

# SCL International refugee law course

The Authors of this study are **Dr. James Lutaaya** and **Ms. Tina Puryear**.

Dr. James Lutaaya is an Immigration consultant and human rights researcher/activist who has worked with and advocated for refugee's rights since 1999. He began his career as a researcher on refugee law and pursued this end in his LLB and LLM research projects. He hosted a Human Rights Talk Show in Uganda before embarking on his Masters in Immigration Law. He also received his Doctorate in International Human Rights and has vast experience in International Law. He has worked with several immigration law firms and the Refugee Council in the UK as well as the International Criminal Tribunal for Rwanda. Dr. James is also a guest lecturer on International & domestic human & group rights; and HIV/ Aids. He is also a publisher of academic works and columnist.

Tina Puryear is currently a freelance writer and researcher who has worked with refugees and migrant communities since 1991. She began her career managing integration projects within the refugee community. Ms. Puryear has a Masters degree in Social Anthropology. This combination of practical experience and theoretical knowledge of refugee issues and legislation informs Ms. Puryear's work. She has written numerous reports and briefings regarding immigration legislation in the UK and international human rights law. She is also a professional trainer who has delivered seminars regarding culture, refugees and human rights.

## SCL international refugee law course

### Part 1

#### **Contents**

1. Preface – the purpose of this course
2. Introduction to Part 1
3. How to work your way through Part 1
4. General principles in international refugee law
5. Questions to general principles

# SCL International refugee law course

## Preface

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

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

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

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

### **The course is ideal for:**

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

# SCL International refugee law course

## Introduction to Part 1

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

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

# SCL International refugee law course

## Part 1

### **How to work your way through part one**

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

# General principles in international refugee law

## Contents

1. International law
2. International organisations
3. International human rights law
4. Refugee protection: international bodies
5. Refugee protection: international convention
6. General principles in deciding who is a refugee
7. Convention reasons for assigning refugee status
8. The assessment of past facts
9. Protection
10. Exclusion clauses
11. Cessation clauses

## 1. International law

### 1.1. What is international law?

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

International law is divided into two main areas:

#### **Information withheld**

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

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

### 1.2. Customary law

#### **Information withheld**

### 1.3. Conventional law

#### **Information withheld**

Customary and Conventional law have equal authority as international law.

### 1.4. General principles

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

## 2. International organisations

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

### 2.1. The United Nations

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

The UN has four purposes:

#### **Information withheld**

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

## 2.2. UN Charter

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

## 2.3. The UN System

### 2.3.2. Main organs

The UN is made up of six main organs.

#### **Information withheld**

Other organs in the UN system include:

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

### 2.3.3. Specialised agencies

#### **Information withheld**

### 2.3.4. UN Offices

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

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

## 3. International human rights law

A right in relation to human rights law<sup>1</sup> is a claim any one has against a State or any institution as a result of his/her being a human being. It comprises of social, economic, cultural, civil and political rights.

International concern over human rights issues and the right to humane treatment in all situations has led to the adoption of a number of treaties and protocols.<sup>2</sup> These

---

<sup>1</sup> Human Rights Law Handbook, 2000.

instruments speak in broad terms of the minimum standards of treatment for all persons. They therefore extend to refugees seeking asylum who do not forfeit their fundamental human rights when they leave their countries of origin.

### 3.1. Universal Declaration of Human Rights

**Information withheld**

### 3.2. UN Charter

**Information withheld**

### 3.3. Compliance

**Information withheld**

The legal obligations of States to protect human rights under human rights law are standards by which States can be legitimately and objectively judged. A State's lack of compliance with its obligations means that public, national and international jurisprudence can justifiably apply political, diplomatic, economic or social pressure against it.

## 4. Refugee protection – international bodies

### 4.1. Background

One of the first institutions created by the United Nations was the International Refugee Organisation (IRO). Established in 1947, this was the first organisation to deal exclusively with refugee matters. It was set up temporarily after the Second World War to deal with status determination and to provide opportunities for protection, repatriation and resettlement of the 21 million refugees in Europe following World War II. The IRO began with a focus on repatriation. But with the build up of the Cold War, the IRO helped resettle those refugees with 'valid objections' to returning home.

