

## Course Outline

<b>COURSE:</b>	<b>LAWS 4605 A – Topics in International Law: International Refugee Law</b>
<b>TERM:</b>	<b>Winter 2008/09</b>
<b>PREREQUISITES:</b>	<b>LAWS 3603 or LAWS 3603 [1.0] (no longer offered)</b>
<b>CLASS:</b>	<b>Day &amp; Time: Tuesday – 2:35-5:25 pm</b> <b>Room: 431 TB (Tory)</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Christina Harrison Baird</b>
<b>CONTACT:</b>	<b>Office: C476 Loeb (Contract Instructors' Office)</b> <b>Office Hrs: Please email to make an appointment</b> <b>Email: <a href="mailto:cmharris@connect.carleton.ca">cmharris@connect.carleton.ca</a></b>

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“Students with documented disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC at 613-520-6608, early each term to ensure that your Instructor receives your Letter of Accommodation no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by March 6, 2009 for April exams.” Also available at [http://www.carleton.ca/pmc/faculty/acom\\_statement.html](http://www.carleton.ca/pmc/faculty/acom_statement.html) . For Religious and Pregnancy accommodations, please contact Equity Services, 613-520-2600 x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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**INTRODUCTION:**

The international law of refugee protection will be examined, starting from the premise that refugee law is an *exception* to the sovereign power of the State. “But for” these relatively new international obligations, the discretion to allow or deny admission to its territory would lie solely within the domestic jurisdiction of the State. In the immediate aftermath of World War II, States were willing to give up a fraction of their sovereignty in the spirit of avoiding future atrocities akin to those of the 1930s and 1940s. The grant of asylum took place under circumstances that were strictly defined as to category, time and geography. Fifty-two States from Europe, Africa, Asia, and the Americas signed on to the 1951 Convention relating to the Status of Refugees between its inception and 1967. From the late 1960s to the 1980s, protections were expanded to answer the growing need for asylum – and in line with the political objectives of Western States during the Cold War. During this period of feverish human rights standard-setting, expansion of the refugee definition occurred with respect to all three limitations itemized above. The grounds for refugee status evolved through case precedents to afford protection for more “particular social groups”, even on grounds specifically contemplated and purposefully omitted by the drafters of the 1951 Convention. The 1967 Protocol – to which the vast majority of Parties to the 1951 Convention acceded – widened protection to cover events after 1951 and beyond Europe. Nonetheless, States retained discretion to exclude some refugees and to expel a refugee lawfully in their territory on grounds of national security or public order.

In the current era of mass transportation and resultant mass migration, and following the events of September 11<sup>th</sup> 2001, there is general agreement that there is a chill on refugee protection. Preserving the existing international legal standards regarding the protection of refugees is becoming increasingly problematic. It is suggested that this is due to mixed migration flows, fears about international terrorism and the political climate in many States Parties to the 1951 Convention. This seminar course affirms the value and ongoing relevance of international refugee law standards and poses a series of questions for students to consider. What was the initial motivation for States to adhere to the 1951 Convention? Were they genuinely engaged in a humanitarian exercise, or was the motivation primarily ideological, political or pragmatic (i.e. recognizing the need for immigration)? Was adherence a symbolic gesture to assuage the conscience of their citizens and preserve their legitimacy in the eyes of those citizens? Is there evidence to support the sentiment among advocates that the institution of asylum is in danger, e.g. do statistics reflect a growing number of cases where non-admission, exclusion or expulsion occurs? If so, what are

the causes contributing to the chill, e.g. is September 11<sup>th</sup> the root of all asylum ills, are States simply experiencing humanitarian fatigue, or are the sheer numbers of migrants overwhelming existing asylum systems? Does this change of climate reflect a broader shift in human rights work from idealistic standard-setting to the pains of implementation, and a predictable pendulum swing in the mood of States with respect to their sovereignty? What is the role of each player in refugee protection: refugees, advocates, governments, inter-governmental and non-governmental organizations?

Students will be encouraged to think critically and to apply the principles they have learned to current affairs. They will have the opportunity to develop their skills in research, analysis, writing and oral presentation – both individually and in collaboration with their peers. Seminars are intended to be highly participatory and their quality will depend largely on students' engagement with the required reading. Discussion will be fostered in an environment of mutual respect.

