

- (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
- (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

#### *Article 43*

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### *Article 44*

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### *Article 45*

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

## **Part V**

### *Article 46*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

### *Article 47*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

## **Part VI**

### *Article 48*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

### *Article 49*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

*Article 50*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

*Article 51*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

*Article 52*

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

*Article 53*

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

APPENDIX 5  
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL  
AND CULTURAL RIGHTS (1966)

**Preamble**

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

**Part I**

*Article 1*

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust

Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **Part II**

### *Article 2*

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### *Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### *Article 4*

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

### *Article 5*

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **Part III**

#### *Article 6*

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

#### *Article 7*

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

- (a) remuneration which provides all workers, as a minimum, with:
  - (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) safe and healthy working conditions;
- (c) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

#### *Article 8*

1. The States Parties to the present Covenant undertake to ensure:

- (a) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the

promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

- (b) the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) the right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### *Article 9*

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

### *Article 10*

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be



protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

### *Article 11*

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

### *Article 12*

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) the improvement of all aspects of environmental and industrial hygiene;
- (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

*Article 13*

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) primary education shall be compulsory and available free to all;
- (b) secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

*Article 14*

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other

territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

### *Article 15*

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) to take part in cultural life;
- (b) to enjoy the benefits of scientific progress and its applications;
- (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

## **Part IV**

### *Article 16*

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

- 2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant.
- (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

*Article 17*

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

*Article 18*

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

*Article 19*

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or as appropriate for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

*Article 20*

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

*Article 21*

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of

the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

#### *Article 22*

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

#### *Article 23*

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

#### *Article 24*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

#### *Article 25*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

### **PART V**

#### *Article 26*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State

Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

### *Article 27*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

### *Article 28*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

### *Article 29*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds

majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

### *Article 30*

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) signatures, ratifications and accessions under article 26;
- (b) the date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

### *Article 31*

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

## SELECT BIBLIOGRAPHY

### Books

- Alston, P., and J. Crawford eds., *The Future of UN Human Rights Treaty Monitoring* (2000, Cambridge University Press)
- Amerasinghe, C., *State Responsibility for Injuries to Aliens* (1967, Clarendon Press)
- Anker, D., *The Law of Asylum in the United States* (1999, Refugee Law Center, Inc.)
- Aust, A., *Modern Treaty Law and Practice* (2000, Cambridge University Press)
- Borchard, E., *The Diplomatic Protection of Citizens Abroad* (1915, Banks Law Publishing Co.)
- Bossuyt, M., *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (1987, Bruylant)
- Brownlie, I., *Principles of Public International Law* (2003, Clarendon Press)
- Byers, M., *Custom, Power and the Power of Rules: International Relations and Customary International Law* (1999, Cambridge University Press)
- Craven, M., *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (1995, Clarendon Press)
- Crock, M., ed., *Protection or Punishment: The Detention of Asylum Seekers in Australia* (1993, Federation Press)
- Danilenko, G., *Law-Making in the International Community* (1993, Martinus Nijhoff)
- Eggli, A., *Mass Refugee Influx and the Limits of Public International Law* (2001, Martinus Nijhoff)
- Eide, A., et al. eds., *Economic, Social and Cultural Rights: A Textbook* (1995, Martinus Nijhoff)
- The Universal Declaration of Human Rights: A Commentary* (1992, Scandinavian University Press)
- Falk, R., *Revitalizing International Law* (1993, Iowa State University Press)
- The Status of Law in International Society* (1970, Princeton University Press)
- Feller, E., et al. eds., *Refugee Protection in International Law* (2003, Cambridge University Press)
- Forbes Martin, S., *Refugee Women* (1991, Zed Books)
- Fourlanos, G., *Sovereignty and the Ingress of Aliens* (1986, Almqvist & Wiksell)
- Fredman, S., *Discrimination Law* (2001, Oxford University Press)



- Garcia Amador, F. V., et al., *Recent Codification of the Law of State Responsibility for Injuries to Aliens* (1974, Oceana Publications)
- Goodwin-Gill, G., *The Refugee in International Law* (1996, Clarendon Press)
- Grahl-Madsen, A., *Commentary on the Refugee Convention 1951* (1963, pub'd. 1997, UNHCR)
- The Status of Refugees in International Law* (vol. I, 1966; vol. II, 1972, A. W. Sijthoff)
- Territorial Asylum* (1980, Swedish Institute of International Affairs)
- Guild, E., and C. Harlow eds., *Implementing Amsterdam: Immigration and Asylum Rights in EC Law* (2001, Hart Publishing)
- Hathaway, J., *The Law of Refugee Status* (1991, Butterworths)
- Hathaway, J., ed., *Reconceiving International Refugee Law* (1997, Kluwer)
- Hathaway, J., and J. Dent, *Refugee Rights: Report on a Comparative Survey* (1995, York Lanes Press)
- Helton, A., *The Price of Indifference: Refugees and Humanitarian Action in the New Century* (2002, Oxford University Press)
- Henkin, L., ed., *The International Bill of Rights* (1981, Columbia University Press)
- Jayawickrama, N., *The Judicial Application of Human Rights Law* (2002, Cambridge University Press)
- Jennings, R., and A. Watts eds., *Oppenheim's International Law* (1992, Longman Publishers)
- Joly, D., *Refugees: Asylum in Europe?* (1992, Minority Rights)
- Julien-Laferrrière, F., ed., *Frontières du droit, Frontières des droits* (1993, L'Harmattan)
- Kälin, W., *Grundriss des Asylverfahrens* (1990, Helbing & Lichtenhahn)
- Das Prinzip des Non-Refoulement* (1982, Peter Lang)
- Keen, D., *Refugees: Rationing the Right to Life* (1992, Zed Books)
- Kibreab, G., *Refugees and Development in Africa: The Case of Eritrea* (1987, Red Sea Press)
- Lambert, H., *Seeking Asylum: Comparative Law and Practice in Selected European Countries* (1995, Martinus Nijhoff)
- Lauterpacht, E., ed., *International Law: The Collected Papers of Hersch Lauterpacht* (1970, Cambridge University Press)
- Lillich, R., *The Human Rights of Aliens in Contemporary International Law* (1984, Manchester University Press)
- Loescher, G., *The UNHCR and World Politics: A Perilous Path* (2001, Oxford University Press)
- Loescher, G., and L. Monahan eds., *Refugees and International Relations* (1990, Oxford University Press)
- McKean, W., *Equality and Discrimination under International Law* (1983, Clarendon Press)
- Martin, D., ed., *The New Asylum Seekers: Refugee Law in the 1980s* (1986, Martinus Nijhoff)
- Melander, G., and P. Nobel eds., *African Refugees and the Law* (1978, Scandinavian Institute of African Studies)

- Meron, T., *Human Rights and Humanitarian Norms as Customary Law* (1989, Clarendon Press)
- Meron, T., ed., *Human Rights in International Law: Legal and Policy Issues* (1984, Clarendon Press)
- Merrills, J., *The Development of International Law by the European Court of Human Rights* (1993, Manchester University Press)
- Muntarhorn, V., *The Status of Refugees in Asia* (1992, Clarendon Press)
- Nicholson, F., and P. Twomey eds., *Refugees Rights and Realities: Evolving International Concepts and Regimes* (1999, Cambridge University Press)
- Noll, G., *Negotiating Asylum: The EU Acquis, Extraterritorial Protection, and the Common Market of Deflection* (2000, Martinus Nijhoff)
- Nowak, M., *UN Covenant on Civil and Political Rights* (1993, N. P. Engel)
- Pellonpää, M., *Expulsion in International Law: A Study in International Aliens Law and Human Rights with Special Reference to Finland* (1984, Suomalainen Tiedeakatemia)
- Ragazzi, M., *The Concept of International Obligations Erga Omnes* (1997, Oxford University Press)
- Ressler, E., et al., *Unaccompanied Children: Care and Protection in Wars, Natural Disasters and Refugee Movements* (1988, Oxford University Press)
- Robinson, N., *Convention relating to the Status of Refugees: Its History, Contents and Interpretation* (1953, Institute of Jewish Affairs)
- Roth, A., *The Minimum Standard of International Law Applied to Aliens* (1949, A. W. Sijthoff)
- Schachter, O., *International Law in Theory and Practice* (1991, Martinus Nijhoff)
- Shaw, M., *International Law* (2003, Cambridge University Press)
- Sieghart, P., *The International Law of Human Rights* (1983, Clarendon Press)
- The Lawful Rights of Mankind* (1985, Oxford University Press)
- Sinclair, I., *The Vienna Convention and the Law of Treaties* (1984, Manchester University Press)
- Sohn, L., and T. Buergenthal, *International Protection of Human Rights* (1973, Bobbs-Merrill)
- The Movement of Persons Across Borders* (1992, American Society of International Law)
- Steiner, H., and P. Alston, *International Human Rights in Context* (2000, Oxford University Press)
- Stenberg, G., *Non-Expulsion and Non-Refoulement* (1989, Iustus Fölag)
- Takkenberg, A., and C. Tahbaz eds., *The Collected Travaux Préparatoires of the 1951 Geneva Convention relating to the Status of Refugees* (1989, Dutch Refugee Council)
- Tiberghien, F., *La protection des réfugiés en France* (1999, Economica, Presses Universitaires d'Aix-Marseille)
- UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1979, reedited 1992, UNHCR)

- Vierdag, E., *The Concept of Discrimination in International Law, with a Special Reference to Human Rights* (1973, Martinus Nijhoff)
- Weis, P., *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis* (posthumously pub'd., 1995, Cambridge University Press)
- Zetterqvist, J., *Refugees in Botswana in the Light of International Law* (1990, Scandinavian Institute of African Studies)
- Zieck, M., *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (1997, Martinus Nijhoff)

### Articles and chapters

- Acer, E., "Living up to America's Values: Reforming the US Detention System for Asylum Seekers," (2002) 20(3) *Refugee* 44
- Alfredsson, G., "Article 17," in A. Eide et al. eds., *The Universal Declaration of Human Rights: A Commentary* 255 (1992)
- Alston, P., "International Law and the Human Right to Food," in P. Alston and K. Tomasevski eds., *International Law and the Human Right to Food* 10 (1984)
- Anderfuhren-Wayne, C., "Family Unity in Immigration and Refugee Matters: United States and European Approaches," (1996) 8(3) *International Journal of Refugee Law* 347
- Arajärvi, P., "Article 26," in A. Eide et al. eds., *The Universal Declaration of Human Rights: A Commentary* 405 (1992)
- Barutciski, M., "A Critical View on UNHCR's Mandate Dilemmas," (2002) 14(2/3) *International Journal of Refugee Law* 365
- "Involuntary Repatriation when Refugee Protection is no Longer Necessary: Moving Forward after the 48th Session of the Executive Committee," (1998) 10(1/2) *International Journal of Refugee Law* 236
- Barutciski, M., and A. Suhrke, "Lessons from the Kosovo Refugee Crisis: Innovations in Protection and Burden-Sharing," (2001) 14(2) *Journal of Refugee Studies* 95
- Blay, S., and M. Tsamenyi, "Reservations and Declarations under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," (1990) 2(4) *International Journal of Refugee Law* 527
- Bos, M., "Theory and Practice of Treaty Interpretation," (1980) 27 *Netherlands International Law Review* 135
- Camus-Jacques, G., "Refugee Women: The Forgotten Majority," in G. Loescher and L. Monahan eds., *Refugees and International Relations* 148 (1990)
- Castillo, M., and J. Hathaway, "Temporary Protection," in J. Hathaway ed., *Reconceiving International Refugee Law* 1 (1997)
- Clapham, A., "UN Human Rights Reporting Procedures: An NGO Perspective," in P. Alston and J. Crawford eds., *The Future of UN Human Rights Treaty Monitoring* 175 (2000)

- Clark, T., and J. Niessen, "Equality Rights and Non-Citizens in Europe and America: The Promise, the Practice, and Some Remaining Issues," (1996) 14(3) *Netherlands Quarterly of Human Rights* 245
- Coles, G., "Approaching the Refugee Problem Today," in G. Loescher and L. Monahan eds., *Refugees and International Relations* 373 (1990)
- Corliss, S., "Asylum State Responsibility for the Hostile Acts of Foreign Exiles," (1990) 2(2) *International Journal of Refugee Law* 181
- Crawford, J., "The UN Human Rights Treaty System: A System in Crisis?," in P. Alston and J. Crawford eds., *The Future of UN Human Rights Treaty Monitoring* 1 (2000)
- Crépeau, F., and M. Barutciski, "The Legal Condition of Refugees in Canada," (1994) 7(2/3) *Journal of Refugee Studies* 239
- Dankwa, E., "Working Paper on Article 2(3) of the International Covenant on Economic, Social and Cultural Rights," (1987) 9 *Human Rights Quarterly* 230
- Domb, F., "Jus Cogens and Human Rights," (1976) 6 *Israeli Yearbook of Human Rights* 104
- Drzewicki, K., "The Right to Work and Rights in Work," in A. Eide et al. eds., *Economic, Social and Cultural Rights: A Textbook* 169 (1995)
- Eide, A., "Article 25," in A. Eide et al. eds., *The Universal Declaration of Human Rights: A Commentary* 385 (1992)
- "The Right to an Adequate Standard of Living, Including the Right to Food," in A. Eide et al. eds., *Economic, Social and Cultural Rights: A Textbook* 89 (1995)
- Elles, D., "Aliens and Activities of the United Nations in the Field of Human Rights," (1974) 7 *Human Rights Journal* 291
- Feller, E., "Carrier Sanctions and International Law," (1989) 1(1) *International Journal of Refugee Law* 48
- Fitzmaurice, M., "The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and Other Treaty Points," (1957) 33 *British Yearbook of International Law* 203
- Fonteyne, J.-P., "Illegal Refugees or Illegal Policy?," in Australian National University Department of International Relations ed., *Refugees and the Myth of the Borderless World* 16 (2002)
- Fredriksson, J., "Reinvigorating Resettlement: Changing Realities Demand Changed Approach," (2002) 13 *Forced Migration Review* 28
- Frelick, B., "Secure and Durable Asylum: Article 34 of the Refugee Convention," in US Committee for Refugees, *World Refugee Survey 2001* 42 (2001)
- Fullerton, M.-E., "Hungary, Refugees, and the Law of Return," (1996) 8(4) *International Journal of Refugee Law* 499
- Gandhi, P., "The Universal Declaration of Human Rights at Fifty Years: Its Origins, Significance and Impact," (1998) 41 *German Yearbook of International Law* 206
- Gibney, M., "Kosovo and Beyond: Popular and Unpopular Refugees," (1999) 5 *Forced Migration Review* 28

- Goldsmith, J., and E. Posner, "Understanding the Resemblance Between Modern and Traditional Customary International Law," (2000) 40(2) *Virginia Journal of International Law* 639
- Goodwin-Gill, G., "Article 31 of the 1951 Convention relating to the Status of Refugees: Non-Penalization, Detention, and Protection," in E. Feller et al. eds., *Refugee Protection in International Law* 185 (2003)
- "The Individual Refugee, the 1951 Convention and the Treaty of Amsterdam," in E. Guild and C. Harlow eds., *Implementing Amsterdam: Immigration and Asylum Rights in EC Law* 141 (2001)
- "International Law and the Detention of Refugees," (1986) 20(2) *International Migration Review* 193
- "Nonrefoulement and the New Asylum Seekers," in D. Martin ed., *The New Asylum Seekers: Refugee Law in the 1980s* 103 (1986)
- "Refugee Identity and Protection's Fading Prospects," in F. Nicholson and P. Twomey eds., *Refugee Rights and Realities: Evolving International Concepts and Regimes* 220 (1999)
- Grahl-Madsen, A., "Political Rights and Freedoms of Refugees," in G. Melander and P. Nobel eds., *African Refugees and the Law* 47 (1978)
- Hailbronner, K., "Nonrefoulement and 'Humanitarian' Refugees: Customary International Law or Wishful Legal Thinking?," in D. Martin ed., *The New Asylum Seekers: Refugee Law in the 1980s* 123 (1986)
- Hathaway, J., "The Emerging Politics of *Non-Entrée*," (1992) 91 *Refugees* 40; also published as "L'émergence d'une politique de non-entrée," in F. Julien-Lafferrière ed., *Frontières du droit, Frontières des droits* 65 (1993)
- "The Evolution of Refugee Status in International Law: 1920–1950," (1984) 33 *International and Comparative Law Quarterly* 348
- "Harmonizing for Whom? The Devaluation of Refugee Protection in the Era of European Economic Integration," (1993) 26(3) *Cornell International Law Journal* 719
- "The Meaning of Repatriation," (1997) 9(4) *International Journal of Refugee Law* 551; also published in European University Institute ed., *Legal and Policy Issues Concerning Refugees from the Former Yugoslavia* 4 (1997)
- "A Reconsideration of the Underlying Premise of Refugee Law," (1990) 31(1) *Harvard International Law Journal* 129
- "Review Essay: N. Nathwani, Rethinking Refugee Law," (2004) 98(3) *American Journal of International Law* 616
- "What's in a Label?," (2003) 5 *European Journal of Migration and Law* 1
- Hathaway, J., and A. Cusick, "Refugee Rights Are Not Negotiable," (2000) 14(2) *Georgetown Immigration Law Journal* 481
- Hathaway, J., and C. Harvey, "Framing Refugee Protection in the New World Disorder," (2001) 34(2) *Cornell International Law Journal* 257
- Hathaway, J., and A. Neve, "Fundamental Justice and the Deflection of Refugees from Canada," (1997) 34(2) *Osgoode Hall Law Journal* 213

- "Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection," (1997) 10 *Harvard Human Rights Journal* 115
- Helton, A., "Asylum and Refugee Protection in Thailand," (1989) 1(1) *International Journal of Refugee Law* 20
- "Reforming Alien Detention Policy in the United States," in M. Crock ed., *Protection or Punishment: The Detention of Asylum Seekers in Australia* 103 (1993)
- Humphrey, J., "Political and Related Rights," in T. Meron ed., *Human Rights in International Law: Legal and Policy Issues* 171 (1984)
- Jacobsen, K., "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes," (1996) 30 *International Migration Review* 655
- Kälin, W., "Supervising the 1951 Convention relating to the Status of Refugees: Article 35 and Beyond," in E. Feller et al. eds., *Refugee Protection in International Law* 613 (2003)
- "Temporary Protection in the EC: Refugee Law, Human Rights, and the Temptations of Pragmatism," (2001) 44 *German Yearbook of International Law* 221
- "Troubled Communication: Cross-Cultural Misunderstandings in the Asylum Hearing," (1986) 20 *International Migration Review* 230
- Källström, K., "Article 23," in A. Eide et al. eds., *The Universal Declaration of Human Rights: A Commentary* 373 (1992)
- Kiapi, A., "The Legal Status of Refugees in Uganda: A Critical Study of Legislative Instruments" (1993)
- Kingsbury, B., "Legal Positivism as Normative Politics: International Society, Balance of Power and Lassa Oppenheim's Positive International Law," (2002) 13(2) *European Journal of International Law* 401
- Koskeniemi, M., "'The Lady Doth Protest Too Much': Kosovo, and the Turn to Ethics in International Law," (2002) 65(2) *Modern Law Review* 159
- Krause, C., "The Right to Property," in A. Eide et al. eds., *Economic, Social and Cultural Rights: A Textbook* 143 (1995)
- Lauterpacht, E., and D. Bethlehem, "The Scope and Content of the Principle of Non-Refoulement," in E. Feller et al. eds., *Refugee Protection in International Law* 87 (2003)
- Lawyers' Committee for Human Rights, "Review of States' Procedures and Practices relating to Detention of Asylum Seekers" (Sept. 2002)
- Leckie, S., "The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?," (1988) 10 *Human Rights Quarterly* 249
- McCruden, C., "Equality and Discrimination," in D. Feldman ed., *English Public Law* (vol. XI, 2004)
- "Institutional Discrimination," (1982) 2(3) *Oxford Journal of Legal Studies* 303
- McGinley, G., "Practice as a Guide to Treaty Interpretation," [Winter 1985] *Fletcher Forum* 211

- Maluwa, T., "The Concept of Asylum and the Protection of Refugees in Botswana: Some Legal and Political Aspects," (1990) 2(4) *International Journal of Refugee Law* 587
- Mathew, P., "Australian Refugee Protection in the Wake of the *Tampa*," (2002) 96(3) *American Journal of International Law* 661
- Melander, G., "Article 24," in A. Eide et al. eds., *The Universal Declaration of Human Rights: A Commentary* 379 (1992)
- Meron, T., "Extraterritoriality of Human Rights Treaties," (1995) 89(1) *American Journal of International Law* 78
- Motta, F., "Between a Rock and a Hard Place: Australia's Mandatory Detention of Asylum Seekers," (2002) 20(3) *Refugee* 12
- Mtango, E., "Military and Armed Attacks on Refugee Camps," in G. Loescher and L. Monahan eds., *Refugees and International Relations* 92 (1990)
- Noll, G., "Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centers and Protection Zones," (2003) 5(3) *European Journal of Migration Law* 303
- North, A., and N. Bhuta, "The Future of Protection – The Role of the Judge," (2001) 15(3) *Georgetown Immigration Law Journal* 479
- O'Connell, M.-E., "Re-Leashing the Dogs of War," (2003) 97(2) *American Journal of International Law* 446
- Ohaegbulom, F., "Human Rights and the Refugee Situation in Africa," in G. Shepherd and V. Nanda eds., *Human Rights and Third World Development* 197 (1985)
- Oppenheim, L., "The Science of International Law: Its Task and Method," (1908) 2 *American Journal of International Law* 313
- Partsch, K., "Freedom of Conscience and Expression, and Political Freedoms," in L. Henkin ed., *The International Bill of Rights* 208 (1981)
- Rao, T., "International Custom," (1979) 19 *Indian Journal of International Law* 515
- Rehof, L., "Article 3," in A. Eide et al. eds., *The Universal Declaration of Human Rights: A Commentary* 73 (1992)
- "Article 12," in A. Eide et al. eds., *The Universal Declaration of Human Rights: A Commentary* 187 (1992)
- Ris, M., "Treaty Interpretation and ICJ Recourse to *Travaux Préparatoires*: Towards a Proposed Amendment of Articles 31 and 32 of the Vienna Convention on the Law of Treaties," (1991) 14(1) *Boston College International and Comparative Law Review* 111
- Roberts, A., "Traditional and Modern Approaches to Customary International Law: A Reconciliation," (2001) 95(4) *American Journal of International Law* 757
- Scheinin, M., "The Right to Social Security," in A. Eide et al. eds., *Economic, Social and Cultural Rights: A Textbook* 159 (1995)
- Schmidt, M., "Servicing and Financing Human Rights Supervisory Bodies," in P. Alston and J. Crawford eds., *The Future of UN Human Rights Treaty Monitoring* 481 (2000)

- Schwebel, S., "May Preparatory Work be Used to Correct, Rather than Confirm, the 'Clear' Meaning of a Treaty Provision?," in L. Makarczyk ed., *Theory of International Law at the Threshold of the 21st Century: Essays in Honour of Krzysztof Skubiszewski* 541 (1996)
- Shacknove, A., "From Asylum to Containment," (1993) 5(4) *International Journal of Refugee Law* 516
- Simma, B., "How Distinctive Are Treaties Representing Collective Interest? The Case of Human Rights Treaties," in V. Gowlland-Debbas ed., *Multilateral Treaty Making – The Current Status of and Reforms Needed in the International Legislative Process* 83 (2000)
- Simma, B., and P. Alston, "The Sources of Human Rights Law: Custom, *Jus Cogens*, and General Principles," (1988–1989) 12 *Australian Year Book of International Law* 82
- Skordas, A., "The Regularization of Illegal Immigrants in Greece," in P. deBruycker ed., *Regularization of Illegal Immigrants in the European Union* 343 (2000)
- Slaughter, A.-M., "A Typology of Transjudicial Communication," (1994) 29 *University of Richmond Law Review* 99
- Sohn, L., "The Human Rights Law of the Charter," (1977) 12 *Texas International Law Journal* 129
- "Human Rights: Their Implementation and Supervision by the United Nations," in T. Meron ed., *Human Rights in International Law: Legal and Policy Issues* 369 (1984)
- Sopf, D., "Temporary Protection in Europe After 1990: The 'Right to Remain' of Genuine Convention Refugees," (2001) 6 *Washington University Journal of Law and Policy* 109
- Storey, H., "The Right to Family Life and Immigration Case Law at Strasbourg," (1990) 39 *International and Comparative Law Quarterly* 328
- Tomasevski, K., "Health Rights," in A. Eide et al. eds., *Economic, Social and Cultural Rights: A Textbook* 125 (1995)
- Trubek, D., "Economic, Social, and Cultural Rights in the Third World," in T. Meron ed., *Human Rights in International Law: Legal and Policy Issues* 205 (1984)
- Verdirame, G., "Human Rights and Refugees: The Case of Kenya," (1999) 12(1) *Journal of Refugee Studies* 54
- Verdross, A., "*Jus Dispositivum* and *Jus Cogens* in International Law," (1966) 60(1) *American Journal of International Law* 55
- Walker, H., "Modern Treaties of Friendship, Commerce and Navigation," (1958) 42 *Minnesota Law Review* 805
- Weis, P., "The 1967 Protocol relating to the Status of Refugees and Some Questions relating to the Law of Treaties," (1967) 42 *British Yearbook of International Law* 39
- "The Concept of the Refugee in International Law," (1960) 87 *Journal du droit international* 928



### **Reports for the International Academy of Comparative Law**

- Addo, M., *International Academy of Comparative Law National Report for the United Kingdom* (1994)
- Ahmad, N., *International Academy of Comparative Law National Report for Pakistan* (1994)
- Allars, M., *International Academy of Comparative Law National Report for Australia* (1994)
- Buttigieg, C., *International Academy of Comparative Law National Report for Malta* (1994)
- Chimni, B. S., *International Academy of Comparative Law National Report for India* (1994)
- Crépeau, F., *International Academy of Comparative Law National Report for Canada* (1994)
- D'Orazio, G., *International Academy of Comparative Law National Report for Italy* (1994)
- Einarsen, T., *International Academy of Comparative Law National Report for Norway* (1994)
- Eriksson, M., *International Academy of Comparative Law National Report for Sweden* (1994)
- Essuman-Johnson, A., *International Academy of Comparative Law National Report for Ghana* (1994)
- Fraidenraij, S., *International Academy of Comparative Law National Report for Argentina* (1994)
- Gionea, V., *International Academy of Comparative Law National Report for Romania* (1994)
- Guimezanes, N., *International Academy of Comparative Law National Report for France* (1994)
- Haines, R., *International Academy of Comparative Law National Report for New Zealand* (1994)
- Hofmann, R., *International Academy of Comparative Law National Report for Germany* (1994)
- Holterman, T., *International Academy of Comparative Law National Report for the Netherlands* (1994)
- Kälin, W., *International Academy of Comparative Law National Report for Switzerland* (1994)
- Khiddu-Makubuya, E., *International Academy of Comparative Law National Report for Uganda* (1994)
- Kuosma, T., *International Academy of Comparative Law National Report for Finland* (1994)
- Leus, K., and G. Vermeylen, *International Academy of Comparative Law National Report for Belgium* (1994)

- Nkiwane, S., *International Academy of Comparative Law National Report for Zimbabwe* (1994)
- Oikawa, S., *International Academy of Comparative Law National Report for Japan* (1994)
- Papassiopi-Passia, Z., *International Academy of Comparative Law National Report for Greece* (1994)
- Siwakoti, G., *International Academy of Comparative Law National Report for Nepal* (1994)
- Thanh Trai Le, T., *International Academy of Comparative Law National Report for the United States* (1994)
- Tharcisse, N., *International Academy of Comparative Law National Report for Burundi* (1994)
- Vedsted-Hansen, J., *International Academy of Comparative Law National Report for Denmark* (1994)
- Wiederin, E., *International Academy of Comparative Law National Report for Austria* (1994)

### UNHCR documents

- "Asylum Processes," UN Doc. EC/GC/01/12, May 31, 2001
- "Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees," UN Doc. HCR/MMSP/2001/09, Dec. 13, 2001, incorporated in Executive Committee of the High Commissioner's Program, "Agenda for Protection," UN Doc. EC/52/SC/CRP.9/Rev.1, June 26, 2002
- Detention of Asylum Seekers in Europe* (1995)
- "Families in Exile: Reflections from the Experience of UNHCR" (1995)
- "Guidelines on International Protection No. 3: Cessation of Refugee Status under Articles 1(C)(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances Clauses')," UN Doc. HCR/GIP/03/03, Feb. 10, 2003
- Handbook on Procedures and Criteria for Determining Refugee Status* (1979, reedited 1992)
- "Handbook: Voluntary Repatriation: International Protection" (1996)
- "Identity Documents for Refugees," UN Doc. EC/SCP/33, July 20, 1984
- "Information Note on Implementation of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," UN Doc. EC/SCP/66, July 22, 1991
- "Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach," UN Doc. EC/50/SC/CRP.17, June 9, 2000
- "Local Integration," UN Doc. EC/GC/02/6, Apr. 25, 2002

- “Note on Accession to International Instruments and the Detention of Refugees and Asylum Seekers,” UN Doc. EC/SCP/44, Aug. 19, 1986
- “Note on the Cessation Clauses,” UN Doc. EC/47/SC/CRP.30 (1997)
- “Note on Follow-up to the Earlier Conclusion of the Executive Committee on Travel Documents for Refugees,” UN Doc. EC/SCP/48, July 3, 1987
- “Note on Refugee Women and International Protection,” UN Doc. EC/SCP/59, Aug. 28, 1990
- “Note on Travel Documents for Refugees,” UN Doc. EC/SCP/10, Aug. 30, 1978
- “Protection of Refugees in Mass Influx Situations: Overall Protection Framework,” UN Doc. EC/GC/01/4, Feb. 19, 2001
- “Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems,” UN Doc. EC/GC/01/17, Sept. 4, 2001
- “Refugee Children: Guidelines on Protection and Care” (1994)
- “Refugee Resettlement: An International Handbook to Guide Reception and Integration” (2002)
- “Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers,” Feb. 1999

## INDEX

*For references to treaties and other international instruments by article, reference should be made to the Table of Treaties and Other International Instruments. For jurisprudence by case, reference should be made to the Table of Cases.*

**absolute rights:** *see* standard of treatment of aliens, evolution of regime, bilateral/ FCN treaty regime; standard of treatment of refugees (CRSR Art. 7(1)), absolute rights

**access to courts:** *see* courts, access to (CRSR Art. 16); courts, access to (equality before) (ICCPR Art. 14(1))

**acquired rights (CRSR Art. 7(3)),** reciprocity, exemption (Art. 7(2)) 203

**acquired rights dependent on personal status (CRSR Art. 12(2))**

as absolute right 237

compliance with formalities required by the law 227–228

1933 and 1938 Conventions and 227–228

drafting history 221–228

married women 221–222

matrimonial status 221–222

physical presence, relevance 163–164

potential abuse of provision 222–223

public policy and 225–227

separation of refugee from law of country of nationality as objective 227

succession and inheritance 223–225

**acquired rights in first country of arrival, loss** 331–332

**adequate standard of living:** *see* necessities of life, right to

**administrative assistance (CRSR Art. 25):** *see also* consular protection; protection of refugees (UNHCR Statute Art. 8)

as absolute right 237

affirmative action, need for 635–636

consular role of high commissioners for refugees as predecessor 94

documents or certifications: *see also* documentation (identity papers) (CRSR Art. 27); documentation (travel documents) (CRSR Art. 28); personal status (applicable law) (CRSR Art. 12(1))

“credence in absence of proof to contrary” (Art. 25(3)) 643–644

“documents” 642–643

drafting history/rationale 639–644

**administrative assistance (CRSR Art. 25) (cont.)**

- limitations on obligations 640–641

- obligation to deliver (Art. 25(2)) 644

- “by or through” 639 n. 1695

- travel and identity documents (CRSR Arts. 27 and 28) distinguished 640

- drafting history 633–635, 636–637, 637–639

- non-anticipation of UNHCR role 634, 636 n. 1677

- as mandatory obligation 635–636, 641–642

- physical presence, relevance/sufficiency 637–639

- “in whose territory he is residing” 637–639

- refugees outside the territory 638, 639, 642

- responsibility

- delegation to an international agency 634–635, 636–637

- delegation to national agency 636–637

- state parties (Art. 25(1)) 628, 634–635

**admission:** *see* illegal entry or presence, non-penalization (CRSR Art. 31(1)); *non-refoulement* (CRSR Art. 33)

**Afghan refugees**

- differential treatment 243

- documentation 616–617, 625–626

- education 577, 587–588, 591 n. 1481

- employment, right to seek/engage in 732–733

- healthcare 508, 509–510, 513–514

- housing/shelter 506, 813–814, 817

- inhuman, cruel, or degrading treatment 456

- necessities of life, right to 461–462, 465

- non-refoulement*, avoidance of obligation 281–282, 283, 284, 285

- political activity 878–879

- reestablishment incentives 959–960, 960

- religious freedom, restrictions 560

- security of person and liberty (ICCPR Art. 9) 465

- risk to 447

- self-employment 720, 724–725

- “voluntary” repatriation 289, 319

**Afghanistan**

- genocide 36–39

- religious education, restrictions 568–569, 582–583

- religious freedom, restrictions 560–561, 579–580, 580–581

**Africa:** *see* Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969)

**age discrimination:** *see also* non-discrimination

- mandatory retirement 145

- non-refoulement*, avoidance of obligation and 286, 320

**aid and development:** *see* international aid/relief, dependence on

**Albania,** housing/shelter 478

**Algeria,** housing/shelter 479, 506

**aliens:** *see* aliens law, international; differential treatment, justification/requirements; diplomatic protection; non-discrimination; refugee rights regime, evolution; standard of treatment of aliens, evolution of regime

**aliens law, international** 147–153: *see also* human rights law post-1951; *individual instruments*; *standard of treatment of aliens, evolution of regime*

