

INDEX

Footnotes are indicated by n following the page number.

AAH (Iraqi Kurds - internal relocation) Iraq CG Arbel, Efrat, 127, 142-3, 195, 197n (UKUT), 186-7 on gender issues (with Dauvergne and Millbank), 15, Abebe, Allehone, 27 200, 201, 203 Abed El Karem El Kott (CJEU), 161-2, 163-4, 166, Arboleda Eduardo 24 Arendt, Hannah, 144 168, 172 Achiume, E. Tendayi, 22, 150n, 154, 158, 167, 171, 180 Article 1D claims. See Palestinian refugees' Article 1D AD (Palestine) (NZ IPT), 157-8, 158n, 159-63, claims 164-5, 166 AS v Slovenian Republic (CJEU), 123n, 141 Adeola, Romola, 27 AS v Switzerland (ECtHR), 108-11 adequate refuge standards, 49-50 Asady and Others v Slovakia (ECtHR), 102 for protection elsewhere. See third country transfers asylum seekers definition, 3 iurisprudence AE (Lebanon) (NZ IPT), 169-71 rights of. See rights of refugees and asylum seekers AE (Relocation, Darfur, Khartoum an option) Sudan Australia (UKAIT), 180-1 offshore processing. See offshore processing African Charter on Human and People's Rights 1981, 68 Palestinian refugees' Article 1D claims (WABQ (Fed Agamben, Giorgio, 142-3, 204 Ct)), 156-7 age factors. See children; elderly persons protection conditions, 53 Ahmedi, Farah, 30, 31, 32-3, 34, 35, 37 safe third country decisions, 17n Akram, Susan, 45 Albanese, Francesca, 13, 26-7, 45, 46, 47, 49, 164 Bartholomeusz, Lance, 27, 45-7, 159 alienage requirement of refugee definition, 152, 165 Bartlett, Katharine, 14 IDPs, implications for, 175-6 Bashir, Halima, 31, 34, 37 AM & AM (armed conflict: risk categories) Somalia CG Baumgärtel, Moritz, 16, 57, 81, 82, 84-5, 87n, 94 Belden Norman Namah (PNG Sup Ct), 131-2, 144-5 (UKAIT), 183n AME v Netherlands (ECtHR), 97-8 best interests of children assessment, 74, 91, 107–8, 141 AMM and Others (Conflict; Humanitarian Crisis; Besteman, Catherine, 25, 41 Returnees; FGM) Somalia CG (UKUT), 185 Betts, Alexander, and Collier, Paul AN v Switzerland (UN CAT), 91 on refuge concept, 31, 32, 33, 40 Aotearoa/New Zealand on refugees' autonomy, 36, 42, 53, 66 internal protection alternative (IPA) jurisprudence, on responsibilities of states to provide protection, 177, 178, 179, 181, 182 28,44-5Palestinian refugees' Article 1D claims Beyani, Chaloka, 174 Biden, Joe, 114, 150 AD (Palestine) (NZ IPT), 157-8, 158n, 159-63, 164-5, 166 Bolbol v Bevándorlási és Állampolgársági Hivatal AE (Lebanon) (NZ IPT), 169-70 (CJEU), 157, 158 Boochani v Papua New Guinea (PNG Sup Ct), 147 AO (Jordan) 169n refugee community sponsorship programmes, 25 Boochani, Behrouz, 21, 53 Appeal No HX51798-2000 14 (Kabul - Pashtun) borders. See under third country transfers jurisprudence Afghanistan CG (UKIAT), 181 Briddick, Catherine, 7, 80, 81

205



> INDEX 206

Calais 'Jungle' camp, 1, 2, 51, 79, 89, 98n exceptionality assessments, 72-4, 75, 106n, 108 unaccompanied minors, 88-9, 91, 98, 99, 141 Çalı, Başak, 96 Canada Chimni, B.S., 153, 154, 157, 165-6, 167 Canada-US safe third country agreement, 112, Canadian Council for Refugees v Canada (Fed Ct, HC), 75-72007), 116, 118-20, 125-7 reversal on appeal, 133-4, 142, 143 Canadian Council for Refugees v Minister for Immigration, Refugees and Citizens (Fed Ct, Collier, Paul 2020), 134-6, 142, 143 reversal on appeal, 136, 144 gender decision-making guidelines, 202 refugee resettlement programme, 25 EU), 44, 99n Cantor, David, 176 care ethics, feminist theory on, 28, 180, 196 Carens, Joseph, 1 categorical approach to refuge concept, 29-30, 91, 194, status, 38-9 195-7, 201, 202 exceptionality assessments as alternative to. See contactless control exceptionality assessments future research issues, 197 group vulnerability, 59, 83-7, 90, 100 in Hirsi Jamaa v Italy (ECtHR), 92-5, 101, 142n in Kituo Cha Sheria (Kenya), 59-63, 67, 72, 73, containment mechanisms, 4 77,83 in MSS v Belgium and Greece (ECtHR), 82-8, 92, 97, 182, 193 100, 101, 103-4, 109, 122 in Palestinian refugees' Article 1D claims, 159-60 1D claims in Plaintiff M70 (Aus HC), 117-18 in putative refugees' claims. See under internal protection alternative (IPA) jurisprudence in R. (ZAT) v SSHD (UKUT), 88-90 reversal on appeal, 98-9, 105 in UN treaty body jurisprudence, 90-1 CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women 1979), 46-7, 49, 159-60, 168 cessation of refugee status, 38-9, 191-2 chain refoulement, 95 Charlesworth, Hilary, 14 Charter of Fundamental Rights of the European Union, Article 4 (inhuman or degrading treatment prohibition), 121, 122, 123, 141 46-7, 73, 91, 159-60 Article 18 (right to asylum), 137 Chatty, Dawn, 24-5 children Coronado-Angulo, Cecilia, 28 alienage requirement of refugee definition, implications for, 152, 175 educational opportunities. See educational opportunities in places of refuge functions of refuge for, 32-3, 34, 35, 37, 38 46-7, 73, 91, 159-60 special protection needs, 43, 46-7, 48, 90-1,

