International Refugee Law, LW5114

**COURSE OUTLINE 2024-25**

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| Objective | By the end of the course, you should be familiar with and able to critically evaluate the international system of refugee protection, its foundational assumptions and likely future direction. |
| Lecturer | Dr Ciara Smythciara.m.smyth@universityofgalway.ieEmail for an appointment |
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| Times | Weeks 1-8, Semester 2, 2024-253 hour weekly seminar, Thursdays 10am-1pm, Seminar Room, ICHR |
| Learning Outcomes | At the end of this course you should be able to:* Situate the refugee regime in its historical context and have a view on its current trajectory
* Demonstrate an understanding of the inclusion, cessation and exclusion clauses of the 1951 Refugee Convention
* Critically analyse the individual refugee status determination procedure
* Outline how complementary and alternative systems of protection have developed
* Discuss the key barriers to international protection that States have erected over the past 20 years
* Debate the pros and cons of the three durable solutions for refugees
* Put forward ideas as to how persons who fall outside the refugee regime, such as IDPs and climate change ‘refugees’, should be managed
* Distinguish between the different protection challenges in different parts of the world
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| Format | The course will be taught by way of eight weekly seminars. Attendance is strongly encouraged. You are hereby given a detailed outline of all the seminars with the assigned readings for the course. You are expected to do the reading in advance and are encouraged to express your understanding/views and engage in active discussion. Guest speakers may contribute to some of the seminars.Teaching and learning materials for the course are available on the Canvas learning management system: <https://universityofgalway.instructure.com/> You will find International Refugee Law (LW5114) in ‘Courses’. You will find this Course Outline in ‘Syllabus’. You will find any teaching and learning materials in ‘Modules’ (the terminology is a bit confusing: a module in Canvas corresponds to a topic within a course, not the course itself!). |
| Programme(s) | LL.M in International Migration and Refugee Law and Policy, ICHRLL.Ms in the ICHRLL.M General, School of Law |
| Course Material | See weekly readings (below) |
| Core Text | * James C. Hathaway, Michelle Foster, *The Law of Refugee Status,* 2nd ed., Cambridge: Cambridge University Press, 2014
* Guy S. Goodwin-Gill and Jane McAdam, The Refugee in International Law, 3rd ed., Oxford: Clarendon Press, 2007.
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| Supplementary Texts | Weekly readings (see below) |
| Assessment | 3,500-word essay (ex footnotes) (worth 70%); Presentation (worth 30%) |
| ECTS | 10 |
| Workload  | 250 hours of student effort |

**GENERAL OVERVIEW OF THE COURSE**

This module explores the development of international refugee law, how refugee protection plays out in different parts of the world and the key challenges for refugee protection today. A thematic, as opposed to a geographical, approach is adopted but in exploring the various themes, we will read about and discuss protection issues in different countries of the global north and global south. The course opens with an exploration of the history of international refugee protection both prior to and since the adoption of the seminal 1951 Convention relating to the Status of Refugees. Attention is then turned to the definition of a refugee in the 1951 Convention, focusing on the inclusion, cessation and exclusion clauses of the treaty. We explore how this seemingly neutral definition is based on a prototypical refugee (as he was in 1951!) and how this effects the recognition of non-prototypical refugees, such as child claimants. We investigate how the definition is applied in the individualised refugee status determination procedure, focusing on procedural guarantees, evidentiary matters and the difficulties in assessing the testimony of asylum seekers. We then consider the rise of complementary and alternative forms of protection, such as those provided by the international human rights law non-refoulement guarantee and by broader regional definitions of a refugee. Next, the numerous barriers to accessing asylum are discussed, such as interception and deflection measures adopted by States. We then turn our attention to the three so-called durable solutions for refugees – local integration, return and resettlement – critically assessing whether they actually work. We focus in particular on local integration in the African context, whether/how it is possible in an encampment situation and alternatives to encampment. Finally, the course deals with persons who lie adjacent to but outside the refugee protection framework, such as IDPs and climate change ‘refugees’.

**SEMINARS AND READINGS**

***Three*** preparatory readings are required for each seminar. However, this course outline supplies a much larger number of readings. This is to help with your own research and essay/dissertation writing. Accordingly, three readings per week are designated as ‘required reading’; further readings are provided for your own perusal.