Declaration on the Human Rights of Individuals Who are not Nationals of the Countries in which they Live (1985) 148–149

early ILC approaches to codification 147–148

insufficiency of existing general, regional, and bilateral instruments 147–148, 148–149, 149–152, 153

derogation in case of emergency and 151 n. 300, 153

developing countries' right to limit economic rights 153

failure to respond to vulnerabilities 148

individual's lack of standing 147–148: *see also* diplomatic protection, right of national state as basis; *individual, standing*

limited applicability of Racial Discrimination Convention (1965) 149

non-compliance/enforcement and 148, 148 n. 278

patchwork coverage of ICCPR and ICESCR 5–7, 148–149

Racial Discrimination Convention (1965), applicability 150

state practice 149–150

Sub-Commission on Human Rights (formerly Sub-Commission on Prevention of Discrimination)

Special Rapporteur (rights of aliens), Report (1974) 148–149

Special Rapporteur (rights of non-citizens), Report (2003) 149–152

failure to address challenge of gaps in provision 151–152

imbalance 150–151

positive evaluation of situations 149–150

proportionality, significance 150–151

UNHRC's approach to "reasonable" justification as limitation 150–151

## **Angola**

dispute settlement provisions, reservation 111–112

employment, right to seek/engage in wage-earning (CRSR Art. 17), regional, political, and economic unions and 231–234, 751

repatriation to 937, 937 n. 89

vocational training 592–593

## **Angolan refugees**

association, right of 875–876, 891

documentation 748

employment, right to seek and engage in 734, 748

internal movement, freedom of/choice of residence 374

international aid, dependence on 472

*non-refoulement*, avoidance of obligation 280, 317

repatriation 930 n. 62, 937, 937 n. 89, 938–939

**appeal and review:** *see* judicial review/appeal against determination of status, right of

**arbitrariness:** *see* differential treatment, justification/requirements, reasonable and objective requirement; expulsion of person lawfully in the territory (CRSR Art. 32), grounds (Art. 32(1)), "objectively reasonable suspicion"; national security, objectively reasonable suspicion

**arbitrary detention:** *see* detention, freedom from arbitrary (ICCPR Art. 9)

## **Argentina**

documentation, certificate of "precarious presence" 480, 496, 616, 625

**Argentina** (cont.)

employment, right to seek/engage in wage-earning (CRSR Art. 17),  
determination of status, dependence on 480, 496

**armed attack:** *see* security of person and liberty (ICCPR Art. 9), risk to

**assets, transfer:** *see* transfer of assets in case of resettlement (CRSR Art. 30)

**association, right of:** *see also* peaceful assembly, right of (ICCPR Art. 21)

cultural values and 875

directed against government of origin 877–879

necessities of life and 875–876

political organization, importance 875, 877

Refugee Problems in Africa, Convention governing Specific Aspects of (OAU)

(1969): *see* Refugee Problems in Africa, Convention governing Specific Aspects  
of (OAU) (1969), association, right of (Art. III)

state practice 876–879

**association, right of (CRSR Art. 15)**

benefits of collective bargaining (CRSR Art. 24(1)(a)) compared 767–768

drafting history 881–891

lawful stay 882, 887–888, 891

most-favored-national treatment 230–234, 248, 882–889, 889–891

HR Conventions compared 249–250, 882, 882–889

ILO Migration for Employment Convention (1949) compared 890–891

“in the same circumstances” 205, 249–250

reservations 231–234

treatment accorded to aliens in general, rejection 889–891

narrowness of provisions 881–882, 891

non-profit-making associations, exclusion 882

political association, exclusion 882–889, 891

domestic politics 884–885

interstate concerns and 883–884, 904–905

political activity outside political associations 891

pre-1951 Conventions compared 891

trade unions 885–887, 891

deliberate ambiguity 885–887

ILO Migration for Employment Convention (1949) 889

Universal Declaration provisions and 881–882, 887 n. 777, 888–889, 891

**association, right of (ICCPR Art. 22) 895–900, 897**

derogation 897

“everyone shall enjoy” 895

“association” 895

freedom of choice (ICCPR Art. 22(1)) 895–896

as negative obligation not to enforce association 895

restrictions (ICCPR Art. 20), propaganda for war or advocacy of hatred 898

restrictions (ICCPR Art. 22(2)) 897–905

national security 899, 904–905

“necessary in a democratic society” 902–903

margin of appreciation 902–903

prescribed by law (ICCPR Art. 22(2)) 897–898

public health 901

public morals 901–902

- public order/*ordre public* 900–901, 904–905
- public safety 901
- rights and freedoms of others, respect for (ICCPR Art. 22(2)) 899
- restrictions (UN Charter/UNGA Res. 3314(XXIX)) (international peace and security) 903–904, 904–905
- standard of treatment 249–250
- strike, right to 896–897
- trade unions 896–897
  - 1951 Convention compared 896
  - closed shop agreements 896
  - restrictions 896
- Universal Declaration Art. 20(2) compared 895 n. 828
- association, right of (ICESCR Art. 8)**
  - scope 882 n. 756
  - standard of treatment 249–250
  - strike, right to: *see* strike, right to (ICESCR Art. 8(1)(d))
- association, right of (UDHR Art. 20)** 881–882, 886 n. 775, 888–889
- asylum:** *see non-refoulement* (CRSR Art. 33); Territorial Asylum, UNGA Declaration on (1967); United Nations Conference on Territorial Asylum
- asylum-seekers:** *see* Conclusions on the International Protection of Refugees, 20 (protection of asylum-seekers at sea) (1980); Conclusions on the International Protection of Refugees, 44 (detention of refugees and asylum-seekers) (1986); diplomatic asylum; lawful presence; refugee status, determination/verification, declaratory nature; Territorial Asylum, UNGA Declaration on (1967); United Nations Conference on Territorial Asylum
- attachment to host state as basis of entitlement:** *see* habitual residence; jurisdictional attachment; lawful presence; “lawfully staying”/“résidant régulièrement”; physical presence
- Australia**
  - carrier sanctions 384, 404
  - child, right to protection 553 n. 1312
  - deportation of parents and 949–950
  - Constitution, 298 n. 107
  - courts, access to (equality before), “suit at law” 648 n. 1743
  - detention, freedom from arbitrary (ICCPR Art. 9), conditions of detention 435
  - differential treatment 128 n. 219
    - authorized/unauthorized entry 145, 242–243, 252, 257–258
    - racial basis, whether 257 n. 523
    - language requirements, impact 128 n. 219, 254
    - public relief and assistance 804–805
    - retirement age 145
  - education, provision, standard of treatment 611
  - employment, right to seek/engage in, reservation (CRSR Art. 17) 746–747
  - employment, right to seek/engage in wage-earning (CRSR Art. 17) 736
    - resettlement program obligations (CRSR Art. 17(3)) 103 n. 93, 753 n. 115
  - “excised territories”/migration zones 298–299, 321–322, 558–559, 630, 650
  - expulsion, examples 660–661
    - admissibility to state with no risk of *non-refoulement*, avoidance of obligation and 677–678



**Australia** (cont.)

- “Pacific Solution” 331, 661, 664, 964
- family unity/reunification 253, 535, 537, 549–550
- first country of arrival/safe third country rules, safe third country rule, return to country not party to 1951 Convention 327
- fiscal charges, residence, relevance 532
- fundamental change of circumstances 925 n. 40, 926 n. 42
- Handbook* and Guidelines, legal effect 115, 117
- hearing, right to fair 632
- high seas, refugee rights on 290–291
  - children 383–384
- inhuman, cruel, or degrading treatment (ICCPR Art. 7) 455
- internal movement, freedom of/choice of residence of person lawfully present, restrictions 375–376, 696, 708, 708–709
  - children 383–384, 434
- judicial review/appeal against determination of status, right of 630
  - unreasonable deadline 632, 651
- language instruction (local language) 593–594
- lawful presence, provisional admission 175
- legislation
  - Migration Act 1958 298–299, 375–376
  - Migration Reform Act 1992, 632 n. 1662
- naturalization, non-discrimination and 252
- non-refoulement*, avoidance of obligation 283, 286, 320
- non-refoulement* (CRSR Art. 33), grounds for withdrawal of right (Art. 33(2)), conviction by a final judgment of a particularly serious crime, “particularly serious” 349–350
- non-refoulement* (CRSR Art. 33), “life or freedom would be threatened” 306–307
- “Pacific Solution” 331, 661, 664, 964
- persecuted, well-founded fear of being (CRSR Art. 1(2)), “persecution” 305 n. 139
- physical presence
  - “in” or “within” 171 n. 83
  - territory for purposes of, “excised” areas 172
- proportionality between ends and means 950
- public relief and assistance 702, 804, 804–805, 807–808
- reception centers, conditions 382–383, 436
- reestablishment incentives 960
- refugee status, determination/verification
  - obligation to verify, whether 180 n. 129
  - provisional grant of minimal refugee rights pending 160 n. 23
- resettlement in third country, “Pacific Solution” 964
- safe third country rule 295–296, 327, 328–329, 330
  - “Pacific Solution” 331, 664
- security of person and liberty (ICCPR Art. 9), risk to 442
- temporary protection status 558–559, 736, 804–805
- treaty interpretation 65 n. 189
- “voluntary” repatriation 319

**Austria**

- differential treatment 133, 142
- documentation (travel) 842
- employment, right to seek/engage in, reservation (CRSR Art. 17) 231–234, 742 n. 62, 746–747
- housing/shelter
  - national treatment 827
  - public housing, access to 819
- illegal entry or presence, non-penalization, failure to distinguish between asylum-seekers and other aliens 423
- internal movement, freedom of/choice of residence
  - conditional permission to live outside reception center 431–432
  - restrictions 375
    - generic detention regimes 435
- life, right to 451
- naturalization 988 n. 333
- non-refoulement*, avoidance of obligation 287, 319
- reception centers 379, 431–432
- reciprocity, legislative 202 n. 222
- religious freedom, restrictions 560
- security of person and liberty (ICCPR Art. 9), risk to 440–441

**Azerbaijan**

- reciprocity, legislative 204 n. 233
- religious freedom, restrictions 565–566, 581

**Bahamas, housing/shelter 479, 506****Bangladesh**

- genocide 36–39
- repatriation to 922 n. 24
- as safe country 296
- security of person and liberty (ICCPR Art. 9), risk to 447–448
- “voluntary” repatriation 289, 447–448, 937

**Bangladeshi refugees 239–241, 251–252****Banyarwandan refugees 241 n. 455****Belgium**

- carrier sanctions 384–385, 404
- cautio judicatum solvi* 907–908, 909, 910–911
- documentation (travel) 842, 858–859
- employment, right to seek/engage in 736
  - regional, political, and economic unions and 231–234, 751, 752
  - reservations (CRSR Art. 17) 231–234, 752
- housing/shelter 822
- illegal entry or presence, non-penalization, failure to distinguish between asylum-seekers and other aliens 423
- internal movement, freedom of/choice of residence (CRSR Art. 31(2)) 374
  - applicability of general aliens law 712
  - children 383–384, 434

**Belgium** (cont.)

- generic detention regimes 435
- language of instruction 590, 606–607
- liberal professions, right to practice 787, 791, 792–793
- naturalization 988 n. 333
- necessities of life, renunciation of other rights requirement 488
- reception centers 480–481, 488, 822
- self-employment 721–722
- temporary protection status 736, 822

**belief, freedom of:** *see* religious freedom (freedom to practice/manifest one's religion or beliefs) (ICCPR Art. 18)

**Belize**, naturalization 989 n. 337

**Benin**, healthcare, compliance with obligations 822

**Bhutan**

- healthcare, housing/shelter and 822
- housing/shelter, healthcare and 822
- non-discrimination, right to adequate standard of living 486
- readmission of refugees 927–928
- religious education, restrictions 568–569, 582–583
- religious freedom, restrictions 565–566, 581

**Bhutanese refugees** 242, 591–592, 896

- association, right of 875–876

**Bosnia-Herzegovina**

- fundamental change of circumstances 927 n. 51
- genocide 36–39
- housing/shelter 815–816, 828
- repatriation from 930 n. 62

**Bosnian refugees**

- education 577
- employment, right to seek/engage in 736–737
- family unity/reunification 550–551
- housing/shelter 817–818
- public relief and assistance 807–808
- religious freedom, restrictions 560
- temporary protection status 807–808, 817–818

**Botswana**

- dispute settlement provisions, reservation 111–112
- employment, right to seek/engage in, reservation (CRSR Art. 17) 231–234, 741–742, 746–747
- expulsion, examples 662, 679 n. 112
- food shortages/food 476–477, 501
- national security 679 n. 112
- naturalization, reservation 989 n. 335
- property rights 515, 523–524
- repatriation from 936
- self-employment 721, 722, 724–725, 727, 728, 729

**Brazil**

- employment, right to seek/engage in 746–747
- regional, political, and economic unions and 231–234, 751

**Bulgaria**

- cessation clause 939 n. 96
- Constitution, Art. 22 (land ownership) 516–517
- illegal entry or presence, non-penalization 406
  - failure to distinguish between asylum-seekers and other aliens, inconsistent legislation 371–372
- property rights 516–517, 522
- religious freedom, restrictions 567–568, 573–574

**burden-sharing:** *see* [Conclusions on the International Protection of Refugees](#), 100 (international cooperation and burden-sharing in mass influx situations) (2004); refugee rights regime, evolution, as cooperative/burden-sharing concept

**Burma**

- inhuman, cruel, or degrading treatment (ICCPR Art. 7) 454
- religious freedom, restrictions 560–561, 566–567
- repatriation from 937
- repatriation to 937
- security of person and liberty (ICCPR Art. 9), risk to in course of flight 439–440

**Burmese refugees**

- documentation 614–615, 625–626
- freedom of movement/choice of residence 374, 697–699
- necessities of life 463
- non-refoulement*, avoidance of obligation 284, 285, 317
- political activity 879, 884, 903
- security of person and liberty (ICCPR Art. 9), risk to 447–448
- “voluntary” repatriation 289, 447–448

**Burundi**

- education, provision 588
- employment, right to seek/engage in, reservation (CRSR Art. 17) 741–742, 746–747
- employment, right to seek/engage in wage-earning, regional, political, and economic unions and 751
- fundamental change of circumstances 927 n. 48
- genocide 36–39
- repatriation to 932 n. 66

**Burundian refugees**

- cessation of refugee status 925 n. 39
- education 606
- employment, right to seek/engage in 731
- food shortages/food 476
- inhuman, cruel, or degrading treatment 456
- international aid, dependence on 473–474
- non-refoulement*, withdrawal of right 362
- political activity 879, 884, 903
- repatriation 930 n. 62
- security of person and liberty (ICCPR Art. 9), risk to 443, 444–445
- self-employment 720
- “voluntary” repatriation 288, 476, 960–961

**Byelorussia,** religious freedom, restrictions 573–574

**Cambodia**

education, provision 585–587, 602–603  
 employment, right to seek/engage in 731, 741–742  
 genocide 36–39  
*non-refoulement*, avoidance of obligation 283, 317

**Cambodian refugees**

education 587–588, 588–589, 606  
 freedom of movement/choice of residence 697–699  
 reception centers 381  
 security of person and liberty (ICCPR Art. 9), risk to in refugee camps 441–442

**Cameroon**, expression, freedom of, restrictions 900**Canada**

carrier sanctions 384, 404  
 child, protection in case of deportation of alien parents 949  
 clothing, right to 504 n. 1049  
 Conclusions on International Protection of Refugees, legal effect 112–114  
 courts, access to 158 n. 16, 651–652  
   “suit at law” 648 n. 1740  
 detention, freedom from 425, 435  
 differential treatment 133–134, 135  
 documentation  
   immigrant’s record of landing 625  
   non-discrimination and 616–617  
 education, provision  
   funding 594 n. 1508, 613  
   standard of treatment 611  
 employment, right to seek/engage in, self-sufficiency and 495–496  
 expulsion  
   on public order grounds 660, 680–681  
   right of appeal 672–673  
 family, right to protection 537  
 first country of arrival/safe third country rules 293–294, 325–326  
 fugitives from justice, exclusion (CRSR Art. 1(F)(b)) 342 n. 291, 342–343  
 fundamental change of circumstances 926 n. 45  
*Handbook* and Guidelines, legal effect 117  
 housing/shelter  
   discrimination 818, 825  
   public housing, access to 819, 828–829  
   “regulated by laws or regulations” 825  
 Immigration Act 1985 594 n. 1508  
 Immigration and Refugee Protection Act 2001 378 n. 444, 384  
 internal movement, freedom of/choice of residence 378  
*jus cogens* 29 n. 48, 30 n. 49  
 language of instruction 590  
 liberal professions, right to practice 787 n. 277, 792  
 national security 265–266  
 naturalization 981 n. 298, 985 n. 316, 986–987  
*non-refoulement* (CRSR Art. 33), grounds for withdrawal of right (Art. 33(2))  
   danger to security of country in which he is 346, 347–348

- effect on refugee status 344–345
- visa controls 291–292
- “persecuted” 305 n. 139
- proportionality 139 n. 252
- public relief and assistance 804
- refugee status, “circumstances have ceased to exist” (Art. 1(C)(5)–(6))
  - 920 n. 20
- resettlement in third country 964
- torture as *jus cogens* 29 n. 48, 30 n. 49
- trade unions, objection to formation 886 n. 775
- treaty interpretation 64
- Canary Islands:** *see also* Spain
  - housing/shelter 436, 479
- capacity, personal status (applicable law)** (CRSR Art. 12(1)) 218–219
- Cape Verde**
  - regional, political, and economic unions 751
  - religious freedom, restrictions 573–574
- carrier sanctions** 291–292, 299–300, 310–311, 384–385, 404, 405: *see also* visa controls
- Cartagena Declaration (1984):** *see* OAS Cartagena Declaration (1984)
- cautio judicatum solvi***(CRSR Art. 16(2)) 906–908, 907–908, 909, 910–911: *see also* legal aid (CRSR Art. 16(2))
  - 1933 and 1938 Conventions 910 n. 899
    - national treatment 906
  - ALI/UNIDROIT Principles and Rules of Transnational Civil Procedure 911 n. 909
  - drafting history 908–912
  - “free access” (CRSR Art. 16(1)) distinguished 908 n. 894
  - habitual residence 190, 908–910
  - margin of appreciation 911 n. 907
  - national treatment 190, 248, 906
    - 1933 and 1938 Conventions 906
  - national treatment [in country of residence or in territory of another state party] (Art. 16(3)) 910
  - non-discrimination and 911 n. 907
  - right to demand 911 n. 907
- cessation of refugee status (CRSR Art. 1(C))**
  - “circumstances have ceased to exist” (Art. 1(C)(5)–(6)): *see* fundamental change of circumstances (“circumstances have ceased to exist” (Art. 1(C)(5)–(6))
  - en bloc*, exclusion (Statute Art. 6(A)(ii)) 939 n. 97
  - loss of legal or certain status, avoidance 920 n. 20
  - naturalization (Art. 1(C)(3)): *see* naturalization (CRSR Art. 34), as termination of refugee status (CRSR Art. 1(C)(3))
  - premature termination, effect 925 n. 39
  - resettlement in third country: *see* resettlement in third country, termination of refugee status consequent on
  - voluntary reestablishment in country of origin: *see* reestablishment in country of origin (CRSR Art. 1(C)(4))

**cessation of refugee status (CRSR Art. 1(C)) (cont.)**

- voluntary repatriation: *see* [fundamental change of circumstances](#)  
 (“circumstances have ceased to exist” (Art. 1(C)(5)–(6))), voluntary  
 repatriation as replacement for CRSR Art. 1(C)(5)–(6) requirements

**Chad**, religious freedom, restrictions 560, 576–577

**Chadian refugees**

- expulsion 662–663, 675
- family unity/reunification 538
- nationality (differential treatment) 241

**Chakma refugees**

- eviction, forced 821, 828–829
- housing/shelter 816
- naturalization 985 n. 317
- non-refoulement*, avoidance of obligation 317–318
- security of person and liberty (ICCPR Art. 9), risk to 444, 816
- termination of refugee status 922 n. 24

**Charter of the United Nations (1945)**: *see* [United Nations Charter \(1945\)](#)

**Child, Convention on the Rights of the (1989)**

- family unity/reunification 545
- reservations 546 n. 1285
- source of universal obligation, whether 33 n. 60

**child refugees**: *see also* [Child, Convention on the Rights of the \(1989\)](#)

- as family members (ICCPR Art. 24) 553–554
- right to protection (ICCPR Art. 24(1)) 250–251, 320: *see also* [education, right to](#); [family unity/reunification](#); [religious freedom \(freedom to practice/manifest one’s religion or beliefs\)](#) (ICCPR Art. 18); [religious and moral education, parents’ right to ensure conformity with convictions](#) (ICESCR Art. 13(3))
- affirmative nature of obligation 547
- detention 383–384, 433–434
- nationality, right to (Art. 24(3)) 553 n. 1312, 949
- non-discrimination 948
- separation and/or adoption 539, 550–551
- special problems relating to 534

**Chile**

- cessation clause 939 n. 96
- naturalization, reservation 989 n. 335

**China**

- differential treatment, political relationships as justification 242, 255
- dispute settlement provisions, reservation 111–112
- inhuman, cruel, or degrading treatment (ICCPR Art. 7) 454, 455–456
- Land Use Law 566 n. 1359
- non-refoulement*, avoidance of obligation 285, 319–320
- religious freedom, restrictions 560–561, 566–567, 572–573, 579–580
- security of person and liberty (ICCPR Art. 9), risk to 440–441

**Chinese refugees** 283, 285

**citizenship**: *see* [differential treatment, justification/requirements, reasonable and objective requirement, presumption of on basis of categories, nationality/citizenship](#); [non-discrimination](#)

**civil and political rights:** *see* [Civil and Political Rights, International Covenant on \(1966\) \(ICCPR\)](#); *and individual rights*

**Civil and Political Rights, International Covenant on (1966) (ICCPR):** *see also under individual headings and Table of Treaties and Other International Instruments; Human Rights Committee (HRC), General Comments*

authentic languages 51 n. 134

derogation, right of in time of emergency (Art. 4(1))

non-derogable rights (Art. 4(2)) 121 n. 193, 453–454, 574–575

non-discrimination and 121 n. 194

implementing legislation, need for 39–41

as limitation on rights of aliens 151 n. 300

as a minimum standard 109

obligation of result/immediate compliance (Art. 2(2)) 123

refugees, relevance to 119–123

omission or inappropriate formulation of refugee-related rights 121–122

**clothing (ICESCR Art. 11)**

“adequate” 503–504

cultural expression (ICCPR Art. 27) and 503–504

persons with disabilities 503–504

UDHR Art. 25(1) and 503

**Colombia, security of person and liberty 458**

**Colombian refugees 283, 317**

**Committee on Economic, Social and Cultural Rights (CESCR), General Comments**

3 (nature of states parties’ obligations) 486–487, 487 n. 980, 489–490, 492 n. 996, 500, 504–505

4 (adequate housing) 485 n. 975, 490–491, 498, 506–507, 827–829

5 (persons with disabilities) 503–504

6 (older persons) 554, 599 n. 1526

7 (eviction, forced) 505–506, 829 n. 518

9 (domestic application) 487–488, 512 n. 1094

11 (plans of action for primary education) 600 n. 1531, 602 n. 1536, 603–605, 604 n. 1542

12 (adequate food) 485 n. 975, 486, 489 n. 988, 490–491, 492–493, 495 n. 1012, 498 n. 1017, 500–502

13 (education) 504 n. 1048, 576 n. 1408, 597 n. 1515, 599–602, 603–605, 606, 611–612, 613

14 (highest attainable standard of health) 486, 489 n. 988, 492 n. 997, 492–493, 494 n. 1006, 497–498, 511–512

15 (water) 486, 490 n. 989, 492–493, 498 n. 1017, 502–503

**Committee on the Elimination of Discrimination Against Women (CEDAW), Recommendations, 21 (equality in marriage) 556**

**Committee on the Elimination of Racial Discrimination (CERD)**

Concluding Observations on Reports of

Germany 458 n. 827

Italy 822

Sudan 241

General Recommendations

XI: Non-citizens (1993) 149 n. 285



**Committee on the Elimination of Racial Discrimination (CERD)** (cont.)

XXII: Refugees and displaced persons (1996) 521 n. 1147, 927 n. 51, 951 n. 145, 956 n. 167

**compliance mechanisms** 13: *see also* dispute settlement provisions; good faith; judicial role; Minorities Treaties (post-WWI), compliance mechanisms

absence in case of international aliens law 148

choice of means 465, 512 n. 1094

collectivization of responsibility 90–91

failure to provide self-standing mechanism, reasons, timing of Convention 995  
ICJ 994

ILO Conventions 152–153

individual right of petition 997–998

*jus cogens* and 28–29

national courts 156, 628–632, 991–992

indirect international supervision 997

justiciability of treaties and 655–656, 991–992

right of individual to enforce 655–656

national law as justification for non-compliance 298 n. 105

political impediments 999–1001

reciprocity and 204 n. 233

UN human rights bodies 156

UN supervisory bodies other than UNHCR 997

UNHCR, role: *see* UNHCR, role (CRSR Art. 35)

**Conclusions on the International Protection of Refugees:** *see also* Guidelines on International Protection; Handbook on Procedures and Criteria for Determining Refugee Status, legal effect

2 (functioning of Sub-Committee and General Conclusion) (1976) 974 n. 263

6 (*non-refoulement*) (1977) 315, 319 n. 193

7 (expulsion) (1977) 691

12 (extraterritorial effect of the determination of refugee status) (1978) 162

15 (refugees without asylum country) (1979) 322, 324, 386 n. 484, 392–393, 398 n. 538, 873–874

18 (voluntary repatriation) (1980) 917

20 (protection of asylum-seekers at sea) (1980) 459 n. 829

22 (large-scale influx) (1981) 358–359, 362–363, 543, 905 n. 878, 974 n. 261

24 (family reunification) (1981) 544

27 (military or armed attacks on refugee camps in Southern Africa and elsewhere) (1983) 452

29 (General Conclusion) (1983) 977 n. 273

30 (manifestly unfounded claims or abusive applications) (1983) 159–160, 408 n. 575

35 (identity documents for refugees) (1984) 624

37 (Central American Refugees and the Cartagena Declaration) (1985) 611 n. 1565

40 (voluntary repatriation) (1985) 932, 944

41 (international protection) (1986) 917

44 (detention of refugees and asylum-seekers) (1986) 374, 424, 431 n. 688, 436–437, 707 n. 248

46 (General Conclusion) (1987) 917

- 47 (refugee children) (1987) 543, 975 n. 266
- 48 (military or armed attacks on refugee camps) (1987) 452, 901
- 50 (General Conclusion) (1988) 120, 763 n. 172, 763 n. 173, 977 n. 273
- 54 (refugee women) (1988) 975 n. 266
- 55 (General Conclusion) (1989) 917, 975 n. 266
- 58 (refugees and asylum-seekers who move in an irregular manner from country of protection) (1989) 322, 324 n. 211, 977 n. 273
- 62 (Note on International Protection) (1990) 917
- 64 (refugee women) (1990) 604 n. 1542
- 65 (General Conclusion) (1991) 944
- 68 (General Conclusion) (1992) 917, 975 n. 266
- 71 (General Conclusion) (1993) 324 n. 211, 975 n. 266
- 72 (personal security of refugees) (1993) 458 n. 827
- 74 (General Conclusion) (1994) 324 n. 211, 917
- 79 (General Conclusion) (1996) 319 n. 193, 917, 977 n. 273
- 81 (General Conclusion) (1997) 113, 119–120, 319 n. 193, 917, 939 n. 98, 975 n. 266
- 84 (refugee children and adolescents) (1997) 543
- 85 (General Conclusion) (1988) 359 n. 359, 436–437, 543, 543–544, 545, 551 n. 1302, 917, 975
- 87 (General Conclusion) (1999) 917, 977 n. 273
- 88 (refugee's family) (1999) 543, 544, 545, 547 n. 1287
- 89 (General Conclusion) (2000) 913, 917
- 91 (registration of refugees and asylum-seekers) (2001) 623 n. 1624
- 96 (return of persons found not to be in need of international protection) (2003) 929 n. 60
- 97 (protection safeguards in interception measures) (2003) 172, 342 n. 288
- 100 (international cooperation and burden-sharing in mass influx situations) (2004) 359, 362–363
- 101 (legal safety issues in context of voluntary repatriation) (2004) 917, 932, 944, 945
- enumeration 112–113
- legal effect 113–114
  - Agenda for Protection (2002) 114 n. 152
  - consensus status 113
  - obligation to explain non-conformity (CRSR Art. 35) 114
  - as subsequent agreement between the parties regarding the interpretation or application of the treaty 54
  - UNHCR recommendations not adopted as Conclusions: *see Handbook on Procedures and Criteria for Determining Refugee Status*, legal effect
- confiscation:** *see* property rights (CRSR Art. 13)
- Congo, Democratic Republic (Zaire)** 111–112
  - detention conditions 435–436
  - dispute settlement provisions, reservation 111–112
  - education, provision 588
  - expulsion, examples 662, 667–668
  - fundamental change of circumstances 923 n. 32, 925 n. 39
  - geographical limitation 97–98
  - inhuman, cruel, or degrading treatment 457

**Congo, Democratic Republic (Zaire) (cont.)**

life, right to 451, 451–452

*non-refoulement*, avoidance of obligation 281

*non-refoulement*, grounds for withdrawal of right, mass influx 362

public relief and assistance 802

repatriation from 930 n. 62

security of person and liberty (ICCPR Art. 9), risk to 440–441, 443

“voluntary” repatriation and 447–448

“voluntary” repatriation 447–448

**Congo, Democratic Republic (Zaire), refugees from**

food shortages/food 476, 476–477, 501

*non-refoulement*, avoidance of obligation 283–284, 317

“voluntary” repatriation 288, 476

**conscientious objection:** *see also* conscription, forced; religious freedom (freedom to practice/manifest one’s religion or beliefs) (ICCPR Art. 18)

non-discrimination and 141, 144, 144–145

*opinio juris* and 33 n. 59

**conscription, forced** 538, 548–549: *see also* military service

**consular protection:** *see also* administrative assistance (CRSR Art. 25); protection of refugees (UNHCR Statute Art. 8)

League of Nations High Commissioner for Refugees and 85, 627

**contiguous zone, refugee rights in** 170–171

**contingent rights:** *see* standard of treatment of aliens, evolution of regime,

bilateral/FCN treaty regime

**Convention Plus regime** 299

**Convention Travel Document (CTD):** *see* documentation (travel documents) (CRSR Art. 28)

**Conventions:** *see* Child, Convention on the Rights of the (1989); Racial Discrimination, Convention on the Elimination of All Forms of (1965); Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969); Refugees, Convention relating to the Status of (1951); Refugees, Protocol relating to the Status of (1967); Women, Convention on the Elimination of All Forms of Discrimination (1979); *and* *Table of Treaties and Other International Instruments*

**core obligations (ICESCR)**

adequate food 489, 490–491, 497, 500–502, 807

adequate housing 489, 490–491, 492–493, 498, 504–506, 807, 828

CESCR General Comment No. 3 489–490

CESCR General Comment No. 4 490–491, 827–829

developing countries, right to limit economic rights (ICESCR Art. 2(3))

151–152, 499–500, 599–602, 740, 769, 772

disaster and humanitarian assistance 492–493, 501

education 489, 599–602, 603, 807

effective remedy, need for 828

employment (Art. 6) 740

international aid, obligation to seek 470–471, 490–491, 499–500

obligation of result and 489, 602–603

obligation to give aid 491–494

primary healthcare 489, 490–491, 492–493, 499–500, 513, 807

proactive/protective nature of obligation 495 n. 1012, 497–499, 499–500

water 490 n. 989, 492–493, 502–503

### Costa Rica

employment, right to seek/engage in 733  
 housing/shelter 814 n. 424  
 public relief and assistance 803, 807–806  
 self-employment 722, 727

### Côte d'Ivoire

documentation (identity) 614 n. 1578, 617–618, 625  
 employment, right to seek/engage in 732–733, 741–742  
 expression, freedom of, restrictions 900–901  
 life, right to 452  
 political activity of Liberian refugees 878–879  
 security of person and liberty (ICCPR Art. 9), risk to, in refugee camps 445–446

**Council of Europe**, employment, right to seek/engage 737

**country of first arrival**: see *first country of arrival/safe third country rules*

**courts, access to (CRSR Art. 16)** 644–647, 905–912

1933 and 1938 Conventions as basis 88, 644  
 as absolute right (Art. 16(1)) 237, 905 n. 879  
 “access to the courts”/“right to appear” 646–647  
 drafting history 644–647, 908–912  
 “free access”/“libre et facile accès devant les tribunaux” 646, 908 n. 894  
   as right not to pay higher charges than nationals 908 n. 894  
   right to fair hearing (ICCPR Art. 14(1)) and 909 n. 897  
 jurisdictional attachment and 158 n. 16, 158 n. 18  
 legal aid/*cautio judicatum solvi* exemption (CRSR Art. 16(2)): see *cautio judicatum solvi* (CRSR Art. 16(2)); legal aid (CRSR Art. 16(2))  
 national treatment 190, 234, 235, 248  
 non-discrimination and 253 n. 509, 254  
 “on the territory of all contracting States” 645, 905 n. 879  
 physical presence, relevance 162  
 reservation, exclusion 96  
 security for costs 190, 248  
 subject-matter jurisdiction, in absence of 647

**courts, access to (equality before) (ICCPR Art. 14(1))** 250–251, 647–656: see also *hearing, right to fair and public* (ICCPR Art.14); *judicial review/appeal against determination of status, right of*

in absence of risk of *refoulement* 649–650  
 access as element of right to equality and a fair trial 650  
 “all persons”, “excised territories”/migration zones and 650  
 arbitrary detention (ICCPR Art. 9(4)) and 425, 905–906  
*cautio judicatum solvi* requirement 911 n. 907  
 “courts” 905–906  
 equality 250–251, 650  
 equality between the parties 905–906  
   legal aid and 912 n. 912  
 impartial tribunal established by law 653–654, 905–906  
 legal aid and 911–912, 912 n. 912: see also *legal aid* (CRSR Art. 16(2))  
 margin of appreciation 651–652, 911–912  
 “suit at law” 647–648