CK v Slovenia (CJEU), 97n, 121n, 140 Coalition for Reform and Democracy v Kenya (Ken collective expulsion prohibition (ECHR Protocol 4 Article 4), 92, 100-1, 102 Collier, Paul (co-author). See Betts, Alexander, and commodity or gift, refuge viewed as, 41, 75, 102-3, 105 Common European Asylum System, 121, 127 Reception Conditions Directive (Recast) (2013/33/ community groups, functions of refuge for, 34, 37-8 comparative legal analysis, 14, 115, 148 'compelling reasons' exception to cessation of refugee complementary protection, 3, 26 joint surveillance, interception and policing practices, 4, 81, 92, 139-40 third country transfer agreements. See third country transfers jurisprudence Refugee Convention viewed as, 4, 8, 151-5, 175, Article 1D. See under Palestinian refugees' Article third country transfer agreements. See third country transfers jurisprudence Convention for the Protection and Assistance of Internally Displaced Persons in Africa 2009 (Kampala Convention), 13, 27, 48, 176n Convention Governing the Specific Aspects of the Refugee Problems in Africa 1969 (OAU Refugee Convention), 24, 26, 41, 44, 163n Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW), 46-7, 49, 159-60, 168 Convention on the Rights of Persons with Disabilities 2006 (CRPD), 43-4, 47, 49, 58, 61-2, 89, Convention on the Rights of the Child 1989 (CRC), 43, Convention Relating to the Status of Refugees 1951. See Refugee Convention 1951 corrective justice function of refuge, 22, 33, 171, Costello, Cathryn, 26, 80, 96, 108, 122 CRC (Convention on the Rights of the Child 1989), 43, critical race, postcolonial and TWAIL analyses of refugee law, 151-5, 165-7, 171, 175, 182

Crock, Mary, 32, 43-4

best interests assessment, 74, 91, 107-8, 141

107-8, 201



INDEX 207

cultural and historical conceptions of refuge, 24-5 Cunningham, Stewart, 96 Cusick, Anne, 34 Daiute, Collette, 25, 35, 37 Dauvergne, Catherine, 15, 200, 201, 203 DD v Spain (UN CRC), 91 Dembour, Marie-Bénédicte, 14, 16, 81, 84, 88, 89, 94, 107n deprivation of liberty. See freedom of movement Desmond, Alan, 89 detention of refugees and asylum seekers, 18, 53 dignity, right to, 40, 42, 59-60, 86 disability alienage requirement of refugee definition, implications for persons with disabilities, 152, 175 healthcare needs mental impairment, 88-9, 108-11, 140, 146 palliative function of refuge. See palliative function of refuge physical impairment, 43-4, 53, 61-2, 108-10, 140 special protection needs, 43-4, 46-7, 89, 106n, 108-10, 201 domestic violence. See sexual and gender-based violence Douzinas, Costas, 78 Dublin System, 6, 7n, 80, 114 challenges to. See European protection from refuge claims Dudley, Sandra, 34 Duffy, Helen, 199 durable solutions to refugehood, right to, 30, 32, 36, 44 European jurisprudence, narrow focus on reception conditions, 104-5 Kenyan jurisprudence on, 60, 68, 75 protracted situations of displacement, 53-4, 75-7 for putative refugees and IDPs, 48, 181 Durieux, Jean-François, 14, 29, 40, 67-8, 148, 186n

Easton-Calabria, Evan, 34
ECHR. See European Convention on Human Rights
1950
economic contributions, drawbacks of focus on, 34,
65–7, 75
educational opportunities in places of refuge
Palestinian refugees, UNRWA's education mandate,
45, 47
regenerative potential, 34, 50
right to, 42–3, 47, 48, 64, 69, 76, 125, 160–1
shortages of, 1, 52, 53
Edwards, Alice, 14, 33, 43, 160n
effective protection standards, 49–50
for protection elsewhere. See third country transfers
jurisprudence

duty, refuge viewed as, 40-1, 118, 160-1, 178-9

elderly persons. See also disability alienage requirement of refugee definition, implications for, 152, 175 special protection needs for, 43, 48, 201 Eli-Ali v SSHD (EWCA Civ), 156 employment opportunities in places of refuge drawbacks of focus on, 34, 65-7, 75 movement in search of, 1 regenerative potential, 34, 50 right to, 33, 42-3, 47, 64, 85, 181 shortages of, 1, 52, 53, 170 encampment policies, 4 Kenyan jurisprudence on. See Kenyan forced encampment jurisprudence for putative refugees. See internal protection alternative (IPA) jurisprudence ethics of care, feminist theory on, 28, 180, 196 ethics-based approach to refuge concept, 28 ethnographic studies, 25, 196 EU law Charter of Fundamental Rights of the European Union, 120, 121 Article 4 (inhuman or degrading treatment prohibition), 121, 122, 123, 141 Article 18 (right to asylum), 137 Common European Asylum System, 121, 127 Reception Conditions Directive (Recast) (2013/ 33/EU), 44, 99n Dublin System, 6, 7n, 80, 114 challenges to. See European protection from refuge claims EU-Turkey refugee resettlement agreement, 114 NF v European Council (CJEU), 136-9, 142 solidarity principle, 123 European Convention on Human Rights 1950 Article 3. See under inhuman or degrading treatment Article 8 (right to respect for private and family life), 88-90, 98-9, 105, 110 Protocol 4 Article 4 (collective expulsion prohibition), 92, 100-1, 102 European protection from refuge claims, 6-7, 79-81, 95-6, 111 categorical approach to refuge concept, 82, 91 group vulnerability, 83-7, 90, 100 in Hirsi Jamaa v Italy (ECtHR), 92-5, 101, 142n in MSS v Belgium and Greece (ECtHR), 82-8, 92, 97, 100, 101, 103-4, 109, 122 in R. (ZAT) v SSHD (UKUT and EWCA Civ), 88-90, 98-9, 105 in UN treaty body jurisprudence, 90-1 exceptionality assessments, 79, 96, 105-6, 111, 140 - 1'good' refugee conduct, 100-2, 103 Greece used as 'litmus test,' 209.170, 103-4 'peculiarly vulnerable' refugees, 97-100, 102-3,