### **REQUIRED READING:**

Rosemary Byrne et al., eds., *The Refugee Law Reader: Cases, Documents, and Materials*, 4<sup>th</sup> edition, Hungarian Helsinki Committee, Budapest 2008. [<http://www.refugeelawreader.org/>]

nb: This text incorporates substantial excerpts from Hathaway 1991 and Goodwin-Gill 2007, listed below.

UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 2<sup>nd</sup> edition, Geneva, 1992. [<http://www.unhcr.org/publ/41a1b51c6.html>]

### **RECOMMENDED READING:**

Erika Feller et al., eds., *Refugee Protection in International Law*, Cambridge University Press, 2003.

Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3<sup>rd</sup> edition, Oxford University Press, 2007.

James C. Hathaway, *The Law of Refugee Status*, Butterworths, Toronto 1991.

James C. Hathaway, *The Rights of Refugees Under International Law*, Cambridge University Press, 2005.

Pia Zambelli, *Annotated Refugee Convention 2007*, Carswell, Toronto 2007.

### **EVALUATION:**

**A. Of Coursework** – Coursework consists of five elements, all of which must be completed in order to pass the course: a current affairs presentation, participation, a debate, a paper proposal and a term paper. There will be no final examination.

*Please note that all work is due at the **beginning** of class. Work that is submitted after the appointed time on the day that the assignment is due will be penalized by a deduction of **3 percent**. Work that is submitted after the due date will be penalized by a deduction of **5 percent** for each day following the due date.*

<b><u>Coursework Element</u></b>	<b><u>Description</u></b>	<b><u>Due Date</u></b>	<b><u>Percentage of Final Grade</u></b>
1. Current Affairs Presentation	Individual student makes a 5-minute presentation that relates a current news article or legal case to concepts from the course. Student provides a 1-page summary to the class, and is prepared to lead discussion on the topic.	Sign up individually for dates throughout the term	10%
2. Participation	Student contributes quality ideas to the weekly discussion and completes periodic quizzes or exercises.	Throughout the term	10%

3. Debate	Students sign up in advance for one of five groups. Each group debates a different proposition relating to a concept from the course. Students prepare in advance to debate a particular side of the proposition. Each debate is one half hour long.	<b>Week 6</b> Students must be in class on this date.	15%
4. Paper Proposal	Individual student prepares a proposal for their term paper, which includes a thesis statement, introduction, outline and annotated bibliography.	<b>Week 8</b>	15%
5. Term Paper	Individual student prepares an original term paper relating to a concept of their choice from the course.	<b>Week 12</b>	50%

**B. Of Instruction** – Students will have the opportunity to evaluate the course and the instruction both formally and informally. Formal evaluation will occur toward the end of the course in accordance with Carleton University procedures. In addition, there will be at least one informal occasion for students to provide constructive anonymous feedback to the instructor through <http://www.getfast.ca/>. Further details will be provided in class.

