

Extracts

The SAS International Refugee Law Course

(you can print this extract out)

These Extracts are taken from Parts One, Two & Three

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SAS International refugee law course

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SAS International refugee law course

Part 1

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SAS International refugee law course

Preface

This course will not only provide an international perspective of refugee law, it will also act as a timely guide to the basic standards each country should meet legally to protect refugees.

Aim: to provide a good grounding in international legislation and policy relating to the protection and integration of refugees

Objectives: by the end of the course, students should be able to demonstrate

- a greater awareness of international laws that protect refugees;
- a greater understanding of how refugee legislation relates to other international human rights legislation;
- an ability to identify the rights of refugees under international legislation;
- an increased awareness of the importance of protecting refugees before and after being granted refugee status;
- an ability to analyse domestic refugee laws and policies against the standards set by international refugee law; and
- an understanding of policies and experiences that foster and hinder refugee integration.

The course is ideal for:

- Students who want to learn more about legislation specifically related to refugees.
- Employees or volunteers of charities, NGOs, or civil societies who advocate for better protection and integration of refugees in their region
- Local, regional or national government officials who write legislation, or shape policy around, refugees and asylum seekers.
- Advocates for human and group rights.

SAS Introduction to international refugee law course

Introduction to Part 1

With the rising awareness of forced migration around the world today, more and more individuals are interested in working within the refugee sector. Those who are legal representatives often find that they wish they had a better understanding of international legislation relating to refugees in order to serve refugees in their region. Others work in the social, human rights or charity sector and discover that a basic awareness of the legal framework that refugees must navigate will greatly improve their ability to serve this client group.

As a consequence, we have designed part one of this short course “General principles in international refugee law”. After completing part one, you will receive part two, “International refugee law”.

SAS International refugee law course

Part 1

How to work your way through part one

1. Before attempting to answer any of the questions, read through all the material.
2. Then answer each question as directed on the answer sheet.
3. When you have finished, send only the answer sheets back to us.

General principles in international refugee law

International law

1.1. What is international law?

Rules and principles that govern the interactions and relations between nations.

International law is divided into two main areas:

- Public international law: deals with questions of rights between nations and the citizens or subjects of other nations.
- Private international law: deals with controversies between private individuals arising from relationships to more than one nation.

For the purpose of this course, 'international law' refers to public international law. Refugee protection falls under *public* international law.

The primary sources of international law are customary law and conventional law.

1.2. Customary law

Customary law is one that embraces traditional and cultural legal considerations in individual countries. Recently the customary law was codified in the Vienna Convention on the Law of Treaties as a primary source of international law.

(see <http://www.un.org/law/ilc/texts/treaties.htm>)

1.3. Conventional law

Conventional international law derives from international agreements. International agreements create law for the parties of the agreement. They may also lead to the creation of customary international law if intended for general adherence and are widely accepted.

Customary and Conventional law have equal authority as international law.

1.4. General principles

Secondary sources of international law are 'general principles' which may be invoked as a rule of international law when a general principle common to most legal systems of the world are present but are not appropriate for international claims.

2. International organisations

An international organisation is a body created by an international agreement or has a membership of nations. International organisations play a major role in the relationships between nations. There are many influential international organisations but the most relevant international organisation relating to refugee protection is the United Nations.

2.1. The United Nations

The most influential international organisation is the United Nations (UN). It was created in 1945 and now has 191 Member countries. The central aim is to “preserve peace through international cooperation and collective security”. (see: www.un.org).

The UN has four purposes:

“To maintain international peace and security; to develop friendly relations among nations; to cooperate in solving international problems and in promoting respect for human rights; and to be a centre for harmonizing the actions of nations”.

The UN does not make laws. It does, however, provide the means to help resolve international conflicts and formulate policies on many global issues.

2.2. UN Charter

When States become members of the UN, they agree to accept the principles of the UN Charter, an international treaty that sets out basic principles of international relations.

2.3. The UN System

2.3.2. Main organs

The UN is made up of six main organs.

All UN Member States are represented in the *General Assembly*. Each Member State has one vote. The General Assembly makes decisions on issues such as international peace and security, admitting new members and the UN budget.

