

## **Refugee and Asylum Law**

**Department of Public and International Law  
University of Oslo**

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Norway**

### **Course Description:**

This course seeks to present the international legal framework for refugee and asylum issues and assess its evolution. The course will not concentrate on the asylum laws of one country in particular, rather the approach is multinational in order to provide an overview of the commonalities and conflicts within the world system. Students will attain thorough understanding of the Convention relating to the Status of Refugees (1951), as well as the principal regional conventions. Main areas of discussion include the basic U.N. criteria for the attainment, denial, and withdrawal of refugee status, the development of the non-refoulement principle, and the standard of treatment of refugees. Students will be asked to address the role of human rights within the pre-flight and post-flight cycles of the refugee experience. In addition, the political, social, and economic context of prevention, protection, and solution strategies will be explored. A basic review of jurisprudence within international, regional, and national courts will provide an understanding of how refugee and asylum law is interpreted and implemented. This course will also analyze the drawbacks and benefits of alternative forms of protection, e.g. temporary protection and safe haven. Trends vis-a-vis the expansion of the refugee definition will be assessed by studying regional approaches to mass flight, gender persecution, the rise of Non-State actors, and “development/environmental” refugees within Africa, Latin America, and Europe. Progressive issues such as internally displaced persons, restitution rights, sanctuary, and will also be presented.

Requirements: Students are expected to have prior knowledge of international law. Previous study of human rights law, regional law, or the law of international organizations is helpful, however it is not required. Recommended Reading: Martin Dixon, *Textbook on International Law*, (Blackstone Press 1996). The course and examination will be conducted in English, however you may answer the question in either Norwegian or English.

### **Syllabus:**

*February 5<sup>th</sup>*

#### **Introduction—Structure of Refugee Law**

#### **Required Reading:**

Text Vevstad, Chapters 1 & 2

**Universal Sources of Law—Browse through Compendium on International Instruments**

**1. Refugee Law**

Convention Relating to the Status of Refugees of 28 July 1951  
Protocol Relating to the Status of Refugees of 28 July 1967  
UN Declaration of Territorial Asylum of 1967  
UN Resolutions/EXCOM (see Goodwin-Gill Annex 3, browse)

**2. Human Rights Law**

UN Declaration of Human Rights of 1948 (Articles 13, 14 & 15)  
UN Convention Against Torture of 1984 (Articles 1, 2 & 3)  
CCPR & CESC

**3. Humanitarian Law**

Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Common Article 3)  
Protocols I & II

*February 7<sup>th</sup> & February 12<sup>th</sup>*

**Who is a Refugee?**

**Required Reading:**

Vevstad pages 43–78

**Examination of UN Definition**

**Traditional Definition—Outside of Country of Nationality**

Subject to “well-founded” fear of persecution (objective & subjective)  
Race  
Religion  
Nationality  
Membership of a particular social group  
Political Opinion (active & implied)  
Persecution by whom? State v. Non-State Agents

**Required Cases:**

Ahmad et. al v. Secretary of State for the Home Department, Court of Appeal (Civil Division), (1990) IMM AR 61, hearing date 6 October 1989 (England).

Brijmati Singh v. Immigration and Naturalization Service, No. 96-70930, U.S. Court of Appeals for the Ninth Circuit, 134 F. 3<sup>rd</sup> 962, January 22, 1998, Filed.

**Required Instruments:**

1951 Geneva Convention, Article I A & B  
1967 Protocol Article I

*February 14<sup>th</sup>*

**Guest Lecture:** *Helga Fastrup Ervik*

**Evolution of the UN Definition—Gender & Sexual Identity**

**Required Reading:**

Goodwin-Gill, pp. 358–365, Vevstad pp. 78–85

**Required Cases:**

Department of Justice, Board of Immigration Appeals Decision In Re Fauziya Kasinga, June 13, 1996, 35 ILM 1145 (1996) (United States).

Pitcherskaia v. INS, No. 95-70887, United States Court of Appeals for the Ninth Circuit, 118 F 3<sup>rd</sup>. 641, June 24, 1997 Filed.

**Instruments:**

EU Proposed Definition of Refugee  
Treaty of Rome establishing ICC  
EXCOM Nos. 64 & 39

*February 19<sup>th</sup>*

**Exclusion & Cessation Clauses**

**Required Reading:**

Goodwin-Gill, Chapter 3, Vevstad pp. 86–94

**Cessation:**

Voluntary re-availment of the protection of the country of nationality  
Voluntary re-establishment in the country of nationality  
Durable change of circumstance in the country of nationality  
(Compelling reasons exception)

**Exclusion:**

Commission of a crime against peace, war crime, crime against humanity  
Commission of a serious non-political crime  
(Mitigating Factors exception)  
Commission of an act contrary to the purposes and principles of the UN

**Required Cases:**

In the matter of Yong-Gueico et. al v. The Minister of Citizenship and Immigration (Canada), Court File No. IMM-3413-96, Federal Court of Canada, Trial Division, Toronto, Ontario, June 26, 1997.

