on Asylum

i. European Integration and Asylum

*Main Debates*

Is the EU Involvement in Asylum Law Raising or Lowering Standards in Practice?
Which of these Approaches Should the EU Take?
What Is the Relationship of the 1951 Geneva Convention with EU Asylum Law?
What Is the Relationship between the 1951 Geneva Convention and Member States’ National Law Enacted Pursuant to the European Community Instruments?
What Are the Possible Implications of the EU’s Decision to Work towards Full Establishment of a Common European Asylum System by 2010?
Main Points
Historical Development of EU Law on Asylum
Objectives of Giving EU Competence over Asylum Matters

EU Documents

UNHCR Documents

Readings
Core


Extended


UNHCR, ‘An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR’, *European Series* vol. 1, no. 3 (Geneva: UNHCR, 1995).


ii. The Institutional and Legal Framework for European Refugee Protection

*Main Debates*

What are the Objectives of EU Involvement in Asylum Law?

Does It Aim at Human Rights Protection, Application of Asylum in the Context of EU Internal Market, or Establishment of Fortress Europe?

*Main Points*

Human Rights and the EU

Institutional Actors and their Powers and Roles

Evolving Roles of the Different EU Institutions in EU Asylum Law- and Policy-making
EU Instruments
Acquis of the European Union under Title IV of the TEC and title VI of the TEU. Consolidated version 2007.
Charter of Fundamental Rights of the EU, OJ C 364/1, 18 December 2000, Arts. 18, 19.

Readings
Core

Editor’s note
Note the limits on the Court’s jurisdiction, voting rules in Council and EP, and the shared Commission initiative. The Commission has full right of initiative from
1 May 2004. The Reform Treaty, if ratified as proposed, will give the European Court of Justice wider jurisdiction in asylum cases.

Consider the provision on changed rules for decision-making on asylum, Article 67(5), in force with the Treaty of Nice as of 1 February 2003:

- What do ‘common rules and basic principles’ mean, especially since EC power is mostly limited to minimum standards?
- The Council has now resolved to move to co-decision in all areas covered by Chapter IV of the Amsterdam Treaty, with the exception of legal migration. this means that while the Parliament will have the power to bind the Council to follow its recommendations in many areas, thus Member States will retain sole decision-making rights in respect of the sensitive question of criteria, rules and programmes for legal (notably economic) migration to their territory, which is currently under discussion at a policy level among EU States.
- The Commission is responsible, in its role as ‘guardian of the Treaties’, for monitoring transposition and implementation at national level of the asylum Directives adopted in the first phase of harmonisation. What powers and tools has it at its disposal to compel States to adopt and implement national laws in line with the Community standards?
- A major outstanding question will be the possible consequences of State laws and practices which could be in line with the minimum standards of the Directives, but are potentially contrary to the 1951 Geneva Convention and other international legal instruments. The question of what bodies would have power and standing to challenge such national measures remains sensitive and widely debated.

b. European Refugee Protection: Practices and Policies

i. Access to Territory

Main Debates
Displacement Activities v. Duty to Provide Protection
Non-Entrée Policies vs. Duty to Provide Protection
**Main Points**
Tension between Objectives of Migration Control, Particularly Control of Irregular Migration, and Protection Obligations

**EU Instruments**

**Readings**

Core

Extended

*Editor’s note*
Examine how attempts to reconcile migration control and protection have been made when EC legislation was proposed and applied in practice when the legislation was adopted.
(a) International and Regional Legal Framework

Main Debates
Do the 1951 Geneva Convention and Article 3 of the ECHR Create a Right of Access to Territory?

Main Points
Absence of a Right to Cross a Border as Such under International Law

EU Instruments

Readings
Core
Extended

Editor’s note
See also the Gebremedhin v. France case in section I and the Prague Airport case in 1(b).

(b) Visas

Main Debates
Immigration Control v. Human Rights Protection

Main Points
Content of EU Visa Rules, Particularly Visa List and Visa Format
Connections between Visa Rules and Asylum Issues

EU Instruments
Council Regulation (EC) No 1932/2006 of 21 December 2006 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 405, 30 December 2006.


Council Regulation (EC) No 851/2005 of 2 June 2005 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as regards the reciprocity mechanism, OJ L 141, 4 June 2005.

