

1951 Convention on the Status of Refugees

- A person who is **outside** his or her country of nationality or habitual residence; has a **well founded fear of persecution** because of his or her **race, religion, nationality, membership of a particular social group or political opinion**; and is **unable or unwilling to avail** himself or herself **of the protection of that country**, or to return there, for fear of persecution.
- 1967 Protocol removes geographical (Europe) and time limitations written into original Convention.

Credibility

- The 1951 Convention does **not** require credibility as a criteria for protection as a refugee
- The UNHCR Handbook calls on states to give the refugee the **benefit of the doubt**

Credibility

- Presentation of facts is the most important part of the process
- The asylum system should work as a **cooperative** hearing based on narrative communication instead of adversarial process
- Most rejections refer to a negative credibility

Well-founded Fear: Subjective Test

- Does the asylum seeker fear persecution?
- The personal and family background of the applicant (age, culture, education, gender role)
- Membership of a particular racial, religious, national, social or political group
- Own interpretation of the situation
- Personal experiences (PTS, RTS)

Cameron Subjective Fear & Contradictory Behavior: Factors affecting delay in decision to flee, prompt return home, or violation of terms of stay

- Familiar risk- persons carry on with life in spite of threat (threat of kidnapping in Colombia)
- Appeal of risky behavior- escapism, contact with family, confirmation of status or identity, community, financial security
- Sense of control: take steps (even if ineffective or counterproductive) to reduce risk
- Risk tolerance: person may underestimate risk and delay flight, others will leave at first indication of danger
- Optimism bias: Persons rate own risk lower than that of others
- Outcome history: survival of prior risk may reduce reaction to subsequent risk-overconfidence
- Place attachment: Refuse to leave in spite of risk
- Lay knowledge: Informal channels of information on how to survive risk
- Non-embodied risks: Separation from family, economic status, cultural identity as a result of migration weighed against other risk
- Passivity: Downplay our ability to control a situation, Precaution abandonment, Post Traumatic Stress Disorder, Rape Trauma Syndrome
- Defiance: Refusal to adapt behavior in relation to risk
- Faith: Higher power will protect
- Delay in decision making under stress

Well-founded Fear: Objective Test

- Does evidence disclose risk of persecution which would cause a reasonable person to reject state or origin's protection?
- What happened to friends, relatives, other members of same racial, religious, political, national or social group?
- What are the laws of the country of origin
- How are the laws applied?
- Is the person well-known: Character, background, influence, wealth, outspokenness (persecution is local)

Thomas: Objective Country Reports

- Does report identify risk categories?
- Take into consideration individual characteristics
- What are the sources of the country report? Is it transparent? Is there selective quotation from sources, is the report written in a biased manner against protection?
- Is the information updated according to current events?
- Is system pursuing administrative processing of claims (end goal efficiency), professional processing (consultation of medical, psychological, and other experts), or legal processing (emphasis on fair hearing of claim of rights)?

Crawley: Persecution

- Serious Harm + Failure of State to Protect

Goodwin-Gill: Persecution

- **Reasons-** Illegitimate ends such as elimination of a minority
- **Mixed motives of persecution-** Non-convention motive does not disqualify the validity of convention motive (pursuit of financial gain + targeting of minority)
- **Interests-** human rights that are infringed (Civil & Political, Social, Cultural & Economic)
- **Measures-** Active and Passive acts, such as infliction of physical or mental harm, denial of civic participation rights, discriminatory policies

Goodwin-Gill Persecution

- Nature of freedom threatened
- Nature & Severity of restriction
- Likelihood of imposition of such restriction
- Is derogation of a right extended beyond i scope, duration, or is it discriminatory

Goodwin-Gill & McAdam: Persecution

- Measures, taken on the basis of one or more of the stated grounds, which threaten deprivation of life or liberty; torture or cruel, inhuman or degrading treatment; subjection to slavery or servitude; non-recognition as a person (particularly where the consequences of such non-recognition impinge directly on an individual's life, liberty, livelihood, security, or integrity); and oppression, discrimination, or harassment of a person in his or her private home or family life.

Persecution

- Serious violations of non-derogable rights
- Serious breaches of derogable rights if they have a systematic or repetitive element
- Discrimination linked to a protected right (e.g. Freedom of religion)
- Persistent pattern of discrimination
- Cumulative grounds
- Individual variances in threshold of what is persecution (age, culture, gender, psychology, experiences)

Persecution- EU Minimum Standards- Persecution

- Acts of persecution within the meaning of article 1 A of the Geneva Convention must:
- (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).
- 2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:
- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment, which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);
- (f) acts of a gender-specific or child-specific nature.

