

Refugee Law: Introduction

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UNHCR

- 21.3 million refugees
- 65.3 million forcibly displaced

Syrian Refugees



DRC



India



Colombia

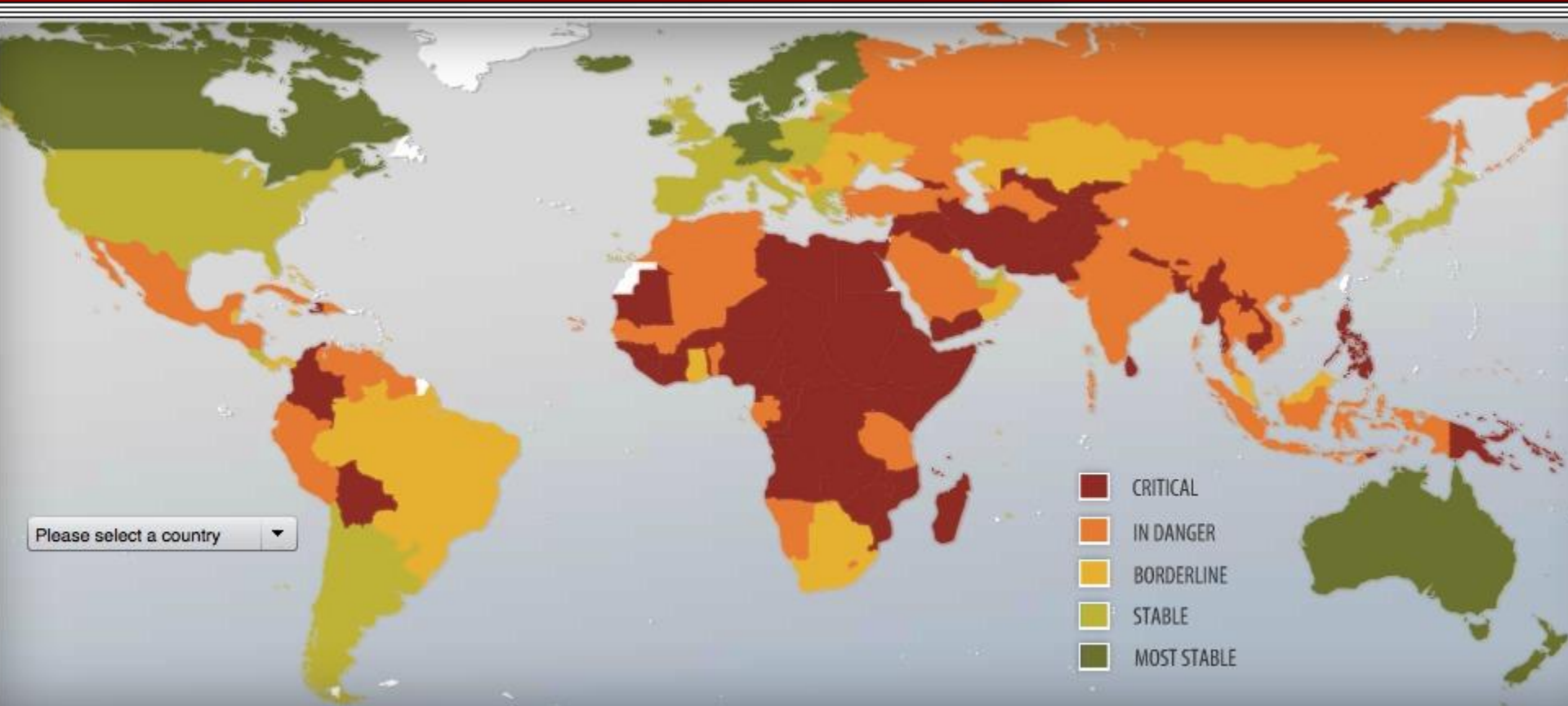


International Refugee Organization

- Refugee: Person who has left, or who is outside of, his country of nationality. . .
- Victims of the Nazi or fascist regimes or of regimes which took part on their side in the second world war, or of the quisling or similar regimes. . .
- Spanish Republicans and other victims of the Falangist regime in Spain
- Persons considered refugees before WWII for reasons of race, religion, nationality or political opinion
- German/Austrian Jews
- Unaccompanied children

International Refugee Organization

- Persons excluded:
- War criminals, quislings and traitors
- Persons who assisted the enemy in persecution of civilians
- Persons assisting enemy forces against UN operations
- Ordinary criminals subject to extradition



Universal Declaration of Human Rights 1948

Article 13

- Everyone has the right to freedom of movement and residence within the borders of each State.
- Everyone has the right to leave any country, including his own, and to return to his country.