#### CLASS SCHEDULE:

<b>Week 1</b>	<p><b>The Concepts of Migration and Sovereignty.</b>  <i>Video</i> – Global View (showing the current work of UNHCR with various refugee populations)  Regular, Illegal, and Forced Migration: Should Different Types of Migration be Subject to Different Forms of Control? Sociological, Demographic, Historical and Legal Perspectives on Migration; Review of State Sovereignty; Relationship Between the Strategic Political Objectives of States and the Scope of Refugee Protection</p> <p><u>Readings:</u>  A. Demuth, 'Some Conceptual Thoughts on Migration Research', in B. Agozino (ed.), <i>Theoretical and Methodological Issues in Migration Research</i> (Aldershot: Ashgate Publishing, 2000), pp. 21–58.  J. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', <i>Harvard International Law Journal</i>, vol. 31, no. 1 (Spring 1990), pp. 129–147.  J. Hathaway, <i>The Law of Refugee Status</i> (Toronto: Butterworths 1991), 1-11.  A. Zolberg, 'Matters of State: Theorizing Immigration Policy', in C. Hirschman, P. Kasinitz, and J. DeWind (eds), <i>The Handbook of International Migration: The American Experience</i> (New York: Russell Sage Foundation, 1999), pp.71–93.</p>
<b>Week 2</b>	<p><b>Theories of Migration.</b>  What are the Causes of Migration? Can Migratory Processes be Managed?</p> <p><u>Readings:</u>  D. Massey, J. Arango, G. Hugo, A. Kouaci, A. Pellegrino, and E. Taylor, 'Theories of International Migration: A Review and Appraisal' <i>Population and Development Review</i>, vol. 19, no. 3 (September 1993), pp. 431–466.  A. Pécoud, P. de Guchteneire, 'Migration without Borders: An Investigation into the Free Movement of People', <i>Global Migration Perspectives</i>, No. 27, (Geneva: Global Commission on International Migration, 2005).</p> <p><u>Optional:</u>  D. Fisher, S. Martin and A. Schoenhotz, 'Migration and Security in International Law', in T. Aleinikoff and V. Chetail (eds), <i>Migration and International Legal Norms</i> (The Hague: Asser Press, 2003), pp. 87–122.</p>

<p><b>Week 3</b></p>	<p><b>Trends in Migration &amp; Universal and Regional Standards of Refugee Protection.</b>  Where are migrants actually moving? Do States have a hard “capacity” to absorb migrants? Absolute Number and Relative Proportion of migrants in the developed world. Protections offered by the 1951 Convention (UN), compared to the 1969 Convention (OAU). The value of soft law i.e. Cartagena Declaration. Overview of interpretation of the 1951 Convention in national systems.</p> <p><u>Readings:</u>  A. Segal, <i>An Atlas of International Migration</i> (London: Hans Zell Publishers, 1993), pp. 3–22.  UNHCR, ‘Refugees, Asylum-seekers, and others of Concern – Trends in Displacement, Protection and Solutions’, in <i>UNHCR Statistical Yearbook</i> (2003).  1951 Convention relating to the Status of Refugees  <i>caselaw excerpts from Pia Zambelli, Annotated Refugee Convention 2007, Carswell 2007.</i>  UNHCR Handbook on Procedures and Criteria for Determining Refugee Status  1967 Protocol Relating to the Status of Refugees  1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa  1984 Cartagena Declaration on Refugees</p>
<p><b>Week 4</b></p>	<p><b>Principles of Refugee Protection I.</b>  Asylum and <i>non-refoulement</i> (the fundamental obligation not to return a person to the place where they fear persecution).</p> <p><u>Readings:</u>  Universal Declaration of Human Rights  A. Edwards, ‘Human Rights, Refugees, and the Right ‘To Enjoy’ Asylum’, <i>International Journal of Refugee Law</i>, vol. 17, no. 2 (2005), pp. 293–330.  Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  UNHCR EXCOM, ‘Non-refoulement’, Conclusion No. 6 (XXVIII), 1977  G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford:Oxford University Press, 2007), pp. 201–267. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp.117–155].  J. Hathaway, <i>The Law of Refugee Status</i> (Toronto: Butterworths, 1991), pp. 24–27.  E. Lauterpacht and D. Bethlehem, ‘The Scope and Content of the Principle of Non-refoulement’, in E. Feller, V. Türk, and F. Nicholson (eds), <i>Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection</i> (Cambridge: Cambridge University Press, 2003), pp.78–177.</p> <p><u>Optional:</u>  G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford:Oxford University Press, 2007), pp. 268–277. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 155–171, 195–204].</p>
<p><b>Week 5</b></p>	<p><b>Principles of Refugee Protection II.</b>  Non-discrimination, family unity, durable solutions, international cooperation.</p> <p><u>Readings (select one topic out of four):</u></p> <p><b>Non-discrimination</b>  G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 2007), pp. 446–450. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 230–234].  1966 International Covenant on Civil and Political Rights  1966 Convention on the Elimination of All Forms of Racial Discrimination  1979 Convention on the Elimination of All Forms of Discrimination against Women  1989 Convention on the Rights of the Child</p>