Readings

Extended


Editor’s note

Note the imposition of visas on every country producing large numbers of refugees/asylum-seekers and the inevitable impact on the likelihood that they will enter illegally and/or use facilitators for smuggling them in.

Readers should recall Article 31 of the 1951 Geneva Convention.

(c) Carrier Sanctions

Main Debates

Are Carrier Sanctions Permitted Under the Letter of the 1951 Geneva Convention? Should Non-State Parties be Responsible for Pre-Screening Asylum Seekers?
Main Points
Carrier Sanctions as a Deflection Mechanism

EU Instruments

Readings
Core

Extended

(d) Interception and Rescue at Sea

Main Debates
Who has Responsibility for Asylum-Seekers Intercepted or Rescued on the Seas?
How does the Position Change if they are Intercepted or Rescued by Member States’ Registered Vessels in
(i) Member States’ Territorial Waters?
(ii) International Waters?
(iii) The Waters of Third States?

Main Points
Interaction between International Law of the Sea and Rules of Refugee, Human Rights and Humanitarian Law
EU Documents

Soft Law

UNHCR Documents

Readings
Core

Cases
R (on the application of European Roma Rights Center et al) v Immigration Officer at Prague Airport & Anor (UNHCR intervening), [2004] UKHL 55; [2005] 2 AC 1.

(e) Extraterritorial Immigration Control

Main Debates
What are the Potential Arguments for and against the Legality of Forced Processing Outside the Territory of the EU?
What Practical Problems Could Result from Such a Policy?
What are the Potential Implications of Making Financial Assistance to Non-EU States Conditional upon more Restrictive Border Control?

Main Points
External Relations Policy as Tool for Non-EU States to Carry out EU Policies
Future Prospect of External Processing of Asylum Applications
**EU Documents**


**UNHCR Documents**


**Readings**

**Core**


**Extended**

Editor’s note:
See also the Safe Third Country Section b.ii (a) ii.

ii. Refugee Status Determination Procedures

(a) Access to Procedures

Main Debates
What Do the Extensive Exceptions and Qualifications to Protection Criteria and Procedural Safeguards in EU Instruments Mean for Access to a Fair and Effective Refugee Status Determination Process?

Readings
Core

Extended

i. Responsibility: The Dublin System

Main Debates
Distribution Mechanisms v. Protection Obligations
Who Controls the Identity of the Asylum Seeker?
Does the Dublin System Provide Sufficient Safeguards Against Refoulement?
Are there Risks that Asylum Seekers Will Not Receive any Substantive Claim Examination in the EU as a result of the Dublin System?

Main Points
Allocating Responsibility for Determining Asylum Claims
Implementing Dublin without Prior Harmonization in Asylum Policies
ID and Data Protection
**EU Documents**


**EU Instruments**


Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities (signed Dublin 15 June 1990, entered into force 1 September 1997) OJ C254, 19 August 1997.


Decision No 1/2000 of 31 October 2000 of the Committee set up by Article 18 of the Dublin Convention concerning the transfer of responsibility for family members in accordance with Article 3(4) and Article 9 of that Convention OJ L281, 7 November 2000.


Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway, OJ L 93, 3 April 2001.


Cases

UK House of Lords Regina v. Secretary of State for the Home department ex parte Adan; Regina v. Secretary of State for the Home Department ex parte Aitseguer, Judgments of 19 December 2000, [2001] 2 WLR 143. (holding that Somali and Algerian asylum applicants could not be returned to France and Germany on safe third country grounds as both states do not grant protection to those in fear of non-state agent persecution)
TI v. UK, ECtHR admissibility decision of 7 March 2000 (noting that agreements for allocating responsibility for asylum seekers do not relieve a State Party to the ECHR of the responsibility to ensure that indirect removal of an asylum seeker will not give rise to Article 3 violation)

Readings
Core
Justice, Asylum: Changing policy and practice in the UK, EU and selected countries (Justice, 2002), pp. 84–92.

Extended

Editor’s note
An analysis of the Dublin rules should consider the following:
• Are they compatible with the 1951 Geneva Convention and the ECHR?
• What are the disputes over how to interpret the Dublin rules?
• What disputes might arise as to how to interpret the Dublin II rules?
• Is Dublin II an effective burden-sharing arrangement, or a burden-shifting mechanism?
ii. Safe Third Country

Main Debates
Deflection and Deterrence Policies v. Protection Obligations
What Minimum Safeguards Should There be for the Implementation of Safe Third Country Returns?
Are European Safe Third Country Practices Shifting the Responsibility for Refugees to Transit States?
Should All EU Member States be Considered as fulfilling requirements for Safe Third Countries?

