

## INDEX

- 1951 Convention relating to the Status of Refugees, 6, 43–6, 59, 62  
 accession to the Convention and the Protocol, 259, 262, 272, 278  
 by Canada, 123, 136  
 application in cases of civil war, 221  
 and the application of national or supranational law, 154  
 Article 35, 43, 83, 318, 320  
 cessation clause, 153–5, 222  
 definition of refugee, 137–46  
 and the EU Qualification Directive, 230  
 exclusion clause, 151–3, 155, 222  
 fairness, 216–18  
 and governance, 75–96  
 implementation of, 322  
 importance of, 278  
 interpretation of, 65, 255, 277, 297, 323  
 in Canada, 126–8  
 convergence in interpretation, 214–32, 233, 255: initiatives for, 225–32; institutions with competence, 232–4, 244; reasons for, 216–25; prospects for, 225–34  
 divergence in interpretation of, 219–24, 225, 255, 324  
 dynamic nature of, 55, 217  
 judicial experience in Europe, 148–56  
 lack of an oversight body, 66  
 non-state actors, 83  
 normative provisions of, 82  
 preamble, 43  
 proposals for renegotiation of, 78  
 regions with few states parties to, 90  
 states' declarations and reservations, 323  
 states not parties to, 259  
 treaty body for, 309  
 universal application of, 218  
 1957 Agreement relating to Refugee Seamen, 44  
 1967 Protocol relating to the Status of Refugees, 6, 43–6, 85, 320  
 1990 Schengen Implementation Convention, 44  
 1997 Treaty of Amsterdam, 44  
*A v. Australia*, 174  
 accountability, 29, 275–85, 339  
 and the international protection regime, 277–82  
 public accountability and state accountability, 282  
*Adan and Aitseguer*, 113  
*Adan v. SSHD*, 113  
 Advisory Committee of outside experts, proposal for, 3, 21–2, 25, 33, 58, 316, 334, 342  
 and accountability, 31  
 argument in favour, 20, 25, 26  
 expertise of, 335  
 membership, 336  
 operation of, 335–6  
 advocacy communities, 61  
 Afghanistan, 257  
 African Union, 337, 341  
 Agenda for Protection, 56  
*Ahmed v. Austria*, 114  
*Al Sadoon v. United Kingdom*, 112, 184  
 Alston, P., 195

- Amnesty International, 7, 303, 305  
*A.M.R.I. v. K.E.R.*, 134  
*Andrews v. Law Society of British Columbia*, 139  
 Arakaki, Osamu, 286–301  
 Asia, *Comprehensive Plan of Action*, 86, 87  
 Asia-Pacific region, refugees and  
     asylum seekers in, 257, 270  
     accession to the Convention, 259  
     agenda for the region, 272  
     protracted outflows of refugees, 258  
 asylum, 9  
     in the Asia-Pacific region, 257  
     contribution of the judiciary to  
         protection of asylum seekers,  
         109–22  
     declining value of, 296–8  
     penalisation of asylum seekers, 277,  
         278  
     restrictions on access to, 4–12, 78,  
         277, 297, 313  
     right to, 8, 62, 148, 308  
     treaty on, 71  
*Attorney General for Canada v. Attorney  
 General for Ontario*, 125  
 Australia  
     detention of refugees and asylum  
         seekers, 174  
     and the ICESCR, 200  
     interpretation of the Convention,  
         219  
     ‘Pacific Solution’, 60  
     ‘refugee swap’ with Malaysia, 92  
     UNHCR Handbook, 226  
*Autism-Europe v. France*, 207  
  
*B. (R.) v. Children’s Aid Society*, 142  
*Bagdanavicius* case, 115  
*Baker* case, 128–9  
 Bali Process on People Smuggling,  
     Trafficking in Persons and  
     Related Transnational Crime in  
     the Asia-Pacific Region, 270  
 Barutski, Prof. Michael, 19, 59–74  
 Bayefsky, A. F., 164, 174  
 Benhabib, S., 279  
 Bentham, Jeremy, 5  
  
 Betts, Alexander, 9–12, 33, 94  
 ‘Big Cities’ initiative, 88  
 Blake, Mr Justice Nicholas, 17, 18,  
     109–22, 329  
 burden-sharing, 9, 74, 92, 218, 339  
     between northern and southern  
         states, 10  
     legal framework for, 219, 327  
     and the Responsibility to Protect,  
         270–2, 281  
 Businesseurope, 191  
  
*C v. Australia*, 174  
 Cahn, Claude, 182–213  
 Cambodia, 264–5  
     refugee status determination in, 264  
 Canada  
     accession to the Convention and the  
         Protocol, 123, 136  
     Balanced Refugee Reform Act, 99,  
         102  
     Canadian Charter of Rights and  
         Freedoms, 98, 123, 127, 130,  
         132, 136, 137, 139, 142, 147  
     Charter of Human Rights and  
         Freedoms of Quebec, 143  
     consensus on non-discrimination,  
         136  
     Constitution Act, 136  
     definition of refugee, 137–46  
     deportation, 130, 305  
     domestic enforceability of treaties,  
         125  
     freedom of religion, 142, 145  
     Gender Guidelines, 140, 141  
     Human Rights Code of Ontario, 135  
     and the ICESCR, 200  
     Immigration Act, 98, 99, 123, 136  
     Immigration and Refugee Board,  
         97–101, 124  
         background, 97–100  
         composition, 98  
         independence, 98  
     IRB Consultative Committee on  
         Practices and Proceedings, 102  
     jurisdiction, 99  
     Refugee Protection Division, 99,  
         100