106, 140-1, 197, 201



> INDEX 208

European protection from refuge claims (cont.) gender, age or disability factors, approaches towards, 106, 140-1 gender-blind decisions, 107-8 notional approaches to gender, 108-11 Palestinian refugees' Article 1D claims, 156, 157, 158, 168, 170, 171 Abed El Karem El Kott (CJEU), 161-2, 163-4, 166, 168, 172 reception conditions, narrow focus on, 104-5, 127-8, 136-40 scholarly views on, 81, 122, 137-9 third country transfer agreements, validity challenges gender, age or disability factors, 140-1 NF v European Council (CJEU), 136-9, 142 NS and ME (CJEU), 116, 120-4, 127-8, 137 vulnerability assessments group vulnerability, 83-7, 90, 100 'peculiarly vulnerable' refugees, 97-100, 102-3, 106, 140-1, 197, 201 exceptionality assessments, 19-20, 111, 194-5, 197-9 in Australian jurisprudence, 145-7 categorical approach as alternative to. See categorical approach to refuge concept in European jurisprudence. See under European protection from refuge claims 'exemplary' refugees, 65, 66, 67, 75, 189 in internal protection alternative (IPA) jurisprudence, 10, 187-91, 193 in Kenyan jurisprudence, 57, 72-5 in Palestinian refugees' Article 1D claims, 9 'resilient' refugees, 97-8, 188-91, 193, 201-2, 203 vulnerability and refugeehood. See vulnerability 'exemplary' refugees, 65, 66, 67, 75, 189 experiential approach to refuge concept, 25-6, 35, 63-7,90externalisation strategies, 80-1, 114 challenges to. See third country transfers jurisprudence family members, responsibility for protection delegated to, 184-6, 190 family reunification, 43, 53 palliative function, 91, 105, 110-11 R. (ZAT) v SSHD (UKUT), 88-90 reversal on appeal, 98-9, 105 Fawole, Charissa, 27 female refugees and asylum seekers. See women and girls feminist theory on ethics of care, 28, 180, 196 feminist approaches to international law, methodology, 14-16 feminist engagement with refugee law, 15-16, 200 on vulnerability, 65, 84-5, 190 group-based human rights, 58

Fiddian-Qasmiyeh, Elena, 75 Fineman, Martha, 65, 84, 85 forced marriage, 168 Foster, Michelle, 41, 115, 157, 178n, 192 on rights of refugees, 27, 31, 47, 50 freedom of movement for family reunification. See family reunification Kenyan jurisprudence on, 57, 68-71, 75-7 restrictions on, 4, 19, 53 third country transfer agreements. See third country transfers jurisprudence right to, 31-2, 48 to seek work, 1 Freier De Ferrari, Luisa, 137 functions of refuge. See under refuge concept future research issues, 197, 199-200, 201-3 Gammeltoft-Hansen, Thomas, 4, 57, 81, 93 Gemignani, Marco, 37 gender female refugees. See women and girls feminist theory. See feminist theory gender-based violence. See sexual and gender-based violence gender-blind decision-making, 107-8, 134-6, 186, 200 LGBTQIA+ refugees, 44, 126-7, 198, 201, 202-3 male refugees stereotyped as 'resilient,' 210.150, 189-91, 203 Giannacopoulos, Maria, 199 Gibney, Matthew, 28, 29, 31, 45 gift or commodity, refuge viewed as, 41, 75, 102-3, 105 Gil-Bazo, Maria-Teresa, 24, 40 Giuffré, Mariagiulia, 26, 139 Global North and South inequities, 8, 179-80 in Article 1D claims. See Palestinian refugees' Article 1D claims critical race, postcolonial and TWAIL analyses, 151-5, 165-7, 171, 175, 182 international cooperation principle in Refugee Convention, 10, 40-1, 167, 171, 196 in internal protection alternative (IPA) jurisprudence, 175, 179, 186, 192, 193 Goodwin-Gill, Guy, 28, 31, 32, 39, 115, 158 Greece freedom of movement restrictions, 53 protection conditions, 51-2, 53 alleged Dublin System violations measured against, 96-7, 103-4 MSS v Belgium and Greece (ECtHR), 82-8, 92, 97, 100, 101, 103-4, 109, 122 NS and ME (CJEU), 116, 120-4, 127-8, 137 Turkey, refugee resettlement agreement with, 114 NF v European Council (CJEU), 136-9, 142 group vulnerability, 59, 83-7, 90, 100