	<p><b>Family Unity</b>  K. Jastram, and K. Newland, 'Family Unity and Refugee Protection', in E. Feller, V. Türk, and F. Nicholson (eds), <i>Refugee Protection in International Law: UNHCR's Global Consultations on International Protection</i> (Cambridge: Cambridge University Press, 2003), pp. 555–603.  Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons  UNHCR EXCOM, 'Family Reunion' Conclusion No. 9 (XXVIII), 1977  UNHCR EXCOM, 'Family Reunification' Conclusion No. 24 (XXXII), 1981  1966 International Covenant on Civil and Political Rights  1989 Convention on the Rights of the Child</p> <p><b>Durable Solutions</b>  D. Anker, J. Fitzpatrick and A. Shacknove, 'Crisis and Cure: A Reply to Hathaway/Neve and Schuck', <i>Harvard Human Rights Journal</i>, vol. 11 (Spring 1988), p. 295.  G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 2007), pp. 489–501. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 268–282].  J. Hathaway and R. A. Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection', <i>Harvard Human Rights Journal</i>, vol. 10 (Spring 1997), pp. 155–169, 173–187.  UNHCR, 'Agenda for Protection', October 2003, pp. 68–75.</p> <p><b>International Cooperation</b>  B.S. Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems', <i>Refugee Survey Quarterly</i>, vol. 23, no. 3 (October 2004), pp. 55–73.  G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 2007), pp. 502–505. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 291–295].  J. Hathaway and R. A. Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection', <i>Harvard Human Rights Journal</i>, vol. 10 (Spring 1997), pp. 115–151, 187–209.  A. Vibeke Egli, <i>Mass Refugee Influx and the Limits of Public International Law</i> (The Hague: Martinus Nijhoff Publishers, 2002), pp. 40–54, 72–87.</p>
<b>Week 6</b>	<b>Debate Day</b>
<b>Week 7</b>	<p><b>UNHCR and other Agencies relevant in Refugee Protection.</b>  Role of UNHCR in status determination; Should the Role of UNHCR Extend Beyond Protection to Include Humanitarian Aid, and/or Return and Reconstruction? UNHCR's role with internally displaced persons; UNHCR's dependency on major donor governments; Has, and Can, UNHCR Put Up Effective Resistance Against Restrictive State Tendencies? What are the appropriate roles for IOM, UNICEF, etc.?</p> <p><u>Readings:</u>  Statute of the Office of the United Nations High Commissioner for Refugees  UNHCR, 'Declaration Reaffirming the Principles of the 1951 Refugee Convention', December 2001.  B.S. Chimni, 'The Geopolitics of Refugee Studies: A View from the South', <i>Journal of Refugee Studies</i>, vol. 11, no. 4 (December 1998), pp. 350–357, 365–368.  G. Gilbert, 'Rights, Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order', <i>International Journal of Refugee Law</i>, vol. 10, no. 3 (July 1998), pp. 350–388.  G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 2007), pp. 20–32. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 7–17].  G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 2007), pp. 441–446. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 222–230].</p>

