## Index

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA (Uganda) v. Sec of State for Home Dept [2008]</td>
<td>304</td>
</tr>
<tr>
<td>Action Plan for Creating a Smart Border (US–Canada)</td>
<td>238–9</td>
</tr>
<tr>
<td>AD v Refugee Applications Commissioner [2009]</td>
<td>37–8</td>
</tr>
<tr>
<td>Afghanistan crisis</td>
<td></td>
</tr>
<tr>
<td>conscientious objectors and jus ad bellum</td>
<td>182–6</td>
</tr>
<tr>
<td>political situation, analysis</td>
<td>58–60</td>
</tr>
<tr>
<td>refugees</td>
<td></td>
</tr>
<tr>
<td>EU subsidiary protections</td>
<td>54–61</td>
</tr>
<tr>
<td>political influences on</td>
<td>52–3</td>
</tr>
<tr>
<td>status, analysis of</td>
<td>58–9</td>
</tr>
<tr>
<td>trends</td>
<td>52–3</td>
</tr>
<tr>
<td>UNHCR protection guidelines</td>
<td>57–9</td>
</tr>
<tr>
<td>war refugees, as special cases</td>
<td>52–5</td>
</tr>
<tr>
<td>Agamben, Giorgio</td>
<td>24–6</td>
</tr>
<tr>
<td>AK (Art 15(c)) Afghanistan CG [2012]</td>
<td>53, 59–60</td>
</tr>
<tr>
<td>Albania, human trafficking</td>
<td>159–62</td>
</tr>
<tr>
<td>and internal relocation</td>
<td>160–61</td>
</tr>
<tr>
<td>state obligations and prevention measures</td>
<td>161–2</td>
</tr>
<tr>
<td>Aleinikoff, T. Alexander</td>
<td>156–8</td>
</tr>
<tr>
<td>AM and BM (Trafficked Women) Albania [2010]</td>
<td>159–62</td>
</tr>
<tr>
<td>Anker, Deborah</td>
<td>196</td>
</tr>
<tr>
<td>Appeal No. 0904298 [2010]</td>
<td>305–6</td>
</tr>
<tr>
<td>Appeal No. 0907337 [2010]</td>
<td>307</td>
</tr>
<tr>
<td>Arendt, Hannah</td>
<td>74</td>
</tr>
<tr>
<td>asylum, generally</td>
<td></td>
</tr>
<tr>
<td>global trends</td>
<td>228–9</td>
</tr>
<tr>
<td>and national security</td>
<td></td>
</tr>
<tr>
<td>conflicts between</td>
<td>80–81, 227–35</td>
</tr>
<tr>
<td>and conscientious objectors</td>
<td>179</td>
</tr>
<tr>
<td>as political concern, development</td>
<td>229–35</td>
</tr>
<tr>
<td>racism and discrimination</td>
<td>234–5</td>
</tr>
<tr>
<td>political trends</td>
<td>227–8</td>
</tr>
<tr>
<td>politics of</td>
<td></td>
</tr>
<tr>
<td>criminalization of illegal entry</td>
<td>7, 231–2, 255</td>
</tr>
<tr>
<td>international cooperation</td>
<td>235–42</td>
</tr>
<tr>
<td>international law, conflicts with</td>
<td>240–41, 255–6</td>
</tr>
<tr>
<td>irregular immigrants vs. asylum seekers</td>
<td>230–31</td>
</tr>
<tr>
<td>migration control mechanisms, purpose</td>
<td>240–41, 255–6</td>
</tr>
<tr>
<td>negative consequences of</td>
<td>240–41</td>
</tr>
<tr>
<td>restrictions on, impact of</td>
<td>22, 27, 30, 256–7</td>
</tr>
<tr>
<td>‘safe third country’ principle</td>
<td>22, 242–6, 256</td>
</tr>
<tr>
<td>see also securitization, of asylum</td>
<td></td>
</tr>
<tr>
<td>asylum shopping</td>
<td>83–4, 242–3</td>
</tr>
<tr>
<td>Australia</td>
<td></td>
</tr>
<tr>
<td>on conscientious objectors</td>
<td>173–4</td>
</tr>
<tr>
<td>on gender-related persecution</td>
<td>209–10</td>
</tr>
<tr>
<td>on internal relocation</td>
<td>10, 290, 295, 305–7</td>
</tr>
<tr>
<td>Baglay, Sasha</td>
<td>147, 158</td>
</tr>
<tr>
<td>Bayatyan v. Armenia (GC) (App No. 23459/03)</td>
<td>181–2</td>
</tr>
<tr>
<td>best interests principle</td>
<td></td>
</tr>
<tr>
<td>domestic influences</td>
<td>135–6</td>
</tr>
<tr>
<td>and rights of children</td>
<td>130–36</td>
</tr>
<tr>
<td>Betts, Alex</td>
<td>39</td>
</tr>
<tr>
<td>Bigo, Didier</td>
<td>232</td>
</tr>
<tr>
<td>bogus refugees</td>
<td>29</td>
</tr>
</tbody>
</table>
Contemporary issues in refugee law