The *International Court of Justice*, also known as the World Court, was established as the UN's principal judicial organ. Participation by States in a proceeding is voluntary, but if a State agrees to participate, it is obligated to comply with the Court's decision. (see: <http://www.icj-cij.org/>)

Other organs in the UN system include:

- Security Council which aims to maintain peace
- Economic and Social Council which coordinates the UN's economic and social work
- Trusteeship Council which supervises 11 Trust Territories as they work towards self-governance
- Secretariat which carries out all the substantial and administrative work of the UN.

2.3.3. Specialised agencies

Also as part of the UN system are 14 independent agencies that are linked to the UN through cooperative agreements. Some of these

include the World Bank, the International Labour Organisation and the World Health Organisation.

2.3.4. UN Offices

There are also several UN offices, programmes and funds such as the UN Development Programme and the UN Children's Fund that work within the UN system "to improve the economic and social condition of people around the world". They report to the General Assembly or the Economic and Social Council.

The **UN High Commissioner for Refugees** (UNHCR) is one such office. It aims "to safeguard the rights and well-being of refugees". The UNHCR reports to the Economic and Social Council.

3. International human rights law

A right in relation to human rights law¹ is a claim any one has against a State or any institution as a result of his/her being a human being. It comprises of social, economic, cultural, civil and political rights.

International concern over human rights issues and the right to humane treatment in all situations has led to the adoption of a number of treaties and protocols.² These instruments speak in broad terms of the minimum standards of treatment for all persons. They therefore extend to refugees seeking asylum who do not forfeit their fundamental human rights when they leave their countries of origin.

3.1. Universal Declaration of Human Rights

Sets out basic and fundamental human rights to which all individuals are entitled. Adopted in 1948, the Declaration includes the right to life, liberty and nationality; to freedom of thought, conscience and religion; and the right to take part in government.

Most States are party to the Declaration that make it legally binding. The Declaration and other International Covenants together constitute the International Bill of Human Rights.

The Declaration was the foundation for more than 80 conventions and declarations on human rights, including the status of refugees, against torture and other degrading treatment, and the prevention and punishment of the crime of genocide.

3.2. UN Charter

The UN Charter requires the United Nations to codify and develop international law, resulting in over 500 conventions, treaties and standards. States that ratify these conventions are legally bound by them.

¹ Human Rights Law Handbook, 2000.

² These include *inter-alia* the Universal Declaration of Human Rights 1948 and the European Convention on Human Rights 1950.

Extracts From Part 2

SAS International refugee law course

Introduction

Unlike most other people who leave their countries, refugees seek admission to another country not out of their choice but necessity to escape threats to their most fundamental human rights. At the core of the concept of a “refugee” is the notion of persecution underlining the need for international protection – this is what most clearly distinguishes refugees from other immigrants.

“Large scale movements of refugees and other forced migrants have become a defining characteristic of the contemporary world. Few times in recent history have such large numbers of people in so many parts of the globe been obliged to leave their own countries and communities to seek safety else where. Never before has the issue of mass population displacement gained such a prominent position in the agenda of the United Nations and its member States.”³

Part 2 provides an overview of the international legal process and framework for the protection of refugees’ rights. It appraises major international laws established to address the plight of refugees⁴. The basic legal framework that accord rights to refugees is the foundation upon which refugees are able to integrate into their host society.

After completing part two, you will receive part three, “International refugee law: integration”.

³ From *The State of the World’s Refugee: In search of Solutions*, UNHCR, 1995 at page 11.

⁴ These include the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol.

SAS International refugee law course

Part 2

How to work your way through part two

4. Before attempting to answer any of the questions, read through the whole material.
5. Then answer each question as directed on the answer sheet.
6. When you have finished, send only the answer sheets back to us.

International Refugee Law

“Today refugees are a major global problem of our time often inseparable from the range of problems affecting the political, social, cultural and economic development of the world.” United Nations High Commissioner for Refugees (UNHCR)⁵

- There are two sources that provide universal rights to refugees,
- 1951 UN Convention Relating to the Status of Refugees; and
 - general standards of international human rights law.

The 1951 UN Convention Relating to the Status of Refugees

Part 1 outlined some of the basic principles of the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention) and the 1967 Protocol. This section will give more detailed explanation of the rights of refugees under the Refugee Convention.