1. **Introduction to International Refugee Law**

History, theory and development of refugee protection

 Required reading

* Rieko Karatani, ‘How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins’, International Journal of Refugee Law, Volume 17, Issue 3, 2005, Pages 517–541.
* Itty Abraham, ‘Contesting the Universality of the Refugee Convention: Decolonization and the Additional Protocol’, Journal of Refugee Studies, Volume 36, Issue 2, June 2023, Pages 195–216.
* Julia Morris, The Value of Refugees: UNHCR and the Growth of the Global Refugee Industry’, Journal of Refugee Studies, Volume 34, Issue 3, September 2021, Pages 2676–2698.

Further reading

* Tristan Harley, ‘Refugee Participation Revisited: The Contributions of Refugees to Early International Refugee Law and Policy’, Refugee Survey Quarterly, Volume 40, Issue 1, March 2021, Pages58-81.
* Peter Gatrell, ‘Refugees – What’s Wrong with History?’, *Journal of Refugee Studies* 30(2), 2017, Pages 170-189.
* Gillian D Triggs, Patrick C J Wall, ‘The Makings of a Success: The Global Compact on Refugees and the Inaugural Global Refugee Forum’, International Journal of Refugee Law, Volume 32, Issue 2, June 2020, Pages 283–339.
1. **Who is a refugee?**

The definition of refugee in the 1951 Convention (inclusion, cessation, exclusion)

Required reading

* + Visit <http://www.refworld.org/rsd.html> for the complete set (1-13) of UNHCR Guidelines relating to the definitional elements of Article 1A(2) of the Convention
	+ UNHCR, ‘Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees’, HCR/IP/4/Rev.3, 2011
	+ Hugo Storey, ‘What Constitutes Persecution? Towards a Working Definition’, *International Journal of Refugee Law* 26(2), 2014, Pages 272-285.

Further reading

* + Mutaz M Qafisheh, ‘An Ongoing Anomaly: Pre- and Post-Second World War Palestinian Refugees’, International Journal of Refugee Law, Volume 27, Issue 1, March 2015, Pages 52–74.
	+ Kate Ogg, ‘Separating the Persecutors from the Persecuted: A Feminist and Comparative Examination of Exclusion from the Refugee Regime’ *International Journal of Refugee Law*, 26(1), 2014, Pages 82–111.
	+ Esther Pearson, ‘From Voluntary Repatriation to Voluntary Re-Establishment: Cessation of Refugee Status under Article 1C(4) of the Refugee Convention’,International Journal of Refugee Law, Volume 33, Issue 3, October 2021, Pages 436–468.
1. **Some vexed issues in refugee recognition**

Gender-based claims, child claimants, war refugees, victims of trafficking, victims of gangs

Required reading

* Michelle Foster and others, ‘”Time” in Refugee Status Determination in Australia and the United Kingdom: A Clear and Present Danger from Armed Conflict?’,International Journal of Refugee Law, Volume 34, Issue 2, June 2022, Pages 163–191.
* Noemi Magugliani, ‘Trafficked Adult Males as (Un)Gendered Protection Seekers: Between Presumption of Invulnerability and Exclusion from Membership of a Particular Social Group, International Journal of Refugee Law, Volume 34, Issue 3-4, October/December 2022, Pages 353–372.
* Ciara Smyth, The Human Rights Approach to ‘Persecution’ and Its Child Rights Discontents, International Journal of Refugee Law, Volume 33, Issue 2, June 2021, Pages 238–276.

Further reading

* Nuno Ferreira, ‘Utterly Unbelievable: The Discourse of “Fake” SOGI Asylum Claims as a Form of Epistemic Injustice’, International Journal of Refugee Law, Volume 34, Issue 3-4, October/December 2022, Pages 303–326.