Persecution: Economic Factors

- The imposition of serious economic disadvantage (food, shelter, adequate standard of living)
- Denial of access to employment, profession or education
- Read: Michelle Foster, International Refugee Law and Socio-Economic Rights Refuge from Deprivation (Cambridge 2007)

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- Where economic measures destroy the economic existence of a particular section of the population, the victims may according to the circumstances become refugees on leaving the country.

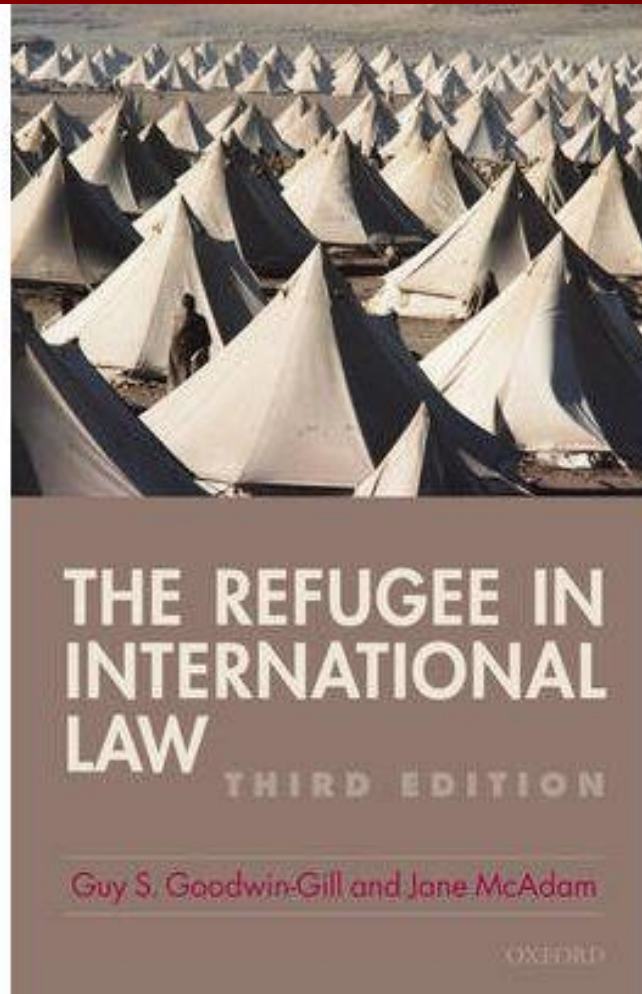
Asbjørn Eide

- **Respect**- State refrains from interfering with the right (traditionally applies to civil right, but consider right to housing requires abstention from eviction)
- **Protect**- State prevents violations by third parties, e.g. Right to physical integrity requires active protection
- **Fulfill**- State takes appropriate legislative, administrative, judicial, or budgetary measures to award full realization of the right (traditional social rights) e.g. Right to life requires measures to increase life expectancy
- Dismantle hierarchical approaches to Human Rights

Prosecution v. Persecution

- Does the law in the country of origin define as crime acts which are protected by international human rights, e.g. Freedom of expression?
- Do criminal procedures in country of origin lack basic standards of fairness and justice?
- Will punishment be excessive with respect to the crime committed?

Textbook: Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd Edition 2007 Oxford



- This class is designed to combine lectures and student presentations. All students are required to prepare outlines of the assigned cases and will be asked to present them in class. The outline is as follows:
- **Facts:** Who are the parties? Which is the country of origin? What was the cause of flight? Which court has processed the case? What were decisions of prior decision makers?
- **Issue:** What is the legal question to be answered?
- **Rule:** What is the relevant legal standard?
- **Analysis:** Please provide your reflections on the consideration of evidence (documentary, oral, expert testimony, etc.), legal argumentation, interpretation of facts, and fairness of the decision. If there is a dissent please discuss the judge's opposing views. Do you agree with the holding? Are there gaps or contradictions in the discussion of the case. Apply counter analysis.
- **Conclusion:** What is the holding of the case?

Websites

- UNHCR Refworld:
<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>
- European Council on Refugees & Exiles:
<http://www.ecre.org/>
- Center for Gender and Refugee Studies:
<http://cgrs.uchastings.edu/>
- Norwegian Organisation for Asylum Seekers: <http://www.noas.org/>
- European Database of Asylum Law:
<http://www.asylumlawdatabase.eu/en/case-law-search>

Soft Law

- UNHCR Handbook,
- Executive Committee Conclusions, Guidelines,
- Notes on Protection
- All found at:
<http://www.unhcr.org/pages/49c3646cce.html>