	<p>C. Phuong, 'Improving United Nations Response to Crises of Internal Displacement', <i>International Journal of Refugee Law</i>, vol. 13, no. 4 (October 2001), pp. 491–517.</p> <p>A. Vibeke Egli, <i>Mass Refugee Influx and the Limits of Public International Law</i> (The Hague: Martinus Nijhoff Publishers, 2002), pp. 118–138.</p> <p><u>Optional:</u></p> <p>M. Barutciski, 'A Critical View on UNHCR's Mandate Dilemmas', (<i>International Journal of Refugee Law</i>, vol. 14, nos. 2–3 (April 2002), 365–381.</p> <p>W. Kälin, 'Supervising the 1951 Convention on the Status of Refugees: Article 35 and Beyond', in E. Feller, V. Türk, and F. Nicholson (eds), <i>Refugee Protection in International Law: UNHCR's Global Consultations on International Protection</i> (Cambridge: Cambridge University Press, 2003), pp. 613–666.</p> <p>G. Loescher, <i>The UNHCR and World Politics: A Perilous Path</i> (Oxford: Oxford University Press, 2001).</p>
<p><b>Week 8</b></p>	<p><b>Inclusion in the definition of a Refugee I</b></p> <p>Alienage (requirement to be outside State of Nationality, what about the needs of stateless or internally displaced persons?); Well-founded fear (subjective + objective element)</p> <p><u>Readings:</u></p> <p>UNHCR, 'The International Protection of Refugees: Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees', April 2001.</p> <p><b>Alienage</b></p> <p>J. Hathaway, <i>The Law of Refugee Status</i> (Toronto: Butterworths, 1991), pp. 29–33.</p> <p><i>Optional – Statelessness</i></p> <p>G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 2007), pp. 67–70. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 41–43].</p> <p>J. Hathaway, <i>The Law of Refugee Status</i> (Toronto: Butterworths, 1991), pp. 59–63.</p> <p>Convention relating to the Status of Stateless Persons</p> <p>Convention on the Reduction of Statelessness</p> <p><b>Well-founded Fear</b></p> <p>J. Hathaway, <i>The Law of Refugee Status</i> (Toronto: Butterworths, 1991), 69-97.</p> <p>'The Michigan Guidelines on Well-Founded Fear', March 2004.</p> <p>INS v. Cardoza-Fonseca 480 US 421 (1987) (US judicial decision stating that one in ten probability of harm can constitute well-founded fear)</p> <p>R v. Secretary of State for the Home Department ex parte Sivakumaran (1988) 1 All ER 193 (HL) (UK judicial decision analyzing objective element)</p> <p><i>Optional – Subjective Fear</i></p> <p>J. Hathaway and W. Hicks, 'Is There a Subjective Element in the Refugee Convention's Requirement of Well-Founded Fear?' (2005) 26 Michigan Journal of International Law 505.</p>
<p><b>Week 9</b></p>	<p><b>Inclusion in the definition of a Refugee II</b></p> <p>Persecution (Accountability Theory v. Protection Theory, Persecution v. Prosecution, Must Persecution Include Punitive Intent? Persecution by Non-State Actors, Threshold for Persecution); the 5 Convention grounds i.e. race, religion, nationality, membership in a particular social group, and political opinion (Widespread Repressive Practices: What is the Relationship between the Individual and the Group? Broad Interpretation of Race, Religion and Nationality; Public Religious Activity v. Private Worship; Religious Objections to Military Service; Conscription: In What Circumstances Can Coerced Military Service Constitute Persecution? Multiple Factors in Social Group Definition: Immutable Characteristics, Involuntary Associations, Shared Values, Voluntary Associations, Pariah Status; Social Groups and Gender-Related Persecution; Whose Political Opinion is Relevant: The Persecutor, the Persecuted or Both? Types of Expression of Political Opinion - Including Neutrality; Flight from General Civil War: Can Violent Insecurity Give Rise to the Possibility of Persecution based upon the Specified Grounds?)</p>

Readings:**Persecution (choose two cases)**

G. Goodwin-Gill and J. McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007), pp. 90–94, 98–100. [G. Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1996), pp. 66–74].

J. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991), pp. 124–131, 169–179.

Cases

New Zealand Refugee Status Appeals Authority, (1999) [2000] NZLR 545, (Refugee Appeal No. 71427/99), paras. 43–53. (NZ administrative decision using international law principles to interpret the term 'persecution')

Pitcherskaia v INS, 118 F 3d 641 (9th Cir 1997) (US judicial decision holding that forced treatment in psychiatric institution without intent to punish can constitute persecution)

Korablina v INS, 158 F 3d 1038 (9th Cir 1998) (US judicial decision finding cumulative discrimination against Jewish woman in Ukraine constitutes persecution)

UK Court of Appeal Adan and Aitseguer, 23 July 1999 [1999] 3 WLR 1274 UK House of Lords Regina v Secretary of State for the Home Department ex parte Adan; Regina v Secretary of State for The Home Department ex parte Aitseguer, Judgments of 19 December 2000, [2001] 2 WLR 143. (UK judicial decision upholding asylum for applicants fearing persecution by non-state actors)

UNHCR, 'Position Paper on Agents of Persecution', 14 March 1995.