# *Refugee Survey Quarterly*, Volume 41, Issue 3, September 2022, Special Issue: Women in Refugee Law, Policy and Practice

* Nicolás Rodríguez Serna, ‘Fleeing Cartels and *Maras*: International Protection Considerations and Profiles from the Northern Triangle’, *International Journal of Refugee Law*, 28(1), 2016, Pages 25–54.
1. **The individualised refugee status determination procedure**

Procedural guarantees (e.g. translator, personal interviewer, legal advice), evidentiary matters, credibility, trauma, interviewing vulnerable applicants, country of origin information

Required reading

* Pia Zambelli, ‘Hearing Differently: Knowledge-Based Approaches to Assessment of Refugee Narrative’, International Journal of Refugee Law, Volume 29, Issue 1, March 2017, Pages 10–41.
* Rebecca Dowd et al., ‘Filling Gaps and Verifying Facts: Assumptions and Credibility Assessment in the Australian Refugee Review Tribunal’, *International Journal of Refugee Law* 30(1), 2018, Pages 71-103.
* Femke Vogelaar, ‘The Elibility Guidelines Examined: The Use of Country of Origin Information by UNHCR’, *International Journal of Refugee Law*, 29(4), 2017, Pages 617-640.

Further reading

* Valentin Feneberg and others, ‘It’s Not What You Know, It’s How You Use It: The Application of Country of Origin Information in Judicial Refugee Status Determination Decisions – A Case Study of Germany’, International Journal of Refugee Law, Volume 34, Issue 2, June 2022: 241–267.
* Tone Maia Liodden, ‘Who Is a Refugee? Uncertainty and Discretion in Asylum Decisions’, International Journal of Refugee Law, Volume 32, Issue 4, December 2020, Pages 645–667.
* Femke Vogelaar, ‘The Presumption of Safety Tested: The Use of Country of Origin Information in the National Designation of Safe Countries of Origin’, Refugee Survey Quarterly, Volume 40, Issue 1, March 2021, Pages 106–137.
* John R Campbell, ‘Examining Procedural Unfairness and Credibility Findings in the UK Asylum System’, Refugee Survey Quarterly, Volume 39, Issue 1, March 2020, Pages 56–75.
* Herlihy, J. & Turner, S., ‘Asylum claims and memory of trauma: Sharing our knowledge’, *The British Journal of Psychiatry*, 191(1), 2007, Pages 3-4.
1. **Complementary and alternative forms of protection**

The non-refoulement guarantee in international human rights law; the expanded definition of a refugee under regional instruments (African Convention, Cartagena Declaration, EU Qualification Directive); *prima facie* recognition; temporary protection; humanitarian admission; family reunification

Required reading

* Palacios-Arapiles, S., ‘Unfolding Africa’s Impact on the Development of International Refugee Law’, *Journal of African Law* (2021), 65(S1), Pages 9-33.
* Javier Ochoa, ‘South America’s Response to the Venezuelan Exodus: A Spirit of Regional Cooperation?’, International Journal of Refugee Law, Volume 32, Issue 3, October 2020, Pages 472–497.
* Luisa Feline Freier, Jean-Pierre Gauci, ‘Refugee Rights Across Regions: A Comparative Overview of Legislative Good Practices in Latin America and the EU’, Refugee Survey Quarterly, Volume 39, Issue 3, September 2020, Pages 321–362.

Further reading

* Stéfanie Morris and others, ‘Refugee Sponsorship and Family Reunification’, Journal of Refugee Studies, Volume 34, Issue 1, March 2021: 130–148. (Canada)
* Karin Åberg, ‘Examining the Vulnerability Procedure: Group-based Determinations at the EU Border’, Refugee Survey Quarterly, Volume 41, Issue 1, March 2022: 52–78.

# *European Journal of Migration and Law*, Volume 25 (2023): Issue 2 (May 2023): Special Issue: Complementary Pathways in Murky Legal Waters, edited by Vladislava Stoyanova

# Küçük, E. (2023). Temporary Protection Directive: Testing New Frontiers?. European Journal of Migration and Law, 25(1), 1-30.

# Vankova, Z. (2022). ‘Work-Based Pathways to Refugee Protection under EU Law: Pie in the Sky?’, European Journal of Migration and Law, 24(1), 86-111.

# Barriers to protection

Preventing arrivals (immigration liaison officers, juxtaposed control zones, excised areas, carrier sanctions, visa black lists, hot returns, push/pull backs, failure to rescue, refusal of permission to disembark, criminalisation of humanitarian actors); protection elsewhere (admissibility and border procedures, safe country concepts, externalisation); punishing asylum seekers (asylum detention, poor reception conditions, destitution); instrumentalisation

Required reading

* Azadeh Dastyari, Asher Hirsch, ‘The Ring of Steel: Extraterritorial Migration Controls in Indonesia and Libya and the Complicity of Australia and Italy’, Human Rights Law Review, Volume 19, Issue 3, November 2019, Pages 435–465.
* Daniel Thym, The End of Human Rights Dynamism? Judgments of the ECtHR on ‘Hot Returns’ and Humanitarian Visas as a Focal Point of Contemporary European Asylum Law and Policy, International Journal of Refugee Law, Volume 32, Issue 4, December 2020, Pages 569–596.
* Margherita Matera and others, ‘Is Australia a Model for the UK? A Critical Assessment of Parallels of Cruelty in Refugee Externalization Policies’, Journal of Refugee Studies, Volume 36, Issue 2, June 2023, Pages 271–293.