Universal Declaration of Human Rights

Article 14

- Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Universal Declaration of Human Rights

Article 15

- Everyone has the right to a nationality.
- No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

UN Declaration on Territorial Asylum 1967

Article 1

- 1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.
- 2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.
- 3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

UN Declaration on Territorial Asylum

Article 2

- 1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.
- 2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

UN Declaration on Territorial Asylum Article 3

- 1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.
- 2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.
- 3. Should a State decide in any case that exception to the principle stated in paragraph I of this article would be justified, it shall consider the possibility of granting to the persons concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

UN Declaration on Territorial Asylum

Article 4

- States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

Convention Against Torture: Article 3

- No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

International Covenant on Civil and Political Rights Article 7

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

European Convention on Human Rights Article 3

- No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

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.

Convention on the Rights of the Child

■ ***Article 22***

- 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

UN Guiding Principles on Internal Displacement

- Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

Other Instruments

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Protocol to Prevent, Suppress, and Punish Trafficking in persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air

Protocol Against Smuggling 2004

- "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.
- Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Protocol Against Smuggling Art. 6

- 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:
 - (a) The smuggling of migrants;
 - (b) When committed for the purpose of enabling the smuggling of migrants:
 - (i) Producing a fraudulent travel or identity document;
 - (ii) Procuring, providing or possessing such a document;
 - (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

Protocol to Prevent Trafficking

- "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Geneva Convention IV

- Art. 44: In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government.
- Article 45: In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

Geneva IV

- Art. 49. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

Geneva IV

- Art. 70. Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.

Protocol II

■ Art 17. Prohibition of forced movement of civilians

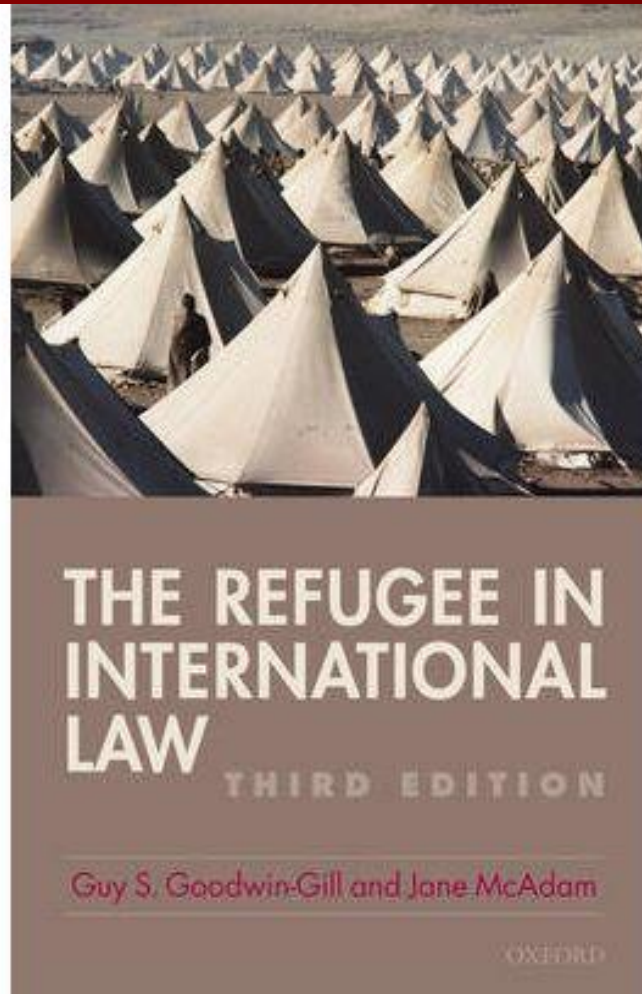
1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

ICC Rome Statute

- Article 2 prohibits the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; and Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- Article 7: Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

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>