**courts, access to (equality before)** (ICCPR Art. 14(1)) (cont.)

territorial limitation/courts of all contracting states 162, 905–906

**criminals, exclusion:** *see* fugitives from justice, exclusion (CRSR Art. 1(F)(b)); *non-refoulement* (CRSR Art. 33)

**Croatia**, housing/shelter 815–816, 828

**cruel treatment:** *see* inhuman, cruel, or degrading treatment (ICCPR Art. 7); torture, freedom from (ICCPR Art. 7)

**Cuba**, political activity directed against 877–878

**Cuban refugees** 239–241, 877–878

**cultural life, right to participation in** (ICESCR Art. 15) 250–251: *see also* Economic, Social and Cultural Rights, International Covenant on (1966) (ICESCR)

**customary international law, requirements:** *see also* international law sources; state practice

acceptance of obligation in treaties, relevance 365

compliance in case of

arbitrary detention 36–39

extrajudicial execution or disappearances 36–39

fair trial, right to 36–39

genocide 36–39

racial discrimination 36–39

slavery 36–39

torture, cruel, inhuman, or degrading treatment 36–39

consistency with good faith interpretation of relevant treaty 365–367

consistent and uniform practice 17–18, 33, 363, 364–365

*droit de regard* and 35

good faith compliance with obligations as source 35–36

persistent objector rule 18 n. 8, 364

general acceptance by appreciable section of community 363, 365, 942–944

general principles of law distinguished 26

human rights norms based in 33, 34–39

instantaneous formation 25 n. 33

international agencies, role 364–365

*jus cogens:* *see jus cogens*

limited value 47–48

natural law and 17 n. 6

*opinio juris* 17–18, 21 n. 18, 33, 33 n. 59, 69–70, 73–74, 364, 365, 545

definition 24 n. 27

policy-oriented international law and 21 n. 18, 21 n. 17

resolutions and recommendations, relevance 25, 30–31, 33

statements, sufficiency 25–26

treaties as source or reflection of 17 n. 5

Genocide Convention (1948) 37 n. 73

Hague Convention on the Law of War (1907) and Regulations 34 n. 64

UN Charter (1945) 17 n. 5

Vienna Convention on the Law of Treaties (1969) 48 n. 117

UN competence 44

**Czech Republic**

differential treatment 137

racial discrimination 36 n. 71

Czechoslovakia, cessation clause 939 n. 96

**de facto reciprocity:** *see* reciprocity, *de facto* reciprocity

**degrading treatment:** *see* inhuman, cruel, or degrading treatment (ICCPR Art. 7)

## Denmark

documentation (travel) 842

employment, right to seek/engage in

determination of status, dependence on 480, 736

regional, political, and economic unions and 231–234, 751

reservation (CRSR Art. 17) 746–747

legislation

Aliens Act 988

Yugoslav Act 1994 736 n. 38

naturalization 986 n. 320, 988

public housing, access to 818–819, 824

public relief and assistance 803–804, 804 n. 363, 805, 807–806

reception centers 378, 431

self-employment 722, 725

social security 776–777, 777 n. 232

temporary protection status 736, 805

**deportation:** *see* expulsion *entries*; repatriation

**deprivation, freedom from:** *see* necessities of life, right to

**derogation, right of (ICESCR Art. 2(3))** 155–156, 897

inalienability of rights and 714 n. 278

**detention, freedom from arbitrary (ICCPR Art. 9):** *see also* internal movement, freedom of/choice of residence (CRSR Art. 26); internal movement, freedom of/choice of residence (CRSR Art. 31(2)); internal movement, freedom of/choice of residence (ICCPR Art. 12(1)); internal movement, freedom of/choice of residence (ICCPR Art. 12(3)); life, right to (ICCPR Art. 6); provisional measures (CRSR Art. 9), internment

conditions of detention: *see also* Human Rights Committee (HRC), General Comments, 21 (humane treatment of persons deprived of liberty); reception centers, conditions

humanity and respect for inherent dignity (ICCPR Art. 10(1)) 435–439

lawfulness of detention distinguished 414 n. 611

positive duty of care 436

CRSR Art. 31 criteria, relevance 418 n. 633

customary international law, whether 36–39

detainees' rights 437–439

“detention” 413 n. 605

judicial proceedings to determine lawfulness of detention, right to (ICCPR Art. 9(4)) 425, 435

justification, need for 424–425

national security 426–428

reasonableness 425 n. 663

non-discrimination (ICCPR Art. 26) and 257 n. 523, 432

protection of detainees 436–439

segregation from common criminals 436–437

**developing countries:** *see also individual countries*

compliance with 1951 Convention 3–4

as main recipients of refugees 3–4

right to limit economic rights (ICESCR Art. 2(3)): *see economic rights, developing countries' right to limit* (ICESCR Art. 2(3))

**differential treatment, justification/requirements** 123–147, 238–243: *see also national security; non-discrimination* (CRSR Art. 3), race, religion, or country of origin, limitation to

affirmative action and 109 n. 123, 124–125, 127 n. 218, 134 n. 236, 138 n. 249, 141, 238

allocation of public goods 83, 85, 123, 124–125, 251, 494–495, 521–522

arbitrary requirement, exclusion: *see reasonable and objective requirement below*

authorized/unauthorized entry 242–243, 252, 257–258

racial basis, whether 257 n. 523

differing impact, relevance 124, 130, 133, 150–151, 238

child support in respect of natural children 135–136

family obligations 135–136

family unity and 135

fiscal charges 528

immigration controls 135–136

income support 133

“individual personal circumstances” 128 n. 219

intention, relevance 137, 138–139, 238

language requirements 128 n. 219, 133–134, 254, 509

non-payment of survivor benefit to non-residents 776–778

pension schemes 136–137

religious freedom 569, 572–574

restrictions of freedom of movement 713

unemployment benefits 134–135

financial situation 537, 557

geographical location 243, 257

HIV status 243, 257

margin of appreciation 130, 139–145, 150–151, 238, 251, 494–495, 549–550, 739–740, 799 n. 341, 839–840, 893 n. 811

merit-based assessment 608, 612–613

military service 130–131

“personal circumstances” 632 n. 1663

political relationships 242

positive discrimination: *see affirmative action and above*

public/private school benefits 140–141

reasonable and objective requirement 124, 128–133, 251

compensation to disadvantaged party, relevance 145

conscientious objection, penalties 141, 144, 144–145

CRSR Art. 3, relevance 245, 249–250, 259–260

equal opportunity for promotion 770

intellectual property rights 839–840

liberal professions, restrictive treatment of 799–800

proportionality 124, 139–140, 140 n. 254, 150–151

restitution of dismissed civil servants at expense of new recruits 141

- retirement age 145
- security considerations 522
- reasonable and objective requirement, presumption of on basis of categories 124, 129–130: *see also* margin of appreciation *above*
  - active/retired employees 142
  - defense/plaintiff for legal aid purposes 142
  - forms of employment inconsistent with human dignity 142
  - married status 130–131, 139 n. 251
    - same-sex/opposite-sex marriages 145
  - military/civilian detained by enemy 142
  - nationality/citizenship 120–121, 130–131, 131–133, 239–241, 254, 494–495, 522, 739–740
    - bilateral treaty based on reciprocity 131–132
  - race 246, 309–310
  - related/non-related cohabitants 141–142
  - residence as determinant of “ties” 143
  - service with predecessor government 142–143
- retroactivity and 134–135
- safe country designation 240–241
- service in armed forces of another country 142–143
- sex 242, 255–256, 486: *see also* women refugees
- diplomatic asylum** 173 n. 95
- diplomatic premises**
  - inviolability 173
  - non-extraterritorial nature 173
  - responsibility for refugees physically present 173
    - concurrent jurisdiction 173 n. 96
    - customary international law 173 n. 96
    - rights of asylum-seekers physically present, nationals of territorial state 173 n. 96
    - third-country nationals 173 n. 96
- diplomatic protection:** *see also* standard of treatment of aliens, evolution of regime
  - injury to individual, relevance 78–79
  - nationality as link 80 n. 14, 193
  - right of national state as basis 78–79
    - surrogate nature of right 80
  - statelessness and 79, 84–85, 626–627
  - travel documents (CRSR Art. 28) and 851
- diplomatic reciprocity:** *see* reciprocity, diplomatic reciprocity
- diplomatic relations, break,** exceptional measures (CRSR Art. 8) and 272
- disabilities,** right to clothing and 503–504
- disappearances, freedom from as customary international law** 36–39
- discrimination:** *see* differential treatment, justification/requirements; non-discrimination
- dispute settlement provisions**
  - ICJ (CRSR Art. 38) 994
    - compulsory submission 156
  - right of reservation
    - Refugee Convention (1951): *see* reservations (CRSR Art. 42), right to make



**dispute settlement provisions (cont.)**

Refugees, Protocol relating to the Status of (1967) 111–112

**divorce**

acquired rights (CRSR Art. 12(2)) and 227

right to (ICCPR Art 23) 227 n. 354

**Djibouti**, education, provision 587–588**documentation**

1933 Convention 89

1936 Convention 89

**documentation (identity papers) (CRSR Art. 27)**

as absolute right 237, 620–622, 626, 748

“asylum-seeker” permit 616

compliance 614–618

refusal to recognize UNHCR or other documentation 615–616, 616–617

verification of status and 615–616, 617–618, 625

Conclusion No. 35 624

Conclusion No. 91 623 n. 1624

core rights and 622

delegation of authority to UNHCR, validity 625

documentation of identity and documentation of identity as refugee

distinguished 619, 623

drafting history 619–623

employment, right to seek and engage in (CRSR Art. 17) and 748

as evidence of entitlement to appropriate level of benefits 626

form, relevance 625

certificate of precarious presence 480, 496, 616, 625

immigrant’s record of landing 625

refugee labor card 625

lawful presence, relevance 619–623, 626

“any refugee in their territory” 620 n. 1608

non-discrimination (CRSR Art. 3) and 258

*non-refoulement* and 622, 624 n. 1626

residence permit distinguished 618, 619

state responsibility for acts committed by agents 625–626

“valid travel document”, relevance 622–625

travel documents (CRSR Art. 28) and 622–623

**documentation (League of Nations)**

as international travel documents 85, 618–619

Nansen passport 618–619

**documentation (travel documents) (CRSR Art. 28) 618–619, 841–843, 843–874**

as absolute right 237

administrative autonomy 858–859, 874

delays in grant or renewal 842–843

determination of status, relevance 842, 847, 848–850

drafting history 846–873

European Agreement on Transfer of Responsibility for Refugees (1980) 842–843,

857 n. 639

failure to make necessary administrative and legislative changes 841

false documentation 840–841

- geographical restrictions 842, 858–859
- language of CTD 852 n. 619
- “lawfully staying”/“résidant régulièrement” and 847–851, 856–857
  - “any other refugee in their territory” 847–851
  - “may issue” 849–850, 856–857
  - physical presence, need for 849–850
  - refugee seamen 849–850
- leave the country, freedom to (ICCPR Art. 12(2)) and 850–851
- passport, equivalence to 841, 843, 846, 874
- physical presence, relevance 842, 848–850
- pre-1951 Conventions compared 846–847
  - recognition of documents issued under (CRSR Art. 28(2)) 854–856
- purpose of documentation
  - business or holiday travel 846–847, 851
  - diplomatic protection, exclusion 851
  - onward travel 846–847, 851, 873–874
- reciprocal recognition 854–856
- reentry to issuing country 842, 843, 848–850, 866–870, 874
- refugee status
  - effect on (CRSR Art. 1(C)(1)) 841
  - evidence of, whether 851–853
- refusal to issue 841–842: *see also* withhold, right of *below*
  - availability of alternative documentation, relevance 853
- right to reenter issuing country, compliance with formalities 868–870
- standard of treatment, national treatment, rejection 860–862
- visa controls 843, 869–871, 871–873, 874
  - European Agreement on the Abolition of Visas for Refugees 843
- withhold, right of 859–866: *see also* refusal to issue *above*
  - “compelling reasons of national security or public order otherwise require” 106 n. 110, 850 n. 606, 864–865
  - exceptional nature 863–864
  - public order 864–865
- domicile**
  - definition, failure to agree 214–216
  - habitual residence
    - assimilation 216
    - distinction 835–838
  - personal status (CRSR Art. 12(1)) and 212–217: *see also* personal status (applicable law) (CRSR Art. 12(1))
- Dominican Republic**, international aid/relief, dependence on 473
- Dublin Convention (1990)**: *see* harmonization regimes
- Dublin Regulation**: *see* harmonization regimes
- due process requirements**: *see* expulsion of person lawfully in the territory (CRSR Art. 32), due process of law requirement (Art. 32(2))
- durable residence**: *see* forcible displacement during WWII (CRSR Art. 10); habitual residence; “lawfully staying”/“résidant régulièrement”
- durable solutions** 13, 95: *see also* local integration; naturalization; reestablishment in country of origin (CRSR Art. 1(C)(4)); repatriation; resettlement in third country

**durable solutions** (cont.)

as preferred option 913

Conclusion No. 89 (international protection) (2000) 913

provisional nature of refugee status 915

respect for refugees' rights and 914–915

**duties of refugees (CRSR Art. 2)** 98–107: *see also* fiscal charges (CRSR Art. 29); military service; refugee status, determination/verification, obligation of asylum-seeker to provide information required to verify status

codification, relevance 98–100

compliance with laws, regulations, and public order measures, limitation to 98, 101–102

“as well as to measures . . . for public order” 102, 102–103

invalid measures 102–103

public morality and 102 n. 91

Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) 118–119

UN Conference on Territorial Asylum (1977) 112

drafting history 98–102

military service 101

political activity 100–101: *see also* political activity

tax liability: *see* fiscal charges (CRSR Art. 29)

withdrawal of rights for breach

as alternative to withdrawal of refugee status or expulsion 104–106, 107

exclusion 104–107

**East Timor**

cessation clause 939 n. 96

genocide 36–39

**economic migrants** 239 n. 451

**economic rights**

definition/classification as 488–489

education 599–602, 612 n. 1567

employment, right to seek/engage in 740

strike, right to 896–897

developing countries' right to limit (ICESCR Art. 2(3)) 122–123, 151–152, 229, 488–489, 499–500, 599–602, 740, 769, 772, 896–897

**Economic, Social and Cultural Rights, International Covenant on (1966)**

(ICESCR): *see also* Committee on Economic, Social and Cultural Rights (CESCR), General Comments; core obligations (ICESCR); progressive realization (ICESCR Art. 2(1))

authentic languages 51 n. 134

refugees, relevance to: *see also* economic rights, developing countries' right to limit (ICESCR Art. 2(3)); progressive realization (ICESCR Art. 2(1))

non-specific nature of obligations 122–123

self-executing nature of obligations 603 n. 1539

**ECOWAS**, employment, right to seek/engage in 732–733

**Ecuador**, documentation (identity) 614 n. 1578

**education, right to** 584–613: *see also* religious freedom (freedom to practice/manifest one's religion or beliefs) (ICCPR Art. 18); religious and moral

education, parents' right to ensure conformity with convictions (ICESCR Art. 13(3))

1933 Convention 88

elementary (CRSR Art. 22(1))

asylum-seekers, right to 604–605

availability “to all” 597–598

elderly 599 n. 1526

restricted access for asylum-seekers as violation 598

definition 596–597: *see also* fundamental education (ICESCR

Art. 13 (2)(d)) *below*

drafting history/rationale 162, 598–599

national treatment 234, 235, 248, 594–599

“under similar conditions” 590, 597–598

as obligation of result 602–603

physical presence, relevance 162, 597

rationale 162

practical difficulties, relevance 162 n. 37

“public” education 597

reservations 597 n. 1517, 602–603

resource constraints, relevance 602–603

elementary (ICESCR Art. 13(2)(a))

Child, Convention on the Rights of the and

as core obligation 489, 599–602, 603, 807

curricula and teaching methods

acceptability to students 605–606

EU Qualification Directive (2004) 589

parents' right to establish alternative school (ICESCR Art. 13(3) and (4)) 606

repatriation/integration as alternative objectives 584, 584–585, 588–590

UNBRO 588–589

UNHCR policy 588, 605

economic or social right, whether 599–602

free provision 603–605

non-discrimination and 229, 603–605

progressive realization 599–602

plan for, obligation to provide (ICCPR 14) 602 n. 1536

resource constraints, relevance 599–602

progressive realization and, obligation to prepare plan of action (ICESCR Art. 14) 600 n. 1531, 602 n. 1536

as self-executing obligation 603 n. 1539

Vienna Declaration and Program of Action and 604 n. 1542

women and 603–605

World Declaration on Education for All and 604 n. 1542

elementary (UDHR Art. 26(1))

availability “to all” 596, 598–599

free provision 598–599, 599 n. 1528

fundamental education (ICESCR Art. 13(2)(d))

progressive realization and 599–602

“shall be encouraged or intensified as far as possible” 613

**education, right to (cont.)**

funding 613

adequate fellowship system (ICESCR Art. 13(e)) 504 n. 1048, 613

non-discrimination (ICESCR Art. 2(3)) and 613

recovery of costs 612

treatment not less favorable/as favorable as possible 609–610

higher: *see* post-elementary (CRSR 22(2) *and* post-elementary (ICESCR 13))  
*below*

post-elementary (CRSR 22(2)) 607–611

Conclusion No. 37 and 611 n. 1565

drafting history 607–611

liberal professions, right to practice (CRSR Art. 19) and 608–609

merit-based assessment 608

public provision, limitation to 608

standard of treatment

“in the same circumstances” 205

most-favored-national treatment, rejection 609

temporary protection and 611

treatment accorded to aliens generally 609

treatment as favorable as possible 198–199, 610–611

technical and vocational education 612 n. 1571

post-elementary (ICESCR Art. 13) 611–613

availability “to all” 611–612

treatment accorded to “third country nationals legally resident” 612

economic or social right, whether 612 n. 1567

higher education (Art. 13(2)(c)) 250–251

merit-based assessment 612–613

progressive introduction of *free* education 611–612

progressive realization 611–612

recovery of costs (CRSR Art. 29) 612

secondary education (Art. 13(2)(b)) 250–251

merit-based assessment 612–613

technical and vocational education (Art. 13(2)(b)) 612

repatriation and 953

**education, role, requirements and provision 584–594**

adult education 593

women and 593

funding

refugees status, dependence on 594

UNHCR scholarships 591

language instruction (local language) 593–594

language (local) 584–585

language (mother), as medium of instruction/instruction in 584, 590, 606–607

obligation to fund, whether 606–607

numbers receiving education 585

girls 585

post-elementary 590–591

post-elementary 590–591

refugee status, dependence on 589–590, 593–594

- resource constraints 585–588
  - refugee-provided education 587–588
- skills training 584–594, 591–592
  - women and 591–592
- vocational training 592–593: *see also* education, right to, post-elementary (ICESCR Art. 13)
  - General Comment No. 612, 612 n. 1571
  - Refugee Convention (1938) 90
  - women and 592 n. 1490, 593

**effective remedy, need for 828**

**Egypt**

- documentation (identity) 614 n. 1578, 617
  - delegation of authority to UNHCR, validity 625
- education, right to elementary (CRSR Art. 22(1)) 597 n. 1517, 602–603
- inhuman, cruel, or degrading treatment 454–455
- public relief and assistance 803
- religious freedom, restrictions 561–564, 565–566, 579–580
- security of person and liberty (ICCPR Art. 9), risk to, from authorities outside refugee camps 446–447

**El Salvador**

- adoption schemes 539, 550–551
- dispute settlement provisions, reservation 111–112
- family, arbitrary interference 550–551
- fundamental change of circumstances 925–926

**emergency withdrawal of rights: *see* Civil and Political Rights, International Covenant on (1966) (ICCPR), derogation, right of in time of emergency (Art. 4(1))**

**employment, right to seek/engage in wage-earning (CRSR Art. 17) 730–738, 741–763, 742–746: *see also* liberal professions, right to practice (CRSR Art. 19); self-employment, right to engage in (CRSR Art. 18)**

- denial as breach of obligations, degrading treatment 496–497
- determination of status, dependence on 479–480, 495–497, 734–736, 754–755
- documentation of identity and status and 748
- drafting history 742–746, 749–768
  - domestic labor market concerns 730–731: *see also* restrictions for protection of national labor market, exemption (CRSR Art. 17(2)) *below*
- freedom of choice 748
- ICESCR Art. 6 compared 741–742
- lawful presence and 754
- “lawfully staying”/“résidant régulièrement” and 754–757
- loss of rights to public relief and assistance and 801–802, 809–810
- necessities of life and 496, 719, 741, 745
- practical difficulties 737–738
  - adaptation programs 738
- racial discrimination and 741
- reservations (CRSR Art. 42) 741–742
  - accepted risk 746–747
  - critical date 746–747
  - regional, political, and economic unions and 751, 752

**employment, right to seek/engage in wage-earning (CRSR Art. 17) (cont.)**

- treatment accorded to aliens generally, limitation to 751
- withdrawal of 746–747
- work permits 753 n. 117
- resettlement program obligations (CRSR Art. 17(3)) 709–710, 752–753
- restrictions for protection of national labor market, exemption (CRSR Art. 17(2)) 755–762
  - applicability to restrictions directed at either non-citizen or employer 760–761
  - cumulative with CRSR Art. 17(1) rights 755 n. 131
  - drafting history 757–763
  - exemption prior to 1951 Convention and 756
  - lawfully staying, relevance 755–756
  - parent of child with nationality of country of residence (Art. 17(2)(c)) 758–760
    - jus soli* rule and 758–760
    - legitimacy, relevance 760
    - reservations 760 n. 155
  - priority of nationals, European citizens, and resident non-citizens 761
  - protection of national labor market, limitation to 762
  - resettlement program obligations and 761–762
  - restrictions applied to nationals and 761–762
  - spouse with nationality of country of residence (CRSR Art. 17(2)(b)) and 757–758
    - abandonment of spouse and 757–758
    - nationality, relevance 757
  - three years' residence (CRSR Art. 17(2)(a)) 756–757
    - de facto or interrupted presence, sufficiency 756–757
- self-settlement, problems relating to 733–734
- self-sufficiency and 479–480, 495–497
- standard of treatment
  - domestic labor market concerns 742–745, 762–763
    - postwar recovery and 743–744
  - most-favored-national (CRSR Art. 17(1)) 230–234, 248, 749–754
    - insurmountable requirements 752, 753–754
    - regional, political, and economic unions and 231–234, 750–752
    - in the same circumstances 205, 752–754
  - national treatment
    - exclusion 749
    - sympathetic consideration (CRSR Art. 17(3)) 762–763
  - treatment accorded to aliens generally (“lowest common denominator”), exclusion 250, 742
    - reservations relating to 751
- temporary presence and 754
- temporary protection and 736–737, 755
- time limits on bar 735–736
- “wage-earning employment” 747–748
  - limitation to agricultural work as breach 748
- work permits and 753–754
  - reservations 753 n. 117

- employment, right to seek/engage in wage-earning (ICESCR Art. 6)** 739–741
- developing countries’ right to limit 740, 741–742
  - differentiation based on nationality 739–740
  - marginalized and vulnerable groups 741 n. 57
  - national treatment 250
  - non-discrimination and 741, 748–749
  - obligation of developed countries to permit, whether 740–741
  - progressive realization 740, 741–742
  - as protection against
    - arbitrary dismissal 741
    - forced labor 740, 741
    - unjust denial of work 740, 741
  - reservations 740–741
  - “work which he freely chooses or accepts” 748
- employment rights (just and favorable conditions of work (ICESCR Art. 7)** 250–251
- applicability to “everyone” within the jurisdiction 771
  - developing countries’ right to limit (ICESCR Art. 2(3)) 769, 772
  - differential treatment on reasonable and objective grounds 770
  - equal opportunity for promotion (ICESCR Art. 7(c)) 770
  - equality of treatment for women (ICESCR Art. 7(a)(i)) 770
  - fair wages and equal remuneration
    - ILO Convention No. 100 distinguished 769 n. 202
    - Treaty of Rome distinguished 769 n. 202
    - without distinction of any kind (ICESCR Art. 7(a)(i)) 769
  - progressive realization 769, 772
  - remuneration sufficient for decent living (ICESCR Art. 7(a)(ii)) 769
    - “adequate standard of living” (ICESCR Art. 11) compared 769
  - rest, leisure, and reasonable limitation of working hours (Art. 7(d)) 769–770
    - periodic holidays with pay and remuneration for public holidays 769–770
  - safe and healthy working conditions (ICESCR Art. 7(b)) 771
  - social security: *see* [social security \(ICESCR Art. 9\)](#)
- employment rights (labor legislation (CRSR Art. 24))** 763–786: *see also*
- [association, right of \(CRSR Art. 15\)](#)
  - drafting history 764–768
  - ICESCR Art. 7 and 765 n. 178, 766, 768–769, 769–772
  - ILO Migration for Employment Convention (1949) and 765–769
  - “lawfully staying”/“résidant régulièrement” and 765
  - limitations/omissions
    - accommodation for workers 767, 822
    - guarantees of employment 766
    - health and safety in employment 766
    - limited list of protections (CRSR Art. 24(1)(a)) 766
    - public domain employment, limitation to (CRSR Art. 24(1)(a)) 766–767
    - trade union membership 767–769
  - national treatment (CRSR Art. 24(1)(a)) 234, 235, 248
    - apprenticeship and training 768–769
    - collective bargaining 767–768: *see also* [association, right of \(CRSR Art. 15\)](#)
    - hours of work . . . and holidays with pay 768–769, 769–770



**employment rights (labor legislation (CRSR Art. 24)) (cont.)**

- minimum age of employment 768–769
- remuneration, including family allowance 768–769
- young persons 768–769
- rationale 764

social security: *see* social security (CRSR Art. 24(1)(b))

Universal Declaration Arts. 23 and 24 and 764

**employment rights (Refugee Convention (1933)) 87–88****enemy alien, classification as: *see also* exceptional measures, exemption (CRSR Art. 8)**

- exemption from exception measures and (CRSR Art. 8) 270–271
- Geneva Convention on Protection of Civilian Persons (Art. 44) 270–271

**enforcement: *see* compliance mechanisms****enter his own country, right to (ICCPR Art. 12(4))**

- arbitrary deprivation 713, 957
- “his own country” 957–958
- naturalization, relevance 981 n. 298, 989 n. 340

**enter, right of refugees to: *see* illegal entry or presence, non-penalization (CRSR Art. 31(1)); *non-refoulement* (CRSR Art. 33)****equality before the courts (ICCPR Art. 14(1)): *see* courts, access to (equality before) (ICCPR Art. 14(1)); non-discrimination (equality before the law/equality of protection) (ICCPR Art. 26)****Eritrean refugees**

- association, right of 875–876, 896
- cessation clause 939 n. 96, 940–941
- education 587–588, 606
- freedom of movement/choice of residence, restrictions 716
- internal movement, freedom of/choice of residence, restrictions 700
- liberal professions, right to practice 786–787
- security of person and liberty (ICCPR Art. 9), risk to 440–441

**Estonia, differential treatment 143****Ethiopia**

- cessation clause 939 n. 96
- core obligations (ICESCR) 489–490
- differential treatment, justification/requirements, sex 242, 255–256
- education, right to elementary (CRSR Art. 22(1)) 602–603
- employment, right to seek/engage in wage-earning, reservation (CRSR Art. 17) 231–234, 741–742, 746–747
- food shortages/food 476, 489–490, 500–501
- fundamental change of circumstances 925 n. 41, 925–926
- healthcare, compliance with obligations 508–509
- housing/shelter 479, 506, 813–814
- international aid
  - diversion 475
  - refusal 470–471, 801–802
- necessities of life, right to 463–464
- water shortages/as core obligation 489–490, 502–503

**Ethiopian refugees**

- housing/shelter 479

liberal professions, right to practice 786–787

nationality (differential treatment) 241

reception centers 380–381

### European Union (EU)

differential treatment, justification/requirements

Amsterdam Treaty (1997) 241

nationality 254

employment, right to seek/engage in 734–736

CRSR Art. 17(2) and 756–757, 761

determination of refugee status, relevance 756–757

non-discrimination and 755

temporary protection status and 737, 752, 755

family unity/reunification, public policy, public security, or public health considerations 557

first country of arrival/safe third country rules (Dublin Regulation) 293–294, 326–327

Dublin Convention (1990) 293–294, 323–324, 326, 326–327

illegal entry or presence, non-penalization 408–409

internal movement, freedom of/choice of residence (ICCPR Art. 12(3)) 715–716

public relief and assistance 804, 805, 807–808

same-sex relationships 556–557

self-employment 725

visa controls 292–293

### European Union (EU) Directives: *see Table of Treaties and Other International Instruments*

Asylum Procedures Directive (draft) (April 29, 2004); Family Reunification Directive (September 22, 2003); Qualification Directive (April 29, 2004); Reception Directive (January 27, 2003); Schengen Directive (June 28, 2001); Temporary Protection Directive (July 20, 2001)

### European Union (EU) Regulations: *see Table of Treaties and Other International Instruments*: Council Regulation 539/2001 of March 15, 2001 (visa requirements) and Dublin Regulation (February 18, 2003)

**eviction, forced** 505–506, 821, 828–829, 829 n. 518

**exceptional measures, exemption (CRSR Art. 8)** 270: *see also* enemy alien, classification as; provisional measures (CRSR Art. 9)

applicability

break of diplomatic relations and 272

in case of temporary interstate dispute 272

general measures 273–274

“in appropriate cases” 276–277

international emergency 272

measures not based on nationality 273

“nationals of a foreign state”, limiting nature 273 n. 599

war or national emergency 272

where national legislation prevents application of general principle 274–276

inappropriateness of measures directed against state 272

margin of appreciation 271

as new right 94

non-discrimination (CRSR Art. 3) and 272, 276

**exceptional measures, exemption (CRSR Art. 8) (cont.)**

- peacetime measures 271
- personal status, applicable law (CRSR Art. 12(1)) and 210–211
- provisional measures (CRSR Art. 9) distinguished 271
- reservations 276

**“excised territories”/migration zones 298–299, 321–322, 558–559, 630, 650**

**exclusion of fugitives from justice: see fugitives from justice, exclusion (CRSR Art. 1(F)(b))**

**Executive Committee (UNCHR): see Conclusions on the International Protection of Refugees; UNHCR, role (CRSR Art. 35)**

**expression, freedom of (ICCPR Art. 19(1)) 891–892: see also Human Rights Committee (HRC), General Comments, 10 (expression, freedom of); peaceful assembly, right of (ICCPR Art. 21)**

- as affirmative obligation 892
- “media of his choice” 893
- public order 900–901
- “regardless of frontiers” 893–894
  - Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969), conflict 119 n. 177, 893–894
- restrictions (ICCPR Art. 19(3)) 892–893, 897–905
  - national security 899, 904–905
  - “necessary” 902
  - non-discrimination and 893 n. 811
  - propaganda for war or advocacy of hatred (ICCPR Art. 20) 898
  - “provided by law” 897–898
  - public health 901
  - public morals 901–902
  - public safety 901
  - respect for reputation of others 899
  - rights and freedoms of others, respect for 899
- restrictions (UN Charter/UNGA Res. 3314(XXIX)) (international peace and security) 903–904, 904–905
- right to “seek, receive and impart information and ideas” (ICCPR Art. 19(2)) 892–894
  - restrictions 900
  - “without interference” 892

**expression, freedom of (UDHR Art. 19) 874–875, 881–882**

- codification in 1951 Convention, rejection 887 n. 777, 891 n. 801

**expulsion**

- 1933 Convention 87, 691
- 1936 Convention 89
- definition 668 n. 55
- examples 659–663
- as right 670

**expulsion of person lawfully in the territory (CRSR Art. 32) 657, 659–668, 965:**

- see also non-refoulement* (CRSR Art. 33); *non-refoulement* (CRSR Art. 33), avoidance of obligation; resettlement in third country
- as absolute right 237
- drafting history/rationale 668–675

- due process of law requirement (CRSR Art. 32(2)) 669–677, 694: *see also* right of appeal to competent authority (CRSR Art. 32(2)) *below*
  - “compelling reasons of national security otherwise require” 675–677, 694
    - limitation to specified rights 675
    - non-judicial proceedings and 676–677, 694
    - “objectively necessary” requirement 676, 695
  - “due process” 674
  - expulsion in accordance with the law (ICCPR Art. 13) compared 671–672
  - judicial process, rejection 670–671, 671–673
  - procedural rights available to all aliens under ICCPR Art. 13 compared 673–674
  - right to submit evidence to clear himself 673
- expulsion to country of origin 678
- grounds (CRSR Art. 32(1))
  - 1933 Convention distinguished 691
  - admissibility to state with no risk of *refoulement* 677–678, 694
  - international trade/comity 677
  - limitation to national security or public order 677–678, 695
  - national security 669–670, 695: *see also* national security
    - CRSR Art. 33(2) compared 669–670, 678
    - “save on” 690–691
  - “objectively reasonable suspicion” 679
  - public order 660, 669–670, 695
    - drafting history 669–670, 679–690, 691–692
- illegal entry or presence, non-penalization (CRSR Art. 31(1)) and 412–413
- “lawfully in the territory” 666–668, 966
  - determination of status, relevance 667–668
  - drafting history 666–667
  - ICCPR Art. 13 compared 666
  - “lawfully staying in the territory” distinguished 666, 667
  - omission from heading 667
- non-refoulement* (CRSR Art. 33) and 691–692
  - drafting history/rationale 664–670
- presumption against right of 677–678
- prior to “lawful” presence 663–664
- reasonable period to seek admission into another country (CRSR 32(3)) 692–694
  - drafting history 692–694
  - internal measures deemed necessary, right to impose 693–694
    - detention, possibility of 693–694
    - margin of appreciation 693 n. 191
    - “restrictions necessary” in case of persons unlawfully present distinguished (CRSR Art. 31(2)) 693 n. 191
  - limitation to cases of non-receipt of documentation or visas, rejection 692–693
  - non-refoulement* safeguards 347
  - as respect for refugee’s preferences 692
- reservations 353 n. 330
  - courts, access to (CRSR Art. 16(1)) and 645
- right of appeal to competent authority (CRSR Art. 32(2)) 671–673, 694: *see also* due process of law requirement (CRSR Art. 32(2)) *above*