Further reading

* Refugee Law Initiative Declaration on Externalisation and Asylum, International Journal of Refugee Law, Volume 34, Issue 1, March 2022, Pages 114–119.
* Maciej Grześkowiak, ‘The “Guardian of the Treaties” is No More? The European Commission and the 2021 Humanitarian Crisis on Poland–Belarus Border’, Refugee Survey Quarterly, Volume 42, Issue 1, March 2023, Pages 81–102.
* Flavia Patanè and others, ‘Asylum-Seekers Prosecuted for Human Smuggling: A Case Study of “Scafisti” in Italy’, Refugee Survey Quarterly, Volume 39, Issue 2, June 2020, Pages 123–152.
* Cathryn Costello, ‘Safe Country? Says Who?’, *International Journal of Refugee Law*, 28(4), 2016, Pages 601-622
* David Cantor et al., ‘Externalisation, Access to Territorial Asylum, and International Law’ *International Journal of Refugee Law*, 34(1), 2022, Pages 120–156.
* Fernando-Gonzalo, E., ‘The EU’s Informal Readmission Agreements with Third Countries on Migration: Effectiveness over Principles?’, European Journal of Migration and Law, 25(1), 2023, Pages 83-108.
* Giuffré, M., Denaro, C., & Raach, F., ‘On ‘Safety’ and EU Externalization of Borders: Questioning the Role of Tunisia as a “Safe Country of Origin” and a “Safe Third Country”’, European Journal of Migration and Law,24(4), 2022, Pages 570-599.
* ‘Biden Administration Reverses Trump Administration Policies on Immigration and Asylum’, *American Journal of International Law,* 115(2), 2021, Pages 340-347.
* Aris Escarcena, J. P., ‘Expulsions: The Construction of a Hostile Environment in Calais’, European Journal of Migration and Law, 21(2), 2021, Pages 215-237.
1. **Durable solutions for refugees**

Local integration (focus on encampment/self-reliance), voluntary return, resettlement

Required reading

* Ratu Ayu Asih Kusuma Putri, Dennyza Gabiella, ‘The Organisational Pattern of Rohingya Refugee Community in Malaysia: Structural Opportunities, Constraints, and Intra-Community Dynamics’, Refugee Survey Quarterly, Volume 41, Issue 4, December 2022, Pages 673–699.
* Ivanov, D. V., & Pchelitseva, V. V., ‘Durable Solution to the Problem of Externally Displaced Persons from the Syrian Arab Republic in OIC Member States: Legal Obligations and International Cooperation with UNHCR, EU and OIC’, European Journal of Migration and Law,25(1), 2023, 31-53.
* Liesbeth Schockaert and others, ‘Behind the Scenes of South Africa’s Asylum Procedure: A Qualitative Study on Long-term Asylum-Seekers from the Democratic Republic of Congo’, Refugee Survey Quarterly, Volume 39, Issue 1, March 2020, Pages 26–55

Further reading

* Mansha Mohee, ‘State Responsibility for Protracted Displacement: An International Legal Approach to Durable Solutions’, International Journal of Refugee Law, Volume 33, Issue 1, March 2021, Pages 111–136.
* Roger Zetter, ‘Refugees and Their Return Home: Unsettling Matters’, Journal of Refugee Studies, Volume 34, Issue 1, March 2021, Pages 7–22.
* Doğuş Simşek, ‘Integration Processes of Syrian Refugees in Turkey: “Class-based Integration”’, Journal of Refugee Studies, Volume 33, Issue 3, September 2020, Pages 537–554.
* *Journal of Refugee Studies*, Volume 33, Issue 1, March 2020, Special Issue: Rethinking Refugee Self-Reliance
* *Journal of Refugee Studies*, Volume 33, Issue 4, December 2020, Special Issue: The Politics of Return: Understanding Trajectories of Displacement and the Complex Dynamics of ‘Return’ in Central Africa
* Måns Fellesson, ‘A Sustainable Solution or Just a Different Form of Humanitarian Assistance? Examining the Kalobeyei Integrated Socio-Economic Development Plan (KISEDP)’, Refugee Survey Quarterly, Volume 42, Issue 2, June 2023, Pages 158–179.
* Lucy Hovil, Nicholas Maple, ‘Local Integration: A Durable Solution in need of Restoration?’, Refugee Survey Quarterly, Volume 41, Issue 2, June 2022, Pages 238–266.
1. **Persons outside (or not clearly inside) the refugee framework**

