“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. For Religious and Pregnancy accommodations, please contact Equity Services, 613-520-2600 x. 5622 or their website: www.carleton.ca/equity.

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 11th 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 th 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:


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


RECOMMENDED READING:


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.

<table>
<thead>
<tr>
<th>Coursework Element</th>
<th>Description</th>
<th>Due Date</th>
<th>Percentage of Final Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Current Affairs Presentation</td>
<td>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.</td>
<td>Sign up individually for dates throughout the term</td>
<td>10%</td>
</tr>
<tr>
<td>2. Participation</td>
<td>Student contributes quality ideas to the weekly discussion and completes periodic quizzes or exercises.</td>
<td>Throughout the term</td>
<td>10%</td>
</tr>
</tbody>
</table>
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.

**Week 6**

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.

**Week 8**

15%

5. Term Paper

Individual student prepares an original term paper relating to a concept of their choice from the course.

**Week 12**

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/](http://www.getfast.ca/). Further details will be provided in class.

**CLASS SCHEDULE:**

<table>
<thead>
<tr>
<th>Week 1</th>
<th>The Concepts of Migration and Sovereignty.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Video – Global View (showing the current work of UNHCR with various refugee populations)</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>Readings:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Week 2</th>
<th>Theories of Migration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the Causes of Migration? Can Migratory Processes be Managed?</td>
<td></td>
</tr>
<tr>
<td>Readings:</td>
<td></td>
</tr>
<tr>
<td>Optional:</td>
<td></td>
</tr>
</tbody>
</table>
**Week 3**  
**Trends in Migration & Universal and Regional Standards of Refugee Protection.**
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.

*Readings:*
- 1951 Convention relating to the Status of Refugees
- 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

**Week 4**  
**Principles of Refugee Protection I.**
Asylum and *non-refoulement* (the fundamental obligation not to return a person to the place where they fear persecution).

*Readings:*
- Universal Declaration of Human Rights
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UNHCR EXCOM, ‘Non-refoulement’, Conclusion No. 6 (XXVIII), 1977

*Optional:*

**Week 5**  
**Principles of Refugee Protection II.**
Non-discrimination, family unity, durable solutions, international cooperation.

*Readings (select one topic out of four):*

**Non-discrimination**
- 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
### Family Unity


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

### Durable Solutions


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

### International Cooperation


### Week 6 Debate Day

### Week 7

**UNHCR and other Agencies relevant in Refugee Protection.**

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.?

Readings:

Statute of the Office of the United Nations High Commissioner for Refugees


### Week 8

**Inclusion in the definition of a Refugee I**

Alienage (requirement to be outside State of Nationality, what about the needs of stateless or internally displaced persons?); Well-founded fear (subjective + objective element)

**Readings:**


**Alienage**


*Optional – Statelessness*


Convention relating to the Status of Stateless Persons

Convention on the Reduction of Statelessness

**Well-founded Fear**


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

R v. Secretary of State for the Home Department ex parte Sivakumaran (1988) 1 All ER 193 (HL) (UK judicial decision analyzing objective element)

*Optional – Subjective Fear*


### Week 9

**Inclusion in the definition of a Refugee II**

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?)
Readings:

**Persecution (choose two cases)**


**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)

Korabliina 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)


**Convention Grounds (choose one case)**


**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)
<table>
<thead>
<tr>
<th><strong>Week 10</strong></th>
<th><strong>Obstacles to inclusion in the definition of a Refugee (Substantive)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>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)</td>
</tr>
</tbody>
</table>

**Readings:**

**IPA**


**Cessation**


UNHCR EXCOM, 'Cessation of Status', Conclusion No. 69 (XLIII), 1992.


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.

**Optional**


**Exclusion**


**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)
**Optional**


---

**Week 11**

**Obstacles to inclusion in the definition of a Refugee (Procedural)**

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

**Readings:**

**Procedures and Proof**


**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)

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

**Credibility**


---

**Optional**


---

**Week 12**

**Other forms of Protection**


**Readings:**

