

Credit :

UTokyo Online Education, Refugee Recognition

- Understanding the Essentials 2019 Allan Mackey

License :

You may use this material in a page unit for educational purposes.

Except where otherwise noted, this material is licensed under a

Creative Commons Attribution-NonCommercial-NoDerivatives

license in a page unit.

<http://creativecommons.org/licenses/by-nc-nd/4.0/>

These lecture materials contain images, etc. which the University of Tokyo has obtained permission for use from third parties and images, etc. provided under each license. These images, etc. may not be used separately from the lecture materials. When using separate images, etc., please comply with the terms of use of each right holder.



University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - *Course 1. Oct 2019*

The International Human Rights Framework

Application of International Human Rights to Refugee Context

- è legal interpretation of refugee concepts
- è treatment of refugees in country of asylum
- è monitoring and protection from *refoulement*
- è prevention and solution of refugee situations

**University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - Course 1. S. 2. Oct 2019**

C1,S 2 “The International Human Rights Framework” includes:

- “International Bill of Human Rights” i.e.:
 - Universal Declaration of Human Rights
 - International Covenant on Civil and Political Rights
 - International Covenant on Economic, Social and Cultural Rights
- Conventions Dealing with Specific Human Rights (e.g. genocide, torture)

University of Tokyo, Graduate Program on Human Security. International Refugee, Complementary Protection, Migration and Human Rights regimes - *Course 1. Oct 2019*

The International Human Rights Framework includes;

- Conventions Dealing with Particular Groups (e.g. refugees, Geneva Conventions, Statelessness, children)
- Conventions Dealings with Discrimination (e.g. racial discrimination, discrimination against women)
- Various international Standards or Norms
- Regional Human Rights Instruments

University of Tokyo, Graduate Program on Human Security. International Refugee, Complementary Protection, Migration and Human Rights regimes - *Course 1.Oct 2019*

The International Human Rights Framework includes:

- -Commission on Human Rights
 - Sub-Commission on the Prevention of Discrimination and Protection of Minorities
- High Commissioner for Human Rights
- Special Rapporteurs
- Treaty Bodies
- Petitions and Inter-State Complaints
- UN Security Council
- International Tribunals and the International Criminal Court

University of Tokyo, Graduate Program on Human Security. International Refugee, Complementary Protection, Migration and Human Rights regimes - *Course 1. Oct 2019*

The International Human Rights Framework includes:

At the regional level the major examples are:

- The European Convention on Human Rights (1950) (ECHR) – Articles 2, 3 (+8, 9 and other articles where there are "flagrant breaches")
- The European Union Qualifications and Procedures Directives (EUQD & EUPD) –including a whole code in EU for *Subsidiary or complementary Protection*)
- The Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) (1969) – Articles 1 and 2
- The Cartagena Declaration on Refugees, (1984). (A non-binding instrument covering Latin America.)
- The Asian-African Legal Consultative Organization's *Bangkok Principles* on the Status and Treatment of Refugees, (1966) (NB. Also non-binding and it did not attract universal support.)

University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - *Course 1. Oct 2019*

The International Human Rights Framework includes:

A timely reminder here the relevance and applicability of the obligations of signatory states in the *Vienna Convention on the Law of Treaties, (VCLT)* (Arts 26,27, and 31): Treaties should be:

- *Interpreted in good faith ,with ordinary meaning, in context and light of object and purpose of the treaty.*
- *Internal laws should not be invoked as justification for failure by states to perform a treaty.*

University of Tokyo, Graduate Program on Human Security. International Refugee, Complementary Protection, Migration and Human Rights regimes - *Course 1. Oct 2019*

“Overview of CSR 51, other protection and IHR framework.”

Now let us turn to :The whole concept of “Surrogate Protection”

As we noted the Refugee Convention is part of a international system wherein *surrogate protection in other countries* is granted to people needing protection, from a “well founded fear” of being persecuted at home, and not being able on return to obtain protection in their country in a way that obviates that risk of serious harm.

As we will discuss there are still some “protection gaps” left ,much of which are covered by :“Complementary (or Subsidiary) international protection.(With the CSR termed “ IPL”)

University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - *Course 1.Oct 2019*

“Overview of IHR framework. CSR 51, other protection ”

The Refugee Convention *thus serves to soften the rule that states retain complete discretion over all migration by effectively enacting a partial exception for a refugee. The Convention thus, while not conferring an automatic right to entry, **does excuse refugees from entering or remaining in state territory in contravention of states’ immigration laws.(Art. 31)**

* And to the extent of *non refoulement* other IPL

University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - *Course 1. Oct 2019*

“Overview of CSR 51, other protection and IHR framework.”

Before we look at the CSR itself remember, from the UDHR, it is the right to “seek” asylum and not asylum itself. And in fact...