### 4.2. United Nations High Commissioner for Refugees

**Information withheld**

## 5. Refugee protection – international convention

The 1951 UN Convention Relating to the Status of Refugees<sup>3</sup> is convention law – and thus binding to States that sign it. The 1951 UN Convention Relating to the Status of Refugees (here after referred to as the 1951 Refugee Convention) has three purposes:

**Information withheld**

---

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

<sup>3</sup> The 1967 Protocol Relating to the Status of Refugees consequently amended this Act.

There are two provisions of the 1951 Refugee Convention that are fundamental, the definition of the term 'refugee' and the *non-refoulement* principle.

5.1. The 1951 Refugee Convention defines a refugee under Article 1A (2) *inter-alia* as one who:

#### **Information withheld**

However the 1967 Protocol Relating to the Status of Refugees (here after referred to as the 1967 Protocol) provides that considering that new refugee situations have arisen since the Convention was adapted and the refugees concerned may therefore not fall within the scope of the 1951 Refugee Convention, there is need to disregard the prior date line of 1<sup>st</sup> January 1951.

Currently, 146 States have signed one or both of the U.N. instruments.

5.2. *Non-refoulement* principle

Article 33 of the 1951 Refugee Convention sets out the most important duty of States: the prohibition on return to a territory where the individual's life or freedom may be threatened.

"No contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."<sup>4</sup>

This principle of *non-refoulement* applies ...**further information withheld**

## **6. General principles in deciding who is a refugee**

6.1. 'Refugee' in legal terms thus has certain characteristics:

- They must be outside of their own country
- They have to possess a "well founded fear"
- That fear is related to treatment which bears the hallmark of "persecution"
- Only persecution which is visited on the individual for one of the reasons outlined in the 1951 Refugee Convention will qualify
- They must be unable or unwilling to obtain protection from their State

5.2 Considerations for credibility of asylum claims

#### **Information withheld**

Some issues which may challenge an asylum claimant's credibility include:

6.2.1 Not disclosing details at the first opportunity

---

<sup>4</sup> United Nations General Assembly resolution 429 (V) of 14 December 1950. For the text of this resolution, see official records of the General Assembly Fifth Session, Supplement no. 20 [A/1775], p. 48.

Often, Officials assume that 'genuine' refugees would provide all relevant details immediately to ensure their case is examined with all the evidence in place. Thus, officials deem information provided by an asylum applicant after an initial interview as false, only added with an intention to mislead.

#### 6.2.2 Not claiming asylum in the first available country

Officials assume that 'genuine' refugees will claim asylum in the first safe country they enter, and thus those who move on to other countries to apply for asylum are bogus – economic migrants trying to deceive the system.

#### **Further in-depth information withheld**

#### 6.2.3 Inability to provide corroborative evidence

An asylum seeker who can provide corroborative evidence will doubtless be in a better position than one who cannot do so; but the UNHCR Handbook makes it clear that corroboration is not required. Paragraph 196:

#### **Information withheld**

#### 5.3 Objective risk

The determination of most asylum applications depends partly on establishing an account of past facts, and partly upon demonstrating with the objective evidence regarding the country that there is a serious possibility of events which he claims to fear actually transpiring. The UK House of Lords in *Sivakumar, R v SSHD* (2003) UKHL 14 (HL) gives a domestic example of a State's interpretation of the relevant standard for the assessment of risk:

#### **Information withheld**

These expressions are summarised representing "a reasonable degree of likelihood."

Possession of a passport issued by the authorities of the country of origin is a factor that is some times equated with the absence of any objectively based fear of persecution. But it must be borne in mind that there will be cases where an individual was granted a passport under a previous regime or asylum seeker may originate from a country where corruptible officials will not uniformly enforce their orders.

Decision makers are often tempted to rule upon the plausibility of an asylum seeker's account. When so doing, however, the asylum seeker's evidence must be adjudicated on the basis of the standards of the relevant country of origin.

#### 5.4 What is 'persecution'?

#### **Information withheld**

#### 5.5 Past Persecution

Information withheld

#### 5.6 Principles of interpretation

Like any other human rights instrument, the 1951 Refugee Convention must be interpreted in the light of the changing times, and in a liberal spirit. In the UK, the court in *Shah, R v IAT & SSHD ex parte* [1999] Imm AR 283 noted:

“Unless it is seen as a living thing, adopted by civilized countries for a humanitarian end which is constant in motive but mutable in form, the Convention will eventually become an anachronism.”