Bolbol (Area of Freedom, Security and Justice) [2009] 47, 49–52
border/migration controls
purpose 240–42
‘state of exception’ principle 24–5
and territorial sovereignty 7–8, 233–4, 236–9
trends 1, 21–2
see also securitization of asylum
Bosniak, Linda 87–8
Canada
on conscientious objectors
partial objection 183–7, 189–94
and state protection 183–7, 191–4
on gender-related persecution 210
on internal relocation 10, 290, 295, 307–8
Migration Integrity Officers (MIOs), role of 235–6
securitization of asylum 7–8
asylum trends 228, 239
detention 8, 247–9, 251
immigrants, attitudes to 233–4
international cooperation 8, 235–8, 235–40, 243
‘safe third country’ principle 243–4, 246
territorial sovereignty and border control 7–8, 233–4, 238–9
terrorism, influence of 233–4
tracking/intercepting asylum seekers 235–8
Charter of Fundamental Rights of the European Union
on conscientious objection 172
Charter of the United Nations 267–8
children, rights of
detention of children 137, 252–4
under Geneva Conventions 103
International Refugee Organization (IRO) role 98–102
status, children vs. refugees 106–8
complementary protection doctrine 130–36
independent source of status 130–37
international policy promotion 110–13
legal recognition conflicts 4, 93–4, 109–10
procedural issues 116–21
protection restrictions 131–2
unaccompanied children 113–14, 119–20
best interests principle 133–6
definition 101–2
international provisions on 98–102
see also Convention on the Rights of the Child
China, human trafficking 163–4
citizenship
and conscientious objectors 5, 165–6
meaning 73–5
complementary protection, doctrine of
and Convention on the Rights of the Child 129–36
conscientious objectors 5–6
and citizenship 5, 165–6
conscription vs. voluntary service 166, 168–70, 175–6, 195
forced labour, prohibition of 180–82
freedom of conscience 6, 167–8, 179–81
judicial interpretation 170, 173–6
EU Qualification Directive 171–2
European Court of Human Rights 181–2
moral duties in democratic society 172–3
motivation 173
partial/selective objection 6, 166
jus ad bellum vs. jus in bello 182–91
and state protection 191–4
threshold for violations of jus ad bellum 188–91
and refugee status 6, 194–5
deserters 43, 176–7
and fear of persecution 168–9

Satvinder Singh Juss and Colin Harvey - 9781782547662
Downloaded from Elgar Online at 12/18/2018 12:30:57AM
via free access
Index