Main Points
Contrasts between UNHCR and EU Criteria for Determining Safe Third Countries
Safe Third Country Lists
European Safe Third Country Notion
Chain Deportations

Soft Law

EU Instruments

UNHCR Documents

UNHCR, ‘Background paper no. 3: Inter-State agreements for the re-admission of third country nationals, including asylum seekers, and for the determination of the State responsible for examining the substance of an asylum claim’, May 2001.

Cases

UK House of Lords, Regina v. Secretary of State for the Home Department ex parte Adan; Regina v Secretary of State for the Home Department ex parte Aitseguer, Judgments of 19 December 2000, (2001) 2 WLR 143. (holding that Somali and Algerian asylum applicants could not be returned to France and Germany on safe third country grounds as both states do not grant protection to those in fear of non-state agent persecution)

TI v. UK, ECtHR admissibility decision of 7 March 2000 (noting that agreements for allocating responsibility for asylum seekers do not relieve a State Party to the ECHR of the responsibility to ensure that indirect removal of an asylum seeker will not give rise to Article 3 violation)

Al-Rahal v. Minister for Immigration and Multicultural Affairs, 20 August 2001, (2001) 184 ALR 698 (deportation of Iraqi to Syria as safe third country without actual permission or formal right of entry held not to be a violation of Article 33)

German Constitutional Court: Judgment in the cases 2 BvR 1938/93 and 2 BvR 2315/93, 14 May 1996, BVerfGE 94, 49. (upholding the constitutionality of the new clause in the Basic Law introducing the safe third country concept)

Readings

Core


Extended


Editor’s note

The documents in this section of the Reader allow the student to see the evolution of safe third country practices in Europe. Note should be taken of the return to the concept of the first country of asylum that is embodied in Art. 26 of the Amended Proposal for the Directive on Minimum Standards. Attention should also be paid to the exceptional border procedure that formalizes the notion of Super Safe Third Countries. See Section v. (b) regarding readmission agreements.
(b) Harmonizing the Definition and the Determination Procedures

i. Harmonization of the 1951 Geneva Convention Refugee Definition

Main Debates
Is the EC legislation on Qualification consistent with the 1951 Geneva Convention?
How Should the 1951 Geneva Convention Exclusion Clauses be Applied in the context of the ‘fight against terror’?

Main Points
Different Interpretations of the Refugee Definition among Member States
Persecution by Non-State Agents
Protection by Non-state Agents
Gender and Sexual Orientation
Refugee Sur Place
Internal Flight Alternative
Compatibility of Rules on Exclusion, Revocation, Cessation with 1951 Geneva Convention
Differentiation in Rights Accorded to 1951 Geneva Convention Refugees and Subsidiary Protection Beneficiaries

EU Instruments
UNHCR Documents

Cases
Regina v Secretary of State for the Home Department ex parte Adan; Regina v Secretary of State for The Home Department ex parte Aitseguer, Judgments of 19 December 2000, [2001] 2 WLR 143 (UK judicial decision upholding asylum for applicants fearing persecution by non-state actors)

Chahal v. UK, ECtHR judgment of 15 November 1996, (violation of Article 3, Article 5, para 4, and Article 13 in conjunction with Article 3 in case of a deportation order to India of a Sikh separatist on national security grounds needs. The Indian citizen has spent 6 years waiting the deportation. The necessity of judicial review has been proved)

Secretary of State for the Home Department v. K. Fornah v. Secretary of State for the Home Department, [2006] UKHL 46 (UK House of Lords holding that women in societies which practised female genital mutilation were ‘members of a particular social group’ for the purposes of the Refugee Convention)

Readings


**Extended**


**ii. Minimum Standards for Normal Procedures**

**Main Debates**

What Constitutes Appropriate Minimum Standards?  
Harmonisation of Standards v. Deference to State Law, Policy and Practice  
Rights of Vulnerable Applicants to Procedural Protections (e.g. Separated Children, Traumatised Asylum-Seekers)

**Main Points**

Low Level of Minimum Standards  
Safeguards  
Appeals  
Remedies

**EU Documents**


**UNHCR Documents**


**Readings**

**Core**


**iii. Minimum Standards for Specific Procedures**

**a. Accelerated and Manifestly Unfounded Procedures**

**Main Debates**

Efficient v. Fair Procedures

**Main Points**

Contrast between UNHCR and EU Definition of ‘Manifestly Unfounded’ Claims

Abridged Safeguards

Shifts in the Standard and Burden of Proof

Procedural and Formal Grounds (as Opposed to Grounds Related to the Merits) for Channeling Claims into Accelerated Procedures

**Soft Law**

UNHCR EXCOM, ‘The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum’, Conclusion No. 30 (XXXIV), 1983.

