CONTENT

About the Reader and Its Use 5
About the Reader 5
Accessing Source Material 6
Adapting the Reader to Specific Course Needs 7
Technical Advise 8
Acknowledgments 8
Reader Feedback 9

Section I
Introduction to International Refugee Law:
Background and Context 11
   a. The Concepts 11
   b. The Theories 11
   c. The Actual Movements 12
2. The Legal and Institutional Framework for Refugee Protection 13
   a. The Evolution of the International Refugee Regime 13
   b. The Universal Standard: the Geneva Convention Refugee Definition and the Statute of the UNHCR 14
   c. Contemporary Alternative Refugee Definitions 14
      i. Africa 14
      ii. Latin America 15
      iii. Europe 15
   d. Institutions and Actors in International Law Relevant to Refugee Protection 15
3. Overview of National Legal Framework, Institutions, and Actors 15
   a. The Interface Between International Law and National Law 15
   b. Comparing National Systems 15

Section II
International Framework for Refugee Protection 16
1. Principles and Concepts of Refugee Law 16
   a. Asylum 16
   b. Protection 17
   c. Non-refoulement 18
   d. Non-discrimination 18
   e. Family Unity 19
f. Durable Solutions 20

g. International Cooperation 20

2. The 1951 Refugee Convention 21
   a. Historical Context 21
      i. Prior Definitions: Group Specific; Geographically and Temporally Limited 21
      ii. 1951 Convention: Universal Applicability; Optional Geographical and Temporal Limits 22
      iii. Expansion via the 1967 Protocol 22
   b. Definition 22
      i. Alienage 23
         (a) Outside the Country of Nationality 23
         (b) Owing to Fear Is Unable or Unwilling to Avail Self of Protection of Country of Nationality 24
         (c) Dual or Multiple Nationality 24
         (d) Stateless 24
      ii. Well-founded Fear 24
      iii. Persecution 25
         (a) Acts of Persecution 26
         (b) Agents of Persecution 27
         (c) Five Grounds: Race, Religion, Nationality, Social Group, Political Opinion 27
   c. Groups with Special Needs 30
      i. Women 31
      ii. Children 32
      iii. Elderly 33
   d. Exclusion from Convention Refugee Status 33
   e. Internal Protection Alternative 35
   f. Reception 36
   g. Detention 37
   h. Recognition as a Refugee 37
      i. Procedures 38
         ii. Establishing the Facts 38
            (a) Standards of Proof 38
            (b) Credibility 39
            (c) Special Issues 39
      i. Rights and Obligations of Refugees 40
      j. Cessation of Refugee Status 40

3. Other Forms and Instruments of Protection 41
   a. Universal Human Rights Instruments 41
      i. Universal Declaration of Human Rights; The UN International Convenant for Civil and Political Rights 42
      ii. The UN Convention Against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment 43

iii. The UN Convention on the Rights of the Child 44

iv. The Geneva Conventions and Protocols:
Minimum Standards in Times of War 44

b. Special Forms of Protection: Subsidiary Protection
   and Humanitarian Status 45

c. Temporary Protection 47

Section III
European Framework for Refugee Protection 48
1. The Council of Europe and Refugee Protection 48
   a. Legal and Policy Framework for Refugee Protection 48
   b. The European Convention on Human Rights
      and Fundamental Freedoms 52

2. The European Union 56
   a. The Evolving EU Acquis on Asylum 56
      i. European Integration and Asylum 56
      ii. The Institutional and Legal Framework for
          European Refugee Protection 58
      i. Access to Territory 59
         (a) International and Regional Legal Framework 60
         (b) Visas 61
         (c) Carrier Sanctions 62
         (d) Interception and Rescue at Sea 62
         (e) Extraterritorial Immigration Control 63
      ii. Refugee Status Determination Procedures 64
         (a) Access to Procedures 64
            i. Responsibility: The Dublin Convention
               and EURODAC 64
            ii. Safe Third Country 67
         (b) Harmonizing the Definition and the
             Determination Procedures 69
            i. Harmonization of the 1951 Convention
               Refugee Definition 69
            ii. Minimum Standards for Normal Procedures 70
            iii. Minimum Standards for Specific Procedures 71
               a. Accelerated and Manifestly Unfounded
                  Procedures 71
               b. Safe Country of Origin 72
         iii. Minimum Standards for Reception Conditions 73
         iv. Other Forms of Protection 74
         v. Leaving Territory 75
Section IV
UNHCR and Other Actors Relevant to International Asylum Law
1. UNHCR
2. Other Agencies and Their Interaction

