

Reading Assignments Refugee & Asylum Law Spring 2015

January 30th- Cecilia Bailliet

Introduction- Structure of Refugee Law

Required Reading: Goodwin-Gill & McAdam: Chapters 1 & 2

Universal Sources of Law-

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](#) & [CESCR](#)

3. Humanitarian Law & International Criminal Law

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

[Rome Statute establishing the International Criminal Court](#)

4. Other Instruments

[UN Protocols on Smuggling & Trafficking](#)

[Convention on Migrant Workers](#)

5. Soft Law

[UNHCR Handbook & Guidelines, Executive Committee Conclusions, Notes on Protection available on RefWorld](#)

February 6th and 13th-Cecilia Baillet

Who is a Refugee- Evolutionary Trends

Required Reading:

Goodwin-Gill & McAdam: Chapter 3

Examination of UN Definition

Traditional Definition- Outside of Country of Nationality

- Subject to “well-founded” fear (objective & subjective) of persecution (reasons, interests, measures; scope, duration, discrimination)

[H.Cameron Subjective Fear paper \(pdf\)](#)

[R.Thomas Country Reports paper \(pdf\)](#)

[Burden of Proof: Gorlick Paper - \[pdf\]](#)

[Administrative Detention Standards](#)

[Internal Flight Alternative - \[pdf\]](#)

- Nexus to Protection Category: Race, Religion, Nationality, Membership of a particular Social Group, Political Opinion (active & implied)

Persecution by whom? State v. Non-State Agents, Adequate and Effective Protection by the State

[Gunn Paper on Religion - \[pdf\]](#)

[Note on Racial Profiling - \[pdf\]](#)

Required Cases:

[Canadian IRB Religion Case - \[rtf\]](#)

[BERNARD LUKWAGO a/k/a MELVIN HAFT, Petitioner v. JOHN ASHCROFT, No. 02-1812 - \[pdf\]](#)

[Otuñez-Tursios v. Ashcroft, U.S. Attorney General, 303 F. 3rd 341 U.S. Court of Appeals for the Fifth Circuit \(2002\) - \[pdf\]](#)

[Nigist Shoafra v. INS, 2000 US App. LEXIS 31361 \(9th Cir. 2000\) - \[pdf\]](#)

[Rios & Rios v. Ashcroft, Attorney General, 287 F. 3rd 895 \(2002\) - \[pdf\]](#)

[Maras - \[pdf\]](#)

[Maras II - \[pdf\]](#)

1951 Geneva Convention, Article 1 A & B 1967 Protocol

Article 1 UNHCR Guidelines on Religion & Internal Flight

~~Alternative~~

February 27th : Cecilia Bailliet

Gender & Sexual Identity issues in Refugee Law

Reading:

[Melanie Randall, "Refugee Law and State Accountability for Violence Against Women: in 25 Harv. Women's](#)

[L.J. 281 \(Spring 2002\) - \[pdf\]](#)

[Nicole La Violette, Gender-Related Refugee Claims: Expanding the Scope of the Canadian Guidelines, 19 International Journal of Refugee Law July 2007 - \[pdf\]](#)

Required Cases:

[Department of Justice, Board of Immigration Appeals Decision In Re Fauziya Kasinga, June 13, 1996, 35 ILM 1145 \(1996\) \(United States\) - \[pdf\]](#)

[Pitcherskaia v. INS, No. 95-70887, United States Court of Appeals for the 9th Circuit, 118 F 3rd. 641, June 24, 1997 Filed. - \[pdf\]](#)

[Hernandez – Montiel v.I.N.S., United States Court of Appeals, Ninth Circuit Court of Appeals Aug. 24 \(2000\)](#)

[– \[pdf\]](#)

Instruments:

EU Definition of Refugee

Treaty of Rome establishing

ICC EXCOM Nos. 64 & 39

UNHCR Guidelines on the application of the 1951 Convention to victims of trafficking,

Guidelines on Gender-Related Persecution, Guidelines on Social Group, Note on Sexual

Identity

[Center for Gender & Refugee Studies](#)

March 6th Cecilia Bailliet

Cecilia Bailliet-

Non-Refoulement Theory

Required Reading:

Goodwin-Gill & McAdam: Chapters 5 and 6

Additional Reading: [Lauchterpacht & Bethlem chapter on Non- Refoulement](#)

[Ruma Mandal Political Rights of refugees](#)

Required Instruments:

Articles 31,32,33 of the 1951

Convention, Article 7 of the ICCPR,

and Article 3 Convention against Torture

Required Cases:

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

[Hilal v. United Kingdom, Judgment of 6 March 2001, App. No. 45276/99 European Court of Human Rights - \[pdf\]](#)

EXCOM No. 6

March 13th Vigdis Vevstad Asylum within the EU

Professor Steve Peers, University of Essex, “The Second phase of the Common European Asylum System: A brave new world – or lipstick on a pig?”