EU Documents
Resolution on Manifestly Unfounded Applications for Asylum, Conclusions of the Meeting of the Ministers responsible for Immigration Doc. 10579/92 IMMIG (London 30 November–1 December 1992).

UNHCR Documents

Readings
Core

Editor’s note
A discussion of accelerated and manifestly unfounded procedures should also consider their relationship to the notions of safe third country and safe country of origin. A consideration of procedural safeguards should consider issues such as, inter alia, legal representation, oral hearings, and appeals, with and without, suspensive effect.
b. Safe Country of Origin

**Main Debates**
Does the Safe Country of Origin Notion Undermine the Right to have a Claim Assessed Individually?

**Main Points**
Safe Country of Origin Notion:
As a Bar to Access to Procedures
As a Rebuttable Presumption of Unfoundedness of Claim
‘White Lists’ of Safe Countries of Origin
Need for Individual Assessment of Claims
Criteria for Designating Countries as ‘Safe’

**EU Documents**
Conclusion on Countries in Which There is Generally No Serious Risk of Persecution, Conclusions of the Meeting of the Ministers responsible for Immigration, Doc. 10579/92 IMMIG (London, 30 November–1 December 1992).

**EU Instruments**

**Readings**

*Core*


iii. Minimum Standards for Reception Conditions

Main Debates
Has the EU Set an Adequate Standard for Reception Conditions?

Main Points
Purposes of EU Power over Reception Conditions
Objectives of Directive 2003/9
Level of Obligations in Directive
Exceptions from Obligations
Application of the directive to particular groups: asylum seekers in detention; those under Dublin II

UNHCR Documents

Readings
Core

Editor’s note
Is the Directive Likely to Raise Standards Anywhere?
What Disputes Might Arise Concerning its Interpretation?
What are the Consequences (Legal And Otherwise) of States’ Failure to Respect Their Obligations to Provide Minimum Reception Conditions in Practice?
iv. Other Forms of Protection

Main Debates
Does Temporary Protection Threaten the 1951 Geneva Convention?
Are the Needs of Subsidiary Protection Beneficiaries Less Pressing Or Durable Than Those Of Refugees?
Is There a Justification for Giving Different Levels of Entitlements to Refugees and Subsidiary Protection Beneficiaries?

Main Points
Relationship Between Directive and Refugee Determination Process
Diminished Rights Under the EC Temporary Protection Regime Compared with 1951 Geneva Convention Rights

Readings
Core
M. Gil-Bazo, ‘Refugee status, subsidiary protection, and the right to be granted asylum under EC law’, UNHCR Research paper No.136, November 2006

EU Instruments
as refugees or as persons who otherwise need international protection and content of the protection granted, OJ L 304, 30 September 2004.


UNHCR Documents

Readings
Core

Editor’s note
See the section on other forms and instruments of protection after the 1951 Convention (Section II.3), in particular the article of Jane McAdam in Section II.3.b.
In the absence of using the EC process, national schemes could be established.
Compare the substantive rights for a person in an EC Temporary Protection regime with those for asylum seekers provided for in the Directive on Reception Conditions, on the one hand, and those for refugees provided for in the Geneva Convention and the Qualification Directive.

v. Leaving Territory

(a) Return Policies

Main Debates
Is there Adequate Protection for Rejected Asylum-Seekers in order to Ensure that Return Policies do not Infringe the Non-Refoulement Principle?

Main Points
Use of Protection Mechanisms to Delay Expulsion or Removal
EU Documents

Soft Law
UNHCR EXCOM, ‘Conclusion on the Return of Persons Found Not to Be in Need of International Protection’, Conclusion No. 96 (LIV), 2003.