human rights/humanitarian law protections 178–82
Human Rights Committee on 178–80
under ICCPR 167–9, 173, 175–6
and national security 179
predicament-based approach 168–9, 172
proportionality 175–6
'real chance' standard of proof 176
under Refugee Convention 43, 167–8
and refusal of military service 166, 168–9
UNHCR Handbook on 43, 170–71, 176–8
Convention against Transnational Organised Crime see Trafficking Protocol
Convention on the Rights of the Child 93
age, and right to be heard 117–18
Art. 3 best interests principle 130–36
Art. 12 right to participation 117–21, 137
Art. 37 detention of children 137
background 103–4
best interests principle 130–36
child asylum claims, guidelines on 114
child pornography/prostitution 107–8
children in armed conflict 107–8, 130–31
detention of children 137
ExCom promotion of 102–3, 112
international promotion of 110–12
interpretative role, in human rights law 121–9, 136–7
irreparable harm, meaning 130
Optional Protocols 107–8, 130–31
persecution, interpretation of 121–9
and Refugee Convention, relationship between 96–103, 113–14, 116
rights and freedoms 104–7, 117–21, 137
right to participation 117–21, 137
sale of children 107–8
state obligations 105–6
status, children vs. refugees
complementary protection doctrine 130–36
as independent source of status 130–37
international policy promotion 110–13
legal recognition conflicts 4, 93–4, 109–10
procedural issues 116–21
protection restrictions 131–2
refugee children, specific protections 106–8
unaccompanied children 113–14, 119–20, 133–6
crimes against humanity
exclusion from refugee status 8, 73, 259, 262, 278–9, 284–5
crimes against peace
exclusion from refugee status 8, 73, 259, 262, 278–9, 284–5
criminal law
complicity in international crimes burden of proof 284–5
and disassociation 17
exclusion from Refugee Convention 8, 73, 259, 262, 278–9, 284–5
crisis, as metaphor for refugee law 2
shis bias, advantages of 17–18
crisis images 22
and international law
place in 22–3, 27–8
refugees as consequence of society 24–6
refugees as outside politics 24–6
and surrogate protection 23–4, 30
interpretation of
nature of crisis 19–21, 28–30
normalization, impossibility of 13–14
persecution vs. discrimination 14–16
Western focus 14–16
politics of refugee regime
'good' nations vs. 'bad' 18–19
refugee resettlement, attitudes to 19–21
refugees vs. state 28–9
restriction and limitation 22, 27, 30
’safe third country’ principle 22, 242–6, 256
sovereignty, influence on 13, 18–19, 22, 25, 29
refugee jurisprudence 14–18
refugee, meaning of 14–15
resistance to crisis 28–30
Cyprus, human trafficking 5, 151–6
d’Aspremont, Jean 39
Declaration of Human Rights 64
Declaration of the Rights of the Child 91–2, 103
Declaration of the Rights of the Child 1924
related treaties/provisions 92–3
deporation
counter-terrorism and human rights, conflicts between
diplomatic assurances 82–3, 86
under European Convention on Human Rights 79–82, 85–7
deserters see conscientious objectors
destination countries
asylum pressures on 227–8, 255–6
refugee resettlement, attitudes to 19–20
safety and protection available at 302–3
see also securitization of asylum;
individual countries and regions by name
detention, of asylum seekers/refugees
alternatives to 248
detention of children 137, 252–4
facilities and representation 250–52
and principle of proportionality 250
private detention centres 251–2, 254
psychological/physical impact of 252–3
reasons for 248
and right to liberty 248–50, 256
trends 247–8
of vulnerable persons 252–4
discretion test, sexual orientation 216–20
dissenters see conscientious objectors
draft dodgers see conscientious objectors
‘Dublin Regulations’ 83–4, 87, 242–3, 246, 254
Durieux, Jean-Francois 56–7
Economic and Social Council (ECOSOC)
on rights of unaccompanied children 99–101
Ellis, Jaye 39
Erduran v. Minister for Immigration and Multicultural Affairs [2004] 174
ethics and morality
human rights/humanitarian law, influence on 264–5
meaning 261–2
see also exclusion, from Refugee Convention protection
EURODAC 240
European Convention on Human Rights
Art. 2 right to life 79, 155–6
Art. 3 rights against torture
and asylum shopping 83–4
and counter-terrorism 3, 79–82, 85–7
and deportation 80–83
diplomatic assurances 82–3, 86
interception at sea 84–5
and right to seek asylum 79–80
Art. 4 rights against slavery/forced labour 151–6
European Court of Human Rights
on detention of asylum seekers
detention of children 254
and right to liberty 249
on eligibility for refugee protection
conscientious objectors 181–2
and deportation 80–81, 86–7
forced labour, prohibition of 181–2
and Refugee Convention, interpretation 80–81