This issue reminds States, that when determining whether or not an individual is a refugee, it is best not to look at the earlier conventions too conservatively.

## **7 The Convention reasons for assigning refugee status**

In order to be considered a refugee, a person must show well-founded fear of persecution because of his/her race, religion, nationality, membership of a particular social group, or political opinion. These are referred to as “Convention reasons”. The persecution may arise from any one of these reasons or from a combination of them.

### 7.2 Race

Information withheld

### 7.3 Religion

**Information withheld**

### 7.4 Nationality

**Information withheld**

### 7.5 Membership of a particular social group

**Information withheld**

### 7.6 Political opinion

**Information withheld**

## **The Assessment of past facts**

### 7.7 Assessing credibility

In a case in the UK, *Karanakaran v Secretary of State for the Home Department* [2000] Imm AR 271 the following spectrum was suggested to assessing a claimant’s credibility:

- (a) Evidence they are certain about
- (b) Evidence they think is probably true
- (c) Evidence to which they are willing to attach to some credence, even if they could not go so far as to say it is probably true
- (d) Evidence to which they are not willing to attach any credence at all

However, it may also be perfectly possible for the Adjudicator to believe that the Appellant is not telling the truth about some matters, but still to be persuaded that the centre piece of the story stands. There is also a formidable task of assessing credibility in a cross-cultural situation, and Judges are poorly equipped to judge how a reasonable person from a different country would act in a given situation, let alone one giving evidence through an interpreter.”

It was stated by Justice Turner in *Ex-Parte Mohammed Hussein*, Queens Bench Division, 25<sup>th</sup> April 1996, “credibility is not in itself a valid end to the function of an Adjudicator. There is a risk that over emphasis of the issue of credibility may distort the findings of an Adjudicator”. The Tribunal’s view in that particular case is that it would be safer for special adjudicators first to look at the story and see whether if it could be true, allow appeal to succeed, and then to proceed to examine it against the background of the country in question.

### 7.8 Assessing ‘persecution’

The assessment of what forms of ill-treatment constitute persecution should involve examining all the circumstances of the case, i.e. “in the round.”<sup>5</sup>

In order to be deemed persecution, the ill-treatment usually needs to be persistent.<sup>6</sup> The ill-treatment needs to be intentional and targeted towards certain individuals or groups. However, there is no requirement that a person be singled out for persecution, so long as they are a member of a class similarly at risk.<sup>7</sup>

Paragraph 52 of the UNHCR Handbook explains that determining whether or not ill-treatment amounts to persecution is a subjective test.

“Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding paragraphs. The subjective character of fear of persecution requires an evaluation of the opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.”

### 7.9 Prosecution v Persecution

#### **Information withheld**

#### 7.10 Civil War

Persons fleeing civil war must demonstrate that they face a differential impact over and above the general risks of the civil war.<sup>8</sup> This is despite the fact that the forms of harm to be expected in a civil war are often serious enough to constitute

---

<sup>5</sup> As was decided by the Court of Appeal in *Ravichandran (Sandralingham & Ravichandran v Secretary of State for the Home Department; Rajendrakumar v Immigration Appeal Tribunal & Secretary of State for the Home Department* [1996] Imm AR 97)

<sup>6</sup> *Ibid*

<sup>7</sup> *R v Secretary of State for the Home Department ex parte Jeyakumaran* [1994] Imm AR 45 (decided 28 June 1985)

<sup>8</sup> The House of Lords in *R v Secretary of State for the Home Department ex parte Adan* [1998] Imm AR 338; [1998] INLR 325.

persecution, and are also visited on an individual for a Convention reason, such as usually being fought on political or racial grounds.

Egregious breaches of international humanitarianism law are not part of the ordinary risks of civil war.<sup>9</sup> Thus, if human rights violations occur within a war, and there is a possibility of their continued occurrence to a group of citizens, one can use that as a ground to seek asylum outside immigration rules under human rights law.

### 7.11 Refugee *sur place*

Asylum seekers or migrants who fear returning home due to changes in circumstances in their home country are referred to as 'refugees *sur place*'. As highlighted by paragraph 94 of the UNHCR Handbook, refugee status is not limited to those who left their country with a prevailing fear. Subsequent events in the country of origin, or the activities of the asylum seeker themselves, might contribute to a legitimate fear which was not apprehended at the time of departure.