Readings
Core
**Extended**


**Editor’s note**

*Note the practical relevance of these policies for rejected asylum-seekers and persons whose refugee status or Subsidiary Protection/Temporary Protection status has ceased.*

**(b) Readmission Agreements**

**Main Debates**

Are the “Safeguard” Provisions in Readmission Agreements Sufficient

**Main Points**

Objectives of Readmission Agreements:

- EU Seeking to Use Readmission Agreements to Guarantee Removal Of Irregular Migrants, Including Those Who Have Merely Transited Through Other Contracting Party
- Rules on Proof and Presumptive Evidence for Nationality and Transit Route
- Safeguard Clauses

**EU Documents**


_EU Instruments_


_Readings_

_Core_


Extended

Editor’s note
Readmission agreements will apply to rejected asylum seekers and to people removed to supposedly safe third countries and safe countries of origin. But query whether readmission agreements concluded by the EC to date do contain adequate safeguards to ensure that people in need of international protection are not returned to persecution.

vi. Co-operation and Responsibility/Burden-Sharing

Main Debates
Burden Shifting v. Burden-Sharing

Main Points
Is Financial Burden-Sharing Effective or are Other Forms of Cooperation Required Amongst Member States?
Modest Degree of Funding Provided for the Review of the European Refugee Fund Planned after Enlargement.

EU Instruments

UNHCR Documents
Readings

Core

Extended

(a) European Refugee Fund

Main Debates
Burden Shifting v. Burden Sharing

Main Points
Is financial burden-sharing effective or are other forms of cooperation required amongst Member States?
Is the Distribution Criteria Appropriate? (ie. States with Largest Asylum Seeker Numbers Receive Greatest Proportion of Funds).

EU Instruments

Readings
SECTION IV

UNHCR and Other Actors Relevant to International Asylum Law

Editor’s note
See also Section I.2, on Institutions and Actors in international law relevant to refugee protection for a brief introduction and basic readings.

UNHCR has changed its perceived mission several times, first extending protection to victims in situations not falling under its original mandate and second by becoming an agency involved in complex humanitarian missions in acute conflict zones.

This extended responsibility could not be discharged without an ever growing cooperation with other member organizations and programs of the UN family and without the expanding engagement of national and international non-governmental organizations as implementing partners.

The outreach of the UN-centered refugee regime depends on its precarious relationship with the major donor governments.

UNHCR strives to redefine itself through the global consultations, the “Convention Plus” approach and the Agenda for Protection.

Readings
Core

1. UNHCR

Main Debates
Should the Role of UNHCR Extend Beyond Protection to Include Humanitarian Aid, and/or Return and Reconstruction
UNHCR’s Expanded Role in Status Determination and the Procedural Standards Applied
Has, and Can, UNHCR Put Up Effective Resistance Against Restrictive Tendencies in Europe and Elsewhere?

Main Points
UNHCR Conducts Status Determination in Over 70 Countries with Significant Variations in Practice and Standards
Necessity of Networks for Co-operation and Engagement
Dependency on Major Donor Governments
Global Consultations
Convention Plus
Agenda for Protection

Treaties
International

Soft Law
Statute of the Office of the United Nations High Commissioner for Refugees,
UN General Assembly Resolution, A/RES/428 (V), 14 December 1950.

UNHCR Documents
REFWORLD, the UNHCR’s CD-ROM Database (2005).

Readings
Core
2. Other Agencies and Their Interaction

Readings

Core


Extended


*Editor’s note*
Note also the activities of agencies not fully covered in the readings, among them the UN Security Council’s resolutions referring to situations producing flight of persons, on the involvement of IOM and the ICRC.
NOTES ON THE EDITORS

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Rosemary Byrne is a Senior Lecturer in International Law at Trinity College Dublin and a Human Rights Commissioner at the Irish Human Rights Commission. She has worked extensively with non-governmental organizations and is the director of the International Process and Justice Project, a founding member of the Refugee Policy Protection Group, as well as the Secretary of the Irish branch of the International Law Association. She has been a Government of Ireland Research Fellow and a Visiting Fellow at the Harvard Law School Human Rights Programme. Her research is in the areas of comparative refugee law and policy and international criminal law. She earned her bachelor’s degree from Barnard College, Columbia University and her J.D. from Harvard Law School.