McMullen v. Immigration and Naturalization Service, No. 84-7468, U.S. Court of Appeals for the Ninth Circuit, 788 F. 2<sup>nd</sup> 591, April 25, 1986, Decided.

**Required Instrument:**

1951 Geneva Convention, Article I C-F

*February 26<sup>th</sup>*

**Non-Refoulement Theory**

**Required Reading:**

Vevstad, Chapter 5

**Required Cases:**

Tahir Hussain Khan v. Canada, Committee against Torture, Communication No. 15/1994, U.N. Doc. A/50/44 at 46 (1995).

Ahmed v. Austria; European Court of Human Rights (71/1995/577/663) 17 December 1996.

EXCOM No. 6.

*March 5<sup>th</sup>*

**Non-Refoulement—Debate on Haitian Refugee Crisis**

Half of the class will present the view of the United States Supreme Court and the other half will argue on behalf of the Inter-American Commission of Human Rights.

Sale, Acting Commissioner, Immigration and Naturalization Service, et.al. v. Haitian Centers Council, INC, et. al., No. 92-344, decided June 21, 1993. (United States).

The Haitian Centre for Human Rights et. al. v. United States, Case 10.675, Report No. 51/96, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 550 (1997).

*March 7<sup>th</sup>*

**The Refugee Concept at the Regional Level**

**Asylum:**

**Browse through excerpts from International Instruments**

Caracas Convention on Territorial Asylum of 1954

Caracas Convention on Diplomatic Asylum of 1954

Council of Europe Declaration on Territorial Asylum of 18 November 1977

Cairo Declaration on Human Rights in Islam 1990 (Article 12)

Fourth Seminar of Arab Experts on Asylum and Refugee Law 1992

UN Declaration on Territorial Asylum

EXCOM No. 5

**Expanded Definitions:**

Africa & Latin America

**Required Reading:**

Vevstad, pp. 95–135 and Chapter 6

Arboleda, Eduardo, “The Cartagena Declaration of 1984 and its Similarities to the 1969 OAU Convention—A Comparative Perspective” *International Journal of Refugee Law* (1995)

**Africa:**

OAU Convention governing the Specific Aspects of Refugee Problems in Africa (1969)

Principles Concerning the Treatment of Refugees 1966

African Charter on Human and People’s Rights 1981 (Arts. 5, 12 & 23)

**Latin America:**

American Convention on Human Rights 1969 (Article 5 & 22)

American Declaration on the Rights and Duties of Man (Article 8 & 27)

Cartagena Declaration on Refugees 1984

San Jose Declaration on Refugees and Displaced Persons

CIREFCA

*March 14<sup>th</sup>*

**Developments in European Asylum Issues from a Human Rights Perspective**

**Guest Lecture:** *Vigdis Vevstad, Ministry of Foreign Affairs*

**EU Proposal for Common Definition**

**Required Reading:**

Vevstad, Chapter 7

First Country of Asylum

Safe Third Country

Refugee “in orbit” and “forum shopping”

Regional Instruments:

European Convention for the Protection of Human Rights 1950 (Art. 3)

Treaty of Amsterdam

Dublin Convention Determining State Responsible for Examining Applications for Asylum

The London Resolutions

Council of Europe Recommendation 773 (1976)

EXCOM No. 15

**Required Cases:**

R. v Secretary of State for the Home Department ex parte Aitsegeur, Queen’s Bench Division (Crown Office List) CO/1765/98 18 December 1998 (England).

R. v. Secretary of State for the Home Department ex parte Iyadurai, Court of Appeal (Civil Division) Imm A R 470, 10 June 1998 (England).

*March 19<sup>th</sup>*

**Temporary Protection: Safe Haven/Internal Flight Alternative**

**Required Reading:**

Fitzpatrick, Joan, «Flight From Asylum: Trends Toward Temporary 'Refuge and Local Responses to Forced Migrations», 35 Virginia Journal of International Law, p. 71 (1994)

Domanski, Maciej, «Insights from Refugee Experience: A Background Paper on Temporary Protection», in Hathaway, James, Reconciling International Refugee Law, p. 22 (Nijhoff 1997)

**Required Case:**

Thirunavukkarasu v. Minister of Employment and Immigration (Canada), Court File No. A-81-92, Federal Court of Appeal, 109 D.L.R. 4<sup>th</sup> 682, Nov. 10, 1993, received Jan. 21, 1994.

**Sanctuary**

**Required Reading:**

Anayea, Toney, «Sanctuary: Because There Are Still Many Who Wait for Death», Hofstra Law Review Vol. 15 p. 101 (Fall 1986)

*April 2<sup>nd</sup>*

**Asylum Procedures**

Required reading: Goodwin-Gill, pages 324–352, Walter Kalin, Troubled Communication: Cross-Cultural Misunderstandings in the Asylum Hearings, 20 Intl. Mig. Rev. 230 (1986).

**A. Theory**

UNHCR & EU Perspectives

Vulnerable Groups: Women & Children

**B. Practice**

Due Process

Pre-screening and expedited Adjudication

Detention

Appeal

Evidence

Ethics

**Required Case:**

Thirunavukkarasu Kandasamy v. The Minister of Citizenship and Immigration (Canada), IMM-4730-96, Federal Court of Canada, Trial Division, November 5, 1997.