INDEX 209

Guiding Principles on Internal Displacement, 13, 27, 48, 178n	Ibrahim v Germany (CJEU), 141 ICCPR (International Covenant on Civil and Political
Guterres, António, 151	Rights 1966), 12, 26, 43, 49, 68, 70
Haddad, Emma, 203	ICESCR (International Covenant on Economic, Social and Cultural Rights 1966), 12, 26, 43, 49,
Haines, David, 35	160-1, 180
Hakakian, Roya, 30-1, 37	identity papers, 31-2, 64, 69
Harley, Tristan, 24, 35, 40, 41	IDPs. See internally displaced persons (IDPs)
Harrell-Bond, Barbara, 56, 77	Ignatieff, Michael, 25, 41
Harvey, Colin, 40	immigration detention, 18, 53
Hathaway, James, 1, 4, 36, 39	Inhorn, Marcia, 34
on Palestinian refugees' Article 1D claims, 157	inhuman or degrading treatment
on refugee definition and status, 29, 103, 115, 166n,	CRC Article 37(a) prohibition, 91
178n	ECHR Article 3 prohibition, 82, 93, 185n
cessation of status, 192	extreme poverty, whether violation, 82–3, 85,
internal protection alternative, 47	96–7, 103–4
on refugees' rights, 12, 26, 27, 39, 43n, 43, 50, 91	healthcare cases, 109
basic survival rights, 32	positive obligations under, 86–7, 104–5
durable solutions to refugehood, 32, 36, 44 non-refoulement, 103	sexual and gender-based violence as violation, 107, 200
restorative function of, 31	vulnerability and 'resilience', 106
socio-economic rights, 34, 43n	EU Charter Article 4 prohibition, 121, 122, 123, 141
on responsibilities of states to provide protection, 41,	ICCPR Article 7 prohibition, 90-1, 98, 104
178n	internal protection alternative (IPA) jurisprudence,
health and healthcare, 18, 43-4	9-10, 174-5, 176, 192-3, See also internally
disability (mental impairment), 88-9, 108-11,	displaced persons (IDPs)
140, 146	categorical approach of early jurisprudence, 176-9,
palliative function of refuge. See palliative	192–3
function of refuge	refuge concept, 178-9, 180-1
disability (physical impairment), 43–4, 53, 61–2,	rights-based arguments, 181–2
108–10, 140	tests applied, 179–81
health risks in places of ostensible refuge, 1, 52, 53,	later jurisprudence, 198
106n, 189	cessation of refugee status decisions, 191–2
Palestinian refugees, UNRWA's healthcare	exceptionality assessments, 10, 187–91, 193
mandate, 45-6	refuge limited to physical survival, 182–7
pregnant women and new mothers' needs, 53,	'putative refugee' definition, 9, 27, 174
140, 146	refuge for putative refugees
right to, 48, 64, 66, 69, 76, 160–1	functions of, 36, 38, 178–9, 180–1
HGMO (Relocation to Khartoum) Sudan CG (UKAIT),	scope of, 47–8, 175, 181
184, 186, 187, 188	rights of putative refugees, academic studies, 27
Hirsi Jamaa v Italy (ECtHR), 92–5, 101, 142n	internally displaced persons (IDPs)
historical and cultural conceptions of refuge,	alienage requirement of refugee definition,
24–5	implications for, 175–6
Hosein, Adam Omar, 28	definition, 10n, 27
housing	IDP camps
Palestinian refugees, UNRWA's housing	claims resisting refuge in. See internal protection
mandate, 45	alternative (IPA) jurisprudence
right to, 42–3, 83	conditions in, 174, 177, 178, 181, 184, 186,
human dignity, right to, 40, 42, 59-60, 86	189, 190
human rights. See rights of refugees and asylum seekers	international law protections, 13
humanitarian organisations, 41-2, 105, 108-11, 124,	Kampala Convention for the Protection and
178–9, 180	Assistance of Internally Displaced Persons in
humanitarianism, 28	Africa 2009, 13, 27, 48, 176n
Hungary, protection conditions, 106n	refuge for, scope and content, 47-8
Hussein v Netherlands and Italy (ECtHR), 107	rights of, 27, 178n, 181-2



210 INDEX

internally displaced persons (IDPs) (cont.) IDPs as 'rightless persons' (Tuitt), 175-6, 182, 187 international cooperation Refugee Convention on, 10, 40-1, 167, 171, 196 Palestinian refugees' Article 1D claims, 167, 171 internal protection alternative (IPA) jurisprudence, 175, 179, 186, 192, 193 solidarity principle of EU law, 123 International Covenant on Civil and Political Rights 1966, 12, 26, 43, 49, 68, 70 Article 7 (inhuman or degrading treatment prohibition), 90-1, 98, 104 International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), 12, 26, 43, 49, 160-1, 180 IPA jurisprudence. See internal protection alternative (IPA) jurisprudence Israel, asylum seeker relocation policy, 17n Italy Libya, containment agreement with, 114, 139-40, 142 Hirsi Jamaa v Italy (ECtHR), 92-5, 101, 142n Sentence No. 22917/2019 (Rome Court), 94 SS and Others v Italy (ECtHR), 92, 140n, 142 protection conditions, 52-3, 106n AS v Switzerland (ECtHR), 108-11 Greek conditions compared with, 96-7, 103-4 NA (Sudan) and MR (Iran) v SSHD (EWCA Civ), 99, 105, 108 sexual violence risk, 107 Tarakhel v Switzerland (ECtHR), 96-8, 104-5, 108,

JA v Netherlands (ECtHR), 108
Januzi v SSHD (UKHL), 179, 182–3
Jasin v Denmark (UN HRC), 90–1, 104
Jawo v Germany (CJEU), 141
JK (Serbia) v SSHD (EWCA Civ), 189
joint surveillance, interception and policing practices,
4, 81, 92, 139–40

'Jungle' camp in Calais, 1, 2, 51, 79, 89, 98n
Juss, Satvinder, 80

UN treaty body jurisprudence on, 90-1

Kagan, Michael, 13 Kälin, Walter, 27 Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa 2009, 13, 27, 48, 176n

Kant, Immanuel, 28 Karageorgiou, Eleni, 137 karam (Islamic notion of generosity and hospitality), 24–5 Kayne, Catherine, 38 Keitetsi, China, 30, 31, 32, 37 Kenya Bill of Rights, 58, 70
forced encampment jurisprudence. See Kenyan
forced encampment jurisprudence
IDP protection legislation, 48n
Kenyan forced encampment jurisprudence, 6, 56–7, 78,
79, 196
human rights claims, inherent tensions and

Kituo Cha Sheria v Attorney General, 56–7, 58–9, 82 categorical approach to refuge concept, 59–63, 67, 72, 73, 77, 83

experiential approach to refuge concept, 63–7, 90 Refugee Convention rights interpreted, 67–71, 75 later cases, 71, 197

closure of camps, challenges to, 77, 199 exceptionality assessments, 57, 72–5 individualisation of claims, 71–2 protracted encampment, challenges to, 75–7

Kesby, Alison, 114, 129 Keyes, Emily, 38 KH (Sudan) v SSHD (EWCA Civ), 187–8

quandaries, 57-8

Khaled v SSHD No 1 (EWHC), 104n, 109n Khan v France (ECtHR), 98n

Kituo Cha Sheria v Attorney General. See under Kenyan forced encampment jurisprudence Kiwanda Mbondenyi, Morris, 58 KK (Unreported decisions - Practice Directions) Sudan