**expulsion of person lawfully in the territory (CRSR Art. 32) (cont.)**

- authority over expulsion process, need for 671–673, 694
- explicit designation of body or person, need for 672–673
- as right to “présenter un recours” 672
- sending for medical treatment abroad 811 n. 409

**expulsion of person lawfully in the territory (ICCPR Art. 13)**

- “in accordance with law” 671 n. 71, 673–674
- “appeal to .... competent authority” (CRSR Art. 32) compared 671–672
- “lawfully in the territory” 666
- time in country, relevance 173 n. 97
- right of review by competent authority
  - oral hearing/personal appearance 673
  - right to be represented 673

**expulsion (Refugee Convention (1936)) 89**

**extraterritorial controls:** *see non-refoulement* (CRSR Art. 33), avoidance of obligation, extraterritorial controls; visa controls

**“extraterritorial”/international zones 298–299, 299–300, 321–322**

- physical presence and 172

**extraterritorial jurisdiction:** *see state responsibility for acts outside territory*

**fair working conditions, right to:** *see employment rights (just and favorable conditions of work (ICESCR Art. 7)); employment rights (labor legislation (CRSR Art. 24))*

**Falasha Jews 560, 577**

**family rights, applicable law 219–220**

- matrimonial status 221–222
- succession and inheritance 220

**family unity/reunification 533–560**

- administrative delays and impediments 534–535, 537–538
- allocation of accommodation and 539–540, 550
- arbitrary interference
  - ICCPR Art. 17(1) 545, 548–551
  - procedures established by law requirement 548–551
  - public order and 557
  - reasonableness/proportionality requirement 549, 549–551, 559, 950
  - repatriation and 948, 949–950

Child, Convention on the Rights of the 545

conscription, forced and 538, 548–549

Convention on Territorial Asylum (draft) (1977) 547 n. 1286

customary international law 543–547, 948

*opinio juris* 545

differing impact of neutral laws 135

family as fundamental unit of society

ICCPR Art. 23(1) 250–251, 547–548

ICESCR Art. 10 250–251, 547–548

family member

applicable law 553–555

assimilation to head of family 541–542

children under 18 (ICCPR Art. 24) 553–554

- definition 536–537, 547 n. 1287, 948
- elderly 554
- state practice 546–547
- family unity and reunification distinguished 545–546
- Final Act, Recommendation B 541–544
  - Conclusions on International Protection of Refugees and 543–544
  - as customary international law: *see* customary international law *above*
  - drafting history 542
  - non-binding nature 542–543
  - as response to absence of provision in 1951 Convention 541–542
- financial situation, relevance 537, 557
- internal movement, freedom of/choice of residence, restrictions 717
- mass expulsion and 538, 548–549
- non-discrimination
  - CRSR Art. 3 253
  - ICCPR Art. 26 253, 549–550
- OAS Cartagena Declaration (1984) 119
- protection and assistance to family 547–548
- public policy, public security, or public health considerations 557
- refugee status, relevance 535–536
  - reasonable implementation of obligations and 558
- right to found family (ICCPR Art. 23(2)) 551–560
  - affirmative action obligation 551, 557, 559–560
  - impossibility of safe reunification abroad and 552
  - “in the society concerned” 553, 554
  - “live together” 552
  - married status, relevance 552
  - as performance benchmark 559–560
  - same-sex relationships 555–557
- separate detention 538, 550
- state practice 544, 545–546, 546–547
- temporarily protected status and 545–546, 558, 558–559
- UNHCR *Handbook* and 543
- Universal Declaration 545
- FCN treaties:** *see* standard of treatment of aliens, evolution of regime, bilateral/  
FCN treaty regime
- federal clause** (CRSR Art. 41), fiscal charges and 530 n. 1199
- Final Act of the Conference of Plenipotentiaries**
  - Recommendation A (status of refugees and stateless persons) 855 n. 632
  - Recommendation B: *see* family unity/reunification, Final Act,  
Recommendation B
- Finland**
  - carrier sanctions 384–385, 404
  - conscientious objection 141, 144
  - differential treatment 141, 144
  - employment, right to seek/engage in
    - determination of status, dependence on 480, 496, 736
    - regional, political, and economic unions and 231–234, 751
    - reservation (CRSR Art. 17) 231–234

**Finland (cont.)**

- family unity/reunification 535–536, 558
- necessities of life, right to 486
- non-discrimination, right to adequate standard of living 486
- public relief and assistance 481
- religious freedom, restrictions 573–574
- temporary protection status 736

**first asylum, principle of:** *see* first country of arrival/safe third country rules

**first country of arrival/safe third country rules** 293–296, 294, 299–300, 322–335: *see also* Conclusions on the International Protection of Refugees, 15 (refugees without asylum country); Conclusions on the International Protection of Refugees, 58 (refugees and asylum-seekers who move in an irregular manner from country of protection)

first country of arrival rule

as constraint on right to choose country of protection 322

definition 293–294

drafting history 322–323

harmonization regimes

Canada–US 293–294, 327

continuing responsibility of first country 326–327

EU regime (Dublin Convention (1990)) 293–294, 323–324, 326, 326–327

EU regime (Dublin Regulation) 293–294, 326–327

indirect *refoulement* and 325–326, 367

safe country of origin, designation as 240–241, 296, 333–335

burden of proof 334–335

EU countries 241, 296–297, 299–300

EU Procedures Directive 296–297

“manifestly unfounded,” treatment as 297 n. 100

as procedural device 334–335

UNHCR views on 334 n. 250

safe third country rule

blanket determinations, acceptability 328

compatibility with CRSR Art. 33 323–324, 332–333

definition 295–296

determination of refugee status, relevance 329

enforceable right to enter third country, need for 330

right to remain distinguished 330 n. 236

EU Procedures Directive 295, 327, 328

non-persecution and respect for rights distinguished 327–328, 329–333, 331–332

return to country not party to 1951 Convention 327, 328–329, 331, 331–332

rights acquired in first country of arrival, loss 331–332

**fiscal charges (CRSR Art. 29)** 527–532: *see also* taxation

bilateral treatment protection, ineffectiveness in case of refugees 529–530

charges for administrative documents (CRSR Art. 29(2)) 530–531

differential treatment of aliens 529 n. 1193

differing impact 528

educational fees 612

exemption from 527–528

- “free access” to courts (CRSR Art. 16(1)) and 908 n. 894
- location of property, expenditures, and activities, relevance 528
- national treatment 234, 248
  - “in similar situations” 205 n. 241, 234, 531–532
  - OECD Tax Treaty (1963) 528, 529 n. 1194, 531
  - “other or higher” charges or taxes 531
  - UN Tax Treaty (1980) 529 n. 1194, 531
- physical presence, relevance 162
  - rationale 162
- pre-1951 Convention treaty provision 529
- reciprocity, relevance 529–530
- residence, relevance 532
- special duties, charges, or taxes, protection against (CRSR 29(1))
  - charges wholly applied for relief of refugees 530–531
  - federal clause (CRSR Art. 41) 530 n. 1199
  - “taxation or any requirement connected therewith” (OECD and UN Model Treaties) 530
  - taxes assessed by political sub-units 530 n. 1199
- flag state:** *see* refugee seamen, flag state obligations (CRSR Art. 11); state responsibility for acts outside territory, flag state
- food (ICESCR Art. 11):** *see also* Committee on Economic, Social and Cultural Rights (CESCR), General Comments, 12 (adequate food); food shortages; international aid/relief, dependence on; necessities of life, right to; water, right to adequate food (ICESCR Art. 11(1)) 250–251, 486, 501–502
  - as core obligation 489, 490–491, 497, 500–502, 807
  - cultural differences and 475–476, 501
  - as fundamental right (ICESCR Art. 11(2)) 500
  - proactive/protective nature of obligation 498 n. 1017, 501
  - state responsibility for 500–501
- food shortages** 489–490
  - food bans 474–475, 497
  - as major cause of death and serious illness 476–477
  - “voluntary” repatriation and 476
- forced eviction:** *see* eviction, forced
- forcible displacement during WWII (CRSR Art. 10)** 190–192
  - attachment to states in which rights are to be invoked as key consideration 191–192, 985 n. 316
    - difficulties faced by refugees, relevance 192, 985 n. 316
  - continuity of residence in country from which deported (CRSR Art. 10(2)) 191
  - lawful residence and (CRSR Art. 10(1)) 190
  - obsolescence of provision 191
- France**
  - carrier sanctions 384–385, 404
  - cautio judicatum solvi* 907–908, 910–911
  - conscientious objection 144–145
  - detention, freedom from arbitrary (ICCPR Art. 9), judicial proceedings to determine lawfulness of detention, right to (Art. 9(4)) 425, 435
  - differential treatment 142, 143, 144–145
  - documentation (travel) 842



**France (cont.)**

- employment, right to seek/engage in 734–736
  - adaptation programs 738
  - determination of status, dependence on 480, 496, 754–755
  - reservation (ICESCR Art. 6) 740–741
  - temporary protection and 755
- expulsion “in accordance with law” 671 n. 71
- “extraterritorial” zones 298–299, 321, 650
- family, right to found (ICCPR Art. 23(2)), married status, relevance 552
- first country of arrival/safe third country rules 296
- healthcare, compliance with obligations 510
- housing/shelter
  - national treatment 827
  - public housing, access to 819
- illegal entry or presence, non-penalization, “penalties”/*sanctions pénales* 411–412
- internal movement, freedom of/choice of residence, *zones d’attente* 379–380
- language of instruction 590, 606–607
- legislation, Ordinance of 2 November 1945 (entry and residence of aliens) 321
- liberal professions, right to practice 787, 792 n. 299, 799
- non-refoulement*, avoidance of obligation 282
  - failure to verify status and 298
- non-refoulement*, grounds for withdrawal of right
  - effect on refugee status 344 n. 300
  - mass influx 361
- political association, objections 885
- public relief and assistance 703–704, 804 n. 363
- refugee rights regime pre-Convention 157
- religious freedom, restrictions 567–568
- self-employment 721–722, 727, 728, 738
- women, differential treatment on grounds of sex 486
- freedom of association:** *see* association, right of (CRSR Art. 15); association, right of (ICESCR Art. 8); association, right of (ICCPR Art. 22)
- freedom of expression:** *see* expression, freedom of (ICCPR Art. 19 (1)); expression, freedom of (UDHR Art. 19)
- freedom from deprivation:** *see* necessities of life, right to
- freedom of thought, conscience, and religion:** *see* religious freedom (freedom to practice/manifest one’s religion or beliefs) (ICCPR Art. 18)
- fugitives from justice, exclusion (CRSR Art. 1(F)(b))** 1 n. 2, 268, 342–345: *see also* *non-refoulement* (CRSR Art. 33), grounds for withdrawal of right (Art. 33(2))
  - continuing justiciability, relevance 351 n. 323
  - crimes committed prior to admission as a refugee 344 n. 297
  - drafting history/rationale 342–343, 344, 349
  - “serious non-political crime” 349
  - standard of proof 342–343
- fundamental change of circumstances (“circumstances have ceased to exist”)** (CRSR Art. 1(C)(5)–(6)) 915–916, 919–939, 1000: *see also* cessation of refugee status (CRSR Art. 1(C))
  - automaticity (CRSR Art. 1(C)(5)) 941–942
  - Ceased Circumstances Guidelines 922 n. 24, 924 n. 33, 927–928, 935 n. 80, 939

- cessation clauses 1 n. 2, 920 n. 20, 939–941
  - Conclusion No. 81 (General Conclusion) 939 n. 98
  - legal effect 939–940, 940–941, 942 n. 112
  - state responsibility and 939, 940 n. 99, 941, 951 n. 141
- compelling reasons arising out of previous persecution exception (CRSR Art. 1(C)(5)) 941–944
  - applicability to CRSR Art. 1(A)(2) refugees 942–944
  - customary international law and 942–944
- enduring change 922, 924–925
  - Ceased Circumstances Guidelines 924, 924–925
  - following conflict 924–925, 925–926, 927 n. 48
- fundamental change 922–924
  - causal connection with original risk 924, 925–928
  - drafters' intentions 923
- government in home state able to protect refugee, sufficiency 921
- non-impairment of rights (CRSR Art. 5) and 108–109
- Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969), Art. 1(4)(3) compared 921 n. 23
- refusal to readmit 927–928
- restoration of protection 922, 927–928
  - UN Committee on the Elimination of Racial Discrimination 927
- standard of proof 920 n. 20
- stateless refugee's ability to return to country of habitual residence, sufficiency 923 n. 32
- UNHCR Statute distinguished 941–942, 942–944
- voluntary repatriation as replacement for CRSR Art. 1(C)(5)–(6)
  - requirements 931 n. 64, 931–935, 938–939: *see also* repatriation; “voluntary” repatriation
  - authoritative nature of UNHCR position 935–936, 938–939
  - cessation clauses: *see* cessation clauses *above*
  - lower threshold (Ceased Circumstances Guidelines) 935 n. 81, 955 n. 159
  - Voluntary Repatriation Handbook 932
- Gambia**, illegal entry or presence, non-penalization, failure to distinguish between asylum-seekers and other aliens 371, 387
- gender**: *see* women refugees
- gender discrimination**: *see* sex discrimination
- General Assembly**: *see* United Nations General Assembly decisions, legal status
- General Comments and Recommendations**: *see* Committee on Economic, Social and Cultural Rights (CESCR), General Comments; Committee on the Elimination of Discrimination Against Women (CEDAW), Recommendations; Committee on the Elimination of Racial Discrimination (CERD), General Recommendations; Human Rights Committee (HRC), General Comments
- general principles of law** 17–18, 26–28, 39–41
  - basis in domestic standards of significant majority 17, 26, 33
  - formalization in domestic law, need for 39
  - scope for systematic evaluation 39–41
  - consent and 26
  - customary international law distinguished 26, 39

**general principles of law** (cont.)

- declarations, recommendations, and resolutions of international bodies and 26–28, 30–31, 39
- inconsistent practice, effect 39
- jus cogens* as 28: see also *jus cogens*
- natural law and 17 n. 7
- UN competence 44

**genocide, freedom from as customary international law** 36–39

- Genocide Convention (1948) 37 n. 73

**geographical limitation of obligations (CRSR Art. 1(B))** 96–98, 260

- Refugees, Protocol relating to the Status of (1967) and 97–98, 260
  - critical date 97–98
- withdrawal, desirability 96 n. 62

**Georgia**

- documentation (identity) 614 n. 1578
- religious freedom, restrictions 565–566, 567–568, 581

**Germany**

- arbitrary interference with family 551
- Asylum Procedure Act (AFG) (1982) 701
- carrier sanctions 384–385, 404
- documentation (travel) 842
- employment, right to seek/engage in 734–736
  - determination of status, relevance 480, 496, 736–737, 751–752, 754–755
- family unity/reunification 535–536, 539–540, 546 n. 1285
  - determination of status, relevance 558
- first country of arrival/safe third country rules 296
- healthcare, compliance with obligations 510
- housing/shelter 817–818, 819
- internal movement, freedom of/choice of residence of person lawfully present, restrictions 539–540, 701, 715, 717
- lawful presence, lawful residence, relevance 178 n. 122
- liberal professions, right to practice 788
- naturalization 986 n. 320
- necessities of life, right to, renunciation of other rights requirement 488
- public relief and assistance 804 n. 363, 805, 817–818, 824
- reception centers 378–379, 431, 480–481, 488
- refugee status, determination/verification, obligation 180 n. 129
- security of person and liberty (ICCPR Art. 9), risk to from vigilantes 447, 458–459
- self-settlement 817–818, 819
- social security 776–777, 777 n. 232
- temporary protection status 736–737, 751–752, 805, 817–818, 824

**Ghana**

- dispute settlement provisions, reservation 111–112
  - as safe country 296
- self-employment 721

**good faith**

- national security, assessment of risk 263–264, 269–270, 711 n. 268
- naturalization requirements (CRSR Art. 34) and 984–986, 988–990

- non-refoulement* in case of mass influx 360, 362
- obligation to consider non-application to refugees of general limits 200, 728, 791, 826
- pacta sunt servanda* 159 n. 19
- treaty implementation 159, 180 n. 126, 180 n. 129, 181, 308 n. 155, 630 n. 1654, 658–659, 991–992
  - as source of *opinio juris* 35–36
  - UN Charter human rights obligations 35–36, 42 n. 99, 42–43
- treaty interpretation 10–11, 58–59, 62 n. 173, 62–63, 161, 308 n. 155, 457

## Greece

- detention, freedom from arbitrary (ICCPR Art. 9), conditions of detention 436
- documentation (travel) 842
- education, provision 589
  - elementary education, restrictions on access to 598
- employment, right to seek/engage in 736
  - reservation (CRSR Art. 17) 231–234, 746–747
  - standard of treatment, regional, political, and economic unions and 231–234
- first country of arrival/safe third country rules 293
- legislation
  - Law 293 n. 80
  - Presidential Decree 736
- non-refoulement*, avoidance of obligation 280
- reception centers, conditions 382, 436
- religious education, restrictions 568–569, 582–583
- religious freedom, restrictions 560–561, 566–567
- self-employment 722, 727

## Guantanamo Bay, jurisdiction 166 n. 65

## Guatemala

- employment, right to seek/engage in, standard of treatment, regional, political, and economic unions and 231–234
- fundamental change of circumstances 925–926
- genocide 36–39

## Guatemalan refugees 445, 452, 460–461, 558

- public relief and assistance 807–808
- temporary protection status 807–808
- termination of aid 801–802

## Guidelines on International Protection

- conflict with *Handbook* 116–118
- legal effect 116–118

## Guinea

- documentation (identity) 614 n. 1578
- inhuman, cruel, or degrading treatment 454, 454–455, 455–456
- international aid/relief, dependence on 474
- logistical difficulties 474
- non-refoulement*, avoidance of obligation 280, 284, 317, 317–318
- non-refoulement*, grounds for withdrawal of right, mass influx 361
- repatriation from 930 n. 62
- security of person and liberty (ICCPR Art. 9), risk to
  - from authorities outside refugee camps 447

**Guinea (cont.)**

- in refugee camps 446
- self-employment 720

**habitual residence**

- domicile
  - assimilation 216
  - distinction 835–838, 909 n. 895
- rights dependent on 190: *see also* employment, right to seek/engage in wage-earning (CRSR Art. 17), restrictions for protection of national labor market, exemption (CRSR Art. 17(2)); intellectual property rights (CRSR Art. 14); legal aid (CRSR Art. 16(2)); reciprocity, exemption (CRSR Art. 7(2))

**Hague Convention on the Law of War (1907) and Regulations**, as codification of customary international law 34 n. 64

**Haitian refugees**

- differential treatment on grounds of nationality 239–241
- expedited determination of status 422, 473
- family unity/reunification 253
- non-refoulement*, avoidance of obligation 283
- non-refoulement*, withdrawal of right 360
- “voluntary” repatriation 289

***Handbook on Procedures and Criteria for Determining Refugee Status***,<sup>1</sup> legal effect 114–117: *see also* Conclusions on the International Protection of Refugees;

Guidelines on International Protection

- decline in respect for 115–118
- Guidelines, effect 116–118
- as subsequent agreement between the parties regarding the interpretation or application of the treaty 54

**harmonization regimes**

- Canada–US 293–294, 327
- continuing responsibility of first country 326–327
- EU regime (Dublin Convention (1990)) 293–294, 323–324, 326, 326–327
- EU regime (Dublin Regulation) 293–294, 326–327
- indirect *refoulement* and 325–326, 367

**hatred, advocacy of:** *see* propaganda for war or advocacy of hatred, prohibition (ICCPR Art. 20)

**health, highest attainable standard of physical and mental, right to (ICESCR Art. 12)**

- 250–251, 483–514: *see also* Committee on Economic, Social and Cultural Rights (CESCR), General Comments, 14 (highest attainable standard of health)
- burden of proof 514
- choice of means 512 n. 1094
- freedom from interference 511
- interrelationship with housing and food 507–508, 513–514, 822
- language and 509, 513–514
- liberal professions, restrictions on right to practice and 791 n. 296
- marginalized and vulnerable groups and 494 n. 1006, 497–498, 513–514

<sup>1</sup> Elsewhere in the Index normally referred to as *Handbook*

national treatment 499–500  
 as non-derogable obligation 513  
     obligations of comparable priority 514  
 non-discrimination and 512–513  
 primary healthcare as core obligation 489, 490–491, 492 n. 997, 499–500, 513, 807  
 progressive realization 511–513  
 right to health distinguished 511  
 timely access to health protection 511

**hearing, right to fair and public (ICCPR Art. 14)** 632, 647, 654–655, 905–906: *see also* expulsion of person lawfully in the territory (CRSR Art. 32), due process of law requirement (CRSR Art. 32(2)); expulsion of person lawfully in the territory (ICCPR Art. 13), right of review by competent authority; judicial review/appeal against determination of status, right of  
     customary international law, whether 36–39  
     economic barriers 909 n. 897  
     national security and 654–655

**high seas, refugee rights on** 171 n. 81, 290–291, 299–300, 336, 337, 339, 341–342, 459: *see also* Conclusions on the International Protection of Refugees, 20 (protection of asylum-seekers at sea); Conclusions on the International Protection of Refugees, 97 (protection safeguards in interception measures)

## **Honduras**

association, right of 875–876, 896  
 housing/shelter, compliance with obligations 479  
 international aid/relief, dependence on 474  
 naturalization, reservation 989 n. 335  
 peace and security obligations, international 903  
 political activity of Nicaraguan refugees 878–879  
 property rights 516 n. 1119, 517, 523–524  
 security of person and liberty (ICCPR Art. 9) 458–459  
     risk to, in course of flight 439–440

## **Hong Kong**

detention, freedom from arbitrary (ICCPR Art. 9), conditions of detention 436  
 family unity/reunification 534 n. 1223  
 internal movement, freedom of/choice of residence of person lawfully present, restrictions 697–699, 717  
     pending admission into another country 414  
 life, right to, effective facilities and procedures to investigate, need for 585–587  
 necessities of life, right to 462, 465  
 reception centers  
     conditions 381–382, 436  
     mass influx and 381  
 security of person and liberty (ICCPR Art. 9) 465  
     risk to, in refugee camps 443  
     “voluntary” repatriation 462

**housing (CRSR Art. 21):** *see also* internal movement, freedom of/choice of residence (CRSR Art. 31(2)); necessities of life, right to; reception centers  
 accommodation for refugee workers 767, 822  
 coping strategies 817

**housing (CRSR Art. 21) (cont.)**

- drafting history/rationale 820–827
  - freedom of movement/choice of residence and 822
  - “lawfully staying”/“résidant régulièrement” 825
    - temporary protection status and 817–818, 825
  - limited value of Art. 21 820–827
  - property rights (CRSR Art. 13) and 524 n. 1162, 820–821
  - public housing, access to 818–819
  - public relief and assistance (CRSR Art. 23) distinguished 823–825
  - “regulated by laws or regulations” 825
  - self-settlement and 816–820, 829
    - assistance in finding 819–820
    - security of person and liberty (ICCPR Art. 9), risk to 816
    - successful adaptation 816
  - shortage of housing 818
    - discrimination 818
  - standard of treatment/assimilation to aliens 248, 250, 826–827
    - adequacy of treatment, ICESCR Art. 11 and: *see also* housing (ICESCR Art. 11(1))
      - as favorable as possible 198–199, 823, 827
      - good faith obligation to consider non-application of general limits 826
      - “in the same circumstances” 205
      - legally resident third-country nationals 827
      - national treatment 827
      - “subject to the control of public authorities” 824–825
      - temporary accommodation 478–479, 813–814: *see also* reception centers
- housing (ICESCR Art. 11(1))** 827–829: *see also* Committee on Economic, Social and Cultural Rights (CESCR), General Comments, 4 (adequate housing)
- “adequate” 478–479, 504–507, 827–829
    - cultural appropriateness 506, 814–815, 828–829
    - habitability 506, 828–829
    - inappropriate materials and design 814–815
    - location 506, 815–816, 828
    - logistical and management deficiencies 815
    - security, peace, and dignity requirement 506, 828
    - self-sufficiency, relevance 828
    - shortage of materials 814–815, 816–817
- CESCR General Comments
- No. 3 504–505
  - No. 7 505–506
- as core obligation 489, 490–491, 492–493, 498, 504–506, 807, 828
    - effective remedy, need for 828
  - eviction, forced and 505–506, 828–829
    - as threat to life and liberty 821, 828–829
  - freedom of movement/choice of residence and 822, 829
  - general international law, relevance 827–828
  - healthcare and 822
  - international aid, obligation to seek 829
  - marginalized and vulnerable groups and 498, 507, 828, 829
  - non-discrimination and 250, 822, 828

overcrowding 479, 507, 815  
 repatriation and 952  
 security of person and liberty (ICCPR Art. 9) and 507, 821  
 self-settlement 829

### **Human Rights Committee (HRC), General Comments**

6 (right to life) 450–451, 452  
 8 (security of person and liberty) 424, 451  
 10 (expression, freedom of) 891–892, 902  
 11 (propaganda for war and advocacy of hatred) 898 n. 843, 898 n. 844  
 14 (right to life) 450–451  
 15 (position of aliens under the Covenant) 101 n. 83, 120–121, 127–128, 249, 450 n. 794, 450 n. 795, 450–451, 504 n. 1049, 547–548, 668 n. 55, 892, 894–895, 948  
 16 (privacy) 545, 549  
 17 (rights of child) 547–548, 553–554, 948  
 18 (non-discrimination) 125  
 19 (family) 551, 556  
 20 (torture, or other cruel, inhuman, or degrading treatment or punishment) 453–454, 945  
 21 (humane treatment of persons deprived of liberty) 435, 436, 436 n. 713, 436–437  
 22 (freedom of thought, conscience, or religion) 574–575, 575–576, 576 n. 1408, 577, 579 n. 1418, 582 n. 1431, 899 n. 845, 901–902  
 25 (participation in public affairs and right to vote) 980–981  
 27 (freedom of movement) 177, 183, 308–310, 312–313, 418 n. 631, 713, 715–716, 716–717, 717–718, 955 n. 162, 956, 956 n. 167, 957–958  
 28 (equality of rights between men and women) 138 n. 249, 553 n. 1310  
 31 (nature of general legal obligation) 120–121, 127–128, 310 n. 161, 369, 450 n. 794

### **human rights law post-1951: see also** *aliens law, international*; *Civil and Political Rights, International Covenant on (1966) (ICCPR)*; *Economic, Social and Cultural Rights, International Covenant on (1966) (ICESCR)*

continuing relevance of 1951 Convention 5–7, 120–123, 154, 228–230, 258, 259–260, 992, 998–1002

as law applicable to refugees 4–6, 119–123

Conclusion No. 50 120

Conclusion No. 81 119–120

provisional nature of refugee status and 5

legal norms

customary international law as 33

enumeration of universally binding human rights norms 36–39

international humanitarian law 34 n. 64

suitability as source 34–39, 47–48

*erga omnes* 44, 46–47

general principles of law as 33, 39–41, 47–48

need to sustain respect for 33

sparsity 15

reach of universal reach and 33



**human rights law post-1951 (cont.)**

- UN Charter as source 33, 41–48: *see also* United Nations Charter (1945), as source of universal human rights law
- legal and political overlap 31–32
- patchwork coverage 5–7, 13–14
- specialized human rights treaties, relevance to core rights 7–8
- “universal” human rights law, definition 15 n. 2
- universality of civil rights (ICCPR) 120–121

**human rights treaties, extraterritorial obligations:** *see* state responsibility for acts outside territory**Human Rights, Universal Declaration of (1948):** *see also* Table of Treaties and Other International Instruments

- compulsory membership of an association (UDHR Art. 20(2)) 895 n. 828
- erga omnes* obligation, rejection 44 n. 105, 45 n. 109, 47 n. 116
- as evidence of the interpretation and application of UN Charter 46 n. 111, 68 n. 200
- family unity/reunification 545
- as model for 1951 Convention 94
- non-binding nature 44–46, 119, 148–149
  - Human Rights Covenants (1966) and 44–46
  - UN Charter and 44–46
- property rights (UDHR Art. 17) 519–520, 524 n. 1159
- security of person (UDHR Art. 3) 457–458

**humanitarian intervention** 954 n. 158**Hungarian refugees** 287**Hungary**

- cessation clause 939 n. 96
- detention, freedom from arbitrary (ICCPR Art. 9), conditions of detention 436
- differential treatment 145
- geographical limitation 97–98
- inhuman, cruel, or degrading treatment 466
- naturalization 986
- property rights 145, 516–517, 522
- racial discrimination 36 n. 71
- religious freedom, restrictions 566–567, 572–573

**identity papers:** *see* documentation (identity papers) (CRSR Art. 27)**illegal entry or presence, non-penalization (CRSR Art. 31(1)):** *see also* lawful presence

- determination of refugee status, right to 408–409
- drafting history/rationale 386 n. 483, 388
- expulsion and 412–413
- failure to distinguish between asylum-seekers and other aliens 370–371, 387, 423
  - inconsistent legislation 371–372
- “illegal entry or presence” 405–406
- internal movement, freedom of/choice of residence (CRSR Art. 31(2)) and: *see* detention, freedom from arbitrary (ICCPR Art. 9); internal movement, freedom of/choice of residence (CRSR Art. 31(2))
- “life or freedom would be threatened”, equivalence with CRSR Art. 1 389 n. 490

- as new right 94
- non-discrimination (CRSR Art. 3) and 258
- non-refoulement* and 386–387
- organizations or persons assisting refugees, applicability to 402–404
  - carrier sanctions and 404, 405
  - “trafficking” 404 n. 560
- “penalties” 405 n. 562, 409–412
  - drafting history 409–411
  - expedited determination of status as 372–373, 380, 387, 408–409
  - obligation not to “impose,” limitation to 406–407
  - sanctions pénales* 411–412
- physical presence, sufficiency 389–390
- requirements
  - “coming directly” 392–402, 405
    - drafting history/rationale 394–395
    - “from a territory” 402
    - January 1, 1951 cut-off date, effect of abolition 399–400, 400–401
    - persecution in country of asylum and 399–402
    - short periods of transit 394, 396–402
  - good cause for illegal entry 175, 177–178, 178–180, 388–389, 390, 392–393, 405
    - drafting history 392–393
  - presentation to the authorities 390–391
    - apprehension by the authorities, relevance 390–391
    - limitation to port or airport of entry, validity 177–178
    - right of presentation 184–185
  - presentation without delay 175, 177–178, 178–180, 373, 386 n. 484, 387, 388, 388–389, 391–392, 405
    - Conclusion No. 15 (refugees without asylum country) 322
  - right to seek admission to another country (CRSR Art. 31(2)) 347
  - visa controls and 312 n. 170
- immigration laws as matter of domestic policy** 300–301, 368 n. 393, 546 n. 1285, 966–967, 999–1000: *see also* enter his own country, right to (ICCPR Art. 12(4))
- “in” or “within” the country:** *see* physical presence
- India**
  - association, right of 875–876, 891
  - Constitution, Art. 21 (life and liberty) 318 n. 187
  - differential treatment, justification/requirements, nationality 239–241, 251–252
  - education, provision 587 n. 1458
  - eviction, forced 828–829
  - fundamental change of circumstances 924
  - healthcare, compliance with obligations 508–509
  - inhuman, cruel, or degrading treatment 455–456
  - internal movement, freedom of/choice of residence of person lawfully present, restrictions 374, 697, 701, 715, 718
  - international aid, obligation to seek/accept 471, 495
  - naturalization 985 n. 317
  - non-refoulement*, avoidance of obligation 283, 317, 317–318
  - non-refoulement*, customary international law and 364
  - political activity of Tamil refugees 879, 902

**India** (cont.)

- refugee status, determination/verification, obligation of asylum-seeker to provide information required to verify status, language difficulties 288
- as safe country 296
- security of person and liberty (ICCPR Art. 9), risk to
  - in refugee camps 444
  - self-settlement and 816, 821
- “voluntary” repatriation 288, 318

**individual, standing:** *see also* [aliens law, international](#); [diplomatic protection](#)

- Minorities Treaties (post-WWI) 81–82, 82–83, 993 n. 14
- treaty enforcement in national courts 655–656

**Indonesia**

- family unity/reunification 539–540, 546 n. 1285
- repatriation from 930 n. 62

**Indonesian refugees** 283, 285, 292**inheritance:** *see* [succession and inheritance](#)**inhuman, cruel, or degrading treatment (ICCPR Art. 7)** 454–456: *see also* [torture, freedom from \(ICCPR Art. 7\)](#)

- customary international law, whether 36–39
- degrading treatment 456–457, 466, 496–497, 947
- “inhuman or cruel,” definition/requirements 454–455, 465–466, 947
  - failure to protect against known risks 455–456
  - intention, relevance 454
  - level of severity, relevance 454–455
  - official act or omission 456
- necessities of life, right to and 465–466, 496–497
- as non-derogable right 121 n. 193

**insurmountable circumstances:** *see* [standard of treatment of refugees \(CRSR Art. 6\)](#), “[in the same circumstances](#),” [insurmountable requirements](#)**integration:** *see* [local integration](#)**intellectual property rights (CRSR Art. 14)**

- benefits conferred by 835, 840
- drafting history/rationale 830–833
- habitual residence requirement 835–838, 840, 909 n. 896
  - domicile distinguished 835–838
- international agreements for the protection of intellectual property rights and
  - Berne Convention on the Protection of Literary and Artistic Works (1886/1967) 831–836, 835–836, 840
  - Convention for the Protection of Producers of Phonograms against Unauthorized Duplication (1971) 838
  - Paris Convention for the Protection of Industrial Property (1883/1967) 835–836
  - Rome Convention for the Protection of Performers and Producers of Phonograms (1861) 838, 838–839, 840
  - TRIPS Agreement (1993) 838–839
  - WIPO Performances and Phonograms Treaty (1996) 838
- reciprocity requirement, exemption 830, 830–833, 840
- scope of protection 834
  - treaty rights subsequent to 1951 Convention 838–839
- standard of treatment