Notes on the Editors
Editorial Staff
ABOUT THE READER AND ITS USE

About the Reader

The Refugee Law Reader: Cases, Documents and Materials (3rd edn.) is a comprehensive online model curriculum for the study of the complex and rapidly evolving field of international refugee law. It was initiated and is supported by Legal Assistance through Refugee Clinics (LARC) - a project of the Hungarian Helsinki Committee and is funded by the United Nations High Commissioner for Refugees (UNHCR) and the European Refugee Fund.

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 350 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 thereto.

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 content of the Reader is reflective of its main objective, which is to provide teaching and resource materials for over twenty refugee clinics that are part of LARC’s network - which extends across Central Europe and the Baltics, the Western CIS, and parts of the Balkans. Because of the depth, scope, and flexibility of the Reader, it is now being used in several continents for the teaching and training of refugee law.

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 of the Refugee Clinics within LARC, national legislation will be shaped by prevailing expectations from the West that central planks of the EU asylum *acquis communautaire* should be translated into national legislation. For many states bordering the current and future Member States, 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 with 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 September 1, 2005.

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 à la carte approach to refugee law. The Main Debates surrounding many of the topics covered in the Reader address the implications of refugee law and practice on refugee populations.

**Accessing Source Material**

Over 85 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. Permission has been granted generously by Oxford University Press for the Reader to make the core text, G. Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 2nd edn., 1996) accessible on-line.

The structure and substantive content of the Reader requires that all of the users should also have at their disposal another core reference text in the field, J. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991).

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 within the LARC network 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 LARC office at the email listed at the end of this section.

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**

<table>
<thead>
<tr>
<th>Topic</th>
<th>48-hour course</th>
<th>24-hour course</th>
<th>12-hour course</th>
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<tbody>
<tr>
<td>Section I: Introduction to Refugee Law</td>
<td>5</td>
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<tr>
<td>Section II: Principles/Concepts of Refugee Law</td>
<td>5</td>
<td>2</td>
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<tr>
<td>The 1951 Convention</td>
<td>14</td>
<td>8</td>
<td>4</td>
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<tr>
<td>Other Forms of Protection</td>
<td>4</td>
<td>2</td>
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<td>Section III</td>
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<tr>
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<td>12</td>
<td>6</td>
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<tr>
<td>Section IV: UNHCR and Other Actors</td>
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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 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 can be accessed in PDF format by 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 LARC’s registered clinic partners. Users should note that some documents and articles in the retrieval section, primarily those assigned as Extended Readings, are not yet accessible, as the publication permissions are pending. When publication permission is received for select articles, the respective links will be activated.

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 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 and second editions. We would like to thank

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**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. The Reader has been strengthened by the feedback from those who are using it in a wide range of jurisdictions.

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 an English translation, 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/LARC
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

Extended

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

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 Geneva Convention Refugee Definition and the Statute of the UNHCR

Treaties
International

Soft Law

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 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
ii. Latin America

**Soft Law**

iii. Europe

**Soft Law**

**EU Documents**
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.

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**

**Extended**
SECTION II - INTERNATIONAL FRAMEWORK FOR REFUGEE PROTECTION

Editor’s note
See also Sections II.2, II.3 and III.1

1. Principles and Concepts of Refugee Law

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

a. Asylum

Soft Law
Declaration on Territorial Asylum, UNGA res. 2313 (XXII), 14 Dec. 1967.
Committee of Ministers of the Council of Europe, ‘Declaration on Territorial Asylum’, 18
Nov. 1977.