- Canada (*cont.*)  
     Research Directorate, 102  
     and UNHCR, 100–3  
     Immigration and Refugee Protection Act, 98, 101, 124, 126, 127, 128, 133  
     impact of international law and domestic law, 123–47  
     implementation of international treaties, 125  
     international collaboration, 103–5  
     interpretation of the Convention, 126–34, 147  
     judicial supervision of the Convention, 123–47  
     ministerial discretion, 128  
     national application of international law, 125–6  
     persecution, 137–41, 142–6  
     Protecting Canada's Immigration System Act, 99, 100, 102  
     refugee determination  
         arrangements, 97, 124, 302, 306  
     rights of Convention refugees, 99  
     role of domestic human rights law, 135  
     role of international law, 125–34, 147  
     training and guidance of UNHCR field staff, 103, 104  
     and the UNHCR, 97–101  
     Working Group on Women Refugee Claimants, 141  
*Canada (Attorney General) v. Ward*, 137  
*Canada (Minister of Employment and Immigration) v. Mayers*, 140, 141  
     Canadian Council for Refugees, 302, 303, 305  
     Canadian Council of Churches, 305  
     Caplan, Eleanor, 303  
     Cartagena Declaration on Refugees, 44, 70, 86, 87  
*Chahal v. United Kingdom*, 112, 114  
*Chaput v. Romain*, 142  
*Cheung v. Minister of Employment and Immigration*, 138  
     Chia, Joyce, 160, 214–56  
     Chimni, B. S., 79–80  
     China, 221  
     civil law tradition, 254  
     civil society  
         activism, 317, 342  
         assistance to stateless persons, 284  
         changing roles of, 292  
         flexibility and accessibility, 276  
         future possibilities, 307–9  
         giving effect to rights to fair trial and non-discrimination, 307–9  
         and the market, 289  
         networks of, 288, 296  
         participation in international regimes, 292  
         role in protection and accountability, 275–85  
         supervisory role, 292–3, 296  
         and a treaty body for the Convention, 309  
         and UNHCR, 282–3  
     Clark, Tom, 19, 302–9  
*COHRE v. Croatia*, 211  
     Commission on Human Rights,  
         Open-Ended Working Group, 196  
     Committee against Torture, 175, 213, 232, 233, 306  
         inquiries, 177  
         Optional Protocol, 177  
         Sub-Committee on the Prevention of Torture, 178  
     Committee on Economic, Social and Cultural Rights, 167, 188, 194  
         ability to decline a complaint, 203  
         ability to request interim measures, 203  
         admissibility assessment, 202  
         general comment on states parties' obligations, 189, 194  
         interpretive procedures, 189–90  
         recognition of its competence, 204  
         reporting, 194, 204  
         time limit, 202  
         transmission of its views, 203  
     Committee on the Elimination of Discrimination against Women, 167, 169, 179

- engagement with asylum and refugee issues, 172, 175
- Committee on the Elimination of Racial Discrimination, 179
- early warning facility, 178
- engagement with asylum and refugee issues, 172
- Committee on the Rights of the Child, 167
  - engagement with asylum and refugee issues, 172
- Common European Asylum System, 45
- common law, 226, 254
  - concept of reasonableness, 200
  - and international law, 132
- Comprehensive Plan of Action in Asia, 87
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 129, 260
- Convention on the Civil Aspects of International Child Abduction, 134
- Convention on the Elimination of Discrimination against Women, 197
- Convention on the Reduction of Statelessness, 45, 321
- Convention on the Rights of the Child, 117, 128, 129, 132, 133, 260, 281
- Convention on the Status of Stateless Persons, 45
- Convention Plus initiative, 56
- Costa Rica, 104
- Côte d'Ivoire, 179
- Council of Europe
  - Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons, 231
  - Committee of Ministers, 211
  - and the ICESCR, 182–211
  - supranational supervision of social rights, 190–3
- Cross Border Network, 283
- customary international law, 31, 261
- de Albuquerque, Catarina, 192, 201
- de Guzman v. Canada (Minister of Citizenship and Immigration)*, 132–4
- Declaration of States Parties, 56
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 146
- Defence for Children International, 209
- deportation, 305, 306
- Dershowitz, Alan, 136
- detention of refugees and asylum seekers, 174, 178, 266
  - alternatives to, 266–7
  - of children, 209
- developing countries; *see also* North/South divide
  - and the Convention, 259
  - and developed countries, 259
- Dewitt, David, 15
- discrimination, 171, 172, 189, 303, 306, 307–9
  - cases on, 206–8, 210
  - in housing, 211
  - racial, 172, 178, 207
  - and refugees, 171, 172, 189
  - requirement of positive action, 207
- dispute settlement mechanisms, 243
- Dörig, Dr Harald, 148–56
- Dublin Convention, 113, 114
- E. (Mrs.) v. Eve*, 138, 141
- economic, social and cultural rights
  - assessment of adequacy of, 189
  - capacity to be legally binding, 187
  - collective nature of, 187
  - complaint mechanisms on, 205
  - core obligations, 190
  - development of legal thinking about, 188
  - and ethnic origin, 208
  - general legal obligations, 189
  - jurisprudence on, 206, 210
  - justiciability of, 187, 188, 190
  - positive rights, 188
  - remedies and accountability, 190
  - specific legal obligations, 190