<http://free-group.eu/2013/04/23/analysis-the-second-phase-of-the-common-european-asylum-system-a-brave-new-world-or-lipstick-on-a-pig/>

New instruments of CEAS:

The Dublin III Regulation 604/2013

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

The Qualification Directive 2011/95/EU

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>

The Eurodac Regulation 603/2013

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF>

The Reception Conditions Directive

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF>

The Asylum Procedures Directive

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32013L0032

Suggested recent decisions by the European Courts:

European Court of Human Rights:

Unanimous Chamber ruling of 19 December 2013 (Applications nos. 33441/10, 33468/10 and 33476/10) concerning three joined cases where violation of art 3 found in cases of 12 asylum seekers who complained of conditions in detention in Greece

Court of Justice of the EU (CJEU):

Dublin related:

Case C-648/11, June 2013 on responsibility for examining protection claims of an unaccompanied minor having applied for asylum in more than one Member State

Persecution:

Joined cases C-71/11 and C-99/11, September 2012 CJEU considers that in assessing an application for refugee status on an individual basis, national authorities cannot reasonably expect the applicant to abstain from the manifestation or practice of certain religious acts
Joined Cases C-199/12, C-200/12 and C-201/12 November 2013: Homosexuals are entitled to protection, provided that severe penalties such as imprisonment are effectively applied

March 20th Cecilia Bailliet

Expanded Definitions: Latin America- The Cartagena Declaration and the link between human rights protection and refugee law

Required Instruments:

[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 - \[pdf\]](#)

[Moiwana Community v. Suriname, Inter-American Court of Human Rights, Judgment February 8, 2006 – \[pdf\]](#)

Asylum Claims from

Africa

Reading: [Okoth Obbo paper - \[pdf\]](#)

[Modise v. Botswana](#)

[African Protocol on the Rights of Women](#)

[og Cairo Declaration on Human Rights](#)

[OAU Convention governing the Specific Aspects of Refugee Problems in Africa \(1969\)](#)

Principles Concerning the Treatment of Refugees 1966

[African Charter on Human and Peoples' Rights 1981 \(Arts. 5, 12 & 23\)](#)

[OAU Convention on Internal Displacement](#)

March 27th & April 10th Cecilia Bailliet

Exclusion & Cessation Clauses

Required Reading:

Goodwin-Gill & McAdam Chapter 4

UNCHR Guidelines on Exclusion and Cessation

1951 Convention Article 1 C, D & F

[Yong-Guieco Case \(pdf\)](#)

[Ashghedom Case \[pdf\]](#)

April 17th Cecilie Hellestveit

Caught in the Middle ? Refugees and Displaced of the Syrian Civil War and the Limits of the International Law of Protection.

Reading:

The lecture presents the case study of Syria and the legal regimes protecting the millions who have been displaced by the Syrian civil war. It will draw a map of their protection under different international legal regimes ? human rights law, humanitarian law and other legal norms relevant to protection of civilians, and their interaction with international refugee law. The objective is to situate the regime of refugee law in the legal context of an armed conflict.

If the students wish to prepare for the lecture, they may read the following short pieces :

* On the relationship between refugee law, humanitarian law and international human rights law:

Emanuela-Chiara Gillard, Humanitarian Law, Human Rights and Refugee Law ? Three Pillars <http://www.icrc.org/eng/resources/documents/misc/6t7g86.htm>

* [A blog raising certain intriguing questions:](#)

[A humanitarian Tragedy for Syrian Refugees:](#)

Please read the NRC report "No Escape": available here: <http://www.nrc.no/?did=9187319>

April 24th Cecilia Bailliet

Class Debate: Interdiction of Refugees at Sea

Read Goodwin-Gill and McAdam: Chapter 7

One group will represent the Inter-America Commission of Human Rights, *The Haitian Centre for Human Rights et. al. v. United States*, Case 10.675, Report No. 51/96 (1997)

[The Haitian Centre](#)

Another group will represent the US Supreme Court, *Sale v. Haitian Ctrs. Council*, 113 S. Ct. 2549, 125 L (92-344), 509 U.S. 155 (1993) - [pdf]

[US Supreme Court](#)

Another group will address how the EU manages this issue:

[Hirsi v. Italy, ECHR 2012](#)

The last group will review Australia's practice and policies:

<http://www.austlii.edu.au/au/cases/cth/HCA/2011/32.html>

1951 Convention Arts. 31 and 33
