

Index

1949 Geneva Conventions, 15 African National Congress (ANC), 34 1950 European Convention of Human Africa-wide Refugee Convention (1969), Rights and Fundamental 188, 208 Freedoms, 17 Agiza, Mr, Swedish asylum claim/expulsion, 1951 Convention relating to the Status of 124-34, 136-42 Aiken, Sharryn, 32-33 Refugees, 2, 9 Article 1F, 88-92 Aliens Bill (France), 200 Article 33.2 88-92 Alzery, Mr auto-interpretation, 10 Alzery v. Sweden, 116, 134-36 comparative analysis of applications, Swedish asylum claim/expulsion, 124-32, 209-10 development of, 35, 118 ANC see African National Congress economic claims to refugee status, 143, Anti-Terrorism, Crime and Security Act 159-70 2001 (UK), 93, 97 exclusion from refugee status, 87, 88-92, apartheid, 43 Arar, Maher, 134 key provisions, 186 armed conflict limited purpose of, 159-60 characterization of, 17, 72-78 refugees' rights, 51-53 asylum claims subsidiary protection, 12-18 adjudication consistency, 10 travaux préparatoires, 91 global regime, 209-10 variant applications, 186-203 numbers, 1 1967 Protocol relating to the Status of political constraints on, 161-62 Refugees, 2 post 9/11 restrictions, 85-118 development of, 35 see also international refugee regime; interpretations of, 187-203 refugee status 2004 EU Qualification Directive, 12-18, asylum systems see international refugee 60-85 regime asymmetrical sovereignty, and refugee effect on asylum seekers, 85-118 protection, 119-42 effect on security threat perceptions, 24 Augsburg, Peace of, 184 see also terrorism Australia economic persecution standard, 149 academic commentators, 6 education-related persecution, 157 accountability regimes, 206-08, 209 post-9/11 legislative responses, 95 Afghani refugees, 195 Austria, 200 Africa, refugee selection and admission auto-interpretation, 1951 Convention, 10 practices, 187-91



212 Index

Baha'is, 155 Balkans, 185 Belgium, 127, 135 Board of Immigration Appeals (BIA), economic persecution claims, 150-51 body searches, 139 Braamfontein Declaration, 54 Britain see United Kingdom Burma, 107 Canada, 134 1951 Convention, 23 asylum claims, 18, 30-31 complementary protection, 36-37 Federal Court of Appeal, 104 standard of proof requirement, 16-17, 81-83 Immigration and Refugee Board, 16-17, 152 persecution standard, 152 Safe Third Country Agreement, 9 Sri Lankan refugees, 33 standard of proof requirement, 14, 16-17, 81-83 subsidiary protection, 59 Supreme Court, 103 Cape Town, South Africa, 41 Care, Geoffrey, 21-23 Cartagena Declaration on Refugees for Latin America, 76, 77, 176 case law economic persecution claims, 154-59 exclusion from refugee status, 101 case studies, 187-203 CAT see Committee against Torture (UN) Central Intelligence Agency (CIA), 137, 138 Centre for Refugee Studies, Oxford University, 47 Chahal v. United Kingdom, 128 Chechen refugees, 199, 200, 202 Chin National Front (CNF), 107 China, 158 Chombo, Esme, 29-30 CIA see Central Intelligence Agency civil wars, 177 classical legal pluralism, 205 CNF see Chin National Front

Committee Against Torture (UN), 20, 78, 115 Agiza v. Sweden, 132–34 Committee on Economic, Social and Cultural Rights, 167 Common European Asylum System, 61 communitarisation, refugee policy, 203 complementary protection, 36-37 conflict, characterization of, 72-78 Congo, Democratic Republic of, 57 Conka v. Belgium, 135 consistency, 10, 38 constitutions, 182 Convention against Torture Inhuman and Degrading Treatment or Punishment (UN), 122 Convention binding African states see Africa-wide Refugee Convention (1969)Convention relating to the Status of Refugees see 1951 Convention relating to the Status of Refugees core obligations approach, economic claims to refugee status, 168-70 Court of Appeal (England and Wales), 105-06 crime, exclusion from refugee status, 100 critical issues, identification of, 4-6 Cyprus, 201, 202 Czech Republic, 155 degrading treatment, 130-31, 132, 140, 201 see also torture deportations, risk of torture, 116 detention facilities, 201 detention policies, 95 diplomatic assurances, 22, 128-29, 133, 135

deportations, risk of torture, 116
detention facilities, 201
detention policies, 95
diplomatic assurances, 22, 128–29, 133, 135
domestic legislation, post-9/11 restrictions on refugees, 92–97
Donmar Theatre, London, 44
Dorig, Harald, 14–15
double balancing, 102
Dublin Regulation, 200
duress defence, involvement in terrorist organizations, 99