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B.S. Chimni is Professor at Jawaharlal Nehru University, New Delhi and is the author of *International Refugee Law: A Reader*, one of the main international textbooks in the field. His areas of expertise include international law, international trade law and international refugee law. He served for three years as Vice Chancellor of the W.B. National University of Juridical Sciences and has been a Visiting Professor at the International Center for Comparative Law and Politics, Tokyo University, a Fulbright Visiting Scholar at Harvard Law School, Visiting Fellow at the Max Planck Institute for Comparative and Public International Law, Heidelberg, and a Visiting Scholar at the Refugee Studies Center, York University, Canada. He served as a member of the Academic Advisory Committee of the Office of the United Nations High Commissioner for Refugees for the period from 1996–2000. He is on the editorial board of several national and international journals including the *Indian Journal of International Law*, International Studies, International...
Refugee Studies, Georgetown Immigration Law Journal & Refugee Survey Quarterly. Professor Chimni is part of a group of scholars who self-identify as the Third World Approaches to International Law (TWAIL) scholars.

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Maryellen Fullerton earned her bachelor’s degree at Duke University, pursued graduate studies in Psychology at the University of Chicago, and then studied Law at Antioch School of Law, from which she received her J.D. degree. After her law studies she worked as a judicial clerk for Judge Frank M. Johnson, Jr., Chief Judge, United States District Court for the Middle District of Alabama, and then served as a judicial clerk for Judge Francis L. Van Dusen, United States Court of Appeals for the Third Circuit. She joined the faculty of Brooklyn Law School in New York in 1980, where she has been a professor of law since 1985. She has co-authored leading academic texts, Forced Migration: Law and Policy (2007) and Immigration and Citizenship Law: Process and Policy (6th edn. 2007), as well as numerous articles on comparative refugee law. She has been a Visiting Professor of Law at the University of Louvain in Belgium and a Fulbright Scholar researching asylum policies in Belgium, Germany, Denmark, and the Netherlands. She has also been a German Marshall Fund Fellow, researching refugee law and asylum policy in Hungary, Poland, and the Czech Republic and a Visiting Scholar at the Center for Advanced Studies in Social Sciences of the Juan March Institute in Madrid. In addition to her academic research, she has served as a rapporteur for Human Rights Watch/Helsinki on several human rights fact-finding missions to Germany. She has been active in the International Law Association on the Committee on Internally Displaced Persons and on the Committee on Refugee Law (American Branch). For her work with law students representing asylum seekers, she was awarded the Migration and Refugee Services’ Volunteer Service Award for Assistance to Refugees.
Madeline Garlick
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Madeline Garlick studied at Monash University, Melbourne, Australia, where she obtained an LL.B.(Honours) in general law and B.A.(Honours) in politics and German language and literature. She later read law at Queens’ College, Cambridge, UK, from which she graduated with an LL.M., after writing a thesis on the compatibility of the national asylum legislation of different countries and international refugee and human rights law. She is qualified as a barrister and solicitor in Victoria, Australia, where she has practiced in various legal fields, including advice and representation for asylum seekers and refugees in Australia. In her work for Justice, UK, she lead research and prepared the 1997 report entitled ‘Providing Protection’, on the UK asylum procedure. She worked for three years in Bosnia and Herzegovina, for the Commission for Real Property Claims of Displaced Persons and Refugees and for the Office of the High Representative. Subsequently, she worked for the United Nations Peacekeeping Force in Cyprus (UNFICYP), including as a member of the Secretary-General’s negotiating team, which sought to facilitate a resolution to Cyprus’ political conflict, from 1999–2004. She is currently Senior EU Affairs Officer with the United Nations High Commissioner for Refugees (UNHCR) in Brussels, in charge of liaison with the EU institutions. Madeline Garlick serves as an Editor in her personal capacity, and the views expressed or implied in the Reader do not necessarily represent the position of the United Nations or UNHCR.

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Elspeth Guild studied classics in Canada and Greece and law in London. She defended her thesis on European Community immigration law at the University of Nijmegen, where she now is the Professor of European Immigration Law. She is also a partner in the immigration department at the London law firm, Kingsley Napley. She teaches at Sciences Po in Paris and is a Visiting Fellow at the London School of Economics. She has published widely in the field of immigration and asylum law and policy in Europe. Her
monograph, Immigration Law in the European Community, remains a basis text in the field. Professor Guild is the UK member of the Odysseus Network of academic experts in European Immigration and Asylum Law. She is frequently invited to advise both the European Commission and the Council of Europe on immigration and asylum issues.