(UKAIT), 189 Knop, Karen, 12, 60–1 Krähenbühl, Pierre, 172–3 Kritzman-Amir, Tally, 28, 180

Krähenbühl, Pierre, 172–3 Kritzman-Amir, Tally, 28, 180 Kyriakides, Christopher, 152, 166–7

Lambert, Hélène, 115, 148n Larking, Emma, 144, 203 legal representation of refugees and asylum seekers, 18–19, 102

LGBTQIA+ refugees, 44, 126–7, 198, 201, 202–3, See also feminist theory

liberty, right to. See freedom of movement Libya–Italy containment agreement, 114, 139–40, 142 Hirsi Jamaa v Italy (ECtHR), 92–5, 101, 142n

Sentence No. 22917/2019 (Rome Court), 94 SS and Others v Italy (ECtHR), 92, 140n, 142 Lilly, Damian, 27, 45, 53–4 Locke, John, 28 López-Farjeat, Luis Xavier, 28

Macklin, Audrey, 171
Maiani, Francesco, 80
male refugees stereotyped as 'resilient', 189–91, 203
Malkki, Liisa, 37–8, 64
Mallia, Patricia, 87
Malta, protection conditions, 93n, 123
Mann, Itamar, 16, 115, 129, 139



INDEX 211

Manus Island detention centre, Papua New Guinea, 52, 53, 131-3, 144-5, 147, 199 Marmo, Marinella, 199 Mathew, Penelope, 24, 35, 40, 41 on putative refugees, 27, 38, 47, 174n, 181, 182 Mayblin, Lucy, 152-3, 154, 155, 167, 171 McAdam, Jane, 39, 40 on complementary protection, 3n, 26, 29 on Palestinian refugees' Article 1D claims, 158 on refugee protection, 26, 32, 39, 43n, 43, 49, 91 Mégret, Frédéric, 58, 59, 60 Melilla (Spanish enclave in Morocco), 91, 100 Michigan Guidelines on Protection Elsewhere (2007), 50, 119, 202 Michigan Guidelines on the Internal Protection Alternative (1999), 179n, 180n, 202 Millbank, Jenni, 15, 200, 201, 203 minimum protection standards, 49-50 for protection elsewhere. See third country transfers jurisprudence Minow, Martha, 11 Mishra, Mallica, 34 MM (Zaghawa - Risk on Return - Internal Flight) Sudan (UKIAT), 178 MN and Others v Belgium (ECtHR), 101n Mohammed, Seidu, 112 MOJ & Ors (Return to Mogadishu) Somalia CG v SSHD (UKUT), 185 Moreno-Lax, Violeta, 40, 137, 139 Mostafa Abed El Karem El Kott (CJEU), 161-2, 163-4, 166, 168, 172 Motz, Stephanie, 61, 89, 110 Mouzourakis, Minos, 108 MS v Slovakia and Ukraine (ECtHR), 102n MSS v Belgium and Greece (ECtHR), 82-8, 92, 97, 100, 101, 103-4, 109, 122 NA (Sudan) and MR (Iran) v SSHD (EWCA Civ), 99, 105, 108 Nah, Alice, 41-2 Nanima, Robert, 72 nature of refuge. See under refuge concept Nauru offshore processing centre (for Australia), 52, 113, 129, 144 Plaintiff M68 (Aus HC), 129-31, 145, 199

non-refoulement, 45, 90n, 103, 151 Canadian jurisprudence on, 119, 125, 126-7 chain refoulement, 95 European jurisprudence on, 92, 95, 119 Kituo Cha Sheria (Kenya) on, 67-8 non-state actors, 41-2, 105, 108-11, 124, 178-9, 180 NS and ME (CIEU), 116, 120-4, 127-8, 137 Nyanduga, Bahame Tom Mukiyra, 41 Nyaoro, Dulo, 24 OAU Refugee Convention (Convention Governing the Specific Aspects of the Refugee Problems in Africa 1969), 24, 26, 41, 44, 163n Odhiambo-Abuya, Edwin, 25, 28, 40 offshore processing, 52, 53, 113, 128-9, 199, See also third country transfers jurisprudence 'borders' in alignment approach (Plaintiff M70 (Aus HC)), 124-5 multiple and misaligned borders, 128-33, 144-5, 147 refugees 'trapped' within borders, 144-7 jurisprudence Belden Norman Namah (PNG Sup Ct), 131-2, 144_5 Boochani v Papua New Guinea (PNG Sup Ct), 147 Plaintiff M68 (Aus HC), 129-31, 145, 199 Plaintiff M70. See Plaintiff M70 (Aus HC) Plaintiff S156 (Aus HC), 129, 144 Plaintiff S195 (Aus HC), 132-3, 145 Plaintiff S99 (Aus Fed Ct), 146 Ogg, Kate, 137, 146, 201 Oomen, Barbara, 25-6, 39 Orchard, Phil, 175n Osogo Ambani, John, 58 O'Sullivan, Maria, 178n, 191n OY (Chechen Muslim women) Russia CG (UKAIT), 189n Paik, A. Naomi, 25 Palestinian refugees, 13, 36, 53-4, 149-50 Article 1D Refugee Convention claims by. See Palestinian refugees' Article 1D claims definition, 8

Paik, A. Naomi, 25
Palestinian refugees, 13, 36, 53–4, 149–50
Article 1D Refugee Convention claims by. See
Palestinian refugees' Article 1D claims
definition, 8
rights of, academic studies, 26–7
UNRWA's mandate for. See UNRWA (United
Nations Relief and Works Agency for
Palestinian Refugees in the Near East)
work and study opportunities restricted, 52, 170
Palestinian refugees' Article 1D claims, 9, 150–1, 154–5,
171–3
Article 1D
'continuative' or 'historically-bounded'
interpretation debate, 156–8
background to drafting, 155–6
scope of refuge for Palestinian refugees, 45–7,

