

CONTENTS

| | |
|--|--------|
| <i>Table of Treaties and Other International Instruments</i> | xxiii |
| <i>Table of Cases</i> | xxix |
| <i>Selected Abbreviations</i> | xxxvii |

PART 1: REFUGEES

| | |
|--|----|
| Chapter 1 DEFINITION AND DESCRIPTION | 3 |
| 1. Refugees | 3 |
| 2. Refugees defined in international instruments 1922–46 | 4 |
| 3. Refugees for the purposes of the United Nations | 7 |
| 3.1 Statute of the United Nations High Commissioner for Refugees (UNHCR) | 7 |
| 3.2 Development of the statutory definition and extension of the mandate | 8 |
| 4. Refugees in the sense of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees | 18 |
| 5. Regional approaches | 20 |
| 6. Refugees in municipal law: some examples | 21 |
| 7. 'Refugees' and international obligations | 25 |
| 8. Summary conclusions on the refugee definition for the purposes of general international law | 29 |
| Chapter 2 DETERMINATION OF REFUGEE STATUS: ANALYSIS AND APPLICATION | 32 |
| 1. Respective competence of UNHCR and of States parties to the Convention and Protocol | 32 |
| 2. Determination of refugee status by UNHCR | 33 |
| 3. Determination of refugee status by States | 34 |
| 4. Preliminary analysis of the definition | 40 |
| 4.1 General matters | 40 |
| 4.1.1 Statelessness | 41 |
| 4.2 Reasons for persecution | 43 |
| 4.2.1 Race | 43 |
| 4.2.2 Religion | 44 |
| 4.2.3 Nationality | 45 |
| 4.2.4 Membership of a particular social group | 46 |

| | | |
|--|---|--------|
| 4.2.5 | Political opinion | 48 |
| 4.3 | Initial problems of interpretation and application | 49 |
| 4.3.1 | Fear, intent and motive, and the rationale for persecution | 50 |
| 4.3.2 | Persecution and laws of general application | 52 |
| 4.3.2.1 | 'Republikflucht' | 53 |
| 4.3.2.2 | Conscientious objectors | 54 |
| 4.3.2.3 | Political and non-political offenders | 59 |
| 5. | Persecution | 66 |
| 5.1 | Protected interests | 68 |
| 5.2 | The ways and means of persecution | 69 |
| 5.2.1 | Agents of persecution and non-State entities | 70 |
| 5.2.1.1 | Agents of persecution and State responsibility | 73 |
| 5.2.2 | Internal flight alternative | 74 |
| 5.2.3 | Flight from civil war | 75 |
| 5.2.4 | The individual and the group | 76 |
| 6. | Persecution and lack of protection | 77 |
| Chapter 3 LOSS AND DENIAL OF REFUGEE STATUS AND ITS BENEFITS | | 80 |
| 1. | Voluntary acts of the individual | 80 |
| 2. | Change of circumstances | 84 |
| 3. | Protection or assistance by other States or United Nations agencies | 88 |
| 3.1 | The country of first asylum principle | 88 |
| 3.2 | Refugees receiving United Nations protection and assistance | 91 |
| 3.3 | Other refugees not considered to require international protection | 93 |
| 4. | Undeserving cases | 95 |
| 4.1 | Crimes against peace, war crimes, and crimes against humanity | 95 |
| 4.1.1 | The drafting history of article 1F(a) | 95 |
| 4.1.2 | The scope of article 1F(a) | 97 |
| 4.1.2.1 | Crimes against peace | 97 |
| 4.1.2.2 | War crimes | 98 |
| 4.1.2.3 | Crimes against humanity | 99 |
| 4.1.3 | Individual responsibility | 100 |
| 4.2 | Serious non-political crimes | 101 |
| 4.2.1 | The drafting history of article 1F(b) | 101 |
| 4.2.1.1 | The relation to extradition | 103 |
| 4.2.1.2 | 'Serious' and 'non-political' | 104 |
| 4.3 | Acts contrary to the purposes and principles of the United Nations | 108 |
| 4.3.1 | The drafting history of article 1F(c) | 108 |

| | | |
|---------|--|-----|
| 4.3.2 | The 'purposes and principles of the United Nations' | 109 |
| 4.3.2.1 | Individuals and persons acting on behalf of the State | 110 |
| 4.3.3 | Article 1F(c) in brief | 114 |