ECJ see European Court of Justice economic claims to refugee status cautious approach, 159–62 coherent approach, 162–70 core obligations approach, 168–70 perspectives on, 159–70

coercive medication, 140

collective expulsions, 127

Colombia, 154

colonisation, 185



Index 213

Economic Community of West African States (ECOWAS), 190 economic harm as persecution, 32 and refugee status, 26, 143-73 economic persecution, 147-59 analytical framework, 148-53 case law, 154-59 employment rights, 154-57 punitive fines, 158-59 economic, social and cultural rights, 25-33, 38, 173 ECOWAS see Economic Community of West African States ECtHR see European Court of Human Edict of Nantes, Revocation of, 184 education-related persecution, 157 Egypt, 21, 124, 126, 127-28, 141 torture of prisoners, 131–32 Elgafaji v. Staatssecretaris van Justitie, Case C-465/07, European Court of Justice (Grand Chamber), 70-72 employment rights, 48-58, 168, 190, 197, economic persecution, 154-57 England see United Kingdom English Court of Appeal, conflict interpretation, 74 Eritrea, 156 ESC Committee see Committee on Economic, Social and Cultural Rights EU Qualification Directive see 2004 EU Qualification Directive European Convention of Human Rights and Fundamental Freedoms see 1950 European Convention of Human Rights and Fundamental Freedoms European Council on Refugees and Exiles, European Court of Human Rights (ECtHR), 70, 125 Conka v. Belgium, 135 deportation prohibition, 114 diplomatic assurances, 128-29 refugee status determination hearings, II2, II3 Roma expulsions, 127 European Court of Justice (ECJ) Elgafaji v. Staatssecretaris van Justitie, 70–72 subsidiary protection, 75

European Union (EU) refugee selection and admission practices, standard of proof requirement, 83 subsidiary protection, 12-18, 37 Temporary Protection Directive, 77 exclusion from refugee status, 87, 88-92, 98-100 1951 Convention, case law, 101 'exclusion by association', 103-07 proportionality test, 99 rejection of exclusion culture, 110 expedited removal powers, 95 expiation, exclusion from refugee status defence, 108 extraordinary rendition, 120, 133 see also torture fair treatment, proportionality, 57 fair trial right, 112 Fiji, 156 fines, economic persecution, 158-59 Foster, Michelle, 27, 144, 163-64, 165, 167, 168, 169 France, 184, 200 Aliens Bill, 200 subsidiary protection claims, 68 freedom of movement, denial to refugees, 201 Geneva Convention, 121, 123 Germany, 184, 200 armed conflict interpretation, 75 protection categories, 15 refugee status claims, 2 standard of proof requirement, 14-15, 83 subsidiary protection, 18, 68 Gilbert, Geoff, 18-25, 37 Global South, case studies, 187-97 Goodwin-Gill, Guy, 8-12, 35, 69 Greece, 200 detention of asylum seekers, 201 subsidiary protection claims, 63 Guild, Elspeth, 18 Refugee Law (2000), 190 refugee selection and admission practices, 188-91 Gurung v. Secretary of State for the Home

Department (UK), 110



214

Hague Programme, 198 Hammond-Tooke, Professor, 56 harmonization asylum claims, 84 Qualification Directive (EU), 62 refugee law, 203 strategies towards, 35-39 Hathaway, J.C., 69, 163, 165, 171 health services, 197 Homeland Security, Department of, 95 hospitality towards strangers, 56 House of Lords, 165, 199 Huguenots, 184 human rights law, 25 limits in refugee status determination, refugee law relationship, 160-61, 162-73 norms, 31, 166, 171 treaty monitoring bodies, 112-16, 122 see also international law; refugee law Human Rights Committee (HRC), 21 Alzery v. Sweden, 116, 134–36

IARLJ see International Association of Refugee Law Judges IAT see Immigration Appeal Tribunal ICC see International Criminal Court ICCPR see International Covenant on Civil and Political Rights

ICESCR see International Covenant on Economic, Social and Cultural Rights

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) 1996 (US), 95 Immigration and Refugee Protection Act

(IRPA) (Canada) 16–17 Immigration Appeal Tribunal (IAT) immigration control, 52 immigration detention facilities, 201 inconsistency, in asylum decisions, 172 India, 128, 177

individual threat requirement, Qualification Directive (EU), 67–72

Indonesia, 155, 156 inhuman treatment, 130–31, 132, 140, 201 *see also* torture

'internal flight' doctrine, International Association of Refugee Law Judges (IARLJ), 22, 163

