

Contents

<i>Tables of Cases</i>	xxv
<i>Table of Treaties and Other International and Regional Instruments</i>	xliii
<i>Selected Abbreviations</i>	xlix
<i>Online Resource Centre</i>	lv

Chapter 1 The Refugee in International Law	1
1. Introduction	1
2. The refugee in international law and the practice of the United Nations Security Council	5
3. The refugee in national and international law	7
4. Protection	9

PART 1: REFUGEES

Chapter 2 Refugees Defined and Described	15
1. Refugees	15
2. Refugees defined in international instruments 1922–46	16
3. Refugees for the purposes of the United Nations	20
3.1 Statute of the United Nations High Commissioner for Refugees (UNHCR)	20
3.2 Development of the statutory definition and extension of the mandate	23
3.3 Responsibility for internally displaced persons	32
4. Refugees in the sense of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees	35
5. Regional approaches to refugee definition	37
6. Refugees in municipal law: some examples	41
7. Institutional responsibilities and international obligations	47
8. ‘Refugees’ for the purposes of general international law	49
Chapter 3 Determination of Refugee Status: Analysis and Application	51
1. Respective competence of UNHCR and of States parties to the Convention and Protocol	51
2. Determination of refugee status by UNHCR	53

3. Determination of refugee status by States	53
3.1 The 2004 European Union Qualification Directive	60
3.1.1 The goal of 'common criteria'	60
4. The refugee definition and the reasons for persecution	63
4.1 General matters	63
4.1.1 'Good faith' and activities in the country of refuge	65
4.1.2 Statelessness	67
4.2 Reasons for persecution	70
4.2.1 Race	70
4.2.2 Religion	71
4.2.3 Nationality	72
4.2.4 Membership of a particular social group	73
4.2.4.1 The concept develops	76
4.2.4.2 The categories of association	78
4.2.4.3 Common victimization	79
4.2.4.4 Women, social group, and refugee status	81
4.2.4.5 A social view of 'social group'	84
4.2.5 Political opinion	86
5. Persecution: Issues of interpretation and application	90
5.1 Protected interests	92
5.2 The ways and means of persecution	93
5.2.1 Persecution as a crime in international law	94
5.3 Agents of persecution	98
5.3.1 Agents of persecution and State responsibility	99
5.4 Fear, intent, motive, and the rationale for persecution	100
5.5 Persecution and laws of general application	102
5.5.1 Conscientious objectors	104
5.5.1.1 The 'right' of conscientious objection	105
5.5.1.2 The 'right' to object to participation in conflict 'condemned by the international community'	108
5.5.1.3 The nature of the dispute between the individual and the State	109
5.5.1.4 <i>Sepet and Bulbul</i>	112
5.5.2 Political and non-political offenders	116
5.6 Persecution and situations of risk	123
5.6.1 Internal flight alternative	123
5.6.2 Flight from civil war	126
5.6.3 The individual and the group	128
5.7 Children as asylum seekers and refugees	130
6. Persecution and lack of protection	131

Chapter 4 Loss and Denial of Refugee Status and its Benefits	135
1. Voluntary acts of the individual	135
2. Change of circumstances	139
2.1 Continuing status in exceptional circumstances	143
2.1.1 Interpretation and application	145
3. Protection or assistance by other States or United Nations agencies	149
3.1 The country of first asylum principle	149
3.2 Refugees receiving United Nations protection and assistance	151
3.2.1 Historical background	153
3.2.2 Interpretation and application	156
3.2.3 An alternative interpretation	157
3.2.4 Article 1D and the future	159
3.3 Other refugees not considered to require international protection	161
4. Exclusion from refugee status	162
4.1 Crimes against peace, war crimes, and crimes against humanity	163
4.1.1 The drafting history of article 1F(a)	163
4.1.2 The scope of article 1F(a)	165
4.1.2.1 Crimes against peace	165
4.1.2.2 War crimes	166
4.1.2.3 Crimes against humanity	167
4.1.3 Individual responsibility	168
4.2 Serious non-political crimes	171
4.2.1 The drafting history of article 1F(b)	172
4.2.1.1 The relation to extradition	173
4.2.1.2 'Serious' and 'non-political'	176
4.2.2 Context and proportionality	180
4.3 Acts contrary to the purposes and principles of the United Nations	184
4.3.1 The drafting history of article 1F(c)	184
4.3.2 The 'purposes and principles of the United Nations'	185
4.3.2.1 Individuals acting on behalf of the State	186
4.3.3 Article 1F(c) in brief	189
4.4 The 2004 European Union Qualification Directive	190
4.5 Terrorism, refugees, and the purposes and principles of the United Nations	191

PART 2: ASYLUM

Chapter 5 <i>Non-Refoulement</i> in the 1951 Refugee Convention	201
1. Evolution of the principle	201
2. Relation of the principle of <i>non-refoulement</i> to particular issues	206
2.1 Admission and non-rejection at the frontier	206