- economic, social and cultural
  - rights (*cont.*)
  - violations of, 190
- Edwards, Alice, 159–81
- ELENA, 229, 230, 304
- Elgafaji v. Staatsecretaris van Justitie*, 112
- EM (Lebanon) case*, 116
- epistemic communities, 292
- equality, 189, 225
- ERRC v. Bulgaria*, 207
- EU Qualification Directive, 45, 111
  - and the Convention, 149, 219, 228, 229, 230
  - persecution, 115, 149
  - protection, 87, 89, 110
  - refugee status, 113–17, 148
  - reviews, 229, 230
- European Asylum Support Office, 45
- European Charter of Fundamental Rights, 44, 115, 148, 341
- European Committee of Social Rights, 183, 190, 191, 213
  - Collective Complaints, 212
  - decisions of, 206–12
  - and the European Court of Human Rights, 211
  - requirements on ethnic data, 207
  - restrictions on access to rights, 210
  - right to shelter, 210
  - state implementation of the
    - European Social Charter, 192
- European Convention on Human Rights, 110, 150, 183, 184
- European Council on Refugees and Exiles, 232
- European Court of Human Rights, 52, 68, 110, 122, 210, 232, 306
  - composition of, 252
  - and the European Committee of Social Rights, 211
  - political support, 240
  - right to asylum, 308
  - success of, 240
  - workload of, 237, 247
- European Court of Justice, 110, 122, 149–55, 232
- cessation clause of the Convention, 153
- exclusion clause of the Convention, 152
  - and the German judiciary, 155
  - and the Qualification Directive, 118
  - success of, 240
- European International Cities of Refuge Network, 88
- European Legal Network on Asylum, 229, 230, 304
- European Social Charter, 183, 205
  - collective complaints mechanism, 205
  - Collective Complaints Procedure, 190, 191
  - jurisprudence on human rights, 192
  - lack of standing by individuals, 211
  - rights contained in, 185–6
- European Trade Union Confederation, 191
- European Trade Union Council, 192
- European Union, 44, 110, 341
  - Agency for Fundamental Rights, 341
  - asylum policy and legislation, 148
  - Common European Asylum System, 228–31
  - contribution of the judiciary to
    - protection of asylum seekers, 109–22
  - definition of refugees, 89
  - directives on asylum, 86
  - harmonisation process, 44, 224
  - human rights based approach to
    - persecution, 115
  - importance of the Convention in, 154
  - judicial experience with the
    - Convention, 148–56
  - limitations of the Qualification Directive, 229
  - margin of appreciation in, 219
  - Procedures Directive, 45, 148, 231
  - supranational law, 149
- fairness, 96, 216–18, 307–9
- Feller, Erika, 82

- Fosu v. Canada (Minister of Employment and Immigration)*, 144
- Francis v. The Queen*, 125
- freedom of movement, 87, 171
- Germany
- application of the Convention, 149–55
  - German Asylum Procedure Act, 148, 151
  - and the ICESCR, 201
  - judicial experience with the Convention, 148–56
  - persecution, 113
- Gibney, Matthew J., 277, 282
- Global Consultations on International Protection, 54, 55, 58, 160, 226, 255
- globalisation, and refugee law, 295
- Goldman, Rick, 303
- Goodman, Brian, 97–105
- Goodwin-Gill, Guy S., 8, 110, 321, 334
- York Conference, 15, 33, 34–6
- governance, 75–96
- beyond national boundaries, 82
  - competition for, 94
  - debate about, 77–85, 94
  - definition, 93–4
  - democratisation of, 314–17
  - factual propositions underlying the debate on, 82–5
  - theoretical dimensions of, 76
- Guidelines on international protection, 226
- Guild, Elspeth, 182–213
- Guterres, António, 105, 283
- Hague Process, 88
- Hampton, Jean, 285
- Hathaway, James, 110, 145, 309
- ICVA reform proposal, 80, 160
  - obligations of states parties, 326
  - reform of the supervision mechanisms, 324, 339
  - ‘regime’, 91
  - regional solutions, 78, 82
  - UNHCR lack of leadership, 327
- Helton, Arthur, 160
- HH (Somalia)*, 119
- HLR v. France*, 114
- Hong Kong, 90
- Horvath case*, 114
- human rights, 31, 265
- in Canada, 135–7
  - focus on individual entitlements, 73
  - respect for, 268
  - and state sovereignty, 60, 64
- Human Rights Committee, 196, 213, 217, 232, 233, 306, 308
- Human Rights Council, 55, 167, 196
- freedom of movement, 171
  - liberty and security of persons, 172
  - on non-discrimination, 171
  - protection of the family, 172
  - the position of aliens under the ICCPR, 171
- Universal Periodic Review process, 55, 167, 170, 261
- human rights culture, 63
- Human Rights First, 232
- human rights law
- in Canada, 135–7
  - and definition of ‘particular social group’, 140
  - and international refugee law, 61
  - and state obligations towards refugees, 89
  - and state sovereignty, 64
- human rights movement, 62
- human rights regime: *see* international human rights law
- human rights treaty monitoring
- bodies, 55, 70, 73, 163–5, 235, 260, 306, 324
  - authority of their views, 176
  - cases involving refugees, 174
  - complementary supervision, 162
  - composition of, 163, 251
  - concluding observations, 170, 171, 180
  - engagement with asylum and refugee issues, 169, 170
  - expertise of, 164
  - functions of, 165