UNHCR Documents

Readings
Core
G. Goodwin-Gill, The Refugee in International Law (Oxford: Oxford University Press, 2nd

Extended
J. Hathaway, Toward the Reformulation of International Refugee Law (Research Report York
University, 1997).
G. Noll, ‘Seeking Asylum at Embassies: A Right to Entry under International Law?’
Editor’s note
See also Sections II.1.b. and II.1.c.
Cf. 1951 Convention Arts. 32, 33.

b. Protection

Treaties


Soft Law

UNHCR EXCOM, ‘Protection of Asylum Seekers in Situations of Large-scale Influx’, Conclusion No. 22 (XXXII), 1981.
UNHCR EXCOM, ‘Refugee Women and International Protection’, Conclusion No. 64 (XLI), 1990.
UNHCR EXCOM, ‘Refugee Protection and Sexual Violence’, Conclusion No. 73 (XLIV), 1993.
UNHCR EXCOM, ‘Conclusion on Protection Safeguards in Interception Measures’, Conclusion No. 97 (LIV), 2003.

UNHCR Documents

Readings

Extended

Editor’s note
See also 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, Art. 2(a), (d)–(g) (for definition).
c. Non-refoulement

**Treaties**

*International*


**Soft Law**

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

**UNHCR Documents**


**Readings**

**Core**


**Extended**


**Editor’s note**

See also Section II.3 + III.1

d. Non-discrimination

**Treaties**

*International*


**Readings**

**Core**


**Extended**


**Editor’s note**

*See Sections II.3. + III.1*


e. **Family Unity**

**Treaties**

**International**


**Regional**


**Soft Law**


UNHCR EXCOM, ‘Family Reunion’ Conclusion No. 9 (XXVIII), 1977.

UNHCR EXCOM, ‘Family Reunification’ Conclusion No. 23 (XXXII), 1981.

**UNHCR Documents**


Extended

Editor’s note
See Section II.3.a.iii
See also Section III.1.b (case-law under ECHR Art. 8).
See Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

f. Durable Solutions
UNHCR Documents

Readings
Core

Editor’s note:
See Section I.2
See Section II.2.j (cessation of refugee status being one of the durable solutions as foreseen be the 1951 Refugee Convention)

g. International Cooperation
Readings
Core

Extended

Editor’s note
See Section IV.

2. The 1951 Refugee Convention
   a. Historical Context

Main Debates
Relationship Between the Strategic Political Objectives of Western States in 1951 and the Scope of the 1951 Convention Definition
Does the Focus on Civil and Political Rights in the 1951 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 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 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 Convention definition.

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

Soft Law

Readings
Core

**ii. 1951 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.
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 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

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 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.

(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 (1998) INLR 472; 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) (UK judicial decision upholding asylum for applicants fearing persecution by non-state actors)
(b) Agents of Persecution

**Soft Law**


**UNHCR Documents**


**Readings**

**Core**


**Extended**


iv. 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


Regional


Soft Law


Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief, UNGA res. 36/55, 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 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)

Thomas v. Gonzales 409 F. 3d 1177 (9th Cir. 2005). (US judicial decision holding family of a racist South African foreman constituted a social group)

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 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 on account of overlapping grounds under Article 1.

It may be useful to think about the scope of protected activities under the 1951 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
‘Asylum and Withholding Definitions’ (7 December 2000) 65 Federal Register 236, 76588–76598 (US proposed rule on gender and domestic violence asylum claims)

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 EXCOM, ‘Refugee Children and Adolescents’, Conclusion No. 84 (LXVIII), 1997.

Readings

Core

Extended

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.

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**

**EU Instruments**

**Soft Law**

**UNHCR Documents**

**Cases**
Australia 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
G. Gilbert, ‘Current issues in the application of the exclusion clauses’ in E. Feller, V. Türk, and F. Nicholson (eds.) ‘Refugee Protection in International Law’ UNHCR’s Global

**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**

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

EU Instruments

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

UNHCR Documents

Readings
Extended

Editor’s note

h. Recognition as a Refugee

Main Debates
Accelerated Procedures v. 1951 Convention and International Standards

Main Points
Minimum Standards for Refugee Status Determination
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**

UNHCR ‘Asylum Processes (Fair and Efficient Asylum Procedures)’ in Global Consultations on International Protection (31 May 2001), UN Doc. EC/GC/01/12.

**EU Instruments**


**Cases**

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

**Readings**

**Core**


**Editor’s note**

Consider the impact of the new EU approach, which outlines minimum procedural standards. See Section III.2.b (ii) for further references.