IDPs, climate change and disaster ‘refugees’

Required Reading

* Dereje Regasa, Ine Lietaert, ‘In Search of the Invisible People: Revisiting the Concept of “Internally Displaced Persons” in Light of an Ethiopian Case Study’, Refugee Survey Quarterly, Volume 41, Issue 2, June 2022, Pages 320–341.
* Scott, M., ‘Adapting to Climate-Related Human Mobility into Europe: Between the Protection Agenda and the Deterrence Paradigm, or Beyond?. European Journal of Migration and Law, 25(1), 2023, Pages 54-82.
* Carolien Jacobs, Bernardo Almeida, ‘Government-led Resettlement after Natural Disasters as a Durable Solution? The Case of Cyclone Idai’, Refugee Survey Quarterly, Volume 40, Issue 2, June 2021, Pages 239–247.

Further reading

* Matthew Scott, Albert Salamanca, ‘A Human Rights-based Approach to Internal Displacement in the Context of Disasters and Climate Change, Refugee Survey Quarterly, Volume 39, Issue 4, December 2020, Pages 564–571.
* *Refugee Survey Quarterly*, Volume 39, Issue 4, December 2020, Special Issue: Improving Attention to Internal Displacement Globally
* Sanjula Weerasinghe, ‘Overview of UNHCR Study, ‘In Harm’s Way: International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change’, *International Journal of Refugee Law*, 31(1), 2019, Pages 149–160.
* Ian Fry, ‘Providing legal options to protect the human rights of persons displaced across international borders due to climate change’, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, UN Doc A/HR/C/53/34, 18 April 2023.

**USEFUL SOURCES OF INFORMATION AND ANALYSIS**

**Journals**

The principal journals are:

*European Journal of Migration and Law*

International Journal of Refugee Law

Journal of Refugee Studies

Refugee Survey Quarterly

Newsletter on European Asylum Issues for Judges <http://cmr.jur.ru.nl/neais/>

Other relevant journals include:

*American Journal of International Law*

*Cornell International Law Journal*

*European Journal of International Law*

*Fordham University International Law Journal*

*Harvard Journal of Human Rights*

*Harvard International Law Journal*

*Human Rights Law Review*

*Human Rights Quarterly*

*International & Comparative Law Quarterly*

*International Journal of Minorities & Group Rights Law & Contemporary Problems*

Journal of Conflict and Security Law

Leiden Journal of International Law

Michigan Journal of International Law

*Netherlands Quarterly of Human Rights*

*Nordic Journal of International Law*

*Yale Law Journal*

Most of these periodicals are available in the university library. The collection is supplemented with on-line journals available through J-Store and Hein On-Line, to which all registered students have access via the library website.

**Useful websites**

The Refugee Law Reader: <http://www.refugeelawreader.org/images/Syllabus-2015-02-27-US-WEB.pdf>

UNHCR Refworld: <https://www.refworld.org/>

Refugee Law Initiative, University of London: <https://www.sas.ac.uk/about-us-6/institutes-and-centres/refugee-law-initiative>

Phap (International Association of Professionals in Humanitarian Assistance and Protection), International Refugee Law: <https://phap.org/PHAP/PHAP/Themes/IRL.aspx>

European Council for Refugees and Exiles: <https://ecre.org/>

UN Special Rapporteur on the Rights of Internally Displaced Persons: <https://www.ohchr.org/en/special-procedures/sr-internally-displaced-persons/about-internally-displaced-persons>

Climate Refugees: <https://www.climate-refugees.org/>

International Organisation for Migration: <https://www.iom.int/>