**Convention Grounds (choose one case)**

G. Goodwin-Gill and J. McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007), pp. 70–90, 104–116. [G. Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1996), pp. 43–49, 54–59].

J. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991), pp. 141–185.

K. Daley and N. Kelley, 'Particular Social Group: A Human Rights Based Approach in Canadian Jurisprudence', *International Journal of Refugee Law*, vol. 12, no. 2. (April 2000), p. 148.

UNHCR, 'Guidelines on International Protection: "Membership of a particular social group" within the context of Art.1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees', 2002.

UNHCR, 'Guidelines on International Protection: "Religion-Based Refugee Claims under Art.1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees"', 2004.

Cases

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

R. v Immigration Appeal Tribunal ex parte Shah; Islam v Secretary of State for the Home Department (1999) 2 AC 629. (UK judicial decision holding Pakistani women accused of adultery feared persecution based on their social group)

Matter of Kasinga 21 Immigration & Nationality Decisions 357 (BIA 1996). (US administrative decision recognising as a social group women who fear female genital mutilation)

Aguirre-Cervantes v. INS 242 F 3d 1169 (9th Cir 2001). (US judicial decision granting asylum to a Mexican woman based on physical abuse by father)

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

Ciric and Ciric v. Canada 2 FC 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)

Guo Chun Di v. Carroll 824 F Supp 858 (ED Va 1994). (US judicial opinion finding opposition to China's population control policy is political opinion)