- most-favored-national treatment, rejection 831–832
- national treatment [in country of residence or in territory of another state party] 832–833, 840
- treatment accorded to aliens generally 839
- intellectual property rights (ICESCR Art. 15(1)(c))** 839, 839–840
  - limited nature of right 839
  - non-discrimination requirement 839–840
- intellectual property rights, pre-Convention** 829
  - reciprocity requirement, exemption 829
  - UDHR Art. 27(2) (right to protection of moral and material interests) 839
- Intergovernmental Consultations on Refugees, Asylum and Migration Policies** 299, 332–333, 964
- internal movement, freedom of/choice of residence:** *see* **detention, freedom from arbitrary** (ICCPR Art. 9); **internal movement, freedom of/choice of residence** (CRSR Art. 26); **internal movement, freedom of/choice of residence** (CRSR Art. 31(2)); **internal movement, freedom of/choice of residence** (ICCPR Art. 12(1)); **internal movement, freedom of/choice of residence** (ICCPR Art. 12(3)); **reception centers; resettlement in third country**
- internal movement, freedom of/choice of residence (CRSR Art. 26)**
  - 1938 Convention compared 705
  - conditional permission to live outside reception center 431–432, 483–484
  - drafting history 704–708
  - lawful presence and 414, 419, 657
  - non-discrimination and 229, 250, 718
  - prohibition of constraints and right to choose residence distinguished 708 n. 253
  - standard of treatment
    - subject to regulations applicable to aliens generally 198 n. 210, 248, 250, 704–705, 711–712
    - CRSR Art. 31(2) restrictions and 423, 711
    - ICCPR Art. 12(3) and 712 n. 270
    - “in the same circumstances” 713
  - suspension or limitation, grounds: *see also* **internal movement, freedom of/choice of residence** (CRSR Art. 31(2))
    - internal measures in case of lawful expulsion (CRSR Art. 32(3)) 693 n. 191
    - mass influx 704–705, 705–706
    - national security 704–705
- internal movement, freedom of/choice of residence (CRSR Art. 31(2))** 374–384: *see also* **resettlement in third country**
  - assignment to reception centers 378–379: *see also* **reception centers**
  - children 383–384, 433–434
  - Conclusion No. 44 (detention of refugees and asylum-seekers) 374
  - detention while awaiting deportation 379, 965–966
  - family unity/reunification and 539–540
  - housing/shelter and 822, 829
  - indirect restrictions 708–709
  - justification
    - avoidance of border trouble 700–701, 711
    - Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) compared 711

**internal movement, freedom of/choice of residence (CRSR Art. 31(2)) (cont.)**

- national security 706
- need for 424–425
- operational reasons 701
- promotion of self-sufficiency 700
- mandatory resettlement in third country and 965–966
- “necessary” 423–431
  - administrative efficiency 432–433
  - automatic detention, exclusion 427–429
  - Conclusion No. 44 424
  - Detention Guidelines 424
  - generic detention regimes 435
  - margin of appreciation 427–428
  - national security 426–428, 706
  - proportionality and 426–427, 904–905
- non-punitive nature 422, 693 n. 191
- provisional nature of right 431, 435
  - admission into another country 414
  - alternatives to detention, obligation to consider 429–432
  - drafting history 415–417
  - mass influx and 419–420, 706
  - pending verification of identity and circumstances of entry 420–423, 658–659, 706
  - provisional detention as disincentive, exclusion 422
    - UNHCR Guidelines 422
  - regularization of status in country 415–419, 707–708
    - compliance with requirements for verification of refugee status 417–419
    - determination of refugee status, relevance 415–417
    - UNHRC General Comment No. 27 418 n. 631
- reasonable time and facilities to obtain entry into another country 965–966
- terms of resettlement or admission and 709–710
- zones d’attente* 379–380

**internal movement, freedom of/choice of residence (ICCPR Art. 12(1)) 250–251:**  
*see also* Human Rights Committee (HRC), General Comments, 27 (freedom of movement)

- arbitrary deprivation of right to enter country (Art. 12(4)) 713
- conditional entry and 713–714
- lawful presence and 182–183, 229, 250

**internal movement, freedom of/choice of residence (ICCPR Art. 12(3)) 713–718**

- as alternative to expulsion 718
- consistency with other rights in the Covenant 717–718
- family unity and 717
- national security 715
- “necessary” 716–717
- non-discrimination and 717–718
- proportionality, need for 716–717
- “provided in law” 716
- provisional nature of right 718–719
- public interest 715–716
- public order 715

**internal protection/flight/relocation alternative 1 n. 2, 116 n. 167**

**internal waters:** *see* [physical presence](#)

**international aid/relief, dependence on** 463–464, 471–474

disaster and humanitarian assistance 492–493, 501

failure to foresee needs 475

food bans 474–475, 497

logistical difficulties 474, 475

non-discrimination (ICCPR Art. 26) 494–495

obligation to give aid 491–494, 495–499, 809

CESCR General Comment No. 3 492 n. 996

obligation to seek/accept aid 470–471, 490–491, 495, 499–500, 829

CESCR General Comment No. 3 489–490

political considerations 463–464, 471–472, 473–474, 494, 494–495

self-sufficiency and 801–802

termination of aid 801–802

voluntary contributions, dependence on 472–473

**international aliens law:** *see* [aliens law](#), [international](#)

**International Association of Refugee Law Judges (IARLJ)** 2 n. 4: *see also* [compliance mechanisms](#); [judicial role](#)

**International Court of Justice (ICJ), role:** *see* [compliance mechanisms](#); [dispute settlement provisions](#)

**International Covenant on Civil and Political Rights (1966) (ICCPR):** *see* [Civil and Political Rights](#), [International Covenant on \(1966\) \(ICCPR\)](#)

**International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR):** *see* [Economic, Social and Cultural Rights](#), [International Covenant on \(1966\) \(ICESCR\)](#)

**International Labor Organization (ILO) migrant labor conventions:** *see also* *Table of Treaties and Other International Instruments*

1951 Convention and 95

binding nature 152–153

compliance, role of worker and employer organizations 152–153

employment rights 765–769

lawful entry, dependence on 152–153

limitation to state parties 152–153

Migrant Workers, Convention for the Protection of (1990)

property rights 521–522

refugees, relevance to 152

refugees, relevance to 152–153

social security 774–776

standard of treatment 890–891

trade unions 889

**International Labor Organization (ILO) Recommendation No. 86 (model agreement for regulation of labor migration)** 152 n. 303

**International Law Commission (ILC), Special Rapporteur** (state responsibility for injury to aliens), Report (1974) 147–148

**international law sources**

customary international law/general principles of law, value 10: *see also* [customary international law](#), [requirements](#)

general principles of law: *see* [general principles of law](#)

legal certainty, need for 17, 19, 21–22, 24

policy-oriented approach 19–21

customary international law and 21 n. 17

**international law sources (cont.)***jus cogens* and 30

law as process 19–20, 20–21

legal certainty, lack 19, 21–22

natural law and 21

political legitimacy and 19–20

power politics and 20–21

positivism/consent-based approach and 10, 18–24

accountability and 24

democratic legitimacy 21 n. 18, 24

discrimination/equality issues and 22–23

“joining the club” and 23–24

legal certainty 24

as realistic approach 18

sluggishness 21–22, 24

treaties: *see* [treaties](#)**international peace and security obligations:** *see* [peace and security obligations, international](#)**International Refugee Organization, role** 91, 92 n. 45, 92–93, 211, 627, 752 n. 114, 963–964**international travel:** *see* [documentation \(travel documents\)](#) (CRSR Art. 28)**international zone:** *see* “excised territories”/migration zones; *non-entrée*; physical presence**internment:** *see* [provisional measures](#) (CRSR Art. 9), [internment Iran](#)

core obligations (ICESCR) 489–490

employment, right to seek/engage in

regional, political, and economic unions and 231–234, 751

reservation (CRSR Art. 17) 231–234, 741–742, 746–747

food shortages 489–490

fundamental change of circumstances 926

healthcare, compliance with obligations 508

*non-refoulement*, avoidance of obligation 284, 317

religious freedom, restrictions 561–564

repatriation from 930 n. 62

water shortages 477–478, 489–490

**Iraq**

fundamental change of circumstances 925 n. 40

genocide 36–39

**Iraqi refugees**

education 587–588, 601–602

food shortages 476–477

freedom of movement/choice of residence 697–699

healthcare 509–510

housing 506

housing/shelter 478–479

inhuman, cruel, or degrading treatment 466

liberal professions, right to practice 786

life, right to 451

nationality (differential treatment) 241  
 necessities of life, right to 462–463  
*non-refoulement*, avoidance of obligation 280–281, 317  
 security of person and liberty (ICCPR Art. 9), risk to 441  
 “voluntary” repatriation 287–288

### **Ireland**

carrier sanctions 404  
 documentation (travel) 842  
 employment, right to seek/engage in 734–736  
 reservation (CRSR Art. 17) 231–234, 751  
   treatment accorded to aliens generally 751  
 language of instruction 590  
 public order 686–687  
 reception centers 379, 431  
 Refugee Act 1996 735 n. 31

### **Italy**

detention, freedom from arbitrary (ICCPR Art. 9), judicial proceedings to  
   determine lawfulness of detention, right to (ICCPR Art. 9(4)) 425, 435  
 documentation (travel) 842  
 employment, right to seek/engage in 734–736  
   determination of refugee status, relevance 480, 496, 754–755  
   reservation (CRSR Art. 17) 231–234, 746–747  
 family unity/reunification 535–536  
 housing/shelter 506  
   assistance in finding 819  
   discrimination 818  
   “regulated by laws or regulations” 825  
 internal movement, freedom of/choice of residence, restrictions 378, 435  
 language instruction (local language) 593–594  
 legal aid 907, 909  
 legislation, Immigration and Asylum Bill 2001 907 n. 884  
 liberal professions, right to practice 787, 792 n. 299  
 naturalization 988 n. 333  
 necessities of life, right to, non-discrimination and 486  
 non-discrimination, right to adequate standard of living 486  
 public relief and assistance 483, 805  
 temporary protection status 736, 805

### **Jamaica**, dispute settlement provisions, reservation 111–112

### **Japan**

courts, access to 628–629  
 family unity/reunification 546 n. 1285  
*non-refoulement*, avoidance of obligation 285, 319–320  
 State Redress Act 629 n. 1650

### **Jordan**

employment, right to seek/engage in 740 n. 51  
*non-refoulement*, avoidance of obligation 280–281, 317  
 religious freedom, restrictions 573–574



**judicial review/appeal against determination of status, right of** 631–632: *see also* administrative assistance (CRSR Art. 25); consular protection; courts, access to (equality before) (ICCPR Art. 14(1)); expulsion of person lawfully in the territory (CRSR Art. 32), right of appeal to competent authority (CRSR Art. 32(2)); expulsion of person lawfully in the territory (ICCPR Art. 13), right of review by competent authority; protection of refugees (UNHCR Statute Art. 8)

EU Procedures Directive 632, 650 n. 1746

expedited determination of status and 320–321, 373, 652–653

free courts, access to (CRSR Art. 16(1)) and 645

full jurisdiction to rule on fact and law, need for 651–652

non-discrimination (CRSR Art. 3) and 252–253, 632 n. 1663

*refoulement* and 320–321, 649–650

unreasonable deadline 632, 651

**judicial role** 1–3

definitions

“refugee” 1–2

rights 2–3

transnational approach 1–2, 65 n. 189

**juridical status:** *see* courts, access to (CRSR Art. 16); individual standing; personal status

**jurisdictional attachment** 12, 160–171: *see also* courts, access to (CRSR Art. 16); education, right to, elementary (CRSR Art. 22(1)); fiscal charges (CRSR Art. 29); naturalization (CRSR Art. 34); non-discrimination (CRSR Art. 3); *non-refoulement* (CRSR Art. 33); property rights (CRSR Art. 13); rationing (CRSR Art. 20); state responsibility for acts outside territory

acquired rights dependent on personal status (CRSR Art. 12(2)) and 163–164

personal status and 163–164

reciprocity, exemption and 163–164

right to treatment accorded to aliens generally 163–164

insurmountable requirements 163–164

**jus cogens** 18 n. 8, 28–31

classification of norm as

ILC proposals 29 n. 48

requirements 29–30

value 30 n. 49

definition 27 n. 41, 28

as attribute of existing norm 28–29, 30–31

enforcement/compliance obligations 28–29

as general principle of law 28

“instantaneous” general principles and 28

as means of ensuring rapid change in law 30–31

natural law and 29–30

policy-oriented approach, international human rights law and 30

Vienna Convention on the Law of Treaties (1969) and 28

**Kenya**

courts, access to 629, 646

documentation (identity) 614 n. 1578

documentation (travel) 842, 866–867

- due process of law 675
- expression, freedom of, restrictions 900–901
- expulsion, examples 662, 671, 675
- first country of arrival/safe third country rules 294
- fiscal charges 527–528
- illegal entry or presence, non-penalization 406
  - failure to distinguish between asylum-seekers and other aliens 371
- inhuman, cruel, or degrading treatment 454, 455–456
- internal movement, freedom of/choice of residence of person lawfully present,
  - restrictions 696, 708
  - mass influx and 420
- international aid/relief, dependence on 473, 473–474, 475
- liberal professions, right to practice 786–787
- life, right to 451, 464–465
- necessities of life, right to 462–463, 464–465, 469
- non-refoulement*, avoidance of obligation 284, 317–318
- non-refoulement*, grounds for withdrawal of right, mass influx 361
- political activity of Ugandan refugees 878–879
- property rights 516–517, 522, 523, 724–725
- public relief and assistance 808–809
- rape by officials in refugee camps 442
- reception centers, mass influx and 380–381
- security of person and liberty (ICCPR Art. 9) 459
  - risk to
    - from authorities outside refugee camps 446, 447
    - in refugee camps 441, 444, 445
- self-employment 720, 724–725
- vocational training 592–593
- Khmer refugees** 601–602
- Kosovar Albanian refugees** 280, 281, 318, 361, 442, 454–455, 460–461, 478, 736
  - housing 506
  - international aid, dependence on 473–474
- Kuwait**, expulsion, examples 662, 672–673
- labor rights:** *see* employment rights (labor legislation (CRSR Art. 24))
- language:** *see* differential treatment, justification/requirements, differing impact, relevance; education, role, requirements and provision; health, highest attainable standard of physical and mental, right to (ICESCR Art. 12), language and; treaty interpretation, aids and guidelines (with particular reference to the 1951 Convention), multiple languages
- Laos**, religious freedom, restrictions 564, 575–576
- Latvia**
  - employment, right to seek/engage in
    - regional, political, and economic unions and 751
    - reservation (CRSR Art. 17) 231–234, 742 n. 62, 746–747
  - naturalization, reservation 989 n. 335
- lawful presence** 12–13: *see also* illegal entry or presence, non-penalization (CRSR Art. 31(1)); physical presence
  - domestic law as determining factor 176–178

**lawful presence (cont.)**

conformity with Convention, need for 177–178

UNHRC General Comment No. 177

drafting history of relevant provisions 175 n. 108, 182 n. 133

lawful residence, relevance 178–180: *see also* “lawfully staying”/“résidant régulièrement”

short-term authorization 182–183

lawful sanction as determining factor 174

provisional admission 175

refugee status, determination/verification, relevance 175–183, 417, 658

in absence of verification procedures 183–185, 420, 658, 658–659

rights deriving from 173–174: *see also* documentation (identity papers) (CRSR Art. 27); expulsion of person lawfully in the territory (CRSR Art. 32); internal movement, freedom of/choice of residence (CRSR Art. 26); internal movement, freedom of/choice of residence (ICCPR Art. 12(1)); self-employment, right to engage in (CRSR Art. 18)

temporary presence 174, 658

termination 185–186

CRSR Art. 1(C) grounds 185–186

departure 185

deportation or expulsion order 185

in case of non-enforcement 182–183

detention 180 n. 127

determination of non-qualification for refugee status 185

non-compliance with conditions on presence 182 n. 133, 185

removal to another country with initial responsibility 175 n. 108, 185

**“lawfully staying”/“résidant régulièrement” 13, 190**

burden of proof 189 n. 168

domicile/permanent residence distinguished 730, 754

equivalence of terms 186–189, 667

French text as controlling 189, 417, 754

lawful presence distinguished 181–182, 417, 966 n. 216

rights deriving from 730: *see also* documentation (travel documents) (CRSR Art. 28);

employment, right to seek/engage in wage-earning (CRSR Art. 17);

employment rights (labor legislation (CRSR Art. 24)); housing (CRSR Art. 21);

intellectual property rights (CRSR Art. 14); liberal professions, right to practice

(CRSR Art. 19); public relief and assistance (CRSR Art. 23); social security

(CRSR Art. 24 (1)(b))

temporary protection and 184, 188, 730, 755

verification of status, relevance 730

**League of Nations**

documentation: *see* documentation (League of Nations)

Minorities Treaties and: *see* Minorities Treaties (post-WWI)

resettlement in third country 89–90

**League of Nations High Commissioner for Refugees, consular protection 85, 627****leave the country, freedom to (ICCPR Art. 12(2)) 250–251, 850–851: *see also***

documentation (travel documents) (CRSR Art. 28); enter his own country, right

to (ICCPR Art. 12(4)); Human Rights Committee (HRC), General Comments, 27

(freedom of movement); internal movement, freedom of/choice of residence

(CRSR Art. 26); internal movement, freedom of/choice of residence (ICCPR Art. 12(1))

non-discrimination (ICCPR Arts. 2(1) and 26) and 309–310, 956

as bar to downgrading of aliens' rights 1906 712 n. 270

*non-refoulement*, avoidance of obligation (CRSR Art. 33) and 308–310

permissible restrictions (ICCPR Art. 12(3)) 309–310, 955 n. 163

consistency with other ICCPR rights 956

necessity 956

proportionality 956

public order/*ordre public*

in country of destination 956

in destination state 956

rights and freedoms of others, respect for (CRSR Art. 22(2)) 955 n. 164

rights and freedoms of refugee distinguished 955 n. 164

UNHRC General Comment No. 27 956 n. 169

reestablishment in country of origin and 955

state practice 312–313

travel documentation, right to 850–851, 955 n. 162

UNHCR General Comment No. 31 310 n. 161

visa controls and 312–314

**legal aid** (CRSR Art. 16(2)) 906–908, 907, 909, 909–910, 911–912: *see also cautio judicatum solvi* (CRSR Art. 16(2))

1933 and 1938 Conventions 910 n. 899

equality between the parties 912 n. 912

“free access” (CRSR Art. 16(1)) distinguished 646, 908 n. 894

habitual residence 190, 908–910

ICCPR and 911–912

legal aid, public schemes, limitation to 911 n. 910

margin of appreciation 911–912

national treatment 190, 911

national treatment [in country of residence or in territory of another state party] (CRSR Art. 16(3)) 910

**legislative reciprocity**: *see* reciprocity, legislative reciprocity

**leisure**: *see* rest and leisure, right to

**liberal professions, right to practice** (CRSR Art. 19): *see also* employment, right to seek/engage in wage-earning (CRSR Art. 17); self-employment, right to engage in (CRSR Art. 18)

determination of status, relevance 794

“diploma recognized by the competent authorities” requirement 791–793

“desirous of practicing” 792–793

“in the same circumstances,” relevance 793

insurmountable requirements and 793

drafting history 789–797

education, right to (CRSR Art. 22(2)) and 608–609

“lawfully staying”/“résidant régulièrement” 793–794

“liberal” professions 797–799

ECJ jurisprudence 798

narrow definition, desirability 798–799

limited value 794–795

**liberal professions, right to practice (CRSR Art. 19) (cont.)**

employment, right to seek/engage in (CRSR Art. 17) compared 794–795

self-employment (CRSR Art. 18) compared 794–795

non-discrimination

CRSR Art. 3 799 n. 339

ICCPR Art. 26 229, 799–800

ICESCR 229

resettlement in affiliated territories, best endeavors obligation (CRSR Art. 19(2))

795–797: *see also* [resettlement in third country](#)

“consistently with their laws and practices” 796, 797

limitation on range of territories 796–797

restrictions 786–788

as breach of ICESCR Art. 12 (health) 791 n. 296

standard of treatment (CRSR Art. 19(1))

most-favored-national treatment, rejection 789–790

treatment accorded to aliens generally 248, 789–790

“in the same circumstances” 205, 793

insurmountable requirements 793

treatment as favorable as possible 198–199, 790–791

treatment more favorable, good faith obligation to consider 791

as obligation of process 791

**Liberia**, repatriation from 930 n. 62

**Librian refugees** 284, 445–446, 452, 509–510, 602–603, 617–618, 720, 732–733

differential treatment on grounds of nationality 239–241

education 587–588

employment, right to seek/engage in 732–733

freedom of movement/choice of residence 697–699

healthcare 509–510

*non-refoulement*, avoidance of obligation 317–318

political activity 878–879

**liberty of person**: *see* [security of person and liberty \(ICCPR Art. 9\)](#)

**Libyan refugees** 239–241

**Liechtenstein**

employment, right to seek/engage in

reservations 231–234, 751

treatment accorded to aliens generally 751

family unity/reunification 539–540, 546 n. 1285

**life, right to (ICCPR Art. 6)** 250–251, 450–453: *see also* [detention](#), [freedom from arbitrary \(ICCPR Art. 9\)](#); [food shortages](#); [inhuman, cruel, or degrading treatment \(ICCPR Art. 7\)](#); [necessities of life, right to](#); [security of person and liberty \(ICCPR Art. 9\)](#), [risk to](#); [torture, freedom from \(ICCPR Art. 7\)](#)

choice of means 465

effective facilities and procedures to investigate, need for 452

housing and 821

as inherent right 450 n. 795, 450–451

intention, relevance 451, 464–465

*non-refoulement* and 369

positive measures to protect, need for/duty of care 451–452, 465, 469

camps near border, right to move from 452

prohibition except under strict control as determined by the law 451  
 serious efforts to protect, sufficiency 453  
 state responsibilities for acts committed by agents 451

**local integration** 977–979, 984 n. 311: *see also* durable solutions

Agenda for Protection 977 n. 275  
 Conclusions on International Protection of Refugees referring to  
 977 n. 275  
 indistinguishability from respect for refugees' rights 978–979

**Luxembourg**

carrier sanctions 384–385, 404  
 documentation (travel) 842  
 employment, right to seek/engage in  
     regional, political, and economic unions and 231–234, 751, 752  
     reservation (CRSR Art. 17) 752  
 naturalization 988 n. 333  
 property rights 516–517, 522

**Macedonia**

housing/shelter, compliance with obligations 479, 506  
 inhuman, cruel, or degrading treatment 454–455  
*non-refoulement*, avoidance of obligation 281  
*non-refoulement*, grounds for withdrawal of right, mass influx 361  
 security of person and liberty (ICCPR Art. 9), risk to 442  
 “voluntary” repatriation 288, 318

**Madagascar**

1967 Protocol 97  
 geographical limitation 97

**Malawi**

cessation clause 939 n. 96  
 education, provision 587–588  
 education, right to elementary (CRSR Art. 22(1)) 602–603  
 employment, right to seek/engage in  
     reservation (CRSR Art. 17) 231–234, 742 n. 62, 746–747, 751, 753 n. 117  
     treatment accorded to aliens generally 751  
 employment, right to seek/engage in wage-earning (ICESCR Art. 6)  
 food shortages 476–477, 500–501  
 healthcare, compliance with obligations 508  
 housing/shelter, self-settlement 816 n. 436  
 illegal entry or presence, non-penalization, failure to distinguish between  
     asylum-seekers and other aliens 371, 387  
 internal movement, freedom of/choice of residence of person lawfully present,  
     restrictions 695–696, 697  
 international aid/relief, dependence on 474  
 life, right to 451  
 naturalization, reservation 989 n. 335  
 property rights 515, 526  
 religious freedom, restrictions 560, 561–564  
 security of person and liberty (ICCPR Art. 9), risk to 440–441  
 self-employment 722–723, 728

**Malaysia**

- inhuman, cruel, or degrading treatment 465
- necessities of life, right to 462
- non-refoulement*, avoidance of obligation 285, 319–320
- racial discrimination 36 n. 71
- religious education, restrictions on 568–569
- “voluntary” repatriation 462

**Maldives**, religious freedom, restrictions 560–561, 566–567, 575–578

**Mali**, as safe country 296

**Malta**

- documentation (identity) 620 n. 1607
- geographical limitation 97–98
- housing/shelter, assistance in finding 819–820
- internal movement, freedom of/choice of residence, restrictions 375
  - provisional nature of right 419
- naturalization, reservation 989 n. 335

**manifestly unfounded claims**

- Conclusion 30 (manifestly unfounded claims or abusive applications) 159–160, 408 n. 575
- conflicting UNHCR views 117
- EU safe country of origin procedures 297 n. 100

**margin of appreciation:** *see also* proportionality

- courts, access to 651–652
  - cautio judicatum solvi* 911 n. 907
  - legal aid 911–912
- exceptional measures, exemption (CRSR Art. 8) 271
- expressive freedoms 902–903
- internal measures in case of expulsion (CRSR Art. 32(3)) 693 n. 191
- internal movement, freedom of/choice of residence, restriction 427–428
- national security 679
- non-discrimination (ICCPR Art. 2; ICESCR Art. 2)) 229
- public morality 902 n. 863

**married women:** *see also* sex discrimination; women refugees

- acquired rights dependent on personal status (CRSR Art. 12(2)) 221–222
- applicable law (CRSR Art. 12(1)) 218–219

**mass influx as ground for suspension or withdrawal of right** 419–420, 704–705, 705–706: *see also non-refoulement* (CRSR Art. 33), grounds for withdrawal of right (CRSR Art. 33(2)), mass influx

**matrimonial status:** *see also* divorce; family rights, applicable law

- acquired rights dependent on personal status (CRSR Art. 12(2)) 221–222

**Mauritania**, employment, right to seek/engage in 731–732, 741–742

**Mauritanian refugees** 460–461

- employment, right to seek/engage in 732–733

**Mexico**

- detention, freedom from arbitrary (ICCPR Art. 9), conditions of detention 436
- employment, right to seek/engage in
  - reservation (CRSR Art. 17) 231–234, 753 n. 117
  - treatment accorded to aliens generally 751

illegal entry or presence, non-penalization, presentation without delay, need for 373, 387, 392

internal movement, freedom of/choice of residence of person lawfully present, restrictions 700–701, 711

life, right to 452

necessities of life, right to, public response to needs 460–461

property rights 516–517, 522, 523–524

public relief and assistance, termination of aid 801–802, 809–810

reception centers, conditions 382, 436

security of person and liberty (ICCPR Art. 9) 458–459

risk to, in refugee camps 445

self-employment 721, 724–725

**migrant workers:** *see* International Labor Organization (ILO) migrant labor conventions; Migrant Workers and Members of Their Families, Convention for the Protection of (1990)

**Migrant Workers and Members of Their Families, Convention for the Protection of (1990)** 152: *see also* International Labor Organization (ILO) migrant labor conventions

property rights 521–522

**military attacks:** *see* security of person and liberty (ICCPR Art. 9), risk to

**military service:** *see also* conscription, forced

differential treatment and 130–131

refugee duty, whether 101

**Minorities Treaties (post-WWI)** 81–83

compliance mechanisms

collective responsibility 82, 83

League of Nations 82

PCIJ 82 n. 17

petitions 82, 993 n. 14

as external guarantee of relationship between foreign citizens and own government 81–83

interstate nature of rights and obligations 81

limited applicability 82

object and purpose 81

as precondition for admission to League of Nations/conclusion of Peace Treaty 81–82

preservation of international peace and security as objective

**minority rights, protection (ICCPR Art. 27)** 250–251

**Moldova,** employment, right to seek/engage in, regional, political, and economic unions and 751

**Monaco**

1967 Protocol 97

education, right to elementary (CRSR Art. 22(1)) 602–603

geographical limitation 97

**most-favored-national treatment:** *see* standard of treatment of aliens; standard of treatment of refugees (CRSR Art. 7)(1), most-favored-national treatment

**Mozambican refugees** 282, 476–477, 561–564, 592 n. 1490, 697

association, right of 875–876, 891

education 587–588



**Mozambican refugees** (cont.)

public relief and assistance 802

**Mozambique**

cessation clause 939 n. 96

education, right to elementary (CRSR Art. 22(1)) 597 n. 1517, 602–603

expulsion, examples 662

inhuman, cruel, or degrading treatment 456

internal movement, freedom of/choice of residence of person lawfully present, restrictions 700, 715

naturalization, reservation 989 n. 335

security of person and liberty (ICCPR Art. 9), risk to, in refugee camps 443

**Myanmar:** *see* [Burma](#)

**Namibia**

1967 Protocol 97

association, right of 877

education, provision 591

inhuman, cruel, or degrading treatment 456–457

internal movement, freedom of/choice of residence, restrictions 374, 419

international aid/relief, dependence on 472, 474–475, 497

*non-refoulement*, avoidance of obligation 280, 319–320

political association, objections 885

property rights 516–517, 522

reception centers 419

repatriation to 936

self-employment 720–721, 724–725

**Namibian refugees** 592 n. 1490, 958–959

**national security** 263–266: *see also* documentation (travel documents) (CRSR Art. 28), withhold, right of; expulsion of person lawfully in the territory (CRSR Art. 32), due process of law requirement (CRSR Art. 32(2)); expulsion of person lawfully in the territory (CRSR Art. 32), grounds; internal movement, freedom of/choice of residence (CRSR Art. 31(2)); provisional measures (CRSR Art. 9)

attack on political integrity of host state and 263–264, 678–679

global interdependence and 265–266

as ground for limited withhold of rights: *see* provisional measures (CRSR Art. 9)

hearing, right to fair and public 654–655, 675–677

*non-refoulement*, avoidance of obligation and 286, 336–337: *see also non-refoulement* (CRSR Art. 33), grounds for withdrawal of right (CRSR Art. 33(2)), danger to security of country in which he is

objectively reasonable suspicion 265–266, 679, 695, 715, 899

previous conviction, relevance 679

risk of direct or indirect harm to basic interests and 679, 695, 899, 1000

subversion 899

terrorism, relevance 264–266, 679

preventative/precautionary approach 264–266

**national treatment:** *see* standard of treatment of refugees (CRSR Art. 7(1)),

*national treatment*; and *under individual subject headings*

**nationality:** *see also* enemy alien, classification as; exceptional measures, exemption (CRSR Art. 8)

- child's right to 553 n. 1312
- differential treatment 120–121, 130–131, 131–133, 239–241, 254, 494–495, 522, 739–740
- “formal” 270–271
- as link establishing right to protection 80 n. 14, 193
- naturalization (CRSR Art. 34)** 977–990
  - as absolute right 237–238
  - additional benefits conferred by 980–981
  - definition 981 n. 294
  - drafting history 981–984
  - European Convention on Nationality (1997) 986 n. 321
  - facilitation as far as possible of assimilation and naturalization 982–990
    - “assimilation” 983–984
    - “expedite” 986
    - good faith obligation 984–986, 988–990
    - “in particular” 985 n. 318
    - reduction of charges and costs 986–987
    - UNHCR financial contribution 987
  - lawful stay, relevance 189–190
  - location in Convention, relevance 982 n. 304
  - minimalist nature of obligation 987–988
  - non-binding nature of obligation 252, 981–984, 987–988
  - non-discrimination (CRSR Art. 3) and 252
  - physical presence, relevance 163
  - refugee's right to refuse 981–982
    - right to enter “his own country” (ICCPR Art. 12(4)) and 981 n. 298, 989 n. 340
  - reservations 989 n. 335
  - as termination of refugee status (CRSR Art. 1(C)(3)) 916, 980–981
  - treatment “more favorable than” treatment given to other aliens 986 n. 319
- naturalization (pre-1951)**
  - as objective 85 n. 21
  - reluctance to grant 88–89
- Nauru**, religious freedom, restrictions 560, 560–561, 566–567, 572–573
- necessities of life, right to** 460–514; *see also* clothing (ICESCR Art. 11); food (ICESCR Art. 11); food shortages; health, highest attainable standard of physical and mental, right to (ICESCR Art. 12); housing (CRSR Art. 21); housing (ICESCR Art. 11(1)); rationing (CRSR Art. 20); self-employment, right to engage in (CRSR Art. 18); water, right to; water shortages
  - absence of provision in 1951 Convention 466–467
  - association and 875–876
  - dependence on international aid/relief operations: *see* international aid/relief, dependence on
  - deprivation
    - as disincentive 462
    - on ethnic or religious grounds 462–463
    - as *non-refoulement*, avoidance of obligation 464
    - as punishment 463
    - as “voluntary” repatriation 462, 464, 489–490
  - deprivation as breach of obligation of

**necessities of life, right to** (cont.)

humanity and respect (ICCPR Art. 10(1)) 466

physical security (ICCPR Art. 9) 465

employment, right to seek/engage in and 496, 719, 741, 745

inhuman, cruel, or degrading treatment 465–466

life, right to and 464–465

proactive/protective nature of obligation 465, 495 n. 1012, 497–499

public response to needs 460–461

reception centers: *see* reception centers

repatriation and 951–952

security of person and liberty (ICCPR Art. 9) and 465

self-sufficiency and 460, 479–480, 495–497, 801

shortages, response to 463

**necessities of life, right to (ICESCR Art. 11) (right to adequate standard of living)** 250–251, 484–507

non-discrimination and 485–486

progressive realization obligation 486–488, 807: *see also* progressive realization (ICESCR Art. 2(1))

renunciation of other rights requirement 488

**Nepal**

association, right of 875–876, 896

differential treatment, justification/requirements, sex 242, 255–256

documentation (identity) 618, 625

healthcare, compliance with obligations 822

inhuman, cruel, or degrading treatment 454

*non-refoulement*, avoidance of obligation 280, 317

*non-refoulement*, grounds for withdrawal of right, mass influx 360

rape by officials in refugee camps 442

religious freedom, restrictions 564, 575–576

skills training 591–592

**Netherlands**

differential treatment 133, 135–136, 138–139, 139–140, 141–142

documentation (travel) 842

employment, right to seek/engage in 735 n. 32, 736

adaptation programs 738

determination of status, dependence on 480, 496

practical difficulties 737–738

regional, political, and economic unions and 751, 752

reservation (CRSR Art. 17) 752

temporary protection and 755

family unity/reunification 535–536, 539–540, 546 n. 1285

refugee status, relevance 558

housing/shelter 507, 822

self-settlement 818–819

naturalization 986 n. 320

public relief and assistance 703, 805

reception centers 507, 709 n. 255, 822

self-sufficiency 496

temporary protection status 755, 805, 822

## New Zealand

- Conclusions on International Protection of Refugees, legal effect 114 n. 149
- differential treatment 136–137, 142
- Handbook* and Guidelines, legal effect 115, 117
- housing/shelter, public housing, access to 819
- illegal entry or presence, non-penalization
  - failure to distinguish between asylum-seekers and other aliens, inconsistent legislation 371–372
  - obligation not to impose penalties, limitation to 407
- internal movement, freedom of/choice of residence, restrictions 427–428, 433
- lawful presence, lawful residence, relevance 178 n. 122
- legislation
  - Crimes Act 1961 372 n. 411
  - Immigration Act 1987 372 n. 411
  - Passports Act 1997 372 n. 411
  - War Pensions Act 142
- non-refoulement*, avoidance of obligation 286
- visa controls 292
- non-refoulement*, grounds for withdrawal of right
  - conviction by a final judgment of a particularly serious crime 345 n. 301
  - danger to security of country in which he is 347–348
  - “reasonable grounds for regarding” 345
  - proportionality between risk to individual and to security of refugee state 355 n. 337
- non-refoulement*, “life or freedom would be threatened” 306–307
- property rights 516–517, 522
- proportionality 427–428
- social security 777 n. 232

**Nicaragua**, necessities of life, right to/rationing 463, 468–469

**Nicaraguan refugees** 474, 479

## Nigeria

- documentation (travel) 841–842, 847
- due process of law 675
- education, provision 587–588, 591
- education, right to, elementary (CRSR Art. 22(1)) 602–603
- expulsion, examples 662–663, 675
- healthcare, compliance with obligations 508–509, 509–510, 514
- internal movement, freedom of/choice of residence of person lawfully present, restrictions 697–699
- mass expulsion 538, 548–549

**Nigerian refugees** 560

**non-citizens:** *see* aliens law, international; differential treatment, justification/requirements; non-discrimination

**non-discrimination:** *see also* differential treatment, justification/requirements; Human Rights Committee (HRC), General Comments, 18 (non-discrimination); non-discrimination (CRSR Art. 3); non-discrimination (equality before the law/equality of protection) (ICCPR Art. 26); non-discrimination (ICCPR Art. 2; ICESCR Art. 2); non-discrimination (UN Charter); Women, Convention on the Elimination of All Forms of Discrimination (1979); *and under individual headings*

**non-discrimination** (cont.)

bilateral/FCN agreements and 80–81

customary international law 250 n. 497

definition 123–124

diplomatic reciprocity and 204 n. 235

non-impairment of non-convention rights and benefits (CRSR Art. 5) and 109, 258–259

political activity 101 n. 84

positivism/consent-based approach and 22–23

**non-discrimination (CRSR Art. 3)**

burden of proof 249–250, 251–252

conflicting provisions, primacy 258–259

continuing relevance 258, 259–260

Convention rights, limitation to 252, 253

including rights not found elsewhere 258

differential treatment as provided for in the Convention 248: *see also* differential treatment, justification/requirements

national treatment and 248

documentation (identity papers) (CRSR Art. 27) 258

drafting history/rationale 244–247

exceptional measures, exemption (CRSR Art. 8) 272, 276

extraterritorial application 245–246, 260

illegal entry or presence, non-penalization 258

non-discrimination between classes of refugees, limitation to 155, 238–243, 246–251, 259

non-impairment obligation (CRSR Art. 5), effect 258–259

*non-refoulement* and 253, 258, 309–310

as overarching duty 12

physical presence, relevance 163, 245–246, 260

public order, safety and morality and 244–245

race, religion, or country of origin, limitation to 251–252, 254–258

arbitrary nature 255–256

country of origin 254

ICCPR Art. 26, effect 256–258

language, omission 254

liberal professions (CRSR Art. 19), relevance to 799 n. 339

political opinion, omission 255

sex discrimination, exclusion 255–256

symmetry with grounds of persecution (CRSR Art. 1(2)) 255

UN Charter distinguished 255

Universal Declaration distinguished 255

“reasonableness” test and 245, 249–250, 259–260

reservation, exclusion 96

**non-discrimination (equality before the law/equality of protection) (ICCPR Art. 26)**

125–129, 238, 251: *see also* courts, access to (equality before) (ICCPR Art.