2.2	Conventions and agreements	208
2.3	Declarations and resolutions	211
2.4	The UNHCR Executive Committee Conclusions on international protection	215
2.5	State views and State practice	218
2.5.1	State views	218
2.5.2	State practice: some aspects	229
3.	The scope of the principle of <i>non-refoulement</i>	232
3.1	Personal scope	232
3.1.1	The question of risk	233
3.2	Exceptions to the principle of <i>non-refoulement</i>	234
3.3	Time and place, ways and means	244
3.3.1	Extraterritorial application	244
3.3.2	'International zones'	253
3.3.3	<i>Non-refoulement</i> and extradition	257
3.3.4	<i>Non-refoulement</i> and expulsion	262
3.3.5	<i>Non-refoulement</i> and illegal entry	264
4.	Measures not amounting to <i>refoulement</i>	267
4.1	Stowaways	268
4.2	Arrival of asylum seekers by boat	270
4.2.1	Internal waters and the territorial sea	272
4.2.2	The contiguous zone	275
4.2.3	The consequences of enforcement action	277
4.3	Rescue-at-sea	277
 Chapter 6 Protection under Human Rights and General International Law		 285
1.	The meaning of 'complementary protection'	285
2.	The history of complementary protection	286
3.	Complementary protection at the international level	296
3.1	Human rights treaties: some procedural considerations	298
3.2	The 1984 Convention against Torture (CAT84)	301
3.3	The 1966 International Covenant on Civil and Political Rights (ICCPR66)	305
3.3.1	What rights are protected?	308
3.4	The 1950 European Convention on Human Rights (ECHR50)	310
3.4.1	Article 3	311
3.4.2	Socio-economic rights	314
3.4.3	Other protected rights	316
3.4.3.1	Article 8: family life	318
3.4.3.2	Article 8: private life	321
3.4.3.3	Article 13: remedies	321
3.5	The 1989 Convention on the Rights of the Child (CRC89)	323
4.	The 2004 European Union Qualification Directive	325

5. Status and exclusion from status	330
6. <i>Non-refoulement</i> in cases of mass influx and the development of 'temporary protection'	335
6.1 Mass influx and <i>non-refoulement</i>	335
6.1.1 Some aspects of State practice	336
6.2 Temporary protection	340
6.2.1 Status	341
6.3 <i>Non-refoulement</i> through time?	343
7. <i>Non-refoulement</i> as a principle of customary international law	345

Chapter 7 The Concept of Asylum 355

1. Introduction	355
2. Asylum in international conventions, other instruments, and acts	358
3. Asylum in regional agreements	366
4. Obstructing asylum: trends in State practice	369
4.1 Access	369
4.2 Interception	371
4.3 Non-arrival policies	374
4.3.1 Visa regimes	374
4.3.2 Pre-entry clearance and carrier sanctions	377
5. International law responses	380
5.1 The right to leave any country	380
5.2 Article 31 of the 1951 Convention	384
5.3 State responsibility for extraterritorial acts	385
5.4 Good faith	387
6. Non-admission policies: the 'safe' country and the concept of 'effective protection'	390
6.1 Jurisdictional issues: identifying the State responsible for determining a claim	390
6.2 The 'safe country' mechanism	392
6.3 'Effective protection'	393
6.4 The 2005 European Union Procedures Directive	396
6.5 'Safe country' notions elsewhere	403
6.6 Readmission agreements	407
6.7 Extraterritorial processing	408
7. Standards of treatment of asylum seekers and refugees	412
8. Conclusion	414

PART 3: PROTECTION

Chapter 8 International Protection	421
1. International institutions	421
1.1 The Office of the United Nations High Commissioner for Refugees (UNHCR)	426

1.1.1	Relation of UNHCR to the General Assembly and its standing in general international law	428
1.2	The United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA)	436
1.3	The United Nations Office for the Coordination of Humanitarian Affairs (OCHA)	438
1.3.1	Strengthening coordination	438
1.3.2	The complementary role of UN agencies	441
1.4	Other international and intergovernmental organizations and agencies	442
1.4.1	International Organization for Migration (IOM)	442
1.4.2	International Committee of the Red Cross (ICRC)	444
1.4.3	Regional organizations	444
1.4.4	Non-governmental organizations (NGOs)	446
2.	The protection of refugees in international law	446
2.1	General international law	448
2.2	Treaties and municipal law	450
2.2.1	The principle of good faith	456
3.	Palestinian refugees: nationality, statelessness, and protection	458
Chapter 9 Protection and Solutions		462
1.	General protection issues	462
1.1	Detention	462
1.1.1	Detention and mass influx	465
1.2	Refugee rights in camps and settlements	466
1.3	Personal security and related measures	471
1.3.1	Refugees and asylum seekers	471
1.3.2	Women refugees	473
1.3.3	Child refugees	475
1.3.4	Relief workers	480
2.	Internally displaced persons (IDPs)	481
3.	Solutions	489
3.1	Local integration	490
3.2	Voluntary repatriation	492
3.2.1	Facilitating and promoting	494
3.2.2	Safe return	496
3.3	Resettlement	497
3.4	Assistance and development	500
4.	International cooperation	502
Chapter 10 Treaty Standards and their Implementation in National Law		506
1.	The 1951 Convention and the 1967 Protocol relating to the Status of Refugees	506
1.1	Required standards of treatment	509