The Refugee Convention is the standard international legislation that provides protection to refugees. All other international legislation that focuses on refugee rights and protection compliment the Refugee Convention. These will be discussed later in this chapter.

Not all refugees are equally entitled to the same rights under the Refugee Convention. While there are some core rights, additional rights are granted depending on the individual’s relationship to the host State. As Hathaway notes,

“Before any given right can be claimed by a particular refugee, the nature of his or her attachment to the host State must therefore be defined. The structure of the attachment system is incremental: because the levels build on one another [...], rights once acquired are retained for the duration of refugee status.”⁶

Thus, basic rights usually apply once a refugee is under a State’s jurisdiction while a refugee who has met residency requirements is often granted more rights.

Also note that States are able to suspend rights for refugees on the grounds of national security.

1.1. Fundamental rights

Fundamental rights are those granted to all refugees automatically when they are physically present in the asylum state and thus are under the jurisdiction of the host State. Thus, these are rights that do not contain requirements of legal residence. These rights include:

1.1.2. *Non-refoulement*

The most fundamental principle of the Refugee Convention, and the most basic of rights for all refugees, is *non-refoulement*. *Non-refoulement* prohibits an asylum country from expelling or returning a refugee to his country of origin. Article 33 of the 1951 Convention states that,

⁵ The United Nations High Commissioner for Refugees’ opening statement at the U.N.C.H.R executive committee 37th session on 6th October 1986.

⁶ James Hathaway: *The Rights of refugees under international law*. Cambridge University Press. Cambridge, 2005, p155.

“No contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories, where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

However it also puts an obligation on the refugee not to be regarded as a danger to the security of the country in which he is, either through conviction by a final judgement of a particular serious crime or otherwise.⁷

It further provides that expulsion will be in pursuance of a decision reached in accordance with the due process of law; and that the asylum countries shall allow such a refugee a reasonable period within which to seek legal admission in another country which is in line with the principle of *non-refoulement*.⁸

Repatriation by coercion can be interpreted as a breach of the *non-refoulement* principle.

Non-refoulement is not the same as the right to asylum from persecution. Article 33 is not a duty for States to receive refugees; instead it prohibits acts by the State to push a refugee back where they are at risk of persecution. A State can deny entry into its territory as long as this refusal does not place someone at great risk of persecution⁹.

1.1.3. Basic needs

The Refugee Convention does not say much about a refugee's right to basic necessities – there is no mention of the right to access food, clean water or healthcare. Hathaway offers an explanation for this gap – the Refugee Convention pre-dates the Western social welfare state and thus at the time of drafting, most refugees were expected to earn their own living¹⁰. This may explain why the only concern addressed by the Refugee Convention relates to essential goods not available on the open market: Article 20 states that

“Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.”

Article 20 is only relevant to systems that ration basic needs in short supply and thus does not entitle a refugee to any welfare benefits system which allocates basic necessities based on economic need.

1.1.4. Freedom of movement

The Refugee Convention awards refugees freedom from arbitrary detention and penalisation for illegal entry. Article 31 states that,

⁷ This is under Article 33 (2)

⁸ This is under Article 17 (1)

⁹ Hathaway, *The rights of refugees under international law*, page 301.

¹⁰ *Ibid*, p 466.

“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

Article 31 is increasingly important for protecting refugees as more and more states strive to prevent the arrival of refugees into their territory, forcing many refugees to breach immigration law to reach safety.

1.1.5. Public education

Extracts From Part 3

SAS International refugee law course: integration

Introduction

The protection of refugees in host countries requires the attainment of a degree of self-sufficiency and local integration within the local communities for the duration of their exile.¹¹ It is by being self-sufficient that refugees can lead a fulfilling productive life; this also makes them assets to the host nation and leads to their integration into their host local communities. By enabling refugees at individual, group, community or organisational levels to use their skills or develop new ones, the process of integration in host communities is made durable, lasting and meaningful.

¹¹ Miles. (1998), Robinson (1993)

SAS International refugee law course

Part 3

How to work your way through part three

7. Before attempting to answer any of the questions, read through the whole material.
8. Then answer each question as directed on the answer sheet.
9. When you have finished, send only the answer sheets back to us.