Index

International Court of Justice, International Covenant on Civil and Political Rights (ICCPR), 112, 122 International Covenant on Economic, Social and Cultural Rights (ICESCR), 38, 166 International Criminal Court (ICC), international law. Qualification Directive (EU) interpetation, 76 refugees' rights, 51-53 see also human rights, law; refugee law International Refugee Law and Socio-Economic Rights Refuge from Deprivation (Foster), 27 international refugee regime critical appraisal, 179-86 fragmented nature of, 209-10 legal pluralism, 203-08 origins, 180, 182 securitization of, 2 Iran, 155 Iraq, 75, 83, 193 refugees, 195, 199 IRPA see Immigration and Refugee Protection Act Islamic Republic of Iran v. United States, 97

Jail Diary of Albie Sachs (play), 44
Jastram, Kate, 25–28, 38
judges
and asylum law, 2
personal experience of, 34
security threat response, 118
jurist/theorist divide, bridging of, 6–8

Kosovo, 119 Kurdish refugees, 193

Italy, 129

laissez-faire framework, 182 Lambertz, Goran, 134 Layden-Stevenson, Caroline, 16–17 legal monism, 204 legal pluralism, 203–08 Lithuania, 201 London Hospital, 45 Lutfy, Chief Justice, 9

Macklin, Audrey, 25 Mactavish, Anne, 30–31 Malawi, 29



Index 215

Malta, 201 practitioner/researcher divide, bridging of, Maputo, Mozambique, 44, 45 6-8 Martin, David, 144, 159-62, 170 prejudice against refugees, 54-56 McAdam, Jane, 12-18, 36, 144 Private Security Industry Regulation Act medical services, 197 (South Africa), 48-49 medication, coercive, 140 procedural law, 208 Memoranda of Understanding, 22 proportionality, 57, 99 migration law, 25 protection minimum core obligation, 168 claim disputes, 123 Mongolia, 192 internatonal refugee regime, 209-10 monitoring bodies, human rights, 112-16 political constraints on, 161-62 Mozambique, 44 Protestants, 184 Myanmar, 107, 191 Protocol relating to the Status of Refugees see 1967 Protocol relating to the Nansen Passports, 185 Status of Refugees Public Security Bureau, China, 192 nation states punitive fines, economic border protection, 185 post-9/11 restrictions on refugees, 92-97 persecution, 158-59 relationship to refugees, 119-42 Punjab, 177 visible state concept, 119-20 see also sovereignty Qualification Directive see 2004 EU Nationality, Immigration and Asylum Act Qualification Directive 2002 (UK), 93 The Queen on the Application of JS (Sri New Zealand Lanka) v. SSHD (Court of Appeal persecution standard, 153 for England and Wales), Refugee Status Appeals Authority, 103 Supreme Court, 102 refugee camps, 29 Nigeria, 156 refugee law non-refoulement, 51, 90, 102 human rights framework, 163-64 norms, 166, 171 human rights law relationship, 160-61, North Korean refugees, 191, 192 162-73 North/South divide, 30, 177 universal application, 175-79 see also European Union; Global South see also human rights, law; international law refugee status OAU see Organization of African Unity categorization, 34, 45 oil platforms case (Islamic Republic of Iran v. determination hearings, 112, 113 United States), 97 economic claims, 143-73 Okafor, Obiora, 11 human rights law limits, 164-67 Organization of African Unity (OAU), 179 political constraints on, 161-62 socio-economic rights, 25-33 Osuna, Juan, 28-29 Oxford University, 47 see also exclusion from refugee status; international refugee regime Refugee Status Appeals Authority (RSAA) Pakistan, 198 peripheral violation of rights, 169 (New Zealand), 103 refugees persecution categorization, 75, 163, 165 benefits to host countries, 47 economic forms, 32, 147-59 numbers, 1 education-related, 157 post-9/11 restrictions on, 85-118 Peru, 103 sovereign interstate system relationship, Pirjola, J., 166 120-23 Poland, 200, 201, 202 visible state concept, 123 Portugal, 81 Refugees Act (South Africa), 48, 49, 53