PART 2: ASYLUM

| | | |
|-----------|--|-----|
| Chapter 4 | NON-REFOULEMENT | 117 |
| 1. | Evolution of the principle | 117 |
| 2. | Relation of the principle of <i>non-refoulement</i> to particular issues | 121 |
| 2.1 | Admission and non-rejection at the frontier | 121 |
| 2.2 | Conventions and agreements | 124 |
| 2.3 | Declarations and resolutions | 126 |
| 2.4 | The UNHCR Executive Committee Conclusions on International Protection | 127 |
| 2.5 | State views and State practice | 129 |
| 2.5.1 | State views | 129 |
| 2.5.2 | State practice: some aspects | 132 |
| 2.6 | The principle and the commentators | 134 |
| 3. | The scope of the principle of <i>non-refoulement</i> | 137 |
| 3.1 | Personal scope | 137 |
| 3.1.1 | The question of risk | 138 |
| 3.2 | Exceptions to the principle of <i>non-refoulement</i> | 139 |
| 3.3 | Time and place, ways and means | 141 |
| 3.3.1 | Extraterritorial application | 141 |
| 3.3.2 | 'International zones' | 145 |
| 3.3.3 | ' <i>Non-refoulement</i> ' and extradition | 147 |
| 3.3.4 | ' <i>Non-refoulement</i> ' and expulsion | 151 |
| 3.3.5 | ' <i>Non-refoulement</i> ' and illegal entry | 152 |
| 3.3.6 | ' <i>Non-refoulement</i> ' and the Committee against Torture | 153 |
| 4. | Measures not amounting to <i>refoulement</i> | 155 |
| 4.1 | Stowaways | 155 |
| 4.2 | Rescue-at-sea | 157 |
| 4.3 | Arrival of asylum seekers by boat | 161 |
| 4.3.1 | Internal waters and the territorial sea | 162 |
| 4.3.2 | The contiguous zone | 164 |
| 4.3.3 | The consequences of enforcement action | 166 |
| 5. | <i>Non-refoulement</i> , access to procedures and 'safe' countries | 167 |
| 6. | The principle of <i>non-refoulement</i> in general international law | 167 |
| 6.1 | <i>Non-refoulement</i> or refuge beyond the 1951 Convention/1967 Protocol | 170 |

| | | |
|-----------|--|-----|
| Chapter 5 | THE CONCEPT OF ASYLUM | 173 |
| 1. | Introduction | 173 |
| 2. | Asylum in international conventions, other instruments and acts: 1945–70 | 174 |
| 3. | A decade of drafts and more: 1971–85 | 179 |
| 3.1 | Flight and response | 182 |
| 4. | A decade of disillusion: 1986–95 | 185 |
| 4.1 | A summary of causes | 189 |
| 4.2 | A summary of responses | 191 |
| 4.3 | A summary analysis of effects | 193 |
| 5. | <i>Non-refoulement</i> and asylum in cases of mass influx | 195 |
| 5.1 | Temporary refuge: the background | 196 |
| 5.2 | From temporary refuge to temporary protection | 199 |
| 6. | Conclusions | 202 |

PART 3: PROTECTION

| | | |
|-----------|--|-----|
| Chapter 6 | INTERNATIONAL PROTECTION | 207 |
| 1. | International institutions | 207 |
| 1.1 | The Office of the United Nations High Commissioner for Refugees (UNHCR) | 212 |
| 1.1.1 | Relation of UNHCR to the General Assembly and its standing in general international law | 214 |
| 1.2 | The United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) | 220 |
| 1.3 | The complementary role of UN agencies | 222 |
| 1.3.1 | Strengthening the co-ordination of UN humanitarian emergency assistance | 223 |
| 1.4 | Other international and intergovernmental organizations and agencies | 225 |
| 1.4.1 | International Organization for Migration (IOM) | 225 |
| 1.4.2 | International Committee of the Red Cross | 227 |
| 1.4.3 | Regional organizations | 228 |
| 1.4.4 | Non-governmental organizations (NGOs) | 229 |
| 2. | The protection of refugees in international law | 230 |
| 2.1 | General international law | 231 |
| 2.2 | Treaties and municipal law | 234 |
| 3. | A note on nationality issues affecting Palestinians | 241 |
| 3.1 | The ‘nationality’ of Palestinians | 241 |
| 3.2 | Palestinians, statelessness and protection | 243 |
| Chapter 7 | PROTECTION, SOLUTIONS, PREVENTION AND CO-OPERATION | 247 |
| 1. | General protection issues | 247 |