- human rights treaty monitoring (*cont.*)
- gender representation on, 164
  - general comments, 173, 181
  - individual complaints, 174–7
  - information available to, 167
  - NGOs and, 306
  - participation in, 184
  - popular actions (*actio popularisi*), 174, 176, 181
  - procedures of, 177–80
  - public nature of reports, 170
  - reporting systems, 168, 180
  - supranational supervision, 182
  - terms of membership, 164
- human trafficking, 176, 258, 265
- humanitarian intervention, 283, 297
- ICRC, 54
- ILO, 54, 184
- immigration law, 61, 258, 272
- Immigration Law Practitioners Association, 177
- Inter-American Commission on Human Rights, 306
- Inter-American Court of Human Rights, 232, 233, 239, 241, 247
- Inter-governmental Asia Pacific Consultation on Refugees, Displaced Persons and Migrants, 270
- inter-governmental organisations, 287
- advocacy role, 317
  - role in monitoring and reporting, 4, 342
  - supervisory role, 290, 338
  - and the UNHCR, 290–1
- Intergovernmental Consultations on Migration, Asylum and Refugees, 105
- INTERIGHTS, 211
- internally displaced people, 41, 46, 65, 279, 281, 297
- International Association of Refugee Law Judges, 52, 60, 79, 104, 232
- International Association for the Study of Forced Migration, 81
- International Bill of Rights, 183
- International Commission of Jurists v. Portugal*, 192
- International Convention on the Rights of Persons with Disabilities, 201
- international cooperation on protection, 9, 11, 35, 40, 69, 272, 319, 325
- International Council for Voluntary Agencies, 80, 81, 160, 309, 324
- International Court of Justice, 128, 129, 237, 238, 309
- composition of, 252
  - interpretation of the Convention, 232
  - Statute of, 5
- International Covenant on Civil and Political Rights, 171, 183, 184, 194, 260, 308
- in Canada, 130, 132, 133, 146
- International Covenant on Economic, Social and Cultural Rights
- arguments against supranational supervision, 196
  - complaints mechanisms, 183, 184, 197, 212
  - comprehensive *v à la carte* approach to supervision, 197, 199
  - international supervision of, 194
  - opposition to the Optional Protocol, 200
- Optional Protocol, 183, 184, 193, 195, 196, 202–5
- preambles, 202
  - political process towards supervisory mechanisms, 193–202
  - rights contained in, 185
  - states parties' obligations, 187, 189–90, 204
  - supervision of, 182–211
  - support for the Optional Protocol, 200, 201, 205
  - supranational consideration of complaints, 184, 212
- International Criminal Court, 237, 238, 271
- International Criminal Tribunal for the Former Yugoslavia, 237
- International Criminal Tribunal for Rwanda, 237
- international human rights law, 84
- compliance, 5

- development of, 173, 177
- and domestic legislation, 129
- regional systems, 190
- sources of state obligations, 180
- international human rights
  - organisations, 7
- international humanitarian law, 117, 118
  - and international refugee law, 245
- international institutions, 40, 235, 237
  - independence of members, 240
  - and the international legal community, 240
  - and state cooperation, 239
- International Judicial Commission for Refugees, 342
  - appointment and conditions of office, 252–3
  - appointments commission, 252
  - part-time appointments, 251
  - remuneration, 253
- authority of, 249
- composition of, 244–5, 251–2
- creation under the mandate of UNHCR, 241–2
- deliberation process, 254
- effectiveness of, 247–8
- efficiency of, 247
- engagement with interested parties, 250
- and the EU Qualification Directive, 229
- expertise of, 245
- functions of, 242, 249, 253
- funding and support for, 254–5
- judicial character of, 235, 243–4
- lack of enforcement powers, 246
- legitimacy, 236–45, 246, 252
- methods of operation, 250–5
- normative influence of, 245, 246
- not an adjudicatory forum, 235, 236
- number of judges, 251
- political feasibility of, 247
- political support, 240
- power to invite submissions, 254
- powers assigned by UNHCR, 246
- principles, 248–9
- private funding of, 248, 254
- promotion of discussion on
  - interpretation, 236
- proposal for, 22–3, 80, 160, 214–55, 336–7
  - consensus on, 27, 34, 342
- purpose of, 215, 235–48, 249
- recognition of, 250
- resources for, 247
- selection of cases, 253–4
- single or multiple opinions, 254
- state involvement in, 245–6
- terms of office, 253
- UN rapporteur to disseminate information about its work, 250
  - and the UNHCR, 24, 249
- international law, 40, 289
  - importance of the Convention and Protocol, 278
  - and non-state actors, 289
  - respect for, 332
- International Law Association's Burgh House Principles on the Independence of the International Judiciary, 252
- international legal community, and the international institutions, 240
- international norms 62, 130, 131
- International Organisation of Employers, 191
- international organisations, 5, 20
  - and sovereign states, 5
  - techniques and models available to, 57
- international protection regime, 9–10, 41, 49; *see also* international refugee regime
  - actors in, 79
  - building capacity to enhance, 313–40
  - and civil society, 275–85, 297
  - Comprehensive Plan of Action* in Asia, 86
  - debate over governance of, 77–82
  - defining the governance of, 85
  - definition of regime, 91–3
  - democratisation of, 335