158-63, 164

Plaintiff S99 (Aus Fed Ct), 146

Neve, Alexander, 41

Neylon, Anne, 139n

Noll, Gregor, 28

108–11 NO v SSHD (CSIH), 189

ND and NT v Spain (ECtHR), 91, 100-2

New Zealand. See Aotearoa/New Zealand

NF v European Council (CJEU), 136-9, 142

NGOs (non-governmental organisations), 41-2, 105,

neoliberal approach to refuge concept, 65-6, 67



212 INDEX

Palestinian refugees' Article 1D claims (cont.) case studies involuntary flight requirement, 161-3 European claims. See European protection from critical race, postcolonial and TWAIL theory refuge claims IDP encampment, claims resisting. See internal critiques, 165-7 gendered implications, 167-9, 171, 200 protection alternative (IPA) jurisprudence refuge limited to physical survival, 163-5, 170-1, Kenyan claims. See Kenyan forced encampment jurisprudence UNRWA's lack of funding, claims based on, Palestinian refugees' claims. See Palestinian 169 - 71refugees' Article 1D claims jurisprudence third country transfers, claims resisting. See third Abed El Karem El Kott (CJEU), 161-2, 163-4, 166, country transfers jurisprudence 168, 172 disability factors. See disability AD (Palestine) (NZ IPT), 157-8, 158n, 159-63, gender factors. See gender; women and girls 164-5, 166 inherent tensions and quandaries, 3-5, 57-8 AE (Lebanon) (NZ IPT), 169-70 methodology of study, 11-14 AQ (Jordan) 169n comparative legal analysis, 14 Bolbol v Bevándorlási és Állampolgársági Hivatal critical race, postcolonial and TWAIL theories, (CJEU), 157, 158 8, 150 Eli-Ali v SSHD (EWCA Civ), 156 feminist legal methodology, 14-16 WABQ (Aus Fed Ct), 156-7 refuge concept in. See refuge concept palliative function of refuge, 36-9, 44, 60, 63-4, 74-5, rights-based arguments in, 12, 56, 78, 181-2 rights referenced. See rights of refugees and 76-7, 188, 195-6 of family reunification, 91, 105, 110-11 asylum seekers Pan-Africanism, 24 scope of study, 16-19 Paposhvili v Belgium (ECtHR), 109n sexuality factors, 44, 126-7, 198, 201, 202-3 Papua New Guinea offshore processing centre (for protracted displacement, 53-4, 75-7 Australia), 52, 53, 113, 129, 144, 199 providers of refuge, 41-2 Belden Norman Namah (PNG Sup Ct), 131-2, 144-5 purposes of refuge. See refuge concept, functions of Boochani v Papua New Guinea (PNG Sup Ct), 147 refuge Plaintiff S156 (Aus HC), 129, 144 putative refugees' claims resisting IDP encampment. Plaintiff S195 (Aus HC), 132-3, 145 See internal protection alternative (IPA) Passarlay, Gulwari, 30, 32-3 jurisprudence persecution requirement of refugee definition, 17n, 29, R (EM (Eritrea)) v SSHD (UK Sup Ct), 97n, 121n 152, 153n, 163, 166n, 198 philosophical approach to refuge concept, 28 R (MA) v SSHD (CJEU), 141 Pickering, Sharon, 101n, 146n R (Tabrizagh) v SSHD (EWHC (Admin)), 97 Plaintiff M68 (Aus HC), 129-31, 145, 199 R (ZAT) v SSHD (UKUT), 79, 88-90 Plaintiff M70 (Aus HC), 128, 159 reversal on appeal, 98-9, 105 RAA and ZM v Denmark (UN HRC), 98, 104 adequate refuge standard assessment, 116-18, 119, 120, 147, 196 Rabben, Linda, 40 juridicial borders alignment, 124-5 Ramsay, Georgina, 1, 33, 35, 61 Plaintiff S156 (Aus HC), 129, 144 on female refugees' experiences, 25, 34, 65 Plaintiff S195 (Aus HC), 132-3, 145 on refuge as journey, 41 Plaintiff S99 (Aus Fed Ct), 146 rape. See sexual and gender-based violence PO (Risk-Return-General) Sierra Leone CG Rawls, John, 28 (UKIAT), 177 readmission agreements, challenges to. See third postcolonial, critical race and TWAIL analyses of country transfers jurisprudence refugee law, 151-5, 165-7, 171, 175, 182 Reception Conditions Directive (Recast) (2013/33/EU), 44, 99n Price, Matthew, 24, 29, 36 process, refuge viewed as, 41, 64, 196 refoulement. See non-refoulement refuge concept, 3-4, 5-6, 10, 19-20, 21-2, 54-5, 194-5 prospective IDPs, claims by. See internal protection adequate refuge standards, 49-50 alternative (IPA) jurisprudence protection elsewhere agreements, challenges to. See for protection elsewhere. See third country third country transfers jurisprudence transfers jurisprudence alternative terms distinguished, 22-3 protection from refuge claims, 2, 3, 10, 19-20, 203-4

dominant conceptions, 23-4

age factors. See children; elderly persons



I N D E X 213

categorical. See categorical approach to refuge concept experiential, 25-6, 35, 63-7, 90 historical and cultural, 24-5 philosophical, 28 rights-based, 26-7 functions of refuge, 30 corrective justice function, 22, 33, 171, 180 palliative function. See palliative function of refuge regenerative function, 33-6, 60, 64, 74-5, 76-7 restorative function, 30-3, 60, 69, 93 future research issues, 197, 199-200, 201-3 nature of refuge as duty, 40-1, 118, 160-1, 178-9 as gift or commodity, 41, 75, 102-3, 105 as process, 41, 64, 196 as remedy, 39-40, 60 as right, 26-7, 40, 160-1 providers of refuge, 41-2 reality of refuge, 50-4 scope of refuge, 42, 49 for Convention refugees, 42-5 for Palestinian refugees, 45-7, 158-63, 164 for putative refugees and IDPs, 47-8, 175, 181 Refugee Appeal No 76191 (NZ RSAA), 177, 178, 181 Refugee Consortium of Kenya v Attorney General (Ken HC), 71-4, 75 Refugee Convention 1951, 7, 13, 103 Article 1A. See refugee definition and status Article 1D claims by Palestinian refugees. See Palestinian refugees' Article 1D claims Article 31(1) (non-penalisation of illegal entrants), 103 as a human rights instrument, 42-3, 45, 79, 81, 93, 179 - 80EU law instruments referencing, 121 Kituo Cha Sheria (Kenya), rights interpreted, 67 - 71, 75non-refoulement. See non-refoulement scholarly views on, 12, 26, 31, 33-4, 39, 49 comparative jurisprudence applying, 115 critical race, postcolonial and TWAIL theory critiques of, 151-5, 175, 182 international cooperation, 10, 40-1, 167, 171, 196 in Palestinian refugees' Article 1D claims, 167, in internal protection alternative (IPA) jurisprudence, 175, 179, 186, 192, 193 putative refugees, approaches to, 27 regenerative aim, 33-4 restorative aim, 32 safety and security aim, 31-2 state responsibilities under, 41 temporal and geographical scope, 137n, 152-3 refugee definition and status, 3, 14, 23, 86n, 103, 115, 198-9, See also internally displaced persons (IDPs)