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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
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 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 Covenant for Civil and Political Rights**

**Treaties**

**Soft Law**
Vienna Declaration, UN World Conference on Human Rights, June 1993, para. 23.

**Human Rights Committee Cases**
C. v. Australia (900/1999) ICCPR, (28 October 2002). (lengthy detention causing mental illness of applicant and deportation to Iran constitutes a violation of Articles 7 and 9)
Torres v. Finland (291/1988) ICCPR (2 April 1990). (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)
A. v. Australia (560/1993) ICCPR (3 April 1997). (absence of individual consideration of reasons for detention of asylum seekers 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 address 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 Dec. 1984, 1465 U.N.T.S. 85, Arts. 1, 3, 10, 16.

**Soft Law**

**Cases**

**Core**
*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, (AG 2002). (detention in Haitian prison is not torture when legally sanctioned);

**Readings**

**Core**
D. Weissbrodt and I. Hortreiter, ‘The Principle of Non-refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

Extended

Editor’s note
See Section III.1.a. and Section IV.1

iii. The UN Convention on the Rights of the Child

Treaties

Soft Law

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 Aug. 1949, 75 U.N.T.S. 287, Arts. 27, 35, 44, 45, 46, 70 (special protection for women)
Additional Protocol I to the Geneva Conventions, 8 June 1977, 1125 U.N.T.S. 3
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), 8 Oct. 2002.

UNHCR Documents

Readings
Core

Extended

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 Refugee 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

EU Documents
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.

Readings
Core

Extended

Editor’s note
While human rights instruments may provide protection against refoulement, the standards of treatment for persons outside the scope of the 1951 Refugee Convention are only vaguely defined in general human rights law.
See also Section II.3.a. and Section III.1. and 2.

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

EU Documents

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 Convention for the Protection of Human Rights and Fundamental Freedoms
European Agreement on the Abolition of Visas for Refugees, 20 April 1959, E.T.S. 031.
   107.
European Convention on the Prevention of Torture and Inhuman or Degrading
   Treatment or Punishment, 26 Nov. 1987, E.T.S. 126.

Extended
Protocol to the European Convention on Consular Functions concerning the Protection
 Protocol Amending the European Convention on the Suppression of Terrorism, 15 May
   157.
Council of Europe Convention on Action against Trafficking in Human Beings, 16 May


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 Sept. 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.

Note the relationship between the ECHR jurisprudence and the Recommendations of the Committee of Ministers.

Art. 3 -
(1) Expulsion decision may give rise to an issue under Article 3 where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be expelled (Hilal v. UK para.59, Ahmed v. Austria paras.38-39).

(2) Mere possibility of ill-treatment is not in itself sufficient (Vilvarajah v. UK para.111).

(2) Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of existence of risk is due to those facts that were known or ought to have been known to the Contracting State at the time of the expulsion (Vilvarajah v. UK para.107, and H.L.R. v. France, para.37).

(3) The Court has confirmed the absolute (ius cogens) nature of Art. 3 applicable irrespective of the reprehensible nature of the conduct of person in question and gravity of the offence that the applicant committed (Ahmed v. Austria).
Art. 3 makes no provision for exceptions nor derogation that would be permissible under Art.15 even in the event of public emergency threatening the life of the nation (Ireland v. UK, reiterated in Chahal v. UK).

Protection afforded by Art. 3 is wider than that provided by Art. 33 of the 1951 Convention relating to the Status of Refugees (Ahmed v. Austria para. 24, and Chahal v. UK para. 80).

Art. 5 -
(1) To satisfy the purpose of Article 5 para.1, the national system must provide safeguards for the lawfulness of detention, requiring inter alia that individuals were protected from arbitrariness (Chahal v. UK para.118).

Para. 4 of Article 5, the Court recalls that the notion of “lawfulness” has the same meaning as under para.1, so that the detained person is entitled to a review of his detention in the light not only of the requirements of domestic law but also of those in the text of the ECHR.

Art. 8 –
(1) No right of an alien to enter or to reside in a particular country is as such guaranteed by the ECHR, nor does it prohibit Contracting States from regulating the entry and length of stay of aliens in order to maintain public order (Berrehab v. the Netherlands para.28).

(2) Expulsion of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life guaranteed by Article 8 para. 1 of the ECHR (Moustaquim v. Belgium para.36).