and state responsibilities 81
European Court of Justice
on eligibility for refugee protection 71
and overlap between UN agencies 49–52
European Trafficking Convention 161
European Union
Charter of Fundamental Rights 71
Directive for granting and
withdrawing international
protection status, proposed 223
Dublin Regulations 22, 83–4, 87,
242–3, 246, 254
Frontex, role of 235–7
Immigration Liaison Officers (ILOs),
role of 235
international law, relationship with
71–2
Qualification Directive
Art. 7 non-state actors, role of 164,
298–9
Art. 15 application challenges
54–61
best interests principle 132
on conscientious objectors 172–3
on gender and ‘particular social
group’ categorisation 207
non-refoulement obligations 55–6
rights of children 132
war refugees, subsidiary protection
54–61
securitization of asylum 7–8
border control developments
228–9, 236–7, 247–8
freedom of movement of persons 8,
228–9, 233
international cooperation 235–8,
240–41
policy development 232–3
‘safe third country’ principle
243–6
Schengen Information System 240
and terrorism 232–3
tracking/interception of asylum
seekers 235–8, 240–41
Europol 237
exclusion, from Refugee Convention
protection 73, 262–3,
265–6, 277–82, 285
excluded persons, and refugee status
burden of proof, for criminal
activity 17, 284–5
and fear of persecution 278–9
interpretation 8–9, 73–5, 276–82
non-refoulement protection 9, 73,
263, 281–2, 285–6
prosecution 9, 263–6, 282–5
UNHCR guidance on 286
Ezeilo, Joy Ngozi 150
Fafschi, Re. Application for Judicial
Review [2006] 37
Farrell, Theo 52–3
female genital mutilation
asylum claims, in France 204
and internal relocation alternative
debate 305, 307–8
as persecution, treaty interpretation
128–9
forced labour, prohibition of
compulsory military service vs.
conscientious objectors 180–82
European Convention on Human
Rights on 151–6
forced marriage 204, 290, 297, 299
Fornah v SSHD [2006] 6, 214–15
Foster, Michelle 296
France
asylum seekers, detention 247, 253–4
female genital mutilation, whether
persecution 204
freedom of movement of persons
and securitization of asylum 8,
228–9, 233
freedom of thought, conscience and
religion see conscientious
objectors
Frontex 235–8
gender-related persecution
internal relocation alternative 297,
299–301
country of origin information
300–303
non-state actors role in 299–300
'particular social group'
categorisation 206–7
gender stereotyping 214–15
judicial interpretation 207–10, 213
Refugee Convention, compatibility with 207–13
and religion, influence on 215–16
persecution, meaning of
female genital mutilation 128–9
forced marriage 204, 290, 297, 299
interpretation challenges 202–6
and religious persecution 215–16
secondary persecution 216–18, 220
sexual exploitation 139–40
sexual orientation, concealment of 216–18, 220
UNHCR guidelines 139–40, 197–202, 206
prostitution, stereotyping 146–8, 161–3
and refugee status accelerated asylum, impact of 221
asylum credibility challenges 220–23
compatibility challenges, criminal law 221
compatibility challenges, Refugee Convention 6–7, 207–13, 224
definition difficulties 200–201
disclosure vs. silence dilemma 222–3
discretion test 216–20
hyper-visability and invisibility 215–16
national adjudication variations 200–201
procedural/evidential difficulties 220–21
and sexual orientation 204, 216–20
UNHCR definitions 197–202
sexual orientation 204
discretion test 216–20
identity vs. behaviour 219, 222
and refugee status 204, 216–20
and secondary persecution 216–18, 220
women
female genital mutilation 128–9, 204, 214–15, 305, 307–8
prostitution 146–8, 161–3
stereotyping 146–8, 161–3
violence against, interpretation difficulties 205–6, 210–13
see also trafficked persons
Geneva Conventions 272–3
children, provisions relating to 103
Germany, conscientious objectors 173, 183
Goodwin-Gill, Guy 132, 168
GS (Art 15(c)) indiscriminate violence Afghanistan CG [2009] 53
Haddad, Emma 24, 28
hard law vs. soft law 39–40, 63–4
Hathaway, James 75–6, 213–14, 219, 279–80, 296
HC and RC (Trafficked Women) China [2009] 163–4
High Commission for Occupied Germany (HICOG) 100–101
Hinzman and Hughey v. Canada [2007] 183–6, 190–93
Hirsy Jamaa v. Italy (App No. 27765/09) 84–6, 241
HJ (Iran) and HT (Cameroon) v. Sec of State for Home Dept [2011] 6, 43, 140, 216, 218–19
HM and others (Art 15(c)) Iraq CG [2012] 61
homosexuality see gender-related persecution
Horvath v Sec of State for the Home Dept [2000] 309
human dignity
human trafficking, as threat to 152–3
relationships, with law, morality and politics 77–8
right to 3, 68, 74, 76–7, 269–70
Human Rights Committee
on conscientious objectors 178–80
human rights law