216 Index

remedial law, 208	South Ossetia, 119
removal powers, 95	South/North divide, 30, 177
Research Workshop on Critical Issues in	see also European Union; Global South
International Refugee Law, 1	sovereignty, 18
panel sessions, 8-33	see also nation states
researcher/practitioner divide, bridging of,	Spain, 201
6–8	Sri Lanka, 33
Revocation of the Edict of Nantes, 184	standard of proof
risk of serious harm see serious harm risk	complementary protection, 59-84
rogue states, 22, 183	economic harm claims, 26
Roma, 127, 155	subsidiary protection, 13–18, 78–83
Romania, 155	statelessness, 181
Rome Statute, 32	states see nation states
RSAA see Refugee Status Appeals Authority	subsidiary protection, 37
Rwanda, 56	1951 Convention, 12–18
Terranda, je	employment rights, 202
Saadi v. Italy, App. No. 37201/06, European	individual threat requirement, 67–72
Court of Human Rights (Grand	international or internal armed conflict,
	_
Chamber), 10, 129 Sachs, Albie	72–78
i • •	standard of proof requirement, 13–18,
article by, 40–58	78–83
assassination attempt, 45	substantive law, 208
exile, 42–46	subterfuge, use by state authorities, 135
imprisonment, 41	Sweden, 21, 116
keynote address, 33–35	asylum claims/expulsions, 124–42, 200
'safe third country' legislation, 126, 183	constitution, 139–40
Sanchez v. Canada (Citizenship and	foreign security agents in, 139
Immigration), 2007 FCA 99 30	Migration Board, 126, 137–38, 141, 199
Security Council (UN)	Security Police, 126, 137–38, 141
terrorism threat perception, 19	sovereignty, 140–42
terrorism/refugee status linkage, 86–87	standard of proof requirement, 81
security industry, refugees' employment	subsidiary protection claims, 66, 67, 68
rights, 48, 57–58	see also Agiza, Mr; Alzery, Mr
security threats, 19, 37, 57	Switzerland, 200
asylum systems, 2	Syria, 134
exclusion from refugee status, 126	
post-9/11 restrictions on refugees, 85–118	temporary asylum, in Turkish law, 194, 195
Sendero Luminoso (Shining Path), 103	Temporary Protection Directive (EU), 77
serious harm risk, subsidiary protection,	terrorism, 24, 25
12–18	fight against, 85
Shining Path, 103	membership of a terrorist organization,
Slovenia, 200, 201, 202	103-07
social groups, 147	threat of, 19, 37
socio-economic rights, 25–33, 38, 173	see also 9/11; security threats
Somali refugees, 199	theorist/jurist divide, bridging of, 6–8
South Africa, 35, 43	torture, 124, 127
constitution, 49, 54	by states, 34
employment rights of refugees, 29–30,	definition, 122, 131
48–58	extraordinary rendition, 120, 133
refugees Act. 48, 40, 53	protection against, 115
Refugees Act, 48, 49, 53	risk of, 9–10, 131–32
xenophobia, 54–56 South Korea, 191	see also non-refoulement traditional societies, 56
ooutii Mita, 191	traditional societies, yo



Index 217

economic claims to refugee status, 145

Transfer of Persons Resolution (Human Rights Committee), 116 travel documents, 51, 192, 196 treaty interpretation, 101–02 Tunisia, 129 Turkey, refugee selection and admission practices, 193–97

ubuntu, 56 Ukraine, 199 UN Convention against Torture, 122 UN Human Rights Committee see Human Rights Committee UNCAT see Committee against Torture (UN) UNHCR see United Nations High Commissioner for Refugees Union of Refugee Women v. Director: Security Industry Authority [2006], 48-58 United Kingdom, 10, 43, 45, 199, 202 Borders Act 2007, 93 courts' role, 22 exclusion from refugee status, 108 Immigration Appeal Tribunal, 110 persecution standard, 153 post-9/11 legislative responses, 93 standard of proof interpretation, 79-80 subsidiary protection claims, 68, 72

United Nations terrorism threat perception, 19 see also Security Council United Nations High Commissioner for Refugees (UNHCR), 1, 5, 20, 70

persecution fears, 177 post-9/11 responses, 98-100 Qualification Directive (EU) implementation, 62-67 United States, 125, 141, 164 asylum claims, 28 economic persecution standard, 149-51 exclusion from refugee status, 107 Homeland Security Department, 95 material support for terrorism provisions, post-9/11 legislative responses, 94 refugee status claims, 2 standard of proof requirement, 14 subsidiary protection, 69 Universal Human Rights Index, 38 universal jurisprudence, asylum claims, 175-79 USA Patriot Act 2001 94 Uzbekistan, 155

Vienna Convention on the Law of Treaties (1969), 88 Vietnamese refugees, 191, 192 violence, characterization of, 72–78

Westphalia, Treaty of, 180, 183 Westphalian state system, 182, 185 work rights, 48–58, 168, 190, 197, 202 economic persecution, 154–57

xenophobia, 54-56