- international protection regime (*cont.*)  
 governance, 76, 339  
 and human rights law, 60, 63  
 implementation of, 72  
 institutions other than UNHCR, 90  
 norms in, 261  
 and public accountability, 277–82  
 reform of, 76, 79, 95, 325, 328  
 regional and local regimes, 77, 78, 86, 87, 88, 95  
 responsibilities to non-refugees, 90  
 and state sovereignty, 66  
 strengthening of its implementation, 57  
 transnational and local governance, 88  
 international refugee regime, 251, 295, 296  
 compliance, 5  
 deficiencies of, 8  
 defining the governance of, 85  
 development of, 80  
 governance, 75–96, 313–17, 340  
 definition, 85–93  
 historical objectives, 63  
 and human rights law, 61–6  
 and humanitarian law, 245  
 ‘international’ aspect, 86–9  
 Internet resources on, 296  
 interpretation of, 24  
 and justice, 217  
 lack of an oversight body, 65  
 lack of uniformity in, 323  
 legal basis for the UNHCR  
 supervisory role, 317–22  
 monitoring of, 313–40  
 participation of civil society in, 293  
 politicisation of, 245  
 practical origins of, 63–6  
 reform of, 322–8  
 special position of, 218–19  
 supervision of, 313–40  
 universal framework for, 40  
 international regimes, 84, 296  
 networks within, 292  
 participation of civil society in, 292  
 international relations theory, 71, 286–300  
 liberalism, 288  
 neo-realism, 288  
 non-state actors in, 287–9  
 realism, 288  
 relativisation, 288  
 international ‘soft law’, 216, 225, 234, 242  
 international society, 297  
 Iraq, 257  
 Japan  
 civil society organisations, 294  
 determination of refugee status, 293–6  
 earthquake and tsunami, 298–300  
 human rights, 299  
 Immigration Control and Refugee Recognition Act, 293  
 immigration system, 293  
 Japan Association of Refugees, 298–300  
 NGOs’ cultivation and formulation of knowledge, 295  
 NGOs’ supervisory role, 298  
 participation of civil society in refugee status determination, 294  
 UNHCR Representative in, 294, 296, 299  
 Japan Association of Refugees, 298–300  
 assistance to evacuees and displaced people, 299  
 awareness of protection issues, 300  
*JHA v. Spain*, 175  
*Jonah* case, 109  
 Jones, Prof. Martin, 19, 75–96  
 judiciary, independence of, 243  
 justice, 217  
 Kälén, Walter, 54, 79, 160, 242, 320, 321, 322, 323  
 Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 46  
 Keohane, Robert, 288  
*KH (Article 15(c) Qualification Directive Iraq CG*, 117  
 Kindred, Hugh M., 125

- Kline, Paula, 303  
 Kneebone, Susan, 82  
 Koskenniemi, Martti, 95  
 Krivenko, Ekaterina, 115, 117  
  
 Lane, Melissa, 278  
 Lao Hmong refugees, 178, 263, 276  
 LaViolette, Nicole, 125  
 legal aid, transnational, 30  
 legitimacy, 237  
     and the discipline of the law, 244  
     and independence of members, 240  
     and the International Judicial  
         Commission for Refugees,  
         236–45, 246, 252  
     separation of powers, 243  
     sources of, 237, 238, 241  
 liberalism, 288  
 Libya, 179  
 Loescher, Gil, 11–12  
  
*Maaouia* case, 308  
 MacDonald, Flora, 303  
 Malaysia, 92, 279, 280  
 Martin, S., 181  
 mass expulsions of people, 8  
 McAdam, Jane, 8, 321  
 McGrath, Susan, 15, 279, 280, 281  
 McNamara, Dennis, 181  
 Mexico, 177  
 Milner, James, 11–12  
 monitoring, 161, 180  
 Muntarbhorn, Vitit, 257–72  
 Myanmar, 257, 263, 276, 280, 281  
  
*NA v. United Kingdom*, 118  
 Nanda, Ved P., 7–8  
 Nansen, Fridtjof, 64  
 Nansen Passport, 64  
 national human rights institutions, 91  
 nationality, 151  
 Neier, Aryeh, 187  
*Németh v. Canada (Justice)*, 134  
 Neve, A., 78, 82  
 Nicholson, Frances, 6  
 non-governmental organisations, 24,  
     29, 283, 287, 292, 337  
     advocacy role, 283, 302, 317  
     initiatives promoting convergence of  
         interpretation, 232  
     involvement in court cases, 305  
     limitations of, 338  
     naming and shaming of violations  
         of, 29, 337, 342  
     role in monitoring and reporting, 4,  
         31, 342  
     supervisory role, 27, 29, 31, 34, 35,  
         302, 337, 338  
*non-refoulement*, 7, 62, 134, 259, 277,  
     323  
 non-state actors, 286–300  
     accountability of, 282  
     definition, 287  
     in international relations theory,  
         287–9  
     as norm entrepreneurs, 11  
     participation in the international  
         refugee regime, 293  
     role of, 300  
     supervisory role, 287  
 normativity, 260–2  
 North, Justice Anthony, 22–3, 60, 79,  
     160, 214–56, 336–7  
 North Korea, 257, 261  
 North/South divide, 4–10, 12, 24, 184,  
     205, 281, 317, 340  
 Nye, Joseph, 288  
  