14(1)); differential treatment, justification/requirements

affirmative nature of obligation 127–128

applicability to refugees and asylum-seekers (“other status”) 127–128

CRSR Art. 3, effect on 256–258, 259–260

- drafting history/rationale 126–127, 131
- equality before the law 126–127
- family reunification 253, 549–550
- General Comment (HRC) No. 125–129
- “In this respect” 126–127
- intention, relevance 137, 138–139, 238
- international aid 494–495
- jurisprudence
  - national courts 127 n. 218
  - UNHRC 127–147
- liberal professions, right to practice (CRSR Art. 19) and 229, 799–800
- limitation to enumerated grounds 138 n. 249
- “other status” 258 n. 524
- private sector discrimination 127–128
- non-discrimination (ICCPR Art. 2; ICESCR Art. 2)**
  - adequate standard of living (ICESCR Art. 11) 250, 485–486, 828
  - “all”/“everyone,” applicability to 120–121
  - distinction between ICCPR and ICESCR, whether 122 n. 196
  - level of protection of CRSR Art. 3 compared 248–251
    - rights not included in 1951 Convention 250–251
  - margin of appreciation 229
  - non-impairment of other rights (CRSR Art. 5) and 109 n. 123
  - patchwork coverage 148–149
- non-discrimination (UN Charter)** 109 n. 123, 147–148, 255
- non-entrée:** *see also non-refoulement* (CRSR Art. 33), avoidance of obligation; physical presence
  - carrier sanctions 291–292, 299–300, 310–311, 384–385, 404, 405
  - definition 292 n. 71
  - “extraterritorial”/international zones 298–299, 299–300, 321–322
  - first country of arrival/safe third country rules 293–296: *see also* first country of arrival/safe third country rules
  - interpretation of Convention and 63–64
  - prospects for resolving problem 368
  - visa controls: *see* visa controls
- non-impairment of non-convention rights and benefits (CRSR Art. 5)** 108–110
  - cessation of status (CRSR Art. 1(C)(5)) and 108
  - drafting history 108, 258–259
  - future obligations and duties, applicability to 108
    - subsequent human rights conventions 109–110
  - ICCPR Art. 5(2) compared 109 n. 124
  - IRO agreements 108–109
  - national provisions 109
  - non-discrimination obligations and 109, 258–259
    - as reflection of intention to enhance refugee rights regime 109
- non-penalization:** *see* illegal entry or presence, non-penalization (CRSR Art. 31(1))
- non-refoulement (CRSR Art. 33)** 279–370: *see also* Conclusions on the International Protection of Refugees, 6 (*non-refoulement*) (1977); persecuted, well-founded fear of being (CRSR Art. 1(2))
  - 1933 Convention compared 87, 302

***non-refoulement*** (cont.)

as absolute right 237

asylum or entry distinguished 300–301

ICCPR Art. 12(2) and 300 n. 113

temporary nature of right 302

Universal Declaration Art. 14(1) and 300 n. 113

authorized presence, relevance 302–303

customary international law and 363–367: *see also* customary international law, requirements

Declaration of States Parties to the 1951 Convention/Agenda for Protection (2001) 364

San Remo Declaration on the Principle of *Non-Refoulement* 364

definition 87–88

expulsion distinguished 315, 315–316, 691–692

determination of refugee status, relevance 157 n. 14, 159, 303–304, 320–321

drafting history 302–303, 336–337, 338

European Human Rights Convention obligations and 369–370

“expel or return” 316–317, 337–338

UNHCR views 338

“expel or return in any manner whatsoever” 316–317, 337–338, 363

expulsion of person lawfully in the territory (CRSR Art. 32) and 664–670

reservation to CRSR Art. 32, effect 665

illegal entry or presence, non-penalization (CRSR Art. 31(1)) and 386–387

individuated exceptions (CRSR Art. 33(2)): *see non-refoulement* (CRSR Art. 33), grounds for withdrawal of right (CRSR Art. 33(2))

“life or freedom would be threatened” 304–307

drafting history 304–305

equivalence with CRSR Art. 1 306, 306–307

generalized violence or threats arising out of internal conflict 369

limitation on class of beneficiaries, whether 304–305

persecution in terms of CRSR Art. 1, whether limited to 305–306, 369

life, right to (ICCPR Art. 6) and 369

non-discrimination (CRSR Art. 3) and 253, 258

OAS Cartagena Declaration (1984) 119

as obligation of result 318

physical presence, relevance 163: *see also* refugee, definition (CRSR Art. 1)

redirection to state where acquired rights will be respected 668

reestablishment in country of origin and 916, 919 n. 17, 953

Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) and 118–119

reservation, exclusion 96

termination of lawful presence, relevance 185 n. 146

Torture Convention obligations and 368–369, 369–370

***non-refoulement* (CRSR Art. 33), avoidance of obligation** 279–300

closure of borders 281–282, 299–300

Convention Plus regime 299

extraterritorial controls 291, 307–310, 311–312, 335–342

freedom to leave any country (ICCPR Art. 12(2)) and 308–310

joint responsibility 340–341

- state responsibility and 313–314
- failure to verify status 284–286, 298 n. 105, 299–300, 319–320
- freedom of movement/choice of residence, restrictions and 708 n. 253
- on grounds of age 286, 320
- high seas and 290–291, 299–300, 336, 337, 341–342
- inefficiencies in system 287, 299–300, 311 n. 164, 319
- Intergovernmental Consultations on Refugees, Asylum and Migration Policies 299
- national security (CRSR Art. 33(2)) and 286, 336–337
- necessities of life, deprivation as 286, 336–337
- non-entrée*: see *non-entrée*
- non-state agents and 284, 299–300, 340
- physical barriers 282, 299–300
- refusal of access 280–281, 299–300, 315, 379, 387
- regional protection areas 299
- “voluntary” repatriation 287–289, 299–300, 318–321, 464, 961
- non-refoulement* (CRSR Art. 33), grounds for withdrawal of right (CRSR Art. 33(2))**
  - 250–251, 342–355: see also fugitives from justice, exclusion (CRSR Art. 1(F)(b))
  - admissibility of exceptions 342 n. 290
  - conviction by a final judgment of a particularly serious crime 342, 343, 349–352, 367, 692 n. 183
    - continuing justiciability, relevance 343
    - conviction by final judgment, need for 344, 350–351
    - “danger to the community” requirement 344, 349, 351–352
    - “particularly serious” 343 n. 296, 344, 349–350
      - sufficiency in itself 351
    - place of crime, relevance 351
  - refoulement* as last resort 351–352, 368
  - service of sentence, relevance 351
- danger to security of country in which he is 342, 367, 692 n. 182
  - avoidance of retaliation 347
  - burden of proof 348
  - danger posed by individual under consideration, limitation to 347–348
    - group membership, relevance 348
  - disincentive to other refugees, relevance 346, 376 n. 434, 381
  - drafting history/rationale 345
  - international relations, relevance 346
  - objectively reasonable test 345–346
  - property or economic interests, relevance 346
  - “reasonable grounds for regarding” 344 n. 298, 345–346
  - right to seek admission to another country and 347, 368
- effect on refugee status 344–345
- expulsion of person lawfully in the territory (CRSR Art. 32(1)) compared 691–692, 694: see also expulsion of person lawfully in the territory (CRSR Art. 32), *non-refoulement* (CRSR Art. 33) and
- mass influx 355–363, 367
  - burden-sharing and 358–359, 362–363, 368
  - Conclusion No. 22 (large-scale influx) 358–359



***non-refoulement*** (cont.)

Conclusion No. 85 (Conclusion on International Protection) (1988)  
359 n. 359

Conclusion No. 100 (international cooperation and burden-sharing in mass influx situations) 359, 362–363

drafting history/rationale 355–357

good faith and 360, 362

individuated exceptions as preferred alternative 360

measures to protect basic rights, need for 360–361, 361–362

EU Directive on Temporary Protection 360–361

new interstate agreement, need for 362–363

state practice 357–358

obligations under other treaties and 344 n. 299

proportionality between risk to individual and to security of refugee state 353–355

seriousness of potential persecution, relevance 344

**North Korean refugees** 440–441, 455–456**Norway**

conditional permission to live outside reception center 431–432

employment, right to seek/engage in

determination of status, dependence on 479–480, 736

regional, political, and economic unions and 231–234, 751

self-sufficiency and 495–496

family unity/reunification 535–536

first country of arrival/safe third country rules 293

healthcare, compliance with obligations 510

language of instruction 590

reception centers 379, 431–432, 822

religious education, restrictions 568–569, 582–583

Religious Knowledge and Education in Ethics Act 1995 568

resettlement in third country 964

social security 776–777, 777 n. 232

temporary protection status 736, 822

**OAS Cartagena Declaration (1984)** 119

family unity/reunification 119

non-binding nature 119

*non-refoulement* 119

Refugees, Convention relating to the Status of (1951) and 119

security of person and liberty (ICCPR Art. 9), risk to 119

**OAS Charter (Bogotá) (1948)** 46 n. 111

**OAU Refugee Convention:** *see* Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969)

**obligations of refugees:** *see* duties of refugees (CRSR Art. 2)

**OECD model tax treaty (1963)** 530

***opinio juris:*** *see* customary international law, requirements, *opinio juris*; state practice, *opinio juris* and

***ordre public:*** *see* public order/ *ordre public*

**“Pacific Solution”** 331, 661, 664, 964

***pacta sunt servanda* (VC Art. 26):** *see* *treaties*, *pacta sunt servanda* (VC Art. 26)

**Pakistan**

- differential treatment, geographical location 243, 257
- documentation (identity) 617, 625–626
- education, provision 587–588, 591 n. 1481
- employment, right to seek/engage in 732–733
- food shortages 476
- healthcare, compliance with obligations 509–510, 513–514
- housing/shelter 506, 813–814
  - self-settlement 817
- inhuman, cruel, or degrading treatment 454, 454–455, 455–456
- internal movement, freedom of/choice of residence of person lawfully present,
  - restrictions 697, 708
- necessities of life, right to 461–462
- non-refoulement*, avoidance of obligation 281–282, 283, 285, 317, 319–320
- peace and security obligations, international 903
- political activity of Afghan refugees 878–879
- religious freedom, restrictions 560, 561–564, 573–574, 575–576, 577
- repatriation from 930 n. 62
- as safe country 335
- security of person and liberty (ICCPR Art. 9), 465
  - risk to, from authorities outside refugee camps 447
- self-employment 720, 724–725
- vocational training 592–593
- “voluntary” repatriation 289, 318, 419
- women, differential treatment on grounds of sex 486

**Pakistani refugees** 286, 374

**Palestinian refugees** 592 n. 1490

**Papua New Guinea**

- education, right to elementary 597 n. 1517, 602–603
- employment, right to seek/engage in, reservation (CRSR Art. 17) 231–234, 741–742, 746–747
- naturalization, reservation 989 n. 335

**passports:** *see* *documentation (travel documents)* (CRSR Art. 28)

**peace and security obligations, international**

- Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) 905
- UN Charter/UNGA Res. 3314(XXIX) 903
- UNGA Res. 2312(XXII) 904 n. 875
- UNGA Res. 2625(XXV) 905 n. 876

**peaceful assembly, right of (ICCPR Art. 21)** 250–251, 893, 894–895: *see also* association, right of *entries*; expression, freedom of (ICCPR Art. 19(1)); political activity

- action against country of origin 894–895
- non-discrimination 894–895
- obligation to protect 894–895, 905
- restrictions 897–905
  - “In conformity with the law” 897–898

**peaceful assembly, right of (ICCPR Art. 21) (cont.)**

- international peace and security (UN Charter/UNGA Res. 3314(XXIX)) 903–904, 904–905
- national security 899, 904–905
- “necessary in a democratic society” 902–903
  - margin of appreciation 902–903
- propaganda for war or advocacy of hatred (ICCPR Art. 20) 898
- public health 901
- public morals 901–902
- public order 900–901
- public safety 901
- rights and freedoms of others, respect for 899

**penalties, obligation not to impose:** *see* illegal entry or presence, non-penalization (CRSR Art. 31(1))**peremptory norms:** *see* *jus cogens***persecuted, well-founded fear of being (CRSR Art. 1(2))**

- changed circumstances (CRSR Art. 1(C)(5)–(6)) and 920 n. 20
- generalized violence or threats arising out of internal conflict, relevance 369
- on grounds of political opinion, non-discrimination (CRSR Art. 3) and 255
- “persecuted”
  - “life or freedom would be threatened” (CRSR Art. 33), relevance 304–307
  - serious violation of human rights 369
  - torture or cruel and degrading treatment 305–306, 369
  - standard of proof, real chance 300–301

**person, right to recognition as (ICCPR Art. 16) 250–251****personal status (1933, 1936, and 1938 Conventions) 88, 89, 211 n. 267, 227–228****personal status (acquired rights) (CRSR Art. 12(2)):** *see* acquired rights dependent on personal status (CRSR Art. 12(2))**personal status (applicable law) (CRSR Art. 12(1))**

- 1933 Convention 211 n. 267
- in absence of relevant domicile or residence 217
- capacity 218–219
- civil/common law divide 209 n. 263
- country of nationality 209–212
  - administrative difficulties 211–212
  - appropriateness in case of refugee 210–211
  - IRO experience 211
- domicile 212–217, 640 n. 1696
  - definition: *see* domicile
  - ethical objections 213–214
  - practical objections 214
- drafting history 209–217, 217–221
- evolution of approach 209 n. 263
- family rights 219–220
- national discretion 217–221
- refugee’s preferences, relevance 213–214
- residence (CRSR Art. 12(1)) as fall-back in absence of domicile 217
- statelessness de jure/de facto, amalgamation 211 n. 267
- succession and inheritance 220

**Peru**, property rights 516 n. 1119

**physical presence:** *see also* illegal entry or presence, non-penalization (CRSR Art. 31(1)); lawful presence

“in” or “within” 171

non-discrimination (CRSR Art. 3) and 163, 245–246, 260

provisional measures (CRSR Art. 9), inclusion of provision as evidence of sufficiency of presence 171–172

rights deriving from 171: *see also* administrative assistance (CRSR Art. 25); courts, access to (CRSR Art. 16); detention, freedom from arbitrary (ICCPR Art. 9); documentation (identity papers) (CRSR Art. 27); education, right to, elementary (CRSR Art. 22(1)); employment, right to seek/engage in wage-earning (CRSR Art. 17), restrictions for protection of national labor market, exemption (CRSR Art. 17(2)); family unity/reunification; illegal entry or presence, non-penalization (CRSR Art. 31(1)); jurisdictional attachment; necessities of life, right to; *non-refoulement* (CRSR Art. 33); property rights (CRSR Art. 13); rationing (CRSR Art. 20); religious freedom (CRSR Art. 4)

territory for purposes of: *see also* diplomatic premises

diplomatic premises 173

“excised” areas 172

“extraterritorial”/international zones 172

inland waters and territorial sea 172

ports of entry 172

territory acquired by accretion, cession, conquest, or prescription 172

**physical security:** *see* security of person and liberty (ICCPR Art. 9), risk to Poland

cessation clause 939 n. 96

documentation (travel documents) 841 n. 575

education, right to elementary 597 n. 1520

illegal entry or presence, non-penalization, presentation without delay, need for 373, 387, 392

proportionality 140 n. 254

as safe country 334 n. 251

social security 777 n. 232

**political activity:** *see also* association, right of (CRSR Art. 15), political association, exclusion; expression, freedom of (ICCPR Art. 19(1)); peaceful assembly, right of (ICCPR Art. 21)

duties of refugees (CRSR Art. 2) and 100–101

ICCPR Art. 19 101 n. 83

ICCPR Art. 25 120 n. 187, 980–981

naturalization and 980–981

non-discrimination and 101 n. 84

outside of political associations 891 n. 801

public order and 101 n. 84

Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) 118–119

restrictions (UN Charter/UNGA Res. 3314(XXIX)) (international peace and security) 903–904, 904–905

**Portugal**

employment, right to seek/engage in

**Portugal (cont.)**

regional, political, and economic unions and 231–234, 751

reservation (CRSR Art. 17) 231–234

housing/shelter

assistance in finding 820

public housing, access to 827

language instruction (local language) 593–594

naturalization 988 n. 333

**presence:** *see* lawful presence; physical presence

**privacy, right to (ICCPR Art. 17)** 250–251, 545

**professional practice:** *see* liberal professions, right to practice (CRSR Art. 19)

**progressive realization (ICESCR Art. 2(1))** 486–488: *see also* Committee on Economic, Social and Cultural Rights (CESCR), General Comments, 3 (nature of states parties' obligations); core obligations (ICESCR)

burden of proof 490–491, 502 n. 1039

core obligations (ICESCR) and 488–490, 502 n. 1039, 599–602

definition

General Comment (CESCR) No. 3 600 n. 1532

General Comment (CESCR) No. 13 611–612

legal accountability 487–488, 499–500, 513–514

marginalized and vulnerable groups and 497–499, 502–503, 507, 741 n. 57

“to the maximum of its available resources” 123, 486–487, 489–490, 498,

499–500, 502 n. 1039, 511–512, 599–602

**propaganda for war or advocacy of hatred, prohibition (ICCPR Art. 20)** 898

**property restitution** 137

**property, right of restitution (Racial Discrimination, Convention on the Elimination of All Forms of (1965))**

ICCPR distinguished 951 n. 145

refugees, applicability to 951 n. 145

**property rights (CRSR Art. 13)** 517–527: *see also* housing (CRSR Art. 21)

African Charter and 520–521, 523

American Convention and 520–521, 523

applicable law, international aliens law 522–523

confiscation

right to compensation 228, 514–515, 519–520, 522–523

standard of compensation 519–520

contractual interests 524–525

drafting history 161–162, 523–524, 525–526

economic or political right, whether 520–521

European Convention on Human Rights and 518–519

First Protocol, limitations and reservations 516–517, 518–519, 523

“possessions” 519 n. 1134, 523 n. 1158

housing (CRSR Art. 21) and 524 n. 1162, 820–821

repatriation and 952

ideological considerations 518, 520–521

jurisdictional attachment and 161–162, 526–527

non-discrimination (ICCPR Art. 26) 521–522

reasonable differentiation 137, 522

physical presence, relevance 526–527

- “property” 523–524
- Protection of Migrant Workers and Their Families Convention (1990) and 521–522
- public interest considerations 518 n. 1128, 518–519
- Racial Discrimination, Convention on the Elimination of All Forms of (1965) and 521–522
- rent controls 524–525
- restrictions on ownership
  - land tenure 516–517
  - personal property 515
  - self-employment in agriculture (CRSR Art. 18) and 724–725
- security considerations 522
- standard of treatment/assimilation to aliens 248
  - assimilation to aliens (CRSR Art. 7(1)) and 522–523
  - as favorable as possible 198–199, 526
  - good faith obligation to consider non-application of general limits 526
  - “in the same circumstances” 205, 526, 526–527
- transfer of assets in case of resettlement (CRSR Art. 30) 524 n. 1159
- Universal Declaration Art. 17 compared 519–520, 524 n. 1159
- Women, Convention on the Elimination of All Forms of Discrimination (1979) and 521–522
- property rights, intellectual:** *see* intellectual property rights (CRSR Art. 14); intellectual property rights (ICESCR Art. 15(1)(c))
- proportionality:** *see also* margin of appreciation
  - arbitrary interference with family unity (ICCPR Art. 17) 549, 549–551, 559, 950
  - between the ends and means 139 n. 252, 140 n. 254, 150–151, 578–579, 716–717, 902, 904–905
  - between national interests and interests of refugee 983 n. 305
  - between national security and violation of human rights (CRSR Art. 9) 267 n. 569, 269–270, 426–427
  - between risk to individual and risk to security of refugee state 353–355
  - differential treatment 124, 139–140
    - conscientious objectors 141, 144, 144–145
  - leave the country, freedom to (ICCPR Art. 12(2)) and 956
  - Special Rapporteur (rights of non-citizens), report (2003) and 150–151
- protection of refugees (UNHCR Statute Art. 8):** *see also* administrative assistance (CRSR Art. 25); consular protection; diplomatic protection; UNHCR, role
  - consular-type activities 627–628, 633–635
  - supervision of the application of international conventions (Art. 8(a)) 628 n. 1646
- Protocol relating to the Status of Refugees (1967):** *see* Refugees, Protocol relating to the Status of (1967)
- provisional measures (CRSR Art. 9) 261–270:** *see also* exceptional measures, exemption (CRSR Art. 8); national security
  - drafting history 261–262
  - “essential to the national security in the case of a particular person” 155–156, 263–266
    - burden of proof 265–266
    - direct relationship with perceived threat 265–266, 267, 269–270

**provisional measures (CRSR Art. 9) (cont.)**

“essential” 263–264, 266–267

mass influx and 261–262, 267

objectively reasonable suspicion 265–266

“of a particular person” 261, 267

proportionality between aversion of risk and violation of human rights  
267 n. 569, 269–270

as evidence of sufficiency of physical presence for entitlement to rights 171–172

good faith assessment of risk 263–264, 269–270, 711 n. 268

“in time of war or other grave and exceptional circumstances” 260, 262–263  
internment 266–267

national security considerations as such distinguished 262–263: *see also* national security

pending determination of refugee status 260, 261–262, 268–269, 422 n. 650  
alternatives in case of positive determination 269

continuance of measures, limitation to 268–269, 269–270

determination of non-entitlement 268

good faith determination of status, need for 268

war or other exceptional circumstances affecting 260

primacy of provision 266 n. 564

provisional nature of measures 261, 711

public order considerations distinguished 262–263

**public goods, differential treatment** 83, 85, 123, 124–125, 251, 494–495, 521–522

**public health:** *see also* health, highest attainable standard of physical and mental, right to (ICESCR Art. 12)

expressive freedoms, as restriction on 901

**public housing:** *see* housing (CRSR Art. 21), “subject to the control of public authorities”

**public interest,** property rights 518 n. 1128, 518–519

**public morality**

expressive freedoms and 901–902

margin of appreciation 902 n. 863

multicultural tradition as basis 580–581

non-discrimination and 244–245

public order and 102 n. 91, 685–686, 695, 715

religious freedom and 578–579, 580–581, 901–902

**public order/ordre public:** *see also* documentation (travel documents) (CRSR Art. 28); expulsion of person lawfully in the territory (CRSR Art. 32), grounds (CRSR Art. 32(1)), public order

civil/common law divide 683–687, 695

agreement to accept narrow interpretation by reference to *travaux préparatoires* 685–686, 900

declaration of public order/ordre public equivalence 102 n. 89, 686–687, 900 n. 853

criminal offenses and 660, 680–683

serious offense, limitation to 685–686, 695, 1000

cultural differences and 681–683

duty to conform with measures relating to

CRSR Art. 2 102, 102–103

Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) 118–119, 905

family unity/reunification and 557

as internal concept 680, 695

international standard of a democratic society and 103 n. 96, 715

non-discrimination and 244–245

*ordre public*, omission from ICCPR Art. 18(3) 578–579

political activity and 101 n. 84

public morality and 102 n. 91, 685–686, 695, 715

public safety distinguished 680 n. 117, 901

reestablishment in country of origin, host state's right to prevent departure 956

religious freedom and 235–236, 578–579

social concerns 687–690, 695

### **public policy**

acquired rights dependent on personal status (CRSR Art. 12(2)) and 225–227

*ordre public*, equivalence of concept 578–579, 686–687, 695

### **public relief and assistance (CRSR Art. 23) 800–813: see also rationing (CRSR Art. 20); social security (CRSR Art. 24(1)(b))**

1933 and 1938 Conventions compared 87–88, 806

beneficiaries, enumeration 810–811

conditions 481–483, 697, 701–702, 702–703, 708–709, 741, 817

local residence requirements, exemption 811–812

determination of refugee status, relevance 481–483, 803–804, 807

differential treatment 804–805

drafting history 806, 810–813

factors leading to need for 800: *see also* employment, right to seek/engage in wage-earning (CRSR Art. 17)

housing (CRSR Art. 21) distinguished 823–825

international aid organizations, role 801–802, 803: *see also* international aid/relief, dependence on

“lawfully staying/”*résidant régulièrement*” 431–432, 806, 807

exclusion of right in case of judicial attachment or physical presence 807

national treatment 234, 235, 248, 432, 806–807, 807–813, 823, 824

absence of public relief system, relevance 808–809

choice of means 812

determination of status, dependence on 803–804

as obligation of result 812

reasons for agreeing to 812–813

reception centers and 481–483, 697, 701–702, 702–703, 708–709, 817

self-sufficiency as preferred alternative 801

social security (ICESCR Art. 9) distinguished 808 n. 389

temporary protection status and 804–805, 817–818, 824

unemployment compensation and 810–811

### **public safety**

Conclusion No. 48 (military or armed attacks on refugee camps) (2004) and 901

expressive rights (ICCPR Arts. 19–22) and 901

public order/*ordre public* distinguished 680 n. 117, 901



**racial discrimination:** *see also* differential treatment, justification/requirements, race; non-discrimination

- customary international law, whether 36–39
- employment, right to seek/engage in and 741
- frequency 36 n. 70
- housing 818
- right to leave country (ICCPR Art. 12(2)) and 956
- statutory discrimination 36 n. 71
- termination of refugee status and 927

**Racial Discrimination, Convention on the Elimination of All Forms of (1965):**

*see also* Committee on the Elimination of Racial Discrimination (CERD); and *Table of Treaties and Other International Instruments*

- as basis for aliens law, international 150
- discrimination between citizens and non-citizens 149
- implementing legislation, need for 39–41
- “race” 150
- restitution of property 521–522

**rape**

- in refugee camps
  - by aid workers 442–443, 456–457
  - by officials 442–443

**rationing (CRSR Art. 20)** 464–471: *see also* food (ICESCR Art. 11); food shortages; housing (CRSR Art. 21); necessities of life, right to; public relief and assistance (CRSR Art. 23)

- “commodities”/“products [in short supply]” 467–468
- drafting history/rationale 467–471
- housing, exclusion 467
- lawful presence, relevance 467
- national treatment 234, 235, 248, 467 n. 860, 468, 468 n. 867
  - “population at large” 470
  - treatment not less favorable 469–470
- obligation to provide, whether 470–471
- physical presence, relevance 163, 467 n. 861
- rationale 163
- temporary presence 467

**reception centers** 480–481: *see also* housing (CRSR Art. 21); housing (ICESCR Art. 11(1)); illegal entry or presence, non-penalization (CRSR Art. 31(1)); and the *Table of Treaties and Other International Instruments: Reception Directive* (January 27, 2003)

- conditional permission to live outside 431–432, 488
- conditions 381–383, 436, 481–482, 483–484, 507: *see also* detention, freedom from arbitrary (ICCPR Art. 9), conditions of detention
- mandatory stay 378–379, 480–481, 488
- mass influx and 380–381
- public relief and assistance (CRSR Art. 23) and 481–483, 697, 701–702, 702–703, 708–709, 709 n. 255, 817
- as short-term arrangement 378–379, 431

**reciprocity** 193–196

- as basis of relations between states under international law 193 n. 188

- bilateral/FCN treaty regime and 84, 131–132
- de facto reciprocity 193–194, 195, 200 n. 215
  - presumption of national treatment 201–202
- definitions 193 n. 190
- diplomatic reciprocity 194, 195
  - non-discrimination and 204 n. 235
- fiscal charges 529–530
- impracticability in respect of refugees 84, 194
- legislative reciprocity 193–194, 195, 202 n. 222, 204 n. 233
  - presumption of national treatment 201–202
- as means for enforcing compliance 204 n. 233
- standard of treatment of aliens and 131–132, 193: *see also* standard of treatment of aliens, evolution of regime
- statelessness and 84, 194
- reciprocity, exemption (CRSR Art. 7(2))** 200–205: *see also* standard of treatment of refugees (CRSR Art. 7(1))
  - 1933 Convention compared 195–196, 196–197, 202
  - acquired rights (CRSR Art. 7(3)) 203
  - habitual residence, relevance 190
  - ICCPR obligations and 204–205
  - inappropriateness of measures directed against state and 204–205
  - intellectual property rights 829, 830, 830–833
  - legislative and/or de facto reciprocity considerations and 200–205
  - most-favored-national or national treatment, in case of provision for 229–230
  - physical presence, relevance 163–164
  - preferred aliens, preservation of distinction 199–200, 202
  - preservation of existing rights (CRSR Art. 7(3)) 196 n. 200
  - regional, political, and economic unions and 197–198
  - three years' residence requirement 196, 202
    - continuity of residence (CRSR Art. 10) and 202 n. 224
  - waiver of requirements (CRSR Art. 7(4)) 203–204
  - nature of obligation 203–204
- reciprocity of refugee rights and duties:** *see* duties of refugees (CRSR Art. 2), withdrawal of rights for breach
- reestablishment in country of origin (CRSR Art. 1(C)(4))** 953–963: *see also* enter his own country, right to (ICCPR Art. 12(4))
  - advice and reconnaissance opportunities 958–959
  - “country of origin” 961–962
  - obligation to protect while still in host state 955 n. 162
  - reestablishment, need for 918–919, 953, 961–963
    - burden of proof 962
    - drafting history 961–962
    - reconnaissance visits and 962–963
    - transient visit 962
  - as refugee's own choice/preferred option 916, 954–955, 958
  - repatriation distinguished 918–919
  - right of destination country to restrain: *see* enter his own country, right to (ICCPR Art. 12(4))