(3) Main criteria applied by the Court are the nature and gravity of the offence committed by the applicant and the length of his stay in the host country, with specific account on localisation of family and social ties - in the home or the host country. Years of schooling and spending the decisive years.

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 Exhibited Too Much or Too Little Deference to National Refugee Decision-Making Processes?

Main Points
Scope of Protection under Article 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**

Facing real and immediate risk of ill-treatment

*Soering v. UK*, European Court of Human Rights 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 is a violation of Article 3 recognising the extra-territorial effect of the ECHR)

*Chahal v. UK*, European Court of Human Rights, Judgment of 15 November 1996. (holding deportation order that would return a Sikh separatist to India on national security grounds where he would face ‘real risk’ of being subject to treatment contrary to Article 3 is in breach of the ECHR)

*Ahmed v. Austria*, European Court of Human Rights Judgment of 17 December 1996. (holding deportation of a Somali convicted of serious criminal offence is a violation of Article 3 if the applicant is under the risk to be subject to inhuman and degrading treatment by non-state agents upon expulsion)

*Hilal v. UK*, European Court of Human Rights Judgment of 6 March 2001. (expulsion of Zanzibari opposition party member, having previously suffered serious ill-treatment in detention, would be contrary to Art.3)

*Jabari v. Turkey*, European Court of Human Rights Judgment of 11 July 2000. (holding violation of Article 3 in case of deportation that would return a woman who has committed adultery to Iraq)

**Lack of necessary health care and destitution as violation of Art. 3**

*BB v. France*, European Court of Human Rights Judgment of 7 September 1998. (finding Article 3 violation whereby a citizen of Congo suffering from AIDS would be deported to the country of origin without access to adequate medical care)

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)

**Conditions in detention amounting to violation of Art. 3**

See *Dougoz v. Greece* (under Art. 5)

**Limitations to Art. 3**
Cruz Varas and others v. Sweden, European Court of Human Rights Judgment of 20 March 1991. (finding no Article 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, European Court of Human Rights Judgment of 30 October 1991. (holding no breach of Article 3 although applicants faced forms of ill-treatment upon return to Sri Lanka, which did not pose a risk of treatment beyond the threshold of Article 3 noting that their personal situation was not worse than ‘the generality’ of other young male Tamils. The right to political asylum is not contained in either the Convention or its Protocols)

HLR v. France, European Court of Human Rights Judgment of 27 April 1997. (finding no violation of Article 3 in case of expulsion of a citizen of Columbia as there was no ‘relevant evidence’ of risk of ill-treatment by non-state agents, whereby authorities ‘are not able to obviate the risk by providing adequate protection’)

Bensaid v. UK, European Court of Human Rights 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 being subject to compelling humanitarian considerations, once the necessary treatment is available in his country of origin)

Art. 5 – the right to liberty and security of person (para. 1), lawfulness of detention (para. 4)

Amuur v. France, European Court of Human Rights Judgment of 25 June 1996. (ruling detention of asylum seekers in a so-called extra-territorial ‘international zone’ of an airport is a violation of Article 5, para. 1)

Art. 3 and Art. 5

Dougoz v. Greece, European Court of Human Rights Judgment of 6 March 2001. (conditions and length of detention amount to degrading treatment contrary to Article 3 and the absence of remedies a violation of Art. 5 paras. 1 and 4)

Art. 8 – the right to respect for private and family life, home and correspondence

Beldjoudi v. France, European Court of Human Rights Judgment of 26 March 1992. (deportation of applicant residing in France for more than four decades with no de facto links with Algeria, apart from his nationality constitutes a violation of Art. 8)

Parental access

Berrehab v. the Netherlands, European Court of Human Rights Judgment of 21 June 1988. (refusal to grant a new residence permit after the divorce and the resulting expulsion order infringes right to respect for family life guaranteed in Art. 8)

Dogan and others v. Turkey, European Court of Human Rights judgment of 29 June 2004. (internal displacement as a result of terrorist activities of the PKK. Expulsion from a home village and refusal on security grounds, to permit the return of villagers to their homes, constitutes a breach of Art. 8)

Limitations to Art. 8
Gul v. Switzerland, European Court of Human Rights Judgment of 9 February 1996. (finding no violation of Art. 8 in case of refusal by public authorities to allow family reunification)