 OAU Refugee Convention, 43–6, 69,  
     87  
 OHCHR, 92  
 Organization of American States, 341  
  
 Palermo Convention, 89  
 Perryman, Benjamin N., 123–47  
 persecution, 109, 111, 221  
     agents of, 113  
     because of religion, 142–6  
     Convention standard, 7  
     danger of, 153  
     definition, 116, 149  
     fear of, 154  
     gender-based, 140, 141, 175  
     human rights-based approach to,  
         115  
     and nationality, 151

- persecution (*cont.*)  
 non-state agents of, 221  
 physical abuse, 150  
 on racial grounds, 151  
 reasons for, 150  
 social group, 110, 111, 137–41, 220  
 Petcharamesree, Dr Sriprapha, 17,  
 275–85, 329  
 Plant, R., 188  
 Plaut, W. Gunther, 7  
 Pogge, Thomas, 196  
 poverty, 196  
 protection, 48–54, 257; *see also*  
 international protection regime  
 accountability, 281  
 and advocacy, 302–5  
 and the discretion of the asylum  
 state, 263  
 effectiveness of, 115, 223  
 evolution of, 120  
 internal, 223  
 judicial elaboration of criteria, 120  
 refugee protection, 161  
 sources of, 120  
 sufficiency of, 121  
 and supervisory mechanisms, 332  
 of those fleeing armed conflict, 118  
 through court initiatives, 305  
 through international treaty body  
 initiatives, 306  
 UNHCR Executive Committee  
 initiatives, 307  
 in urban areas, 88  
 ‘protection gaps’, 93, 115, 118, 174,  
 259, 261, 263  
 Protection in the Americas Strategy,  
 104  
 public international law, 4–12  
 definition, 4  
 enforcement, 5  
 resistance to, 24  
 Puebla Process, 104  
*Pushpamathan v. Canada (Minister of  
 Citizenship and Immigration)*,  
 127  
  
*QD (Iraq) v. SSHD*, 117, 119  
*Quaker Council for European Affairs  
 (QCEA) v. Greece*, 193  
  
*R. v. Big M Drug Mart*, 142, 145  
*R v. Secretary of State for the Home  
 Department, ex parte Adan*,  
 218  
 realism, 288  
 reasonableness, 200  
 refugee  
 definition, 87, 89–91, 109, 249, 258,  
 262  
 definition in the Convention, 8,  
 137–46, 220, 277  
 definition in the EU, 111, 149–51  
 Refugee Legal Group, 177  
 refugee status  
 national procedures for, 262–5, 272  
 number of applications, 85  
 procedures for determination, 9, 30,  
 50, 154, 166, 262–5, 272  
 in Canada, 97  
 in Japan, 293–6  
 unfairness in, 96  
 withdrawal of refugee status, 154,  
 155  
*Refugee Survey Quarterly*, 81  
 refugees and asylum seekers, 41  
 acceptance rates, 224, 225  
 in the Asia-Pacific region, 257  
 causes of displacement, 272  
 claims before human rights treaty  
 bodies, 174–7  
 collective nature of problems of,  
 176  
 complaint system for, 184  
 consensus on legal obligations  
 towards, 73  
 detention of, 174, 178, 209, 266  
 differential treatment of, 308  
 forum shopping, 259  
 legal rights for, 64  
 links between country of origin,  
 transit, first asylum and  
 resettlement, 267, 269  
 management of refugee flows, 64, 73  
 numbers of, 279  
 opportunities for meaningful  
 livelihoods, 267  
 and other undocumented persons,  
 278  
 portrayal as illegal immigrants, 258

- registration of birth of children, 281, 284
- responsibility for, 270–2
- rights of, 94, 95, 96, 168–71, 177, 181, 218, 249, 339
- rights of rejected asylum seekers, 209–10
- safety of, 265–7
- secondary movements, 258
- solidarity, 267–70
- status of children of refugees, 281, 284
- as threats, 297
- treatment of asylum seekers in the first asylum country, 266
- regimes, 91–3
  - conflict between norms and decision-making procedures, 91
  - international, 94
  - norms and institutions of, 91
- regional mechanisms for supervising international refugee rights instruments, 27, 31
- reporting on the implementation of international instruments, 20, 25, 26, 34, 57, 166
- concluding observations, 167
- guidelines on form and content, 166
- harmonised guidelines, 166
- Lists of Issues, 166
- on refugee rights, 168–71
- responsibility
  - individual, 155
  - obfuscation of, 315, 325
- Responsibility to Protect, 40, 271, 281
- Reul v. Canada (Minister of Citizenship and Immigration)*, 145
- rights
  - to affordable health care, 189
  - to asylum, 8, 62, 148, 308
  - to development, 195, 196
  - to education, 183, 189
  - to fair trial, 307–9
  - to food, 189
  - to peaceful enjoyment of one's possessions, 183
  - to self-determination, 198
  - to shelter, 210
- River International, 283
- Rohinyas, 280, 283
- Rome Statute of the International Criminal Court, 152
- Ross v. New Brunswick School District No. 15*, 143
- rule of law, 244
- safe countries of origin, 303, 305, 308
- 'safe third country', 223
- Sakamoto, Yoshikazu, 288
- sanctuary movements, 88
- Sen, Amartya, 195
- separation of powers, 243
- Sheekh v. The Netherlands*, 114, 116
- Shoukri, Mamdouh, 15
- Simeon, James C., 1–36, 313–43
- Singh v. Canada (Minister of Employment and Immigration)*, 123
- Social Policy Group, 282
- Soering* case, 112
- solidarity, 267–70
  - international and regional, 270
- South Africa, 104, 179
- sovereign states, 5, 73, 182, 262, 283
  - and the ICESCR, 205
  - and the International Judicial Commission for Refugees, 242
  - and international organisations, 5
  - and international society, 297
  - and international supervision, 41
  - interpretation and implementation of treaties, 292
- Sri Lanka, 177
- states parties to international refugee rights instruments, 28, 35, 259
  - collective responsibility, 338
  - commitment to stronger protection norms, 66
  - consent to UNHCR supervision, 61, 66
  - cooperation with UNHCR, 322, 340
  - Declaration, 56
  - international consensus among, 21
  - and international human rights law, 89, 161