**Required Instrument:**

1951 Convention, Articles 31 & 32

Brussels Resolution on Minimum Guarantees for Asylum Procedures 20 June 1995

EXCOM No. 44, No. 22, No. 8, No. 84

UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment

UNHCR Guidelines on Detention

*April 9<sup>th</sup>*

**Prosecution of Forced Migration: Potential Use of the ICC**

**Guest Lecture:** *Research Fellow Jo Stigen*

**Required Case:**

Prosecutor v. Blaskic paras. 549–50

*April 16<sup>th</sup>*

**Hour One: Resettlement, Repatriation and Prevention**

**Required Reading:**

Zweig, Ronald, «Restitution of Property and Refugee Rehabilitation: Two Case Studies», *Journal of Refugee Studies* Vol. 6, No. 1/4 (1993)

Djuve, Anne Britt & Hagen, Kåre, «Living Conditions among Refugee Immigrants in Oslo», FAFO 1997

**Required Instrument:**

1951 Convention, Article 3, 12–30

Dayton Peace Accords Annex 7 Agreement on Refugees and Displaced Persons

ILA Declaration of Principles of International Law on Compensation to Refugees

EXCOM No. 6, No. 40, No. 18

**Hour Two: Return to Afghanistan: Legal Pluralism**

**Guest Lecture:** *Pål Nesse from the Norwegian Refugee Council*

**Required Reading:**

To be distributed.

*April 23<sup>rd</sup>*

**Guest Lecture:** *Research Fellow Geir Ludvigsen*

**Refugee Children**

**Required Case:**

Feng Chai Li v. The Minister of Citizenship and Immigration, Federal Court of Canada, 11 September 2001.

*April 30<sup>th</sup>*

## **Off the Beaten Path: Internally Displaced Persons**

### **Instruments:**

- UN Guiding Principles on Internal Displacement
- ILA Principles on Internal Displacement
- EXCOM no. 75

### **“Development, Environmental, and Economic Refugees”**

#### **Reading:**

Gosine, Andil, «Roots of Flight: Environmental Refugees in Latin America-A Response to Analysis by Homer-Dixon, Refuge, Vol, 15, No. 2 (April 1996).

Weist, Katherine M., “Development Refugees: Africans, Indians and the Big Dams”, Journal of Refugee Studies, Vol. 8 No. 2, (1995).

Nkiwane Muzenda, Tandeka, “The Role of Social and Economic Factors and Natural Disasters in Forced Population Displacements in Africa”, in International Journal of Refugee Law Special Issue p. 46 (1995).

### **Course Readings:**

Literature includes Textbooks, Conventions, Case law and Journal Articles.

#### **Main Literature:**

##### **Required Textbooks:**

Goodwin-Gill, Guy, *The Refugee in International Law* 2<sup>nd</sup> Ed., (Clarendon 1996).

This book provides an in-depth analysis of the international framework for refugee and asylum law, the refugee definition, exclusion and cessation clauses, the development of the non-refoulement principle, and the concept of asylum. The Annex contains selections of the relevant refugee, human rights, and humanitarian law.

Vevstad, Vigdis, *Refugee Protection: A European Challenge* (Tano Aschehoug 1998).

This book is a very clear account of the development of the refugee concept and specifically addresses non-refoulement and asylum policy in Europe.

### **Compendiums of Case Law, Instruments, and Selected Readings**

#### **Principal International Instruments:**

- Convention Relating to the Status of Refugees of 28 July 1951
- Protocol Relating to the Status of Refugees of 28 July 1967
- UN Declaration on Territorial Asylum 1967

Cartagena Declaration on Refugees 1989

OUA Convention Governing the Specific Aspects of Refugee Problems in Africa 1969

Dublin Convention Determining the State Responsible for Examining Applications for Asylum 1990

**Selections from Human Rights Instruments**

UN Declaration of Human Rights of 1948 (Articles 13 & 14)

UN Convention Against Torture of 1984 (Articles 1, 2 & 3)

European Convention for the Protection of Human Rights 1950 (Article 3)

African Charter on Human and People's Rights 1981 (Arts. 5, 12 & 23)

American Declaration on the Rights and Duties of Man (Article 27)

American Convention on Human Rights 1969 (Articles 5 & 22)

In addition, the compendium contains other human rights and humanitarian legal instruments of relevance.

**Recommended Supplementary Texts:**

Musalo, Moore & Boswell, *Refugee Law and Policy*, (Carolina Academic Press 1997).

This is an American casebook which is highly recommended as it provides a clear, in-depth analysis of refugee law jurisprudence, legislation, and theory.

Hathaway, James, *The Law of Refugee Status* (Butterworths 1991).

This book provides a comprehensive analysis of the refugee definition, the concept of persecution, and cessation and exclusion clauses.

Grahl-Madsen, Atle, *The Status of Refugees in International Law*, vols. 1 and 2, (Sijthoff, Leyden 1972).

This is the classic treatise of Refugee Law. It offers a profound discussion of the historical evolution of refugee law.

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