**reestablishment in country of origin (CRSR Art. 1(C)(4)) (cont.)**

right of host country to restrain: *see* leave the country, freedom to (ICCPR Art. 12(2)), permissible restrictions (ICCPR Art. 12(3))

termination of refugee status consequent on 916

“outside the territory of his own territory” requirement (CRSR Art. 1(A)) and 918, 954

territorial jurisdiction considerations 954

voluntary return, need for 919 n. 17, 953

coercion 960–961: *see also* “voluntary” repatriation

financial incentives 959–960

*non-refoulement* and 916, 919 n. 17, 953

**refugee camps:** *see* reception centers; security of person and liberty (ICCPR Art. 9), risk to, in refugee camps

**Refugee Convention (1951):** *see* Refugees, Convention relating to the Status of (1951)

**refugee, definition (CRSR Art. 1) 1 n. 1:** *see also* durable solutions

displaced persons distinguished 614–615

“is outside the country of his nationality” (CRSR Art. 1(A)(2)) 78, 307–310, 918  
January 1, 1951 cut-off date, abolition 399–400, 400–401

“membership of a particular group” 1 n. 2

“persons of concern” 614–615

provisional nature 5, 915, 919–920, 928–929, 942 n. 112

temporary protection status 184, 188, 730

withdrawal of right to *non-refoulement* (CRSR Art. 33(2)), effect 344–345

**Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) 118–119**

activity causing tension between states (Art. III)

expression, freedom of (ICCPR Art. 19(1)) and 118–119, 893–894

freedom of movement/choice of residence and 711

obligation to prevent 905

association, right of (Art. III) 879, 884

best endeavors obligation to receive and settle refugees 118–119

laws and regulations, duty to conform 118–119

*non-refoulement* 118–119

physical security in border areas 118–119

political activity 118–119

public order measures, duty to conform 118–119, 905

repatriation 921 n. 23

1951 Convention, conflict with 921 n. 23

termination of refugee status 921 n. 23, 940 n. 101

**Refugee Protocol (1967):** *see* Refugees, Protocol relating to the Status of (1967)

**refugee rights regime, evolution**

as acknowledgment of link between national self-interest and treatment of refugees 11–12, 85, 92, 93, 914 n. 4

collectivization of responsibility 82, 83, 90–91

attempt to reverse (1951) 92

as cooperative/burden-sharing concept 92–93, 359, 362–363, 1000

human rights law, as part of 4–6

as means of avoiding international destabilization 85

- Minorities Treaties (post-WWI): *see* Minorities Treaties (post-WWI)
- post-1951: *see also* aliens law, international; human rights law post-1951; Refugees, Protocol relating to the Status of (1967)
  - absence of new refugee convention 112
  - analytical approach, absence 2–3
  - changed political, social, and economic circumstances 13, 63–64
  - development of human rights law and 5–7, 110, 119–123
  - legal basis, importance 4, 5–7, 13–14
  - retrenchment 3–4
  - state sovereignty, reluctance to limit 16
  - surrogacy and 4–5, 13–14
- post-WWI
  - forced exoduses as catalyst 83
  - as interim solution 86
  - Minorities Treaties: *see* Minorities Treaties (post-WWI)
  - most-favored-national treatment 86
  - naturalization as objective 85 n. 21
  - protectionist nature 85
  - resettlement: *see* resettlement
  - social and economic changes and 83, 88–89
  - surrogacy model 85
- post-WWII
  - considerations leading to 1951 Convention 91–93
  - IRO resettlement program 91
- pre-1951 refugee conventions 85: *see also under individual headings*
  - 1928 Arrangement relating to Russian and Armenian refugees
    - failure 86
    - non-binding nature 86
    - provisions 86
  - 1933 Convention
    - back-tracking on commitments 89
    - binding nature 87
    - limited effectiveness 88–89
    - as model for 1951 Convention 93
    - transfer of focus from aliens in general to refugees in particular 87
  - 1936 Convention
    - binding nature 89
    - ease of renunciation 89
    - limited effectiveness 89–90
  - 1938 Convention
    - 1933 Convention compared 90
    - renunciation without notice, right of 90
- reform process 1001–1002
- regional regimes: *see* OAS Cartagena Declaration (1984); Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969)
- reservations 89, 196
- standard of treatment of aliens regime and: *see* reciprocity; reciprocity, exemption (CRSR Art. 7(2)); standard of treatment of aliens, evolution of regime

**refugee rights regime, evolution** (cont.)

transfer of focus from aliens in general to refugees in particular 87, 90–91

**refugee seamen, flag state obligations** (CRSR Art. 11)

resettlement in third country, facilitation 966 n. 219

“sympathetic consideration” 983 n. 305

as balance of national and individual interests 983 n. 305

travel documentation 848–850, 966 n. 219

**refugee status, determination/verification:** *see also* lawful presence, refugee status, determination/verification, relevance; *non-refoulement* (CRSR Art. 33), avoidance of obligation, failure to verify status; provisional measures (CRSR Art. 9), pending determination of refugee status; Refugees, Convention relating to the Status of (1951); Refugees, Protocol relating to the Status of (1967)

declaratory nature 11, 158–159, 184, 278–279

expedited determination 159–160, 239–240, 253

illegal entry or presence, non-penalization (CRSR Art. 31(1)) and 372–373, 380, 387, 408–409

judicial review/appeal against determination of status and 320–321

manifestly unfounded claims 117, 185, 253 n. 509

Conclusion 30 (manifestly unfounded claims or abusive applications) 159–160, 408 n. 575

conflicting UNHCR views 117

EU safe country of origin procedures 297 n. 100

persons from “safe country” 296

extraterritorial effect: *see also* jurisdictional attachment; state responsibility for acts outside territory

Conclusion No. 162

judicial review/appeal against determination: *see* judicial review/appeal against determination of status, right of

obligation of asylum-seeker to provide information required to verify status 178–180

inappropriate information 180 n. 126

information difficult to provide 180 n. 126

language difficulties 288

obligation of national authorities to assist 180 n. 126

obligation to verify, whether 180–181, 183–185, 189

“excluded tolerance” 159 n. 19

failure to consider status 420

where rights made contingent on 180–181, 184–185, 658–659

presentation in territory of state party, right of 184–185

provisional grant of minimal refugee rights pending 159: *see also* illegal entry or presence, non-penalization (CRSR Art. 31(1)); necessities of life; *non-refoulement* (CRSR Art. 33), determination of refugee status, relevance; security of person and liberty (ICCPR Art. 9)

summary withdrawal 159 n. 20, 160

as shared responsibility 178–180

state responsibility for 939, 940 n. 99, 941

travel documents (CRSR Art. 28), whether evidence of 851–853

**refugee status, termination** (CRSR Art. 1(C)): *see* cessation of refugee status (CRSR Art. 1(C))

**Refugees, Convention relating to the Status of (1951):** *see also* *Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969)*; *refugee rights regime, evolution, pre-1951 refugee conventions; and separate headings for individual provisions*

1933 Refugee Convention as basis 93

accessions 5 n. 16

overlap with Human Rights Covenants 9–10

amendment/revision, absence 112: *see also* *Refugees, Protocol relating to the Status of (1967)*

UN Conference on Territorial Asylum (1977) 112

attachment to host state as basis of entitlement 11–12, 154–155: *see also* *habitual residence; jurisdictional attachment; lawful presence; “lawfully staying”/“résidant régulièrement”; physical presence; refugee status, determination*

incremental nature of system 157

levels of attachment defined 156

as means of balancing interests of refugee and host state 914 n. 4

as response to problems of mass influx 157

authentic languages 51 n. 134

compliance mechanisms: *see* *compliance mechanisms; good faith, treaty*

*implementation*

conflicting provisions, primacy 258–259

continuing relevance 5–7, 120–123, 153, 154, 228–230, 258, 259–260: *see also* *aliens law, international*

changed political, social, and economic circumstances and 13, 63–64, 992, 998–1002

customary international law developments and 942–944

derogation/restriction of rights 12, 155–156: *see also* *national security; non-refoulement (CRSR Art. 33), grounds for withdrawal of right (CRSR Art. 33(2)); provisional measures (CRSR Art. 9); public order/ordre public*

dispute settlement provisions: *see* *dispute settlement provisions*

drafting history 91–93

enforcement: *see* *compliance mechanisms*

extraterritorial obligations, attachment to host state as basis of entitlement: *see also* *state responsibility for acts outside territory*

good faith obligation to implement 991–992

Human Rights, Universal Declaration of (1948) and 46 n. 111, 68 n. 200, 94

limitations on codification as binding rights 94 n. 54

ILO Conventions and: *see* *International Labor Organization (ILO) migrant labor conventions*

judicial role: *see* *judicial role*

lowest common denominator approach

employment, right to seek/engage in (CRSR Art. 17) and 250, 742, 751

non-impairment of obligations (CRSR Art. 5) and 109

as means of compensating for vulnerability caused by involuntary migration 5, 13–14, 107, 146

new rights introduced by 94

non-Convention rights and benefits, effect on: *see* *non-impairment of non-convention rights and benefits (CRSR Art. 5)*

object and purpose

**Refugees, Convention relating to the Status of (1951) (cont.)**

regime favorable to refugees 109, 206

surrogacy 4–5, 13–14

overview of key provisions 93–95

reservations: *see* geographical limitation of obligations (CRSR Art. 1(B));

reservations (CRSR Art. 42), right to make; temporal limitation of obligations (CRSR Art. 1(B))

standard of treatment of refugees: *see* standard of treatment of refugees (CRSR Art. 6); standard of treatment of refugees (CRSR Art. 7(1)); *and under separate headings*

subsequent human rights conventions, role 110: *see also individual treaties and references to them under separate headings*

UN proposals for 91

**Refugees, Protocol relating to the Status of (1967) 110–112: *see also under separate headings and the Table of Treaties and Other International Instruments***

accession to 97

authentic languages 51 n. 134

dispute settlement provisions, right of reservation (Art. VII(1)) 111–112

independence of Convention relating to the Status of Refugees (1951) 110–111

limitation on obligations and 96–98

self-executing, whether 422 n. 652

**regional, political, and economic unions**

“aliens generally” standard of treatment and 197–198

employment, right to seek/engage in wage-earning (CRSR Art. 17) 231–234, 750–752

**regional protection areas 299**

**regional refugee rights regimes:** *see* OAS Cartagena Declaration (1984); Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969)

**rejection at frontier:** *see non-refoulement entries*

**relief and assistance:** *see* public relief and assistance (CRSR Art. 23)

**relief, international:** *see* international aid/relief, dependence on

**religious education, freedom (CRSR Art. 4) 582–583: *see also* religious and moral education, parents’ right to ensure conformity with convictions (ICESCR Art. 13(3))**

**religious freedom (CRSR Art. 4)**

binding nature 571–572

drafting history 570–574

freedom to practice their religion 574

national treatment 234, 235–237, 248

differing impact, relevance 572–574

drafting history 235–237

religious education 248

“treatment at least as favorable” 236–237, 572–574

as moral obligation 573–574

as proactive obligation 572–573

public morality and 578, 580–581

public order and 578

public worship and 581

reservation, exclusion 96

right not to believe 582 n. 1431

**religious freedom (freedom to practice/manifest one's religion or beliefs)**  
(ICCPR Art. 18) 250–251, 574–581

action within a single religious tradition 576–577

belief, applicability to 575–576

coercion, freedom from (ICCPR Art. 18(2)) 577

CRSR Art. 4 compared 576–577

limitations (ICCPR Art. 18(3)) 575 n. 1403, 899 n. 845, 901–902

“as prescribed by law” 579 n. 1418

conformity with other Covenant articles 579 n. 1418

drafting history 578–579

public morals (ICCPR Art. 18(3)) 580–581

public safety, order, health, or morals 235–236, 578–579

restrictive interpretation 579 n. 1418

as non-derogable obligation 121 n. 193, 574–575

parents' right to ensure education in accordance with convictions (ICCPR Art. 18(4)) 576 n. 1408

ICESCR Art. 13(3) compared 576 n. 1408

non-discrimination in funding 583

“practice” 575–578, 581

“thought or conscience” 576–577

UNHRC General Comment No. 22 574–575, 575–576

**religious freedom, restrictions** 560–583

on all residents 560–561

conversion and 564, 575–576

differing impact 569, 572–574

directed at refugees 560

on minority religions 561–564

proselytization 567–568

public worship 565–566

religious buildings 566–567

religious education 568–569

**religious and moral education, parents' right to ensure conformity with convictions** (ICESCR Art. 13(3)) 576: *see also* religious education, freedom (CRSR Art. 4)

Child, Convention on the Rights of the, effect 576 n. 1408

ICCPR Art. 18(4) compared 576 n. 1408

right to choose non-public schools (ICESCR Art. 13(3)) 576 n. 1408, 582–583

right to establish own institutions (ICESCR Art. 13(4)) 576 n. 1408

**remedies:** *see* compliance mechanisms; effective remedy, need for

**removal:** *see* expulsion *entries*

**repatriation** 917–953: *see also* cessation of refugee status (CRSR Art. 1(C));

Conclusions on the International Protection of Refugees, 18 (voluntary repatriation) (1980); Conclusions on the International Protection of Refugees, 40 (voluntary repatriation) (1985); fundamental change of circumstances

(“circumstances have ceased to exist” (Art. 1(C)(5)–(6))), voluntary repatriation as replacement for CRSR Art. 1(C)(5)–(6) requirements; “voluntary” repatriation

compliance with human rights law, need for 929

consent of refugee, relevance 915–916, 921–922, 929–931



**repatriation** (cont.)

“in safety and with dignity” 929

Conclusion No. 101 (legal safety issues) 945

“conditions of absolute safety” (Conclusion No. 40) distinguished 944

confusion of procedure for repatriation and conditions at destination 952

EU Temporary Protection Directive (2001) 946 n. 123, 952–953

lack of clear legal base 945

land mines in Angola 938–939

material security on return, relevance 951–952

respect for the rule of law 946 n. 123

“safety” 944

confusion in Voluntary Repatriation Handbook 944

torture, cruel, inhuman, or degrading treatment or punishment/security of person (ICCPR Arts. 7 and 9(1)) as binding standards 946–947

UNHCR policy and 932, 933 n. 70, 944–953

“with dignity” 944–945, 948

determination of cessation requirements, sufficiency 948

family unity and 948, 949–950, 953

permission to remain following termination of refugee status, states’ right to allow 942–943

as preferred option

Conclusions on International Protection of Refugees 917

UNHCR Statute 917

UNHCR Voluntary Repatriation Handbook 917

Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) 921 n. 23

“return” as preferred term 918

as right following termination of refugee status 915–916, 928–939, 951–953

in case of poor health 952

Ceased Circumstances Guidelines 928–929

European Human Rights Convention (1950) and 951 n. 142

UNHCR unwillingness to acknowledge 928–929, 935: *see also* UNHCR role *below*

UNHCR role

assisting voluntary repatriation (Statute Art. 8(c)) 929–931

as blurring of termination of refugee status requirement 931 n. 64, 931–935

cessation clauses 939–941

Conclusion No. 40 (voluntary return) 932

Conclusion No. 96 (return of persons found not to be in need of international protection), relevance 929 n. 60

Conclusion No. 101 (legal safety issues in the context of voluntary repatriation) 932

conduct and/or financing of repatriation 930–931

consent, insistence on 929–931

deference to repatriation decisions 935–936, 938–939, 951 n. 141

mandated repatriation

following termination of refugee status 930 n. 61

under General Assembly authorization (Statute Art. 9) 930 n. 61

political and financial pressures 937–938

- potential conflict of interests 930 n. 61
- pressure to respond to perceived needs and 936–937
- repatriation culture 931 n. 65, 932
- “voluntary” repatriation 933 n. 72, 934
- Voluntary Repatriation Handbook 929, 932, 935 n. 80, 938–939, 951, 951 n. 141
- voluntary compliance, justified incentives 953 n. 154
- voluntary reestablishment in country of origin distinguished 918–919
- reservations (CRSR Art. 42), right to make** 95–96, 260: *see also* geographical limitation of obligations (CRSR Art. 1(B)); provisional measures (CRSR Art. 9); temporal limitation of obligations (CRSR Art. 1(B)); *and under individual subject headings*
  - effect on provision 989 n. 335
  - non-derogable obligations 94–95, 96
  - non-discrimination (CRSR Art. 3) 96
  - obligations particularly liable to 96
  - post-ratification, exclusion 96, 746–747
  - withdrawable rights: *see also* documentation (travel documents) (CRSR Art. 28); expulsion of person lawfully in the territory (CRSR Art. 32); *non-refoulement* (CRSR Art. 33)
  - withdrawal of reservation, desirability 96 n. 62
- resettlement in third country** 963–977: *see also* internal movement, freedom of/choice of residence (CRSR Art. 31(2)); liberal professions, right to practice (CRSR Art. 19), resettlement in affiliated territories, best endeavors obligation (CRSR Art. 19(2))
  - 1936 Convention 89–90, 963–964
  - 1938 Convention 90, 963–964
  - 1938–51 90
  - 1947–51 (IRO) 91
  - absence of obligation to offer 966–967, 976
  - at behest of country of first arrival 963–966
    - 1936/1938 Conventions 963–964
    - lawful presence and 966
    - revival of mandatory schemes 964
  - common denominator entitlements, need for 92–93
  - League of Nations proposals 89–90
  - as residual solution 974–977
    - change in role 974–976
    - Conclusion No. 67 975
    - Conclusion No. 85 975
    - need for reconsideration 976–977
    - for people with special needs 975–976
  - seamen (CRSR Art. 11) 966 n. 219
  - termination of refugee status consequent on 916
    - initial host country’s obligation to facilitate 916
  - transfer of assets: *see* transfer of assets in case of resettlement (CRSR Art. 30)
  - voluntary resettlement 966–967
- rest and leisure, right to**
  - ICESCR Art. 7(d) 769–770

**rest and leisure, right to** (cont.)

UDHR Art. 24 764

**review and appeal:** *see* judicial review/appeal against determination of status, right of

**right to enter his own country:** *see* enter his own country, right to (ICCPR Art. 12(4))

**Rohingya refugees** 454

repatriation 937

**Roma, racial discrimination against** 36 n. 71

**Roma refugees:** *see also the Roma European Rights Centre Cases under United Kingdom in the Table of Cases*

expedited determination 253 n. 509

extraterritorial controls 291, 296–297

housing/shelter 479, 506

“voluntary” repatriation 288

**Romania**

cessation clause 939 n. 96

fundamental change of circumstances 923

as safe country 296

**Russia**

detention while awaiting deportation 379

documentation (identity) 622

determination of status, relevance 615–616

refusal to recognize UNHCR documentation 615–616

housing/shelter, assistance in finding 820

illegal entry or presence, non-penalization 371–372, 406

inhuman, cruel, or degrading treatment 454–455

*non-refoulement*, avoidance of obligation, refusal of access 379, 387

property rights (CRSR Art. 13) 821

religious freedom, restrictions 561–564

security of person and liberty (ICCPR Art. 9), risk to from authorities outside refugee camps 446

**Rwanda**

cessation clause 940

dispute settlement provisions, reservation 111–112

genocide 36–39

religious freedom, restrictions 573–574

repatriation to 937–938

“voluntary” repatriation 288, 318

**Rwandan refugees**

cessation of refugee status 925 n. 39

documentation 618

due process of law 675

education 588

expulsion 675

illegal entry or presence, non-penalization 371

inhuman, cruel, or degrading treatment 457

life, right to 451

naturalization 987

*non-refoulement*, avoidance of obligation 285  
*non-refoulement*, withdrawal of right 361, 362  
 political activity 877–878  
 reception centers 380, 420  
 repatriation 933–934, 940  
 safe third country rules 295  
 security of person and liberty (ICCPR Art. 9), risk to 440–441, 443  
 “voluntary” repatriation 318–319

**safe country designation:** *see* first country of arrival/safe third country rules

**Sahrawi refugees**

education 587–588  
 housing/shelter 479, 506

**Saint Kitts and Nevis**, 1967 Protocol 97

**Salvadoran refugees**

association, right of 875–876, 896  
 family unity/reunification 537–538  
 necessities of life, right to/rationing 463  
 public relief and assistance 807–808  
 temporary protection status 558, 807–808  
 “voluntary” repatriation 319

**San Marino**, property rights 516–517

**Saudi Arabia**

differential treatment, justification/requirements, nationality 239–241, 254  
 life, right to 451  
 religious freedom, restrictions 560, 561–564, 577, 579–580, 580–581  
 security of person and liberty (ICCPR Art. 9), risk to, in refugee camps 441

**seamen:** *see* refugee seamen, flag state obligations (CRSR Art. 11)

**Security Council human rights role** 43

**security, national:** *see* national security

**security of person and liberty (ICCPR Art. 9)** 250–251

necessities of life, right to (ICCPR Art. 9) and 465  
 “security of person” 457–459  
   drafting history 457–458  
   reasonable and appropriate measures to protect, obligation 458–459, 465, 947  
   repatriation in “safety and with dignity” and 946–947  
   Universal Declaration compared 457–458  
 state responsibility for acts outside territory 946 n. 126

**security of person and liberty (ICCPR Art. 9), risk to** 439–450: *see also* life, right to (ICCPR Art. 6); security of person and liberty (ICCPR Art. 9)

absence of provision in 1951 Convention 448–450  
   drafting history 448  
   protection under other human rights treaties 449  
   rationale 448–449  
   standard of treatment accorded to aliens generally (CRSR Art. 7(1)) as fall back 449  
 in border areas 440–441, 815–816

**security of person and liberty (ICCPR Art. 9), risk to (cont.)**

Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) 118–119

in course of flight 439–440

from authorities outside refugee camps 446–447

from vigilantes 447, 459

housing/shelter, right to and 507, 816, 821

OAS Cartagena Declaration (1984) 119

obligation to protect former refugee while still in host country 955 n. 162

in refugee camps 441–446, 444, 459, 502–503, 701

domestic violence 444

from agents of country of origin 445–446

Guatemala 445

South Africa 445

Sudan 445

from fellow residents 443–444

rape by aid workers 442–443, 456–457

rape by officials 442–443

as sitting ducks 444–445

“voluntary” repatriation and 447–448

**self-employment, right to engage in (CRSR Art. 18)** 657–658, 719–723, 723–729, 738: *see also* employment, right to seek/engage in wage-earning (CRSR Art. 17);

liberal professions, right to practice (CRSR Art. 19)

agriculture 724–725

land restrictions and 724–725

compliance with obligations, need for 727

domestic labor market concerns 726–727

drafting history/rationale 724–727

Eastern Sudan Refugee Program 801

importance of provision 723–724

as innovation 723

lawful presence 719–720, 725

right to be employed or engage in professional practice distinguished 719–720, 725

short-term presence 725

verification of status, relevance 725

“on his own account” 726

physical presence, sufficiency/necessity 725 n. 336, 727 n. 343

right to establish companies 724

treatment as favorable as possible/not less favorable 726–728

“as favorable as possible” 727–728

good faith obligation to consider non-application of general limits 728

insurmountable requirements 728–729

limitations applied to aliens generally 727–728

**self-employment, right to engage in (ICESCR)**

“in the same circumstances” 205

non-discrimination and 229

**self-sufficiency**

employment, right to seek/engage in 479–480, 495–497

housing/shelter and 828  
 internal movement, freedom of/choice of residence and 700  
 international aid/relief, dependence on 801–802  
 necessities of life, right to and 460, 479–480, 495–497, 801  
 public relief and assistance and 801

### Senegal

employment, right to seek/engage in 732–733, 741–742  
 determination of refugee status, relevance 755 n. 125  
 necessities of life, right to, public response to needs 460–461  
 as safe country 296

### Senegalese refugees 371, 560

### Serbia

conscription, forced 538, 548–549  
 as safe country 296

**sex discrimination:** *see also* differential treatment, justification/requirements, sex; Human Rights Committee (HRC), General Comments, 28 (equality of rights between men and women); women refugees  
 exclusion from CRSR Art. 3 255–256  
 legislative difficulties and 256 n. 520

**sexual orientation, right to found family and 555–557**

**shelter, right to:** *see* housing (CRSR Art. 21); housing (ICESCR Art. 11(1))

**Sierra Leone,** employment, right to seek/engage in, reservation (CRSR Art. 17) 231–234, 741–742, 746–747

**Sierra Leonean refugees 280, 284, 446**

inhuman, cruel, or degrading treatment 456  
 repatriation 930 n. 62

**Slavery Convention (1926), Slavery Protocol (1953), and Supplementary Convention (1956), implementing legislation, need for 39–41**

**slavery, freedom from as customary international law 36–39**

**Slovenia,** documentation (travel documents) 841 n. 576

**social rights:** *see* Economic, Social and Cultural Rights, International Covenant on (1966) (ICESCR)

**social security (CRSR Art. 24(1)(b)) 773–786:** *see also* public relief and assistance (CRSR Art. 23)

acquired rights under bilateral treaties, national treatment (CRSR Art. 24(3)) 781–783

“agreements concluded between them” 781–783

agreements with non-parties to the Convention (CRSR Art. 24(4)) 784–786, 785–786

application to refugees generally 784–785

non-binding nature 784

future arrangements 783

rights/obligations in case of default 785–786

self-executing, whether 783 n. 254

compensation for death of refugee, payment outside the territory (CRSR Art. 24(2)) 776–778, 785

cost-sharing 778–780

acquired rights (CRSR Art. 24(1)(b)(i)) 779–780

definition 773 n. 212, 774–776

**social security (CRSR Art. 24(1)(b)) (cont.)**

“invalidity”/“disability” 775–776

drafting history 774–776, 776–785

ILO Migration for Employment Convention (1949) and 774–776

national treatment 234, 248, 774

reservations 777–778

treatment more favorable than 777–778, 785

nationality requirement 776 n. 226

top-up benefits payable from public funds (CRSR Art. 24(1)(b)(ii)) 780–782

**social security (ICESCR Art. 9) 250–251, 808 n. 389****social security, pre-Convention practice 773–774**

bilateral treaty, need for 773–774

**social welfare:** *see* public relief and assistance (CRSR Art. 23); social security (CRSR Art. 24(1)(b))

**socioeconomic rights 95:** *see also* economic rights; International Labor Organization (ILO) migrant labor conventions; *and individual headings*

**solutions:** *see* durable solutions

**Somali refugees**

differential treatment on grounds of nationality 239–241

differential treatment on grounds of sex 242

documentation 616–617

fiscal charges 527–528

food shortages 476

inhuman, cruel, or degrading treatment 456

international aid, dependence on 473–474

life, right to 451

necessities of life, right to 462–463, 463–464, 469

reception centers 380–381

security of person and liberty (ICCPR Art. 9), risk to

from authorities outside refugee camps 446

in refugee camps 444, 445

self-employment 720

“voluntary” repatriation 476

**Somalia**

fundamental change of circumstances 925–926, 926 n. 42

healthcare, compliance with obligations 508

**sources of law:** *see* international law sources

**South Africa**

documentation 616, 622

education, provision 585–587, 598

employment, right to seek/engage in 496–497, 732–733

equal protection of the law 128 n. 218

first country of arrival/safe third country rules 294–295

healthcare, compliance with obligations 509, 513

illegal entry or presence, non-penalization 371–372, 406

inhuman, cruel, or degrading treatment 454–455, 496–497

internal movement, freedom of/choice of residence 715 n. 283

life, right to, serious efforts to protect, sufficiency 453

*non-refoulement*, avoidance of obligation 282, 287, 319

public relief and assistance 802  
 security of person and liberty (ICCPR Art. 9), risk to 440–441

**South African refugees** 662, 679

**South Korea**, reception centers 382

**Spain**: *see also* [Canary Islands](#)

documentation (travel) 842  
 employment, right to seek/engage in  
   adaptation programmes 738  
   practical difficulties 738  
   regional, political, and economic unions and 231–234, 751  
   reservation (CRSR Art. 17) 231–234  
 family unity/reunification 535–536, 558  
 housing/shelter 507, 827  
   public housing, access to 819  
 naturalization 988 n. 333  
 reception centers 382, 436, 507  
 self-employment 721–722, 738

**Sri Lanka**, as safe country 296

**Sri Lankan refugees**

differential treatment on grounds of nationality 239–241  
 nationality (differential treatment) 241  
*non-refoulement*, avoidance of obligation 283, 317  
 political activity 879  
 “voluntary” repatriation 288

**standard of treatment of aliens, evolution of regime 75–81**: *see also* [aliens law, international](#); [diplomatic protection](#)

as acknowledgment of link between national self-interest and treatment of aliens  
 75–76, 79–80

ancient Greece 76

bilateral/FCN treaty regime 76–79

absolute and contingent rights, as mixture 77–78, 80–81  
 absolute standards, disadvantages  
   difficulty of interpretation 77  
   inequality of treatment 77  
   inflexibility 77

differential treatment based on 131–132

general principles of law and 76–77: *see also* [general principles of law below](#)

interstate nature of rights and obligations: *see* [diplomatic protection](#)

most-favored-national or national treatment 77–78

non-discrimination provision as benchmark 80–81

reciprocity, need for 84

general principles of law 76–77, 193

enumeration of rights covered by 76–77

supplementary rights 77

law merchant 76

as source of refugee rights: *see* [aliens law, international](#)

UN Charter (1945) 148 n. 280

**standard of treatment of refugees (CRSR Art. 6)**

“in the same circumstances” 207



**standard of treatment of refugees (CRSR Art. 6) (cont.)**

conditions of stay as sole criterion 205–206

criteria for distinguishing 206–207

insurmountable requirements 163–164, 207–208, 728–729, 793

most-favored-national treatment, rejection 205–206

**standard of treatment of refugees (CRSR Art. 7(1)): *see also under individual***

*subject headings*

absolute rights

classification as 237, 238: *see also* acquired rights dependent on personal status (CRSR Art. 12(2)); administrative assistance (CRSR Art. 25); courts, access to (CRSR Art. 16); documentation (identity papers) (CRSR Art. 27); documentation (travel documents) (CRSR Art. 28); expulsion of person lawfully in the territory (CRSR Art. 32); naturalization (CRSR Art. 34); *non-refoulement* (CRSR Art. 33); transfer of assets in case of resettlement (CRSR Art. 30)

contingent rights and, as mixture 155, 238

assimilation to aliens: *see also* reciprocity, exemption (CRSR Art. 7(2))

general norm of human rights law 228–230

limited nature of benefits 228

treatment accorded to aliens generally 196–200

applicability of general norms, importance 228–229, 522–523

comprehensive nature (CRSR Art. 7(5)) 197, 228–230

non-discrimination distinguished 198–199

reciprocity, relevance 202–203

regional, political, and economic unions and 197–198, 231–234

treatment as favorable as possible 198–199

good faith obligation to consider non-application of general limits 200, 526

treatment more favorable 229–230

most-favored-national treatment 230–234, 750–752

1933 Convention and 88, 88–89

drafting history/rationale 230–233

regional, political, and economic unions and 750–752

reservations 231–234, 751

national treatment 234–237

1933 Convention and 88, 235

1936 Convention and 89–90

principle/fairness 235

rationale 234–235

assimilation, desirability 235

practical considerations 235, 236–237

prior or cognate treaties 235

rights entitled to 234: *see also* courts, access to (CRSR Art. 16); education, right to, elementary (CRSR Art. 22(1)); employment rights (labor legislation (CRSR Art. 24)); fiscal charges (CRSR Art. 29); intellectual property rights (CRSR Art. 14); public relief and assistance (CRSR Art. 23); rationing (CRSR Art. 20); religious freedom (CRSR Art. 4), national treatment; social security (CRSR Art. 24(1)(b))

national treatment (CRSR Art. 4), “treatment at least as favorable” 236–237

non-discrimination as between refugees 155

- state practice:** *see also* customary international law, requirements  
 as aid to treaty interpretation: *see* treaty interpretation, aids and guidelines (with particular reference to the 1951 Convention), state practice (VC Art. 31(3)(b))  
 aliens law, international 149–150  
 association, right of 876–879  
 employment, right to seek/engage in: *see* employment, right to seek/engage in wage-earning  
 family unity/reunification 544, 545–546, 546–547  
 leave the country, freedom to 312–313  
*non-refoulement* 364–365  
   in case of mass influx 357–358  
*opinio juris* and 69–70, 73–74  
 payment of survivor benefits to non-residents 776–777  
 visa controls 310 n. 163, 311–312
- state responsibility for acts of aggression by refugees** 903–904  
 in absence of internationally lawful act 904  
 duty to take corrective action 903  
 knowledge and adoption of act, need for 903–904  
 right to self-determination and 904
- state responsibility for acts committed by agents**  
 act or omission and 500–501  
 administrative assistance (CRSR Art. 25(1)) and 636–637  
 documentation (identity papers) (CRSR Art. 27) 625–626  
 food (ICESCR Art. 11) 500–501  
 life, right to 451
- state responsibility for acts outside territory** 339–342  
 in absence of lawful jurisdiction 160–161, 339  
 contiguous zone 170–171  
 control/effective jurisdiction test 163, 166–167  
   actions adopted by state 340  
   effects test distinguished 166–167, 168, 169  
   exercise of public power by state agents 166, 168–169, 170 n. 79, 313–314, 339, 340, 946  
   extraterritorial controls 313–314, 340–341  
   ILC Draft Articles on State Responsibility for Internationally Wrongful Acts 340  
 extraterritorial detention and 162  
 “extraterritorial”/international zones distinguished 321–322
- flag state  
   jurisdiction 166  
   jurisdiction in absence of 341
- high seas 171 n. 81, 290–291, 336, 337, 339, 341, 459: *see also* Conclusions on the International Protection of Refugees, 20 (protection of asylum-seekers at sea); Conclusions on the International Protection of Refugees, 97 (protection safeguards in interception measures)
- human rights obligations 494 n. 1008
- ICCPR Art. 2(1) and 946 n. 126
- jurisprudence  
   ECHR 161, 165–168, 170 n. 79, 321, 339  
   ICJ 164, 165 n. 58, 167 n. 68, 168–169, 313–314, 339