- states parties to international (*cont.*)
  - legislative definitions of terms, 224
  - objections on the application of the
    - Convention by other states parties, 326
  - obligations, 80
    - compliance, 3, 11–12, 30, 159, 290, 314
    - cooperation, 42, 48, 83, 218, 341
  - Peer Review Group, 337
  - provision of information and statistics, 27, 43, 165–71
  - reporting, 165–71
  - and UNHCR supervision, 48, 319
- state sovereignty and human rights, 60, 64
- stateless persons, 8, 41, 45, 281, 284
- states not signatories to the
  - international refugee instruments, 28, 35
- Statute of the Office of the United Nations High Commission for Refugees, 6, 13–14, 42, 59, 67, 72, 75, 318
- Strategic Humanitarian Action and Research Centre, 160
- SUARAM, 278, 280, 283
- subsidiary protection, 110, 111–13, 154
  - serious harm, 112
- Sunstein, C., 188
- supervision
  - complementary, 159–81
  - definition, 161
  - and monitoring, 161, 180
- supervisory mechanisms
  - and accountability, 29
  - and capacity building, 29, 30, 32
  - effectiveness of, 339
  - elements of, 160, 180
  - geographic variation, 28, 29, 32, 34
  - independent, 325
  - judicial supervision, 29, 30, 35
  - meaning of, 30, 32, 34
  - peer review mechanisms, 31, 55
  - political process towards, 193–202
  - proliferation of, 57
  - and protection, 332
    - regional, 27, 31
    - and state sovereignty, 41
- supranational law, 149
- Suresh v. Canada (Minister of Citizenship and Immigration)*, 129–31
- Swing, William Lacy, 276
- Syndicat national des Professions du tourisme v. France*, 206–7
- Syndicat Northcrest v. Amselem*, 143, 146
- terrorism, 152, 155
- Thailand, 263, 280, 281, 282, 283
  - Thai Committee for Refugees, 90
- Thlimmenos v. Greece*, 210
- torture, 129, 131, 175, 208–9
- treaty interpretation, 217
- Treaty on the Functions of the European Union, 44
- TT v. UK*, 114
- Türk, Volker, 6, 26, 33, 39–58, 180, 332–4
  - keynote speech, 17, 20, 329
  - questions posed for the conference, 3, 20, 24, 316, 333–4
- UNHCR mandate, 39–57, 313, 321
- UK
  - Asylum and Immigration Tribunal, 121
  - contribution of the judiciary to protection of asylum seekers, 109–22
  - and the ECHR, 122
  - Human Rights Act 1998, 121, 122
  - judicial structure of, 121–2
- UN, 40
  - Guiding Principles on Internal Displacement, 46
  - and the ICESCR, 182–211
- UN Charter, 63, 260
  - Special Procedures, 261
  - Special Rapporteurs, 261
- UN General Assembly, 67, 321
  - and the UNHCR, 83
- UN peacekeepers, 271

- UN Security Council, 153
  - and human rights violations, 271
  - and the ICC, 271
- UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 261
- UN Treaty Bodies
  - individual complaints procedure, 186
  - international supervision by, 186–90
- UNHCR, 7, 290, 333
  - 10-Point Plan on Refugee Protection and Mixed Migration, 269–70
  - accountability, 56
  - advisory and consultative role, 50, 52
  - advocacy role, 31, 52
  - Age, Gender and Diversity Mainstreaming strategy, 56–8
  - Agenda for Protection, 161
  - Assistant High Commissioner (Protection), 68
  - authority of, 68, 315, 337
  - autonomy of, 69
  - and Canada, 97–101
  - capacity building role, 4, 34
  - capacity of, 32
  - and CEDAW, 169
  - challenges facing, 4–12
  - and civil society groups, 282–3, 287
  - constraints on its actions, 282
  - consultative practices, 83
  - cross-issue linkages, 10
  - development of international law and standards, 53
  - dialogue with NGOs, 283, 307
  - Division of International Protection, 68, 70, 173
  - effectiveness, 24
  - enforcement powers, 42, 290, 315, 320
  - engagement with all branches of states and with civil society, 49
  - entitlement to data and information, 52
  - expansion of its operations, 84
  - expertise in refugee protection, 71
  - expertise of, 242
  - facilitative role of, 12
  - feedback to states parties, 24
  - financial resources, 12
    - dependence on donors, 3, 11, 28, 31, 54, 69, 325, 339
    - limitations of, 28, 30, 34, 248, 282, 316
  - functions, 14, 67–72, 318
  - Global Consultations on International Protection, 215
  - Global Needs Assessment initiative, 41
  - governance, 12, 95
  - Guidelines on international protection, 26, 53, 173, 215, 225, 226, 228
  - Handbook on Procedures and Criteria for Determining Refugee Status*, 52, 225, 226
  - High Commissioner's Dialogues on Protection Challenges, 20, 56, 58
  - hybrid nature of, 243
  - independence of, 68
  - influence of, 10, 269
  - influence on treaty monitoring bodies, 164, 165, 173, 181
  - information on country conditions, 165
  - and INGOs and NGOs, 11–12, 290–1
  - inter-agency framework, 49
  - and internally displaced persons, 65
  - international collaboration, 103–5
  - and the International Judicial Commission for Refugees, 249
  - interpretation of the Convention, 225–8
  - intervention in judicial proceedings, 51, 113
  - involvement in countries of origin, 49, 63
  - issuing of legal positions, 52
  - leadership skills and expertise, 11
  - mandate, 12, 39–57, 63, 67–72, 261, 321
  - institutional mandate, 64, 70, 242
  - and resources, 31, 34

