



# *The Hebrew University of Jerusalem*

## *Syllabus*

### *Immigration Asylum and Refugee Law - 62342*

*Last update 05-03-2020*

*HU Credits: 1*

*Degree/Cycle: 1st degree (Bachelor)*

*Responsible Department: Law*

*Academic year: 0*

*Semester: 2nd Semester*

*Teaching Languages: English*

*Campus: Mt. Scopus*

*Course/Module Coordinator: Prof. Ruvi Ziegler*

*Coordinator Email: [Ruvi.Ziegler@mail.huji.ac.il](mailto:Ruvi.Ziegler@mail.huji.ac.il)*

*Coordinator Office Hours: Email appointments*

*Teaching Staff:*

Course/Module description:

*International Refugee Law explores a major area of public international law that regulates a (limited) exception to the principles of state sovereignty and migration control. The 1951 Convention Relating to the Status of Refugees concerns the protection of persons who have crossed an international border and who are outside their state of origin owing to well-founded fear of persecution in that state for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Global debates continue regarding the nature of the protection that refugees should be granted, the role of the international community, and the obligations of states of asylum. The module will provide students with a critical understanding of the international regime of refugee protection by highlighting its virtues and shortcomings. The first session will explore the history, structure, and aims of the 1951 Geneva Convention Relating to the Status of Refugees. Subsequently, the module considers criteria for the attainment ('inclusion'), exclusion from, and cessation of refugee status; the non-refoulement principle; complementary and subsidiary protection regimes; challenges arising in the context of displacement from conflict; and an extensive case-study of the treatment of African asylum-seekers in Israel. The module concludes by appraising the limits of the international refugee protection.*

Course/Module aims:

*To provide students with a critical understanding of the international regime of refugee protection by highlighting its virtues and shortcomings.*

Learning outcomes - On successful completion of this module, students should be able to:

*On successful completion of this module, students should be able to:*

- Draw upon a body of detailed substantive knowledge gained through both class participation and self-study, and apply this to contemporary dilemmas arising in the refugee field in an assessed piece of written work.*
- Demonstrate a solid understanding of the institutional, procedural and substantive aspects of the international refugee law system, as well as its location in the international legal order.*
- Demonstrate an ability to set the substantive law content of the module in a wider context, both legal and non-legal.*
- Critically evaluate the protection offered by international refugee law, its virtues and shortcomings.*
- critically analyse the legal topics examined.*

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Attendance requirements(%):

Attendance is required

Teaching arrangement and method of instruction: Classes and required and optional reading

Course/Module Content:

SESSION ONE

The global framework for refugee protection & the refugee definition

SESSION TWO

Exclusions from and cessation of refugee status

SESSION THREE

Nonrefoulement and access to protection

SESSION FOUR

Regional protection regimes & Displacement from conflict

Required Reading:

SESSION ONE

The global framework for refugee protection & the refugee definition

FOR CONSIDERATION/DISCUSSION

- Why is (international) refugee protection considered as a 'surrogate' to national protection?
- What challenges arise from the absence of an enforcement mechanism?
- To what extent was the Refugee Convention a compromise? Consider the Final Act of the Conference of Plenipotentiaries.
- Can non-state actors be 'agents of persecution'?
- What is gender-related persecution and why does it pose difficulties for the interpretation of the refugee definition?

TREATIES/LEGISLATION

- Convention Relating to the Status of Refugees\*
- Final Act of the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (25 July 1951)
- Protocol Relating to the Status of Refugees\*
- Vienna Convention on the Law of Treaties, Article 31\*
- Statute of the Office of the United Nations High Commissioner for Refugees

LITERATURE

- Jean-Francois Durieux, 'Three Asylum Paradigms' (2013) 20(2) International Journal on Minority and Group Rights 147-177 \*
- Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn Oxford University Press, 2007), chapters 1\*, 7, 8
- James Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005) chapters 1-3
- Andrew Shacknove, 'Who is a Refugee?' (1985) 95 Ethics 274-284 UNHCR,

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*Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the status of Refugees (October 2012)*

- *UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (December 2011)\**

#### **CASES**

- *Minister for Immigration and Multicultural Affairs v. Khawar [High Court, Australia] (11 April 2002)*
- *Canada (Attorney General) v. Ward [Supreme Court, Canada] (30 June 1993)\**
- *R v. Secretary of State for the Home Department, Ex parte Adan\* [House of Lords, UK] (19 December 2000)*
- *Horvath v. Secretary of State for the Home Department [House of Lords, UK] (6 July 2000)\**

#### **SESSION TWO**

*Exclusions from and cessation of refugee status*

#### **FOR CONSIDERATION/DISCUSSION**

- *What are the common features of the grounds for cessation of refugee status? Can certain distinctions be nonetheless drawn?*
- *Do refugees suffer from unique political predicament? If so, can (and should) it be redressed?*
- *Consider the exclusion ground under Article 1F(b). Would Julian Assange and/or Edward Snowden be protected under the Refugee Convention? Which challenges are posed by the UNRWA definition and scope of operation?*

#### **TREATIES/LEGISLATION**

- *Convention Relating to the Status of Refugees, Articles 1C-F, 34\**
- *UNGA, Resolution No 302 (IV) of 8 December 1949 ('Assistance to Palestine Refugees')\**

#### **LITERATURE**

- *Joan Fitzpatrick & Rafael Bonoan, 'Cessation of Refugee Protection' in Erika Feller, Volker Türk and Frances Nicholson (eds), Refugee Protection in International Law (CUP, 2003) 491-544*
- *Guy S Goodwin-Gill and Jane McAdam, The Refugee in International Law (3rd edn Oxford University Press, 2007) chapters 6, 9*
- *James Hathaway, The Rights of Refugees under International Law (CUP, 2005) 913-990*
- *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 (10 February 2003)*