alienage requirement. See alienage requirement of refugee definition cessation of status, 38-9, 191-2 critical race, postcolonial and TWAIL analysis of, 151-2, 153, 165, 166, 167, 175 'Palestinian refugee' definition, 8 'protection' afforded on basis of, 117 'putative refugee' definition, 9, 27, 174 well-founded fear of persecution requirement, 17n, 29, 152, 153n, 163, 166n, 198 regenerative function of refuge, 33-6, 60, 64, 74-5, 76-7 regional containment instruments, challenges to. See third country transfers jurisprudence Rehaag, Sean, 26 religious and cultural conceptions of refuge, 24-5 remedies scholarship, 11, 39 remedy, refuge viewed as, 39-40, 60 reparation function of refuge, 22, 33, 171, 180 'resilient' refugees, 97-8, 188-91, 193, 201-2, 203 restorative function of refuge, 30-3, 60, 69, 93 rights of refugees and asylum seekers, 49 asylum, right to (seek), 40, 137 collective expulsion prohibition (ECHR Protocol 4 Article 4), 92, 100-1, 102 dignity, 40, 42, 59-60, 86 durable solutions to refugehood. See durable solutions to refugehood, right to freedom of movement. See freedom of movement group-based rights, 58 inhuman or degrading treatment prohibition. See inhuman or degrading treatment non-citizens' claims, local opposition to, 57-8 non-refoulement. See non-refoulementof putative refugees, 27, 178n, 181-2 refuge conceived as right, 26-7, 40, 160-1 in Refugee Convention. See under Refugee Convention 1951 right to respect for private and family life (ECHR Article 8), 88-90, 98-9, 105, 110 socio-economic rights, 180 educational opportunities, 42-3, 47, 48, 64, 69, 76, 125, 160-1 employment opportunities, 33, 42-3, 47, 64, 85, 181 healthcare, 48, 64, 66, 69, 76, 160-1 RM (Young Chechen Male - Risk - IFA) Russia CG (UKAIT), 189 safe third country decisions, 17-18, 114, 134-6 Sale v Haitian Centers Council Inc. (US Sup Ct), 25, 92 Samow Mumin Mohamed v Cabinet Secretary et al (Ken HC), 71, 72, 74-5

Sale v Haitian Centers Council Inc. (US Sup Ct), 25, 92
Samow Mumin Mohamed v Cabinet Secretary et al (Ken HC), 71, 72, 74–5
sanctuary concept. See refuge concept
Schnyder, Felix, 49
Schultz, Jessica, 105n, 178n, 191
on putative refugees, 27, 36, 38, 41, 47, 179, 181



> INDEX 214

scope of refuge. See under refuge concept challenges to. See third country transfers Secretary of State for the Home Department v AH iurisprudence (Sudan) (UKHL), 174n offshore processing for Australia. See offshore Secretary of State for the Home Department v MS processing (Somalia) (EWCA Civ), 191 Sentence No. 22917/2019 (Rome Court), 94 sexual and gender-based violence. See also women and 147-8, 197 girls care needs of survivors, 44 forced marriage as, 168 124-5 as inhuman or degrading treatment, 107, 200 in places of ostensible refuge, 51-2, 107, 131, 181, 185, 186, 190 refugee status and refoulement risk founded on, 126-7, 167n state responsibility to prevent, 48 unrecognised or notionally assessed needs of lower standards survivors, 105, 107, 108, 146, 200 sexuality factors, 44, 126-7, 198, 201, 202-3 Shachar, Ayelet, 114 Shacknove, Andrew, 29 Sharpe, Marina, 26, 50-1 SK (FGM - ethnic groups) Liberia CG (UKAIT), 185, 186, 188 Skran, Claudia, 34 Slaughter, Anne-Marie, 114-15, 118 socio-economic rights. See under rights of refugees and asylum seekers solidarity principle of EU law, 123 solutions to refugehood. See durable solutions to refugehood, right to Spijkerboer, Thomas, 16, 137, 138, 142, 169, 171, 190, 203 140 SS and Others v Italy (ECtHR), 92, 140n, 142 Starfield, Gina, 89-90, 201 Stephens, Murdoch, 25 Stevens, Dallal, 36, 41, 50 Stowe, Harriet Beecher, 40 Ticktin, Miriam, 16 strategic litigation, 199-200 Stråth, Bo, 37 torture victims, 91, 108-11 Sufi and Elmi v United Kingdom (ECtHR), 18n, 181n surrogate state protection, 36, 39, 60 Syrian refugee crisis in Europe, 102, 141, 154, 167 EU-Turkey refugee resettlement agreement, 114 NF v European Council (CJEU), 136-9, 142 Trump, Donald, 114, 149 Takkenberg, Lex, 13, 26-7, 45, 46, 47, 49, 164 Tantalus, 204 Tarakhel v Switzerland (ECtHR), 96-8, 104-5, 108, 121n