It does so only within defined limitations, we will discuss soon, including a full definition of a refugee (Arts. 1A -1F) and within a full code of rights and obligations for refugees and states (Arts 2 -34)-but not and international Court or tribunal.

**University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - Course 1. Oct 2019**

“Overview of CSR 51, other protection and IHR framework.”

“The Convention relating to the status of refugees 1951
and 1967 Protocol thereto(CSR).”

Recognise at outset:-

1. Drafted & adopted by States for States.
2. The CSR not just about Art 1A(2) but Articles 1- 46.

We now look at :Arts 1A-F and Art 31-33 and a quick
overview Arts 2-30. *Later in the course we may look at the
whole– “The Refugee rights regime”.*

University of Tokyo, Graduate Program on Human Security. International Refugee, Complementary Protection, Migration and Human Rights regimes - *Course 1. Oct 2019*

“Overview of CSR 51, other protection and IHR framework.”

It is very helpful background , not only as students, but also those of us regularly involved with refugees and asylum issues to (re) read :

1. The UNHCR 60 years on *“Introductory note 2010”*.
2. The unanimous recommendations of the 1951 country participants . “A” to “E”.(NB. “C” *Family Unity*)
3. The Preamble CSR 51.

University of Tokyo, Graduate Program on Human Security.
The International Refugee, Complementary Protection,
Migration and Human Rights regime - Course 1 : Oct 2019

Now before getting to the details of the
Refugee Convention 1951 and Protocol 1967
(CSR) itself let us have a quick overview and
look at:

A brief history and introduction to the CSR

See separate slides

“CSR Introduction 2019”

University of Tokyo, Graduate Program on Human Security. International Refugee, Complementary Protection, Migration and Human Rights regimes - *Course 1. Oct 2019*

S “Overview of CSR 51, other protection and IHR framework.”

Definition of a “refugee” has 3 parts- Inclusion, Cessation ,Exclusion.

1. The “Inclusion clause “- Article 1A(2) ... a refugee is a person who“... *owing to a well-founded fear of being persecuted for reasons of* race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the *protection* of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - *Course 1. Oct 2019*

S 2 : “Overview of CSR 51, other protection and IHR framework.”

2. The Cessation provisions in Article 1C
We will cover briefly in seminar 5 or 6
along with...
3. Exclusion Articles 1D-1F we also will
cover in Seminar 6.

So how do we go about the confirmation process (“RSD”) of a claimant’s refugee status when they arrive and/or claim they are refugees ?

**University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - Course 1. Oct 2019**

Who is recognised as a refugee and how?

The IARMJ (and UNHCR) strongly recommends Refugee Status Determination (RSD) (and pragmatically parallel complementary protection assessment) should be carried out in a carefully structured , step by step process, in accordance with soundly established international refugee law, practices and norms.

Only in this way can consistency be achieved in best interests of both claimants/refugees and states.

**University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - Course 1. Oct 2019**

Inclusion under Article 1 A (2)

Sound, established refugee law is based on the so called “international human rights law and practices approach”. This has been developed, agreed and adopted by a very significant number of national jurisdictions, at their highest and national and regional courts, and the UNHCR itself. It thus may be appropriately termed a mix of actual international Convention based law and established customary international law, and norms.

University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - *Course 1. Oct 2019*

Inclusion under Article 1 A (2)

A structured approach-The Chart

IARMJ suggests a step by step, decision making process- which explains the roles of both primary (MOJ/IB) decision makers and of the judge in both full merits review or error of law appeals.

Our eight step structure is in the Chart at Part II of paper.

Step 1. Sets out pragmatic inquiries first .

University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - *Course 1. S. 3. Oct 2019*

C.1 S.3 Inclusion under Article 1 A (2)

A structured approach-The Chart

Step 2 “Credibility Box”: Finding the claimant’s
“accepted facts” – (or “profile” or “characteristics”):
Here is where the credibility assessment takes place
(The Guidance of Part III of the paper should/must
be used).

Step 3: “The Harm Box” – there must be “serious harm
arising ...

University of Tokyo, Graduate Program on Human Security.
International Refugee, Complementary Protection, Migration
and Human Rights regimes - *Course 1. Oct 2019*

Inclusion under Article 1 A (2)

A structured approach – The Chart

Step 4- “The Risk (*or well founded fear*) Box- “real chance”

Step 5 - “ The Reasons box” for RC51 claims- “*for reasons of..*”

Step 6 - “ The Decision box” – make “Issues based” conclusions.

Step 7 - “ Exclusion and Cessation Box”

Step 8 - “ Decision Writing Box”- sound and “Issues based”.

**Before looking at the major Steps in detail
some vital background is essential: ...**