Art. 4 of the Protocol No. 4 – prohibition of collective expulsion of aliens
Conka v. Belgium, European Court of Human Rights Judgment of 5 February 2002. (the detention and return of rejected Roma asylum seekers to Slovakia constituted a violation of Art. 5, as well as the prohibition against ‘collective expulsion’ under Protocol 4)

Extended
Art. 3 – prohibition of torture, inhuman or degrading treatment or punishment
D. v. UK, European Court of Human Rights Judgment of 2 May 1997. (expulsion to the country of origin - known for the lack of medical facilities and appropriate treatment in case of the applicant suffering from advanced stages of a terminal ad incurable illness - HIV/AIDS, would amount to inhumane treatment prohibited by Art. 3)
S.C.C. v. Sweden, European Court of Human Rights decision of 15 February 2000. (expulsion to the country of origin - known for 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 grounds to compelling humanitarian consideration)

Limitations to Art. 3
Territorial and material limitations
Al-Adsani v. UK, European Court of Human Rights 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 Arts. 1 and 3 of the European Convention could extend only to the prevention of torture)

Absence of real risk
Venkadajalasarma v. the Netherlands, European Court of Human Rights 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)
Thampibillai v. the Netherlands, European Court of Human Rights decision of 17 February 2004, (present conditions are decisive in determining whether expulsion of the applicant would be contrary to Art. 3)

Art. 8 – the right to respect for private and family life

Mehemi v. France, European Court of Human Rights Judgment of 26 Sept. 1997 (enforcement of order for permanent exclusion from French territory of Algerian
national convicted for drug-trafficking and has family and minor children in France is an Art. 8 violation)

Readings

Core

Extended

Editor’s note

Compare the beneficiaries under the ECHR in contrast to the 1951 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 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 Geneva Convention with EU Asylum Law?
What Is the Relationship between the 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 Instruments

UNHCR Documents

Readings
Core

Extended
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 2003.
Charter of Fundamental Rights of the EU, OJ C 364/1 18 December 2000, Arts. 18, 19.

Readings

Core
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 date of the most recent EU enlargement to include 10 new Member States.

Consider the provision on changed rules for decision-making on asylum, Article 67(5), in force under 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, 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 laws. 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 these two objectives 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 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**


Council Resolution of 26 June 1997 on Unaccompanied Minors who are Nationals of Third Countries OJ C 221 (19 July 1997).


**Readings**

**Core**


Extended

Editor’s note
Please note that Arts. 28-38 of the Schengen Agreement relate to responsibility and have not been in force since 1997.

(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) N 2414/2001 amending Regulation (EC) N 539/2001 listing the third countries, whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement OJ L 327/1 (12 December 2001).


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 L141/3 (4 June 2005).

Readings
Core

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 Convention.

(c) Carrier Sanctions

Main Debates
Are Carrier Sanctions Permitted Under the Letter of the 1951 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 Discovered or Rescued on the Seas?

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

*Soft Law*

*UNHCR Documents*

*Readings*

**Core**

(e) **Extraterritorial Immigration Control**

*Main Debates*
What are the Potential Arguments for and against the Legality of Forced Process Outside the Territory of the EU?
What Practical Problems Could Result from Such a Policy?

*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 Instruments*
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 Extended**

   **i. Responsibility: The Dublin Convention and Dublin II Regulation**

   **Main Debates**
   Distribution Mechanisms v. Protection Obligations
   Who Controls the Identity of the Asylum Seeker?
   Does the Dublin System Provide Sufficient Safeguards Against Refoulement?
   What are the implications of the Dublin II Regulation post-Enlargement?

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

   **EU Instruments**
   Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum
application lodged in one of the Member States by a third-country national OJ L 050 (25 February 2003) (Dublin II).


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 1 (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, 1.


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, 2001.

Commission of the European Communities, ‘Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an application for asylum submitted in one of the Member States’: SEC (2002) 522.

Council Regulation (EC) 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, amended by Regulation (EC) 453/2003 of 6 March 2003 - consolidated version.
Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts SCH/Com-ex (99)13 (28 April 1999).

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.