1.2 Standards applicable to refugees as refugees	510
1.2.1 Administrative assistance: article 25	512
1.2.2 Identity documents: article 27	515
1.2.3 The Convention Travel Document: article 28	516
1.2.4 Treatment of refugees entering illegally: article 31	520
1.2.5 Expulsion of refugees: article 32	523
1.2.6 <i>Non-refoulement</i> : article 33	524
1.3 The criteria of entitlement to treatment in accordance with the Convention	524
1.3.1 Simple presence	524
1.3.2 Lawful presence	524
1.3.3 Lawful residence	525
1.3.4 Habitual residence	526
2. Protection in national law: the refugee status determination procedure	528
2.1 General standards for the determination of refugee status	529
2.2 The role of UNHCR in national procedures	532
2.3 Due process in the determination of refugee status	533
2.3.1 Appeal or review	535
3. The 2005 European Union Procedures Directive	537
3.1 Organization of the Procedures Directive	539
4. Process in refugee status determination: getting to 'Yes'; getting to 'No'	542
4.1 The interview, examination, or hearing	544
4.2 Uses and abuses of country and other information	545
4.3 Assessing credibility and drawing inferences from the evidence	548
5. The status of refugees and the termination of refugee status in national law	551
5.1 Refugee status and the 'opposability' of decisions	553
5.2 The principle of acquired rights	554
6. Afterword	555

ANNEXES

Table of Contents	557
Annexe 1 Basic Instruments	559
1. 1946 Constitution of the International Refugee Organization—Extracts	559
2. 1948 Universal Declaration of Human Rights—Extracts	564
3. 1950 Statute of the Office of the United Nations High Commissioner for Refugees	564
4. 1951 Convention relating to the Status of Refugees	569
5. 1967 Protocol relating to the Status of Refugees	588
6. 1967 United Nations Declaration on Territorial Asylum	592

7. 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—Extracts	594
8. 1989 United Nations Convention on the Rights of the Child—Extracts	596
9. 1987 Constitution of the International Organization for Migration	598
10. 2001 Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees	607
Annexe 2 Selected Regional Instruments	610
1. 1969 Convention on the Specific Aspects of Refugee Problems in Africa	610
2. 1981 African Charter on Human and Peoples' Rights—Extracts	615
3. 1954 Caracas Convention on Territorial Asylum	616
4. 1954 Caracas Convention on Diplomatic Asylum	619
5. 1969 American Convention on Human Rights—Extracts	622
6. 1981 Inter-American Convention on Extradition—Extracts	623
7. 1984 Cartagena Declaration on Refugees	624
8. 1950 European Convention on Human Rights and Fundamental Freedoms—Extracts	629
9. 1963 Protocol No. 4 to the European Convention on the Protection of Human Rights and Fundamental Freedoms—Extracts	630
10. 1957 European Convention on Extradition—Extracts	630
11. 1975 Additional Protocol to the European Convention on Extradition—Extracts	631
12. 1977 European Convention on the Suppression of Terrorism—Extracts	632
13. 2000 European Union Charter of Fundamental Rights—Extracts	633
14. 2001 European Union Council Directive on Temporary Protection	635
15. 2001 European Union Council Common Position on Combating Terrorism	649
16. 2003 European Union Council Directive on the Reception of Asylum Seekers	653
17. 2003 European Union Council Regulation on the Criteria and Mechanisms for Determining the Member State responsible for Examining an Asylum Application	664
18. 2003 European Union Council Directive on the Right to Family Reunification	680
19. 2004 European Union Council Directive on Qualification and Status as Refugees or Persons otherwise in need of International Protection	691

20. 2005 European Union Council Directive on Minimum Standards on Procedures for Granting and Withdrawing Refugee Status	709
Annexe 3 States Parties to the 1951 Convention, the 1967 Protocol, and the 1969 OAU Convention; Delegations Participating in the 1984 Cartagena Declaration; and Members of the Executive Committee of the High Commissioner's Programme (at 31 January 2007)	739
1. States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol	739
2. States Parties to the 1969 OAU Convention	740
3. Government Delegations participating in the 1984 Cartagena Declaration	741
4. States Members of the Executive Committee of the High Commissioner's Programme	741
<i>Select Bibliography</i>	743
<i>Index</i>	773