UNHCR (*cont.*)

- monitoring of state practice and follow-up intervention, 50
- obligations of, 96
- operational focus, 63, 321, 333
- operational role in host countries, 49, 84
- origins of, 59–61
- and other UN agencies, 341
- ‘Parinac’ conference with NGOs, 302
- participatory planning and needs assessment, 56
- partnerships, 49
- persons of concern, 46–7, 48, 52
- promotion of international uniformity and standardisation, 291
- promotion of protection norms, 291
- promotion of ratification of the Convention, 14, 319
- protection functions, 48, 49
- provision of country of origin information, 102, 180
- reform of, 81, 315, 325
- refugee camps in non-Convention states, 49
- Refugee Status Determination, 24
- as a regime, 93
- Regional Consultation on Detention of Asylum-Seekers and Refugees, 266
- relationship with Canada’s IRB, 100–3
- reporting system, 171
- Representative in Japan, 294, 296, 299
- requirement for invitation from states, 12, 321
- requirement to cooperate with governments, 67
- responsibilities of, 67, 96, 325, 342
- and regional organisations, 341
- safe countries of origin, 304
- separation of powers, 243
- sources of funds, 340
- strategic relationship with civil society, 283

- strengthening of its supervisory role, 66

- supervisory role, 48, 69, 77, 293
  - complementary supervision, 159–81

- components of, 160, 180

- debate on, 54–6, 61

- enhancement of capacity for, 1–35, 66, 325

- implementation of, 54

- legal basis of, 35, 42, 317–22

- limits of, 59–72, 339

- and non-state actors, 286–300

- and protection standards, 39–57, 321

- transparency, 12

- a treaty monitoring body, 53

- ‘watchdog’ functions, 67–72

- work for systemic change, 49

- UNHCR Executive Committee, 83, 161, 262

- and the Canadian IRB, 103

- Conclusions, 50, 56, 58, 72, 227, 228

- consultations with civil society, 83

- inclusion of non-states parties, 83

- mandate, 70–2

- membership, 171

- and NGOs, 307

- practical evolution, 71

- Special Sub-Committee on

- international protection, 21, 334, 335, 336, 342

- consensus on reconstitution of, 3, 20, 25, 34, 58, 316

- purpose of reconstitution of, 27, 339, 342

- United States, and the ICESCR, 200

- Universal Declaration of Human

- Rights, 75, 183, 193, 260

- University of Michigan, 232, 309

- USA and Canada, Safe Third Country Agreement, 86, 305

- van Ert, Gib, 133

- Vienna Convention on the Law of Treaties, 127

- Vienna Declaration and Programme of Action, 195

## INDEX

359

- Vienna World Human Rights  
Conference, 195, 197, 212
- Vietnam, 268–9  
Law on Vietnamese Nationality, 268
- Vilvarajah* case, 118, 120
- Waltz, Kenneth, 288
- war crimes, 152
- Ward v. Canada*, 110, 119
- Westphalian system of states, 289, 297
- World Organisation Against Torture,  
208–9
- York 2010 International Conference, 2,  
3, 13–19, 328–31  
breakout sessions, 16, 21, 27, 33,  
332, 334–8  
Evaluation Report, 331  
facilitation of dialogue, 329  
feedback on, 17  
keynote addresses, 16, 17, 18, 329  
legal instruments and remedies,  
18  
outcomes, 13, 14, 21–32, 33–4, 343  
panel sessions, 331–2  
participants, 329, 330  
plenary panel sessions, 18, 332  
programme, structure and  
organisation, 15–19, 23–32,  
328, 331–4  
purpose, 14, 16, 328  
role of civil society, 19  
role of the judiciary in supervision,  
18  
survey of participants, 330  
UNHCR supervisory role, 18  
website, 14, 15
- York University Centre of Refugee  
Studies, 1
- Young, Margot, 136
- Zhu v. Canada (Citizenship and  
Immigration)*, 145
- Zieck, Marjoleine, 315, 320, 321, 325,  
327
- Zinn, Russel W., 123–47