International Refugee Law: integration

Integration

“The Conference expresses the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides¹².”

1. Introduction

International refugee protection involves:

- securing admission to a safe country of asylum;
- granting asylum;
- respecting refugee’s fundamental human rights;
- honouring the principle of *non-refoulement* (the right not to be forcibly returned to a country where their safety is threatened).

But true protection only occurs when a refugee feels long-term safety, security and hope. The UNCHR helps promote three ‘durable solutions’, or means to permanently resolve the refugee protection issues:

- Voluntary repatriation
- Resettlement
- Local integration

1.1 Voluntary repatriation

Article 1C (2) of the 1951 Refugee Convention states

“This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily reacquired it; ...”

Voluntary repatriation, or returning to one’s home country by choice, is the ideal solution for the majority of refugees. Whereas the 1951 Refugee Convention focuses on the right for a refugee not to be forcibly returned to their country of origin, the UNCHR actively assists states in the repatriation of refugees.

The key difference is the word ‘voluntary’ – it must be the individual’s choice to return to his/her country of origin. Most refugees want to return to their home at the first opportunity. Most refugees want to resume their lives.

The UNCHR notes¹³ that the ideal scenario for voluntary repatriation is when

¹² Annex 1 of *Excerpt from the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, United Nations Treaty Series, vol. 189, p.37.

¹³ *Refugee Protection: A Guide to International Law*. UNCHR. 2001.

“conflict has ceased and threats to physical security, such as landmines, have been removed, or other improvements in the human rights situation have eliminated the causes of refugee flight. Refugees make a free decision to return based on full knowledge of conditions in their home country and with sufficient international protection and assistance to return in safety and dignity. Their legal status is ensured through a tri-partite agreement among UNCHR, the country of asylum and the home country. Gaps between the relief phase of the operation and longer-term development assistance have been bridged. Reconciliation among warring parties in the population has begun.”

Often, however, this is not the case. Some asylum countries compel asylum seekers to return home by denying them access to welfare assistance.

Other times, refugees return home of their own free will, but before the situation in their home country has settled enough to provide a safe welcome. In this scenario, refugees often remain very vulnerable – returning to find their homes or land destroyed, their social support network dispersed, or employment opportunities non-existent. Currently, the UNCHR does its best to provide assistance to returnees. In extreme cases, however, the situation in the home country remains so volatile that the refugees are forced to flee a second time.

1.2 Resettlement

Some refugees find that there is no ‘durable solution’ to their plight. At times, this is due to the long-term duration of the conflict, making it unsafe to return home after years in exile. In other cases, there is no resolution to the refugee’s circumstances because they remain at risk in their first country of asylum.

In these situations, the only viable option is a safe resettlement in a third country. Resettlement is also a long-term solution for those with special needs that cannot be met in the first country of asylum or in the home country.

The UNHCR identifies cases that are in need of resettlement. Several countries have established agreements with the UNCHR to resettle refugees. These states examine each case individually, and can refuse or accept a refugee. The state agrees to grant legal protection and residency – which can sometimes lead to citizenship. The UNCHR works with local and regional charities and non-governmental agencies, as well as the participating states, to ensure the resettlement process is successful. Once the refugees are in the third safe country, they are under the protection of the state and are to be granted the same rights and entitlements as other residents.

1.3 Local integration

Some refugees are allowed to stay permanently in the country where they first sought asylum. Local integration is one of the ‘durable solutions’, but each states fosters this process differently. Integration into the asylum country is sometimes actively supported by states that provide assistance to refugees towards this aim.

Other states are only welcoming when the economy benefits from the new arrivals.

2. About integration

For these 'durable solutions' to be truly successful in providing long-term protection for refugees, the refugees need to be allowed to integrate. However, international refugee law is more concerned with refugee protection issues than integration, in spite of various international treaties to that effect.

End of Course Extracts

We hope that these extracts have watered your appetite and will motivate you to take this International Refugee Law course.

Whether you are new to this area of law or have been working in it for some time, this comprehensive course will clarify many things and empower you to work more effectively in this often sad and desperate area of human existence.

The SAS Law School