Cases

UK Court of Appeal Adan and Aitseguer [1998] INLR 472; 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 143–169. (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, European Court of Human Rights 2000 European Court of Human Rights Third Section Decision as to the Admissibility of Application 43844/98 (2000) 12 IJRL 244–267. (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), 84–92.


Extended


Editor’s note
An analysis of the Dublin rules should consider the following:
• Are they compatible with the Geneva Convention and the ECHR?
• What are the disputes over how to interpret the Dublin rules?
• How have they changed as a result of the Dublin II regulation? What is the likely impact of the changes?
• 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 Safe Third Countries?

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

Soft Law

EU Documents
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 143–169. (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, European Court of Human Rights 2000 European Court of Human Rights Third Section Decision as to the Admissibility of Application 43844/98 (2000) 12 IJRL 244-267. (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 (2001) 184 ALR 698 (20 August 2001). (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 delivered on 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
UNHCR, ‘Global Consultations in International Protection, Regional Meeting Budapest, 6–7 June 2001, Conclusions’.
Editor's note
The safe third country principle does not preclude a host state from voluntarily assuming responsibility for an asylum claim. A consideration of the safeguards that should be incorporated into safe third country practices should address, inter alia, readmission agreements, access and adequacy of procedures, national interpretations of the refugee definition, and standards of protection in the host third state.

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 Convention Refugee Definition

Main Debates
Should the EU Ensure That All Member States Treat Persecution by Non-State Agents as Persecution under the Geneva Convention?

How Should the Geneva Convention Exclusion Clauses be Applied post-September 11th?

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 Convention
Differentiation in Rights Accorded to 1951 Convention Refugees and Subsidiary Protection Beneficiaries

EU Documents
Joint Position of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term

Council Directive 8043/04 of 27 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.

**UNHCR Documents**


**Cases**

*Adan and Aitseguer [1998] INLR 472 (UK CA); Regina v Secretary of State for the Home Department ex parte Adan; Regina v Secretary of State for The Home Department ex parte Aitseguer (UK HL) (Judgments of 19 December 2000) (UK judicial decision upholding asylum for applicants fearing persecution by non-state actors)*

*Chahal v. UK (European Court of Human Rights 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)*

**Readings**

**Core**


**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

Reading
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
Abridged Safeguards
Shifts in the Standard and Burden Proof
Procedural and Formal Grounds (as Opposed to Grounds Related to the Merits) for Channelling 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

UNHCR Documents
UNHCR, An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR, Vol. 1 No. 3 European Series (Geneva: UNHCR, 1995).

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 Notion Undermine the Right to have a Claim Assessed Individually?

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

EU Documents

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

EU Documents

UNHCR Documents

Reading
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 Convention?

Main Points
Relationship between Directive and Refugee Determination Process
Diminished Rights under the EC TP Regime Compared with 1951 Convention Rights

EU Documents

UNHCR Documents

Readings
Core

Extended

Editor’s note
See the section on other forms and instruments of protection after the 1951 Convention (Section II.3.).
A process is required to invoke the TP scheme; it does not replace national TP schemes. In the absence of using the EC process, national schemes could be established.
Compare the substantive rights for a person in an EC TP 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 1951 Convention on refugees and the ‘Council of the European Union Proposal for a Council Directive 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’ (25 September 2002).

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
‘EU plan for return to Afghanistan’, 4 December 2002.


UNHCR Documents
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 SP/TP 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

Safe Guard Clauses

EU Documents
Readings

Core

Extended

Editor’s note
Readmission agreements will apply to those who are failed protection-seekers and to removals 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
Modest Degree of Funding Provided for the Review of the European Refugee Fund Planned after Enlargement.

EU Instruments

Readings

Core

Extended
(a) **European Refugee Fund**

*Main Debates*
Burden Shifting v. Burden Sharing

*Main Points*
Have the Amounts Provided under the ERF Proven Too Modest for the Member States’ Needs?
Is the Split between the Community Actions (7.5% of Total) and the Amount Available for Member States Equitable?
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**

*Main Debates*
The Role of UNHCR: Should it Extend Beyond Protection to Include Humanitarian Aid, and/or Return and Reconstruction?
Has, and Can, UNHCR Put Up Effective Resistance against Restrictive Tendencies in Europe and Elsewhere?