safe third country decisions, 17-18, 114, 134-6 third country transfers jurisprudence, 7-8, 112-13, 'borders' manoeuvring, 124 alignment approach (Plaintiff M70 (Aus HC)), extension approach (Canadian Council for Refugees (Can Fed Ct)), 125-7 reticent approach (NS and ME) (CJEU), 127-8 adequate refuge standard assessments, 113, 116 high standard (Plaintiff M70 (Aus HC)), 116-18, 119, 120, 147, 196 Canadian Council for Refugees (Can Fed Ct), 116, 118-20, 125-7 NS and ME (CJEU), 116, 120-4, 137 Dublin System, challenges to. See European protection from refuge claims Italy-Libya containment agreements, challenges to, 114, 139-40, 142 Hirsi Jamaa v Italy (ECtHR), 92-5, 101, 142n Sentence No. 22917/2019 (Rome Court), 94 SS and Others v Italy (ECtHR), 92, 140n, 142 multiple and misaligned juridical borders, 128 Australian jurisprudence, 128-33 Canadian jurisprudence, 133-6 European jurisprudence, 136-40 refugees 'trapped' between juridical borders, European/North African context, 140-2 North American context, 142-4 Oceanic region context, 144-7 transjudicial communication in, 113-15, 148 Timmer, Alexandra, 84, 100 transjudicial communication, 114-15, 148 in third country transfers jurisprudence. See third country transfers jurisprudence trauma recovery. See palliative function of refuge Tuitt, Patricia, 165-6, 180, 190, 193 on IDPs, 175-6, 180, 182, 187 Palestinian refugees, ideas applied to, 156, 161, 165, 166, 167, 172-3 on refugee definition and status, 151-2, 153, 165, 166, 167, 175 Turkey–EU refugee resettlement agreement, 114NF v European Council (CJEU), 136-9, 142 TWAIL, critical race and postcolonial analyses of refugee law, 151-5, 165-7, 171, 175, 182

challenges to. See European protection from

third country transfers, 50

chain refoulement risk, 95

Dublin System, 6, 7n, 80, 114

refuge claims

externalisation strategies, 80-1, 114



INDEX 215

UN treaty body jurisprudence, 90-1, 98, 104 inability to fulfil, Article 1D claims based on, unaccompanied minors, 88-9, 91, 98, 99, 141 169-71 UNCCP (United Nations Conciliation Commission for scope, 45-7, 159-62, 164, 168 Palestine), 45n, 155 'Palestinian refugee' definition, 8 UNHCR (Office of the United Nations High utilitarianism, 28 Commissioner for Refugees), 23, 36, 41, violence. See also sexual and gender-based violence amicus curiae submissions care needs of survivors, 44 Kituo Cha Sheria (Kenya), 72 torture victims, 91, 108-11 NS and ME (CJEU), 121 in places of ostensible refuge, 51-2 on Article 1D (Palestinian refugees), 160-1 sexual violence, 51-2, 107, 131, 181, 185, 186 vulnerability, 10, 53, 81 on cessation of refugee status, 192 on the internal protection alternative (IPA), 38, 47-8 feminist critiques of, 65, 84-5, 190 on needs of refugees, 31, 32, 43, 202 group vulnerability, 59, 83-7, 90, 100 on rights of refugees, 34, 44 jurisprudence addressing on third country transfers, 50, 119 Australian jurisprudence, 145-7 European jurisprudence, 83-7, 90, 97-100, 102-3, United Kingdom Dublin System transfers, challenges to 106, 140-1, 197, 201 internal protection alternative (IPA) Khaled v SSHD No 1 (EWHC), 104n, 109n NA (Sudan) and MR (Iran) v SSHD (EWCA Civ), jurisprudence, 187-91 99, 105, 108 Kenyan jurisprudence, 59, 71, 72-4, 75, 83 R (EM (Eritrea)) v SSHD (Sup Ct), 97n, 121n UN treaty body jurisprudence, 90-1 R (Tabrizagh) v SSHD (EWHC), 97 'resilience' contrasted with, 97-8, 188-91, 193, R (ZAT) v SSHD (UKUT and EWCA Civ), 79, 201-2, 203 88-90, 98-9, 105 internal protection alternative (IPA) jurisprudence WABQ (Aus Fed Ct), 156-7 Walzer, Michael, 28 categorical approach to refuge concept (early cases), 177-8, 181 Wek, Alek, 35 well-founded fear of persecution, 17n, 29, 152, 153n, cessation of refugee status decisions (later cases), 191-2 163, 166n, 198 exceptionality assessments (later cases), women and girls 187-91, 193 alienage requirement of refugee definition, gendered implications, 152, 175 refuge limited to physical survival (later cases), caregiving role, neglect by decision-makers, 34, 182 - 7tests applied, 179, 180-1, 183 65, 66 Palestinian refugees' Article 1D claims, 157n pregnant women and new mothers, healthcare Eli-Ali v SSHD (EWCA Civ), 156 needs, 53, 140, 146 safe third country decisions, 17n sexual and gender-based violence. See sexual and United States gender-based violence Canada, safe third country agreement with, 112, special protection needs, 43, 46-7, 48, 90-1, 201 113-14 exceptionality assessments, 72-4, 75, 98, 106n, 187 challenges to. See under Canada gender-blind decisions, 107-8, 134-6, 186, 200 immigration detention in, 53 guidance on, 202-3 protection conditions, 53 notional assessments, 108, 146, 200 safe third country agreements with Guatemala, 'resilient' women, 188-9, 190, 201-2 Honduras and El Salvador, 114 US protection conditions for, 127 Sale v Haitian Centers Council Inc. (Sup Ct), 25, 92 work opportunities. See employment opportunities in UNRWA funding by, 149-50 places of refuge Universal Declaration of Human Rights 1948, 40 UNRWA (United Nations Relief and Works Agency X and X v État belge (CJEU), 138 for Palestinian Refugees in the Near East), YJ (Non-Kurdish Speakers in KAA) Iraq CG (UKIAT), 8-9, 13, 26-7, 33, 41, 155, See also Palestinian refugees' Article 1D claims 177 - 8funding crisis, 149-50, 158, 164, 167, 169-70, 171, 172 - 3Zakrzewski, Rafal, 11 mandate Zimmermann, Susan, 25, 31, 33