| | |
|--|-----|
| 1.1 Detention | 247 |
| 1.1.1 Detention and mass influx | 251 |
| 1.2 Access | 251 |
| 1.3 Personal security and related measures | 253 |
| 1.3.1 Refugees and asylum seekers | 254 |
| 1.3.2 Women refugees | 255 |
| 1.3.3 Child refugees | 257 |
| 1.3.4 Relief workers | 262 |
| 2. Internally displaced persons (IDPs) | 264 |
| 3. Solutions and prevention | 268 |
| 3.1 Voluntary repatriation | 270 |
| 3.1.1 Facilitating and promoting | 273 |
| 3.2 Safe return | 275 |
| 3.3 Resettlement | 276 |
| 3.4 Assistance and development | 281 |
| 3.5 'Preventive protection' | 282 |
| 3.5.1 Fact-finding and the resolution of disputes | 283 |
| 3.5.2 The United Nations and its possibilities | 285 |
| 3.5.3 UNHCR and 'preventive protection' | 286 |
| 3.5.4 Prevention and the refugee dimension | 288 |
| 3.5.5 Prevention: some preliminary conclusions | 290 |
| 4. International co-operation | 291 |
| Chapter 8 TREATY STANDARDS | 296 |
| 1. The 1951 Convention and the 1967 Protocol relating to the Status of Refugees | 296 |
| 1.1 Required standards of treatment | 298 |
| 1.2 Standards applicable to refugees as refugees | 299 |
| 1.2.1 The Convention Travel Document: article 28 | 302 |
| 1.2.2 Treatment of refugees entering illegally: article 31 | 305 |
| 1.2.3 Expulsion of refugees: article 32 | 306 |
| 1.2.4 <i>Non-refoulement</i> : article 33 | 307 |
| 1.3 The criteria of entitlement to treatment in accordance with the Convention | 307 |
| 1.3.1 Simple presence | 307 |
| 1.3.2 Lawful presence | 307 |
| 1.3.3 Lawful residence | 308 |
| 1.3.4 Habitual residence | 309 |
| 2. Refugees as the beneficiaries of other instruments, including regional agreements | 311 |
| 2.1 Universal treaty monitoring bodies | 313 |
| 2.2 Regional treaty monitoring bodies | 314 |
| 2.2.1 Refugees, asylum seekers and the European Convention: an assessment | 315 |

| | |
|---|-----|
| 2.3 Refugees and the responsibility of asylum States | 322 |
| Chapter 9 PROTECTION IN MUNICIPAL LAW | 324 |
| 1. Definitions and procedures | 325 |
| 1.1 Refugee status and asylum procedures: general standards | 325 |
| 1.2 The role of UNHCR in national procedures | 327 |
| 1.3 Due process in the determination of refugee status | 328 |
| 1.3.1 Appeal or review | 331 |
| 2. The determination process | 332 |
| 2.1 Admissibility and preliminary questions | 332 |
| 2.1.1 Jurisdictional issues: identifying the State responsible for determining a claim | 333 |
| 2.1.2 Substantive issues: manifestly unfounded claims and the 'safe country of origin' exception | 344 |
| 2.2 Getting to 'Yes'; Getting to 'No' | 349 |
| 2.2.1 The interview, examination or hearing | 350 |
| 2.2.2 Uses and abuses of country and other information | 352 |
| 2.2.3 Assessing credibility and drawing inferences from the evidence | 354 |
| 3. Selected issues | 356 |
| 3.1 Children as asylum seekers | 356 |
| 3.2 Emergent social groups | 358 |
| 3.2.1 The possible categories of social group | 359 |
| 3.2.2 The categories of association | 360 |
| 3.2.3 Common victimization | 362 |
| 3.2.4 Women, social group and refugee status | 362 |
| 3.2.5 A social view of 'social group' | 365 |
| 3.3 Interpretation of international instruments: the uses and limits of <i>travaux préparatoires</i> | 366 |
| 4. The status of refugees and the termination of refugee status in municipal law | 368 |
| 4.1 The principle of acquired rights | 370 |
| 4.2 Refugee status and the opposability of decisions | 371 |
| ANNEXES | 373 |
| Table of Contents | 375 |
| Annexe 1 Basic Instruments | 379 |
| Annexe 2 Selected Regional Instruments | 429 |
| Annexe 3 UNHCR Executive Committee: selected Conclusions on International Protection | 471 |
| Annexe 4 Miscellaneous Texts | 510 |
| Annexe 5 Comprehensive Arrangements for Refugees | 534 |

| | |
|--|-----|
| Annexe 6 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 December 1995) | 548 |
| <i>Select Bibliography</i> | 551 |
| <i>Index</i> | 575 |