Lyra Jakulevičienė

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Lyra Jakulevičienė is an Associate Professor at Mykolas Romeris University in Lithuania and has almost ten years of teaching experience in international law (human rights, refugee and treaty law in particular). She served in the capacities of Legal Adviser and later as Liaison Officer of the United Nations High Commissioner for Refugees in Lithuania in 1997–2003 and lately as the Head of United Nations Development Programme in Lithuania. Her international experience includes participation in the Söderköping process where she was responsible for the establishment and management of a Cross Border Cooperation Secretariat in Kiev, Ukraine in 2003. In this capacity Ms. Jakulevičienė has been working on facilitation and promotion of co-operation among ten countries in the Western CIS and the Central European/Baltic region on migration, asylum and other cross-border related issues, as well as on bridging the implementation of the UN priorities and strategies with the changing environment due to the EU enlargement process in the countries on both sides of the future EU external borders. She is a Doctor of Social Sciences (law) and an author of a dozen of articles on refugee protection, as well as the first book in Lithuania on the rights of refugees, and is a member of the Odysseus Academic Network in Europe.

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Boldizsár Nagy read law and philosophy at the Eötvös Loránd University and pursued international studies at the Johns Hopkins University Bologna Center. Besides the uninterrupted academic activity both at the Eötvös Loránd University International Law Department (since 1977) and the
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Luis Peral holds a Ph.D. in Law, M.A. in Law of the European Union, M.A. in Political Sciences – International Relations (Universities Complutense and Carlos III of Madrid), and Diploma in English Law (University of Kent, Canterbury, UK). He currently works at the Center for Constitutional Studies of the Minister of the Presidency under the Ramón y Cajal Research Program of the Spanish Government, and is also the Director of the Conflict Prevention and Resolution Programme of the International Center of Toledo for Peace (CITpax). From September 1992 to September 2004, he taught Public International Law at the Law Faculty of the University Carlos III of Madrid, where he organised a Masters Course on Cooperation to Development, Migration and Humanitarian Action. Between 2004 and 2006 he worked as Senior Research Fellow at FRIDE. He has been Visiting Scholar at the University of Michigan Law School, and a lecturer at several universities and institutions, such as the International Institute of Humanitarian Law (Sanremo, Italy) and the European Master Course on Democratization and Human Rights of the European Inter-University Center (Venice). He is also Director of the Cuenca Colloquium on International Refugee Law. His research and publications, particularly, “Exodos masivos, supervivencia
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Jens Vedsted-Hansen earned his LL.M and LL.D. from the University of Aarhus, where he is a Professor of Law. Having worked as a research scholar at the University of Aalborg, Faculty of Social Sciences, and as assistant and associate professor at the University of Aarhus Law School, he became a research fellow at the Danish Centre for Human Rights in 1993. In 1997 he joined the Faculty of Law at the University of Copenhagen as an associate professor. Since 1999 he has been a professor of human rights law at the University of Aarhus Law School. He has participated in various international research projects as a contributor, commentator or panel member. He is a member of the Odysseus Academic Network of Legal Studies on Immigration and Asylum in Europe, and of the editorial board of European Journal of Migration and Law. He served as a member of the Danish Refugee Appeals Board from 1987 to 1994. His research interests include administrative law, immigration and refugee law, and human rights law.
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Tímea Szabó graduated from Hungary’s József Attila University of Sciences and studied comparative refugee law at Harvard Law School. Before joining the Hungarian Helsinki Committee to coordinate the organization’s refugee program, she worked in Afghanistan and Pakistan for various international organizations, including CARE International and the International Rescue Committee. Her focus was on human rights, human security and refugee protection. Prior to that, she worked as research coordinator at a human security program of Harvard University, researching conflict prevention strategies and the protection of civilians in conflict areas. Before joining Harvard, she was a Budapest-based journalist, writing for a number of U.S. and British newspapers, magazines and newswires.

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Syed Qadri earned his political science degree at York University, specializing in policy and human rights development. He joined the Hungarian Helsinki Committee through Human Rights Internet that is sponsored by the Canadian International Development Agency and is part of NetCorps Canada, an international development program. Before he joined the Hungarian Helsinki Committee, he volunteered with Rooftops Canada focusing on various development projects and resource building. He also worked at York University, at the Office of the Ombudsperson & Centre for Human Rights as a researcher and case analyst. His work also involves grassroots initiatives for the community, such as local food drives for the homeless and blood drives.