*Main Points*
UNHCR’s Evolving Role
Necessity of Networks for Co-operation and Engagement
Dependency on Major Donor Governments
Global Consultations
Convention Plus
Agenda for Protection

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 co-operation 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.

See also W. Kälin, ‘Supervising the 1951 Convention on the Status of Refugees: Article 35 and Beyond’ in Section IV.2., exploring the possibilities of supervising the Geneva Convention the second chapter of which reviews present day UNHCR practice. W. Kälin, ‘Supervising the 1951 Convention on the Status of Refugees: Article 35 and Beyond’ in Section IV.2.

1. UNHCR

Main Debates

The Role of UNHCR:

Should it Extend Beyond Protection to Include

Humanitarian Aid, and/or Return and Reconstruction

Has, and Can, UNHCR Put Up Effective Resistance Against Restrictive Ten-dencies in Europe and Elsewhere?

Main Points

UNHCR’s Evolving Role

Necessity of Networks for Co-operation and Engagement

Dependency on Major Donor Governments

Global Consultations

Convention Plus

Agenda for Protection

Treaties

International


Soft Law

**UNHCR Documents**
- REF WORLD, the UNHCR’s CD-ROM Database (2005).

**Readings**

**Core**

**Extended**

**2. Other Agencies and Their Interaction**

**Readings**

**Core**

**Extended**
NOTES ON THE EDITORS

Rosemary Byrne
Trinity College, Dublin, Ireland

Rosemary Byrne earned her bachelor’s degree from Barnard College, Columbia University and her J.D. from Harvard Law School. 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. Since 1994 she has been on the faculty of Trinity College Dublin, where she lectures in human rights and international law at the Law School. She also serves as member of the Executive Committee of the Institute for International Integration Studies.

Maryellen Fullerton
Brooklyn Law School, New York, USA

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 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
UNHCR Brussels, Belgium
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.

Elspeth Guild
University of Nijmegen, The Netherlands

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.

Darina Macková
Trnava Univeristy, Slovakia

Darina Macková graduated from the Faculty of Law of Komensky / Comenius University in Bratislava and since 2000, has taught International Public Law, the International Protection of Human Rights and Refugee Law at the Faculty of Law of Trnava University in Slovakia. Having been involved also in activities of several human rights NGOs, she took active part in connecting Slovak academia with the non-governmental sector through the establishment of Trnava Legal Clinic, with particular
focus on protection of human rights and the Refugee Law.  
Other work and study-stays included the Institute of Human Rights in Strasbourg, the Hague Academy of the International Law, Abo Academy of Human Rights in Turku, Finland and Faculty of Law at Charles University in Prague.  She is also a member of the American and European Societies of the International Law as well as the Academic Council of the United Nations (ACUNS).

**Boldizsár Nagy**  
*ELTE University, Hungary*

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 Central European University (since 1990) he is counsel for Hungary in the Gabcikovo-Nagymaros Project case pending before the International Court of Justice, and has acted several times as an expert for the Hungarian Ministry for Foreign Affairs and the Council of Europe. The Directorate of Refugee Affairs of the Hungarian Office for Nationality and Immigration Affairs and UNHCR Branch Office in Budapest maintain close contacts with him. He is also involved in the work of three leading Hungarian NGOs (Menedék, Helsinki Committee and NEKI) representing the interests of forced migrants and other victims of discrimination. In 2001 he was awarded the Menedék Prize of UNHCR for his contribution to refugee protection. He has published widely in the area of refugee and international law and is on the editorial boards of the *International Journal of Refugee Law* and of the *European Journal of Migration and Law*.

**Jens Vedsted-Hansen**  
*University of Aarhus, Denmark*

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.
Editorial Staff

Boyan Konstantinov
Hungarian Helsinki Committee

Boyan Konstantinov has a degree in law from Sofia University in Bulgaria where he was a member of the legal clinic. He is currently the Regional Project Coordinator of LARC at the Hungarian Helsinki Committee. During his years at the university, Boyan worked as a journalist and editor. Since 2001 has worked for the Network Scholarships Programs of the Open Society Institute and for the Office of the Academic Pro-Rector at the Central European University in Hungary.

Tímea Szabó
Hungarian Helsinki Committee

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 its regional refugee project LARC, 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.