## 8 Protection

### 8.2 Non- State persecution

#### Information withheld

### 8.3 Internal relocation

Even if a person is a refugee they may still be able to find protection in their own country, but in a different region from their original home.

If the fear of persecution extends across the whole of the territory, then no question of "internal flight" from potential harm can arise.

However, there will be cases where parts of the country do not present the individual with a well-founded fear of persecution. Then it must be determined whether those parts are physically accessible, and also whether relocation would be "unduly harsh"<sup>10</sup>

Where persecution emanates from the State itself, it is obviously unlikely that internal relocation will offer an antidote to threat of persecution.

## 9 Exclusion clauses

In addition to defining who a refugee is, the 1951 Refugee Convention also outlines who is *not* a refugee.

### 9.2 Second country of nationality

The second part of Article 1 (A)(2) excludes persons with a second country of nationality in which they lack any well-founded fear of persecution.

---

<sup>9</sup> See the determination of the Tribunal in Rudralingam (00/TH/02264; 24 November 2000)

<sup>10</sup> See R v Secretary of State for the Home Department & Immigration Appeals Tribunal ex parte Robinson [1997] Imm AR 568

“In case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”

### 9.3 Article 1(F)

Article 1 (F) of the 1951 Refugee Convention can be employed to exclude refugees.

“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- c) He has been guilty of acts contrary to the purposes and principles of the United Nations.”

This is not as easy to apply in practice as issues around forced conscription into militias or armies make it difficult to draw the line between criminal and victim. Also, remember the adage, “one person’s terrorist is another person’s freedom fighter.” Often history reveals that individuals treated as criminals by a State later become leaders in revolutions against oppressive regimes.

## 10 The Cessation clauses

Article 1C of the Refugee Convention sets out circumstances in which the Convention shall cease to be applicable to an individual. These provisions have been incorporated into domestic law in many countries. They are of some interest because they have been employed in cases to interpret the consequences of a change of circumstances on a substantive Article 1(A)(2) case, and also to support an argument that where an individual has suffered atrocious past persecution, they cannot be returned to their country, despite a change of circumstances (see further UNHCR Handbook paragraph 136).

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

- i He has voluntarily re-availed himself of the protection of the country of his nationality; or
- ii Having lost his nationality, he has voluntarily re-acquired it; or
- iii He has acquired a new nationality and enjoys the protection of the country of his new nationality; or
- iv He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

- v He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.

- vi Being a person who has no nationality he is, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecutions for refusing to return to the country of his former habitual residence.”

The first four clauses reflect changes in circumstances initiated by the refugee him/herself.

The final two recognise that circumstances may change so that the refugee can no longer justify the need for international protection. However, these clauses should be applied with caution and care; they should not be applied if the person would be put at risk again.

The cessation clauses are not the same as ‘cancelling’ refugee status. Refugee status cannot be cancelled unless it can be proven that the person should not have been granted refugee status originally because they misled the host State.

## Closing thought:

Joanne Van Selm Thorburn defines protection as,

*“The act of upholding fundamental human rights such as the core rights declared in the Covenants on Civil and Political Rights and on Economic and Social Rights.”<sup>11</sup>*

She further notes that the key connection between human rights and refugees' laws and policies lies in Article 14 of the Universal Declaration on Human Rights which states that,

*“Every one has the right to seek asylum and enjoy in other countries asylum from persecution.”*

However the correlative duty would have to be for the State to provide such asylum and for every host nation to assume such a moral obligation. There should be a logical relationship between rights violated causing a need for protection - if the violation of rights causes a need for protection, those same rights must be upheld for protection to be meaningful; otherwise a paradoxical system would evolve.<sup>12</sup> She argues State's domestic refugee laws should extend beyond asylum to protection of basic rights. States should realise that refugees are a vulnerable group who have suffered numerous injustices and violations of their rights in their countries of origin and thus ensure they find a safe haven in their host countries.

---

<sup>11</sup> Joanne Van Selm Thorburn: *Refugee Protection in Europe, Lesson of the Yugoslav Crisis*, Martinus Nijhoff publishers. The Hague/ Boston/ London at page 43.

<sup>12</sup> *Ibid* at page 45.