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- UNHCR, *Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees* (October 2009)\*
  - UNHCR, *Statement on Article 1F of the 1951 Convention* (July 2009)\*

#### CASES

- C-31/09 *Bolbol v. Bevándorlási és Állampolgársági Hivatal* [Court of Justice, European Union] (17 June 2010)\*
- C-175/08 and others *Salahadin Abdulla and Others v. Bundesrepublik Deutschland* [Court of Justice, European Union] (2 March 2010)
- *Suresh v. Canada* (Minister of Citizenship and Immigration) [2002] 1 S.C.R. 3 [Supreme Court, Canada] (11 January 2012)\*

#### SESSION THREE

Nonrefoulement and access to protection

#### FOR CONSIDERATION/DISCUSSION

- What is the significance of the principle of non-refoulement in Article 33 of the 1951 Convention? Is there a 'right to asylum'?
- Consider the divergent approaches to cases of interception at sea in *Sale* and *Hirsi*. What role does the notion of 'jurisdiction' play in both judgments?
- Is a 'third safe country' a relevant concept in international refugee law? Should it be

#### TREATIES/LEGISLATION

Convention Relating to the Status of Refugees, Article 33

#### LITERATURE

- Alice Edwards, 'Human Rights, Refugees and the Right to 'Enjoy' Asylum' (2005) 17(2) *International Journal of Refugee Law* 293-330\*
- Michelle Foster, 'Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State' (2007) 28(2) *Michigan Journal of International Law* 223-286
- Guy S Goodwin-Gill, 'Non-Refoulement and the New Asylum Seekers' (1985-1986) 26 *Virginia Journal of International Law* 897-918
- Guy S Goodwin-Gill, 'The Right to Seek Asylum: Interception at Sea and the Principle of Non-refoulement' (2011) 23(3) *International Journal of Refugee Law* 443-457\*
- Guy S. Goodwin-Gill, 'Non-refoulement, Temporary Refuge, and the 'New' Asylum Seekers' in David J. Cantor and Jean-Francois Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Brill, 2014) chapter 18
- Itamar Mann, 'The Haiti Paradigm, twenty Years After' *Humanity* (21 June 2013)\*
- Violeta Moreno-Lax, 'Hirsi Jamaa and Others v. Italy or the Strasbourg Court versus Extraterritorial Migration Control?' 12(3) *Human Rights Law Review* 574-598

#### CASES

- *Haitian Centre for Human Rights et al. v. United States* [Inter-American Commission on Human Rights] (13 March 1997)
- *Hirsi Jamaa and Others v. Italy* [European Court of Human Rights] (23 February 2012)\* [also UNHCR, *Submission in the Case of Hirsi and Others v. Italy* (29 March 2011)]

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- *HCJ 7302/07 Hotline for Migrant Workers v. Minister of Defense* [Supreme Court, Israel] (7 July 2011)
  - *MSS v. Belgium and Greece* [European Court of Human Rights] (21 January 2011)
  - *R v. Immigration Officer at Prague Airport and Another, Ex parte European Roma Rights Centre and Others* [House of Lords, United Kingdom] (9 December 2004)
  - *Sale v. Haitian Centers Council, Inc., et al* [Supreme Court, U.S.] (21 June 1993)\*

## SESSION FOUR

*Regional protection regimes & Displacement from conflict*

### FOR CONSIDERATION/DISCUSSION

- Consider the normative distinction between adopting an expansive refugee definition and introducing subsidiary protection.
- Do subsidiary and complementary protection regimes suggest that the refugee convention is not 'fit for purpose'?
- To what extent does IHL offer protection for persons displaced from conflict?

### TREATIES/LEGISLATION

- Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)
- Cartagena Declaration on Refugees
- Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Articles 1,3,49, 45, 146-148\*
- (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa
- Directive of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast)\*

### LITERATURE

- David J. Cantor and Stefania E. Barichello, 'The Inter-American Human Rights System: A New Model for Integrating Refugee and Complementary Protection?' (2013) 17 (5-6) *International Journal of Human Rights* 689-706
- Vincent Chetail, 'Armed Conflict and Forced Migration: A Systemic Approach to International Humanitarian Law, Refugee Law and Human Rights Law' in Andrew Clapham & Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP, 2014) chapter 29
- Stephane Jacquemet, 'The Cross-fertilization of International Humanitarian Law and International Refugee Law' (2001) 83 (843) *IRRC* 651-674\*
- Generally Jane McAdam, *Complementary Protection in International Law* (OUP, 2007)
- Jane McAdam, 'The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime' (2005) 17(3) *International Journal of Refugee Law* 461-516\*
- UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the*

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*Status of Refugees (December 2011), [164]\**

- *Reuven (Ruv) Ziegler, 'Non-Refoulement between 'Common Article 1' and 'Common Article 3'' in David J. Cantor and Jean-Francois Durieux (eds), Refuge from Inhumanity? War Refugees and International Humanitarian Law (Brill, 2014) chapter 16\**

**CASES**

- *Prosecutor v. Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber (2 October 1995), [70]\**

*Additional Reading Material:*

*Course/Module evaluation:*

*End of year written/oral examination 100 %*

*Presentation 0 %*

*Participation in Tutorials 0 %*

*Project work 0 %*

*Assignments 0 %*

*Reports 0 %*

*Research project 0 %*

*Quizzes 0 %*

*Other 0 %*

*Additional information:*