<p><b>Week 10</b></p>	<p><b>Obstacles to inclusion in the definition of a Refugee (Substantive)</b>  Internal Protection Alternative (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.); Cessation (Gaining or Re-gaining National Protection; Changed Circumstances; Risk of Short-Term Trips to Homeland); Exclusion (Already Receiving Protection; Undeserving of International Protection; Special cases – conscripts, child soldiers)</p> <p><u>Readings:</u></p> <p><b>IPA</b>  J. Hathaway and M. Foster, 'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination' in E. Feller, V. Türk, and F. Nicholson (eds.) 'Refugee Protection in International Law' UNHCR's Global Consultations on International Protection (Cambridge: Cambridge University Press, 2003), 357-417.  'The Michigan Guidelines on the Internal Protection Alternative', April 1999.  UNHCR, 'Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees', 2003.</p> <p><b>Cessation</b>  G. Goodwin-Gill and J. McAdam, The Refugee in International Law (Oxford: Oxford University Press, 2007), pp. 139–142. [G. Goodwin-Gill, The Refugee in International Law (Oxford: Oxford University Press, 1996), pp. 84–87].  J. Hathaway, The Law of Refugee Status (Toronto: Butterworths, 1991), pp.191–205, 209–211.  UNHCR EXCOM, 'Cessation of Status', Conclusion No. 69 (XLIII), 1992.  UNHCR, 'The Cessation Clauses: Guidelines on their application', 1999.  UNHCR, 'Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), 2003.</p> <p><u>Optional</u>  J. Fitzpatrick and R. Bonoan, 'Cessation of Refugee Protection', in E. Feller, V. Türk, and F. Nicholson (eds), Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (Cambridge: Cambridge University Press, 2003), pp. 491–544.</p> <p><b>Exclusion</b>  J. Hathaway, 'Framing Refugee Protection in the New World Disorder', Cornell International Law Journal, vol. 34, no. 2 (2001), pp. 257–320.  J. Hathaway, The Law of Refugee Status (Toronto: Butterworths, 1991), 91-114.  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 Consultations on International Protection (Cambridge: Cambridge University Press, 2003), 425-478.  G. Goodwin-Gill and J. McAdam, The Refugee in International Law (Oxford: Oxford University Press, 2007), pp. 421–446. [G. Goodwin-Gill, The Refugee in International Law (Oxford: Oxford University Press, 1996), pp. 205–229].  UNHCR, 'Guidelines on International Protection. Application of the Exclusion Clauses (Article 1 F of the 1951 Convention)', 2003.</p> <p><u>Cases</u>  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)  Moreno v. Canada 107 D.L.R. 4th 424 (1993) (forcibly conscripted teenage Salvadoran present at torture of prisoners not excluded)  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)</p>
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	<p><i>Optional</i></p> <p>M. Gallagher, S.J., 'Soldier Bad Boy: Child Soldiers, Culture and Bars to Asylum' <i>International Journal of Refugee Law</i>, vol. 13, no. 3 (2001), p. 310.</p> <p>B. Saul, 'Exclusion of Suspected Terrorists from Asylum: Trends in International and European Refugee Law', <i>Institute for International Integration Studies, Discussion Paper</i>, no. 26, July 2004.</p>
<b>Week 11</b>	<p><b>Obstacles to inclusion in the definition of a Refugee (Procedural)</b></p> <p>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</p> <p><u>Readings:</u></p> <p><b>Procedures and Proof</b></p> <p>G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 2007), pp. 53-60, 528–535. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 34-40, 324–332].</p> <p>S. Legomsky, 'An Asylum Seeker's Bill of Rights in a Non-Utopian World', <i>Georgetown Immigration Law Journal</i>, vol. 14 (2000), p. 619.</p> <p>UNHCR 'Asylum Processes (Fair and Efficient Asylum Procedures)', in <i>Global Consultations on International Protection</i>, 31 May 2001.</p> <p>UNHCR, 'Note on Burden and Standard of Proof in Refugee Claims', 16 December 1998.</p> <p><u>Cases</u></p> <p><i>INS v. Cardoza-Fonseca</i> 480 US 421 (1987). (US judicial decision stating that one in ten probability of harm can constitute well-founded fear)</p> <p><i>The Minister of Home Affairs v. Watchenuka</i>, 10 November 2003. (South African Supreme Court of Appeal judicial decision regarding rights of asylum seekers prior to determination of refugee status)</p> <p><b>Credibility</b></p> <p>M. Kagan, 'Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determinations', (2003) 17 <i>Georgetown Law Journal</i> 367.</p> <p>J. Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers' (2001) 13 <i>International Journal of Refugee Law</i> 293.</p> <p>A. Macklin, 'Truth or Consequences: Credibility Determinations in the Refugee Context' (<i>International Association of Refugee Law Judges: Ottawa, Canada, 14-16 October 1998</i>).</p> <p><u>Optional</u></p> <p>W. Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum Hearing' (1986) 20 <i>International Migration Review</i> 230.</p>
<b>Week 12</b>	<p><b>Other forms of Protection</b></p> <p>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? International Monitoring Bodies and their Protection-Related Practices; Are Additional (International or Regional) Instruments Needed to Secure Protection for Victims of Generalized Violence, Armed Conflict etc.? Should there be a 'Sliding Scale' of Protection and Entitlements? Temporary Protection -- Not an Alternative to Convention Protection, but a Precursor to it (or to Subsidiary Protection)</p> <p><u>Readings:</u></p> <p>G. Goodwin-Gill and J. McAdam, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 2007), pp. 340–342. [G. Goodwin-Gill, <i>The Refugee in International Law</i> (Oxford: Oxford University Press, 1996), pp. 196–202].</p> <p>J. Hathaway, <i>The Law of Refugee Status</i> (Toronto: Butterworths, 1991), 105-112.</p> <p>J. Doerfel, 'The Convention Against Torture and the Protection of Refugees' <i>Refugee Survey Quarterly</i>, vol. 24, no. 2 (2005), pp. 83–97.</p>

	<p>J. Fitzpatrick, 'Temporary Protection of Refugees: Elements of a Formalized Regime', <i>American Journal of International Law</i>, vol. 94, no. 2 (April 2000), pp. 279–306.</p> <p>B. Gorlick, 'The Convention and the Committee against Torture: A Complementary Protection Regime for Refugees', <i>International Journal of Refugee Law</i>, vol. 11, no. 3 (July 1999), pp. 479–495.</p> <p>S. Jaquemet, 'The Cross-Fertilization of International Humanitarian Law and International Refugee Law' (2001) 83 <i>International Review of the Red Cross</i> 843.</p> <p>R. Mandal, 'Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")', in <i>UNHCR Legal and Protection Policy Research Series</i> (UNHCR, 2005).</p>
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