**state responsibility for acts outside territory (cont.)**

Interamerican Commission on Human Rights 165, 339

UK courts 169 n. 76, 170 n. 79

UNHRC 164, 165, 168 n. 74, 313–314, 946

US courts 167 n. 66

lawfulness of act, relevance 167 n. 70

non-state actors 317–318

presumption against 161, 166

security of person (ICCPR Art. 9) 946 n. 126

torture (ICCPR Art. 7) 946 n. 126

treaty obligations 164–171

American Convention on Human Rights (1969) 164–165

American Declaration of the Rights and Duties of Man (1948) 164–165

European Human Rights Convention (1950) 164–165, 165–168

Geneva Conventions (1949) 164

ICCPR 164, 164–165, 168 n. 74

Optional Protocol No. 1 (1966) 164–165

Optional Protocol No. 2 (1989) 164–165

ICESCR 164–165

Racial Discrimination, Convention on the Elimination of All Forms of (1965) 164–165

specific provision 161

Torture Convention (1984) 164–165

Women, Convention on the Elimination of all Forms of Discrimination (1979) 164–165

**state responsibility for determination of refugee status** 939, 940 n. 99, 941, 951 n. 141

**state responsibility/international human rights law, interrelationship** 5 n. 17

**statelessness**

diplomatic protection and 79, 84–85, 626–627

personal status, applicable law (CRSR Art. 12(1)) and 211 n. 267

reciprocity and 84, 194

UN Charter, effect 79 n. 12

**status, personal:** *see* personal status *entries*

**strike, right to (ICESCR Art. 8(1)(d))** 896–897: *see also* association, right of (ICCPR Art. 22), trade unions

association, right of (ICESCR Art. 8) 896–897

developing countries' right to limit (ICESCR Art. 2(3)) 896–897

**succession and inheritance**

applicable law (CRSR Art. 12(2)) 220, 223–225

part of family law, whether 220

**Sudan**

association, right of 875–876, 896

differential treatment, justification/requirements, nationality 241, 254

education, provision 587–588, 591

fiscal charges 527–528

genocide 36–39

healthcare, compliance with obligations 508–509, 514

housing/shelter 479, 506, 815–816

- adequacy 828
- self-settlement 817
- internal movement, freedom of/choice of residence, restrictions 700, 703, 715, 716
- liberal professions, right to practice 786–787
- property rights 516–517, 522, 526, 821
- public relief and assistance 808–809
- religious education, restrictions on 568–569
- religious freedom, restrictions 560, 560–561, 566–567, 573–574, 575–578, 577
- security of person and liberty (ICCPR Art. 9), risk to, in course of flight 439–440
- skills training 591–592
- Sudanese refugees** 288–289, 451–452, 506, 527–528
  - fiscal charges 527–528
  - food shortages 476
  - necessities of life, right to 463, 463–464
  - reception centers 380, 420
  - security of person and liberty (ICCPR Art. 9), risk to 444–445
  - self-employment 720
  - “voluntary” repatriation 476
- supervisory responsibility:** *see* compliance mechanisms; repatriation, UNHCR role; UNHCR, role (CRSR Art. 35)
- Swaziland**
  - association, right of 875–876, 891
  - education, provision 591
  - expulsion 628 n. 1647, 662
  - internal movement, freedom of/choice of residence (CRSR Art. 31(2)) 374
    - provisional nature of right 419
  - naturalization, reservation 989 n. 335
  - necessities of life, right to 462
  - skills training 592 n. 1490
  - “voluntary” repatriation 462, 464
  - withdrawal of refugee status for non-compliance with law 106 n. 109
- Sweden**
  - differential treatment 140–141
  - documentation (travel) 842
  - employment, right to seek/engage in 735 n. 32, 736
    - determination of status, dependence on 480, 496
    - practical difficulties 738
    - regional, political, and economic unions and 231–234, 751
    - reservation (CRSR Art. 17) 753 n. 117
  - expulsion 660, 676
    - removal, requirements (CRSR Art. 32(3)) 692–693
  - family unity/reunification 535–536
  - healthcare, compliance with obligations 510
  - housing/shelter
    - public housing, access to 818–819, 824
    - shortage of accommodation 818–819
  - internal movement, freedom of/choice of residence, lawful presence and 182–183
  - language of instruction 590

**Sweden (cont.)**

- lawful presence, termination, deportation or expulsion order, in case of non-enforcement 182–183
- national security, due process and (CRSR Art. 32(2)) 676
- naturalization 986 n. 320
- non-refoulement*, avoidance of obligation, visa controls 293
- public relief and assistance 804 n. 363, 805
- reception centers 379, 822
- religious education, restrictions 582–583
- temporary protection status 736, 805, 822

**Switzerland**

- association, right of 877
- degrading treatment 947 n. 129
- documentation 847
- employment, right to seek/engage in
  - reservation (CRSR Art. 231–234, 746–747)
  - temporary protection and 755
- expression, freedom of, restrictions 893
- family unity/reunification 535 n. 1225, 539–540, 546 n. 1285, 547 n. 1287
- first country of arrival/safe third country rules 295
- illegal entry or presence, non-penalization
  - failure to distinguish between asylum-seekers and other aliens 423
  - organizations or persons assisting refugees, applicability to 402–403
  - presentation without delay, need for 392 n. 506
- internal movement, freedom of/choice of residence, restrictions 374
  - children 434
  - generic detention regimes 435
- legislation, *Asylum Act* 535 n. 1225
- liberal professions, right to practice 787, 791
- naturalization 985 n. 316
- necessities of life, right to, renunciation of other rights requirement 488
- political association, objections 883–884
- reception centers 379, 480–481, 488
- resettlement in third country 964
- self-employment 721, 728
- social security 773
- temporary protection status 755

**Syria, religious freedom, restrictions 573–574****Tanzania**

- dispute settlement provisions, reservation 111–112
- documentation 618, 842, 866–867
- education, provision 588, 591, 606, 611
- employment, right to seek/engage in 731, 741
- first country of arrival/safe third country rules 294
- food shortages/food 476, 476–477, 501
- fundamental change of circumstances 927 n. 48
- inhuman, cruel, or degrading treatment 454–456, 947

internal movement, freedom of/choice of residence, restrictions 697–699, 700, 717

international aid/relief, dependence on 473

naturalization 987

*non-refoulement*, avoidance of obligation 281

*non-refoulement*, grounds for withdrawal of right, mass influx 362

political activity of Burundian refugees 879, 903

political association, objections 884

public relief and assistance 802

repatriation from 930 n. 62, 933–934, 947

security of person and liberty (ICCPR Art. 9) 444, 444–445

self-employment 720, 724–725

vocational training 592–593

“voluntary” repatriation 288, 318–319, 489–490, 933–934, 937 n. 90, 960–961

water shortages/as core obligation 477–478

**taxation:** *see also* fiscal charges (CRSR Art. 29)

1933 Convention 88, 235

**temporal limitation of obligations (CRSR Art. 1(B))** 96–98, 260

1967 Protocol and 97

**temporary protection status:** *see also* “lawfully staying”/“résidant régulièrement”

education, right to post-elementary 611

employment, right to seek/engage in 736–737, 751–752, 755

family unity/reunification and 545–546, 558, 558–559

“lawfully staying”/“résidant régulièrement” and 184, 188, 730, 755

public relief and assistance 804–805, 817–818, 824

**Territorial Asylum, UNGA Declaration on (1967)** 368 n. 393, 904: *see also* United Nations Conference on Territorial Asylum

**territory:** *see* physical presence, territory for purposes of; state responsibility for acts outside territory

**terrorism:** *see* national security, terrorism, relevance

## Thailand

documentation 614–615, 625–626

education, provision 585–587, 587–588, 601–602, 606

family unity/reunification 546 n. 1285

healthcare, compliance with obligations 508–509

housing/shelter 815–816, 821

illegal entry or presence, non-penalization 371, 387

internal movement, freedom of/choice of residence, restrictions 374, 697–699, 717

mass influx and 420

provisional nature of right 419

legislation, Immigration Act 371

life, right to 464–465

state responsibilities for acts committed by agents 451

necessities of life, right to 463, 464–465

*non-refoulement*, avoidance of obligation 280, 284, 285, 317, 319–320

*non-refoulement*, grounds for withdrawal of right, mass influx 361

political activity of Burmese refugees 879

political association, objections 884

**Thailand** (cont.)

- reception centers 420
- mass influx and 381
- refugee status, displaced persons distinguished 614–615
- security of person and liberty (ICCPR Art. 9), risk to in refugee camps 441–442, 815–816, 821
- skills training 591–592, 592 n. 1489
- state responsibility for acts of nationals on high seas 459
- withdrawal of refugee status for non-compliance with law 107 n. 111

**thought, conscience, and religion, freedom of:** *see* religious freedom (freedom to practice/manifest one's religion or beliefs) (ICCPR Art. 18)

**Tibetan refugees**

- association, right of 875–876, 891
- differential treatment 251–252
- differential treatment on grounds of nationality 239–241
- documentation 618
- education 587 n. 1458
- non-refoulement*, avoidance of obligation 280, 317
- non-refoulement*, withdrawal of right 360
- rape by officials in refugee camps 442

**Timor Leste:** *see* East Timor

**Togolese refugees** 822

**Torture Convention (1984):** *see* under individual subject headings and the Table of Treaties and Other International Instruments

**torture, freedom from (ICCPR Art. 7)** 453–457: *see also* inhuman, cruel, or degrading treatment (ICCPR Art. 7); life, right to (ICCPR Art. 6)

- compliance 41 n. 96
- customary international law, whether 36–39
- definition (Torture Convention) 454 n. 811
- definition/requirements 454–455
  - intention 454
  - motivation 454
  - official act or omission 454
  - severe physical or mental pain 454
- Torture Convention (1984) 454 n. 811
- jus cogens*, whether 29 n. 48, 30 n. 49
- as non-derogable right 121 n. 193, 453–454
- as persecution 305–306, 369
- positive measures to protect, need for/duty of care 453–454
- repatriation in “safety and with dignity” and 946–947
- state responsibility for acts outside territory 946 n. 126

**trade unions:** *see* association, right of (CRSR Art. 15), trade unions; association, right of (ICPPR Art. 22), trade unions; employment rights (labor legislation (CRSR Art. 24))

**“trafficking”** 404 n. 560

**transfer of assets in case of resettlement (CRSR Art. 30)** 967–974: *see also* property rights

- as absolute right 237
- “aliens generally” standard of treatment 973, 974

“assets” 970

sympathetic consideration to transfer of assets “wherever they may be”  
(including assets acquired in host country) 971–972, 974

“which they have brought into the country” 970–971, 973–974

Conclusion No. 22 974 n. 261

drafting history 967–973

“in conformity with its laws and regulations” 968–970

limitation to cases of resettlement 973

as new right 94

**travaux préparatoires:** *see* treaty interpretation, aids and guidelines (with particular reference to the 1951 Convention), drafting history (VC Art. 31(2)); and “drafting history” under individual headings

**travel documents:** *see* documentation (travel documents) (CRSR Art. 28)

**treaties:** *see also* Minorities Treaties (post-WWI); Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969); refugee rights regime, evolution, pre–1951 refugee conventions; Refugees, Convention relating to the Status of (1951); Refugees, Protocol relating to the Status of (1967); standard of treatment of aliens, evolution of regime, bilateral/FCN treaty regime; and the *Table of Treaties and Other International Instruments for treaties by article*  
implementation legislation as treaty requirement, Torture Convention (1984) 39–41

incorporation, need for 991: *see also* compliance mechanisms, national courts  
lawmaking treaties 72–73

*pacta sunt servanda* (VC Art. 26) 62 n. 177, 64 n. 184, 67–68, 159 n. 19

third-party obligations (VC Arts. 34 and 35) 68

**treaty interpretation, aids and guidelines (with particular reference to the 1951 Convention):** *see also* judicial role

“any relevant rules of international law applicable in the relations between the parties” 66

avoidance of absurdity 946 n. 126

Conclusions on International Protection 54

conflicting provisions

avoidance 417–464

primacy 258–259, 266 n. 564

Refugee Problems in Africa, Convention governing Specific Aspects of (OAU) (1969) and

1951 Convention 921 n. 23

ICCPR 893–894

UN Charter and other obligations 33 n. 60

context (VC Art. 31(2)) 10–11, 53–55, 74, 171–172

balance of provisions of treaty 161

other provisions in same treaty 747

dictionary 51–52

drafters’ intentions 16, 171, 306–307

drafting history (VC Art. 32) 10–11, 49, 56–62, 161–162, 175 n. 108, 972 n. 249

availability of *travaux* 56 n. 148

in case of ambiguity or obscurity (VC Art. 32(a)) 60

classification as 57 n. 155

“clear” meaning and 58–59



**treaty interpretation, aids and guidelines (with particular reference to the 1951 Convention) (cont.)**

- “confirmatory” 58, 59 n. 164
- effectiveness principle and 61
- quality and value of *travaux* 56 n. 149, 56 n. 151
- selectivity 56 n. 152
- as supplementary means 56–57, 58–59
  - “supplementary” 58 n. 162
- effectiveness principle 16, 55–68, 74
  - changed political, social, and economic circumstances 63–64
  - drafting history and 61, 74
  - effectiveness of all elements 457
  - in face of clear language 64 n. 184
  - “living instrument” concept 10–11, 55, 62–68
  - purposive reading 254, 757–758
- evolution of customary international law 305–306
- good faith (VC Art. 31(1)) 10–11, 58–59, 62 n. 173, 62–63, 64 n. 184, 161, 308 n. 155, 457
- “he”/“she” 760 n. 157
- headings, status 596 n. 1511
- human rights factors 920 n. 20
- interactive approach, definition 50–51
- interpretations by UN supervisory bodies 10–11
- literal approach, preference for 48–49, 51–52
- location in text 982 n. 304
- most-favored-nation treaties, difficulties 77
- multiple languages 51–52, 186–189, 411–412, 417, 667, 672
  - authentic languages (VC Art. 33(1)) 51–52
- object and purpose, respect for 8–9, 10–11, 49, 163–164, 167 n. 70, 168, 168 n. 74, 267 n. 568, 306–307, 337–338, 411–412, 693, 946 n. 126: *see also* effectiveness principle *above*
- “ordinary meaning” (VC Art. 31(1)), elusiveness 49–53
- other treaties: *see also* subsequent agreement between the parties regarding the interpretation or application of the treaty (VC Art. 31(3)(b)) *below*
  - cognate treaties 64–67, 66 n. 198, 245, 305–306
    - ICJ jurisprudence 66
  - human rights treaties 64–66, 109 n. 124, 167
  - previous 596–597
  - subsequent international agreements [between parties] 8–9, 43–46, 46 n. 111, 305–306, 306–307
- parties’ agreement in connection with conclusion of treaty (VC Art. 31(4)) 49, 189, 197 n. 207, 417, 596 n. 1511, 776, 836
  - agreement to adopt narrow interpretation by reference to *travaux préparatoires* 685–686
    - Final Act of the Conference of Plenipotentiaries 53, 74
- plain language 161, 163–164, 168, 171, 337–338, 747
- preamble 53–54, 74, 359
- “soft law” and 11
- state practice (VC Art. 31(3)(b)) 10–11, 16, 68–74, 173 n. 97, 182 n. 133

- lawmaking treaties 72–73
- non-unanimous practice 68–69, 73–74
- opinio juris*, need for 69–70, 73–74
- PCIJ practice distinguished 70 n. 206
- state practice running counter to purpose of human rights treaties 71–72
- as supplementary means (VC Art. 32) 70–71, 73–74
- structure of agreement 306–307
- subsequent agreement between the parties regarding the interpretation or application of the treaty (VC Art. 31(3)(b)): *see also other treaties above*
- Declaration of State Parties to the 1951 Convention (2001) 54–55
- Handbook on Procedures and Criteria* 54
- Vienna Convention (1969) as codification of customary international law 48 n. 117
- Trinidad and Tobago**, religious freedom 575 n. 1404
- Turkey**
  - due process of law (Art. 32(2)) 675
  - education, provision 585–587, 601–602
  - expulsion, examples 661–662, 675
  - food shortages 476–477
  - geographical limitation 97–98
  - healthcare, compliance with obligations 509–510, 513–514
  - housing/shelter 478–479, 506
  - illegal entry or presence, non-penalization 373, 387, 392
  - inhuman, cruel, or degrading treatment 466
  - internal movement, freedom of/choice of residence, restrictions 697–699, 717
  - liberal professions, right to practice 786, 791
  - religious freedom, restrictions 565–566
  - “voluntary” repatriation 287–288, 318
- Turkmenistan**, religious freedom 565–566
  - restrictions 560, 561–564, 575–576, 581
- Uganda**
  - Constitution 629–630
  - Control of Alien Refugees Act 629–630
  - courts, access to 629–630, 647
  - differential treatment, justification/requirements, nationality 241, 254
  - documentation 842, 866–867
  - expulsion, examples 661, 665
  - first country of arrival/safe third country rules 294
  - food shortages 476
  - fundamental change of circumstances 926 n. 45
  - internal movement, freedom of/choice of residence of person lawfully present, restrictions 696, 708
  - legal aid 907, 911
  - liberal professions, right to practice 791
  - life, right to 451–452, 453
  - non-refoulement*, avoidance of obligation 665
  - political activity of Ugandan refugees 877–878
  - property rights 523

**Uganda (cont.)**

- public relief and assistance 808–809
- reception centers 380, 420
- regional, political, and economic unions 751
- security of person and liberty (ICCPR Art. 9) 459
  - risk to
    - from authorities outside refugee camps 446, 447
    - in refugee camps 444–445
- “voluntary” repatriation 288–289, 318, 489–490, 786

**Ugandan refugees**

- due process of law 675
- expulsion 675
- non-refoulement*, avoidance of obligation 317–318
- non-refoulement*, withdrawal of right 361
- political activity 878–879

**Ukraine**

- religious freedom, restrictions 573–574
- as safe country 296

**UNHCR, role (CRSR Art. 35):** *see also* compliance mechanisms; Conclusions on the International Protection of Refugees; Guidelines on International Protection; repatriation, UNHCR role

- direct service delivery 995–996
- effectiveness as compliance mechanism 993–994, 995–997
  - conflict with realities of protection role 996
  - direct service delivery role as impediment 995–996
  - other UN bodies compared 993–994
  - political and financial constraints 996
- international protection (Statute Art. 1) 993
  - presence in the jurisdiction 993
    - as surrogate protector 156, 193, 628 n. 1646, 993
- obligation of state parties to cooperate (Art. 35(1)) 993
  - non-conformity with Conclusions on International Protection of Refugees 114
  - reporting on legislation 993, 994 n. 16
- promotion of conclusion and ratification of conventions (Statute Art. 8(b)) 992 n. 8
- reception centers, assistance in establishment 381
- standard-setting 993, 996–997
- supervision of application of Convention provisions (Statute Art. 8(b)) 156, 628 n. 1646, 992–994, 996–997
- surrogate protector 156, 193, 628 n. 1646, 993
- voluntary repatriation: *see* repatriation

**United Kingdom**

- carrier sanctions 384, 403 n. 559
- cessation of refugee status, compelling reasons arising out of previous persecution exception 942–944
- conscientious objection 33 n. 59
- courts, access to (CRSR Art. 16) 158 n. 18, 652–653
- customary international law, requirements 365–367
- differential treatment, justification/requirements

- nationality 239–241
  - safe country designation 240–241
- documentation (travel) 842, 847
- due process and (CRSR Art. 32(2)) 676
- education, provision 589–590, 593
- education, right to, elementary education, restrictions on access to 598
- employment, right to seek/engage in 734–736, 738
  - determination of status, dependence on 481–482, 496 n. 1013, 754–755
  - reservation (CRSR Art. 17) 760 n. 155
  - restrictions for protection of national labor market, exemption (CRSR Art. 17(2)(c)) 760 n. 155
- employment, right to seek/engage in wage-earning (ICESCR Art. 6), reservation 740–741
- expulsion
  - examples 659, 659–660, 676
  - international trade/comity and 677
- extraterritorial controls 291
- family unity/reunification 534 n. 1223, 544 n. 1278
- first country of arrival/safe third country rules 296, 325–326, 326–327
- good faith
  - treaty implementation 308 n. 155
  - treaty interpretation 308 n. 155
- Handbook*, legal effect 54 n. 146, 115
- healthcare, compliance with obligations 510, 513–514
- high seas, refugee rights on 291
- housing/shelter 506, 507
  - public housing, access to 819
- illegal entry or presence, non-penalization 406
  - expedited determination of status 373, 387, 408
  - failure to distinguish between asylum-seekers and other aliens, inconsistent legislation 371–372
  - “penalties” 411
  - visa controls and 312 n. 170
- internal movement, freedom of/choice of residence, conditional permission to live outside reception center 483–484, 488, 708
- internal movement, freedom of/choice of residence, restrictions 377–378
  - children 383–384, 434
  - indirect restrictions 708–709
  - “necessary” 432–433
  - provisional nature of right 435
- judicial review/appeal against determination of status, right of
  - expedited determination of status and 320–321, 373, 652–653
  - non-discrimination and 252–253
- lawful presence
  - domestic law as determining factor 176–178
  - presentation without delay, limitation to port or airport of entry, validity 177–178
  - public relief and assistance and 481–482
  - refugee status, determination/verification, relevance 175–177

**United Kingdom (cont.)**

legal aid 907, 909–910

legislation

Asylum and Immigration Act 1999 481 n. 960, 631

Education Act 1996 590 n. 1472

Immigration Act 1971 177 n. 112

National Assistance Act 1948 481 n. 961

Nationality, Immigration and Asylum Act 2002 377 n. 438, 590 n. 1472

Social Security (Persons from Abroad) Miscellaneous Amendment

Regulations 1966 481 n. 960

liberal professions, right to practice 788, 792

resettlement in other territories 796, 796–797

national security 264–265

naturalization 252

necessities of life, right to 486, 496 n. 1013

non-discrimination, right to adequate standard of living 486

*non-refoulement*

determination of refugee status, relevance 320–321

“life or freedom would be threatened” 306, 306–307

*non-refoulement*, avoidance of obligation 282, 287

expulsion distinguished 315–316

extraterritorial controls 291, 307–310

on grounds of age 320

visa controls 292

*non-refoulement*, grounds for withdrawal of right

mass influx 361

proportionality between risk to individual and risk to security of refugee state  
354

*opinio juris* 33 n. 59

political activity of Kurds 877–878

public relief and assistance 481–482, 496 n. 1013, 702–703, 704, 708–709, 804,  
804 n. 363

determination of refugee status and 481–482, 807

reception centers, conditions 481–482

reestablishment incentives 959–960

refugee, definition

“is outside the country of his nationality” (CRSR Art. 1(A)(2)) 307–310

provisional nature 919–920

refugee status, determination/verification

declaratory nature 158–159

expedited determination

manifestly unfounded claims 253 n. 509, 408

persons from “safe country” 296, 651

obligation to verify, whether, where rights made contingent on 180 n. 129

regional protection areas 299

resettlement in third country 964

safe country of origin, designation as 334–335

security of person and liberty (ICCPR Art. 9) 459

risk to, from vigilantes 447

self-employment 721–722, 728  
 social security 776–777, 777 n. 232  
 state responsibility for acts outside territory 339  
 suitability as source for universal human rights law 34  
 temporary protection status 736, 807–808  
 treaty interpretation 61, 64 n. 184  
 women, education and 593

**United Nations Charter (1945):** *see also Table of Treaties and Other International Instruments*

as customary international law 17 n. 5  
 General Assembly  
   *droit de regard* 35–36, 46–47  
   right to discuss (Art. 10) 46–47  
   studies and recommendations relating to human rights (Art. 13) 46–47  
 international peace and security, Chapter VII obligations 43, 47, 903, 903–904, 904–905  
 joint and separate action in furtherance of human rights and fundamental freedoms (Arts. 55 and 56) 42–44  
   binding obligation, whether 41–43  
     incorporation of subsequent UN human rights corpus and 43–46  
   drafting history 42 n. 100  
   “for the purposes of stability and well-being . . . peaceful and friendly relations” limitation 43: *see also* international peace and security, Chapter VII obligations *above*  
   as good faith undertaking 35–36, 42 n. 99, 42–43  
   Security Council authority 43  
 non-discrimination (Art. 1(3))  
   as explicit obligation 44  
   freedom from racial discrimination as customary international law and 36  
   limitations 109 n. 123, 147–148, 255  
   standard of treatment 148 n. 280  
 primacy 33 n. 60  
 as source of universal human rights law 33, 41–48  
   limited value 47–48  
 statelessness and 79 n. 12  
 trusteeship responsibilities (Arts. 75–85) 41–42, 47  
 UN competence in respect of customary international law or general principles of law 44  
 Universal Declaration as evidence of interpretation and application 46 n. 111

**United Nations Conference on Territorial Asylum**

family unity/reunification 112, 547 n. 1286  
 laws and regulations, duty to conform 112  
*non-refoulement* 112

**United Nations General Assembly decisions, legal status** 27 n. 39, 30–31, 32 n. 58

**United Nations General Assembly declarations:** *see* Human Rights, Universal Declaration of (1948); Territorial Asylum, UNGA Declaration on (1967); *Table of Treaties and Other International Instruments*: Declaration on Territorial Asylum (December 14, 1967), Declaration on the Principles of International Law Concerning Friendly Relations (November 4, 1970),

Declaration on the Inadmissibility of Intervention in the Internal Affairs of States (December 9, 1981), Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which they Live (December 13, 1985), Declaration on the Right to Development (December 4, 1986) *and* Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol (December 13, 2001)

**United Nations Human Rights Committee:** *see* [Human Rights Committee \(HRC\)](#), [General Comments](#)

**United Nations model tax treaty (1980)** 530

**United States**

- arbitrary interference with family 550
- association, right of 876
- cessation of refugee status, compelling reasons arising out of previous persecution 942 n. 111
- courts, access to 630, 647
  - national security and 654–655
  - non-discrimination and 253 n. 509
- detainees, protection 436–437
- differential treatment, justification/requirements
  - affirmative action 127 n. 218
  - Cuban/Haitian refugees 239–241
  - HIV status 243, 257
  - nationality 239–241
  - race 246
- dispute settlement provisions, reservation 112 n. 132
- documentation (travel) 842, 858–859
- employment, right to seek/engage in 741
  - adaptation programs 738
- family unity/reunification 537–538, 550
- first country of arrival/safe third country rules 293–294
- Handbook*, legal effect 114–115
- healthcare, compliance with obligations 510
- high seas, refugee rights on 171 n. 81, 290–291, 336, 337, 339
- illegal entry or presence, non-penalization, expedited determination of status 372–373, 380, 387, 408, 422
- internal movement, freedom of/choice of residence of person lawfully present, restrictions 376–377, 426–427, 696
- internment 266–267
- judicial review/appeal against determination of status, right of, expedited determination of status and 373, 630, 647
- lawful presence
  - lawful residence, relevance 179 n. 125
  - refugee status, determination/verification, relevance 175 n. 108
- legislation
  - 8 CPR § 208.13(c)(2)(i)(B) 294
  - 30 USC § 22 (mineral rights) 515
  - 42 USC § 2133(d) (atomic energy facilities) 515
  - 42 USC § 2134(d) (atomic energy facilities: medical therapy) 515
  - 47 USC § 310(b)(1) (radio operator licenses) 515

Immigration and Nationality Act (as amended 1996) 290 n. 66, 372–373, 376 n. 436

Notice Designating Aliens Subject to Expedited Removal 380

Omnibus Appropriations Act 1996 372–373

Social Security Act 776 n. 226

liberal professions, right to practice 787, 799

necessities of life 741

non-discrimination, *non-refoulement* and 253

*non-refoulement* 304 n. 131, 306–307

grounds for withdrawal of right, conviction by a final judgment of a particularly serious crime, “particularly serious” 351

*non-refoulement*, avoidance of obligation 283, 286

*non-refoulement*, grounds for withdrawal of right  
danger to security of country in which he is 346, 347  
mass influx 360

property rights 515, 522

public relief and assistance 741, 804–805, 807–808

reception centers 382

refugee status, determination/verification

delays 558

expedited determination 239–240, 253, 380, 387, 408

religious freedom, restrictions 573–574

resettlement in third country 964

social security 776 n. 226

reservation 776 n. 226

temporary protection status 558, 736, 804–805

trade unions, objection to formation 886 n. 775

“voluntary” repatriation 289, 319

**Universal Declaration of Human Rights (1948):** *see* Human Rights, Universal Declaration of (1948)

**universal human rights law:** *see* aliens law, international; human rights law post-1951; international law sources; refugee rights regime, evolution

**unlawful presence:** *see* illegal entry or presence, non-penalization (CRSR Art. 31(1)); lawful presence

## Uruguay

association, right of 895 n. 825

differential treatment 141

**Uzbekistan**, religious freedom, restrictions 567–568, 578

## Venezuela

dispute settlement provisions, reservation 112 n. 132

employment, right to seek/engage in, regional, political, and economic unions and 751

*non-refoulement*, avoidance of obligation 283, 317

property rights 516–517, 522

refugee status, determination/verification, “excluded tolerance” 159 n. 19

## Vietnamese refugees

in Cambodia 283, 317

in China 560–561



**Vietnamese refugees (cont.)**

- in Hong Kong 381, 462, 604–605, 697–699
- in Ireland 590
- in Malaysia 462
- in Thailand 280, 361, 439–440
- in United States 876

**visa controls** 291–293, 299–300, 310–314: *see also* carrier sanctions

- asylum-seekers as target 310–311
- extraterritorial controls and 311–312, 340–341
  - state responsibility and 313–314, 340–341
- illegal entry or presence, non-penalization 312 n. 170
- leave the country, freedom to (ICCPR Art. 12(2)) and 312–314
- legality (CRSR Art. 33) 311–312
- non-refoulement* and 367
- state practice 310 n. 163, 311–312

**vocational training:** *see* education, role, requirements and provision, vocational training

- “voluntary” repatriation:** *see also* fundamental change of circumstances (“circumstances have ceased to exist” (Art. 1(C)(5)–(6))), voluntary repatriation as replacement for CRSR Art. 1(C)(5)–(6) requirements; repatriation necessities of life, right to and 462, 464, 476
- as *refoulement* 287–289, 299–300, 318–321, 464, 961
  - UNHCR repatriation policy as incentive for 933, 934, 936–937

**vulnerable groups:** *see* progressive realization (ICESCR Art. 2(1)), marginalized and vulnerable groups and; water, right to, marginalized and vulnerable groups and**water, right to:** *see also* Committee on Economic, Social and Cultural Rights (CESCR), General Comments, 15 (water)

- as core obligation 490 n. 989, 492–493, 502–503
- ICESCR Arts. 11 and 12 as basis 502–503
- marginalized and vulnerable groups and 498 n. 1017, 498 n. 1019, 502–503
- national treatment 502–503
- physical security and 502–503
- proactive/protective nature of obligation 498 n. 1017

**water shortages** 477–478**welfare:** *see* public relief and assistance (CRSR Art. 23); social security (CRSR Art. 24(1)(b))**well-founded fear of persecution:** *see* persecuted, well-founded fear of being (CRSR Art. 1(2))**Women, Convention on the Elimination of All Forms of Discrimination (1979),** implementing legislation, need for 39–41**women refugees:** *see also* Human Rights Committee (HRC), General Comments, 28 (equality of rights between men and women)

- adult education 593
- affirmative action, need for 138 n. 249
- differential treatment on grounds of sex 242, 255–256, 486
- differing impact of neutral laws 134–135

education 585  
 employment rights 770  
 food, right to 486  
 healthcare and 509–510, 513–514  
 necessities of life, right to and 475–476  
 permanent residence requirements and 988 n. 332  
 personal status, applicable law (CRSR Art. 12(1)) 218–219  
 primary education (ICESCR Art. 13(2)(a)) 603–605  
 security of person and liberty (ICCPR Art. 9), risk to, absence of provision in 1951 Convention and 448–449  
 skills training 591–592  
 unemployment benefits 134–135  
 vocational training 592 n. 1490, 593

**work, right to:** *see* employment, right to seek/engage in wage-earning (CRSR Art. 17); employment, right to seek/engage in wage-earning (ICESCR Art. 6); liberal professions, right to practice; liberal professions, right to practice (CRSR Art. 19); self-employment, right to engage in (CRSR Art. 18)

## Yemen

documentation (identity) 614 n. 1578  
 religious freedom, restrictions 564

**Zaire:** *see* Congo, Democratic Republic of (Zaire)

## Zambia

arbitrary interference with family 550  
 association, right of 875–876, 876–877, 891, 896  
 core obligations (ICESCR) 489–490  
 documentation (identity) 618, 625  
 documentation (travel) 841–842, 853  
 education, right to elementary 597 n. 1517, 602–603  
 employment, right to seek/engage in 731, 734, 748  
     reservation (CRSR Art. 17) 231–234, 742 n. 62, 753 n. 117  
     treatment accorded to aliens generally 751  
     work permits 753–754  
 family unity/reunification 539–540, 550  
 food shortages 489–490  
 healthcare, compliance with obligations 509–510, 514  
 illegal entry or presence, non-penalization 371, 406  
 internal movement, freedom of/choice of residence of person lawfully present, restrictions 699, 699–700, 703, 713  
 international aid/relief, dependence on 471, 473, 473–474, 474–475, 497  
 naturalization 989  
*non-refoulement*, avoidance of obligation 283–284, 317, 753–754  
 public relief and assistance 802  
 repatriation from 930 n. 62, 932 n. 66, 936, 937, 937–938, 938–939  
 repatriation to 936–937  
 self-employment 722, 729  
 “voluntary” repatriation 961  
 water shortages/as core obligation 477–478, 489–490, 502–503

**Zimbabwe** 597 n. 1517, 602–603

due process (CRSR Art. 32(2)) 678–679

education, provision 588

employment, right to seek/engage in 731–732

reservation (CRSR Art. 17) 231–234, 742 n. 62, 753 n. 117

treatment accorded to aliens generally 751

expulsion, examples 663, 678–679

food shortages 476

illegal entry or presence, non-penalization 406

failure to distinguish between asylum-seekers and other aliens 371

inhuman, cruel, or degrading treatment 456–457

internal movement, freedom of/choice of residence of person lawfully present,  
restrictions 696–697, 708*non-refoulement*, avoidance of obligation 285, 319–320

political association, objections 885

public relief and assistance 803, 809–810

**Zimbabwean refugees** 292, 320–321