balance challenges 77–8, 87–8
definitions 74, 87–8
need for conformity/uniformity 127–9
development 260
  international treaties, as basis for 271–3
  UN role in 267–71
  influences on 121–9, 136–7
  ethics and morality 264–5
International Bill of Rights 271–3
refugee law
  counter-terrorism, conflicts between 79–82, 85–7
  relationship between 23–4, 30, 75–6, 78–9, 121–9
  role in development of 23
  right to liberty
detention of asylum seekers 248–52, 256
  and principle of proportionality 250
  ‘safe third country’ principle, conflicts with 244–6, 256
human trafficking
  anti-trafficking framework 4–5, 138–9, 141–4
country of origin information 158
credible suspicion of trafficking 154–5
female stereotyping 146–8
forced prostitution 139–40, 146–8
  and gender
  boys, risks for 139–40
  social group categorization 146–8, 161–3
as illegal migrants, misconception 144
internal relocation/re-integration
  procedures 159–61
  whether viable option 159–64
labour exploitation 140, 148
  meaning 141–4
by non-state actors 4, 140, 148–56
  process of trafficking
  as cause of harm 159–60
  direct/indirect forms 145
  trends 144, 159–60, 163–4
and refugee law
  incompatibility between 156–64
judicial interpretation 159–64
overlap between 138–9, 140–41, 151–6
  protection and source control bias 4–5, 156–8, 164
  severe exploitation 145
sexual exploitation 139–40, 146–8
state obligations 151–6
  ability to provide protection 158
  for actions of non-state actors 148–56
well founded fear of persecution 144–8, 159–64
  see also Trafficking Protocol
humanity, myth of 76–7
IFA (internal flight alternative) see internal relocation alternative
illegal entry/migration
  criminalization 7, 231–2, 255
  forcible return, prohibition of 256
  and national security, threat to 229–35
  security policy
    merger with asylum regime 230–31
    migration controls, purpose 240–42
    political influences on 231–2
    and sovereign control 13, 18–19, 22, 25, 29, 255–7
    trends 1–2, 13, 19–21, 29
IM v. France (App No. 9152/09) 249
interception at sea 84–5
internal relocation alternative
  country of origin information 300–303
  and human trafficking 159–64
  myth of 9–10
  non-state actors, protection by 298–9
  policy trends 289–90
Refugee Convention interpretation 43–4, 290–95
  risk vs. sufficiency of protection 10, 289–90, 309–10
  access to livelihood on return 301–2
  Australia, practice in 295, 305–7
Canada, practice in 295, 307–8
cultural context of home state
301–2
in gender-related asylum claims
297, 299–303
New Zealand, practice in 289,
294–5, 303, 308
and non-state actors, abuse caused
by 297–9
reasonableness test 295–7
risks of persecution on return
301–2
safety and protection at destination
302–3
United Kingdom, practice in 295,
303–5
UNHCR guidance on 43–4, 59–60,
291–4, 300–301
International Bill of Rights 271–3
International Convention on Civil and
Political Rights (ICCPR)
Art. 8 prohibition of forced labour
180–81
Art. 18 freedom of thought,
conscience and religion 167–9,
173, 175–6, 179–81
international humanitarian law
ethics and morality, influence of
264–5
refugee law
military service, partial objection
to 186–91
relationship between 3, 23–4, 30,
72–3
role in development of 23
International Labor Organization (ILO)
on trafficking in persons 148
international law
complementary protection doctrine
Convention on the Rights of the
Child 130–36
Refugee Convention 129–30
enforcement mechanisms 63–5
hard law vs. soft law 39–40, 63–6
and international knowledge system
40–41
legal authority for
adoption of treaties by consent 63
Index

Minister for Immigration v. Yusuf [2001] 174
MSS v. Belgium and Greece (App No. 30696/09) 83–4, 246, 249
Munro, V. 221

national security, and asylum regime conflicts between 80–81, 227–35 and conscientious objectors 179 as political concern, development of 229–35 racism and discrimination 234–5
Nyers, Peter 264

Othman (Abu Qatada) v UK (App No. 813/09) 81–2, 86–7

Palestinian Crisis history 46–7 UN refugee involvement eligibility criteria 47–9 exclusions 48–9 and non-registered refugees 47–8 UN agencies, relationship between 48–52 ‘particular social group’ categorisation see under gender-related persecution persecution control over risks of 218–19

Piotrowicz, Ryszard 150, 155–6
Pobjoy, Jason 219 proportionality, principle of 250 prostitution child prostitution 107–8 female stereotyping 146–8, 161–3 forced prostitution, as persecution 139–40 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children see Trafficking Protocol

QD (Iraq) v SSHD [2009] 55–7
Qualification Directive see under European Union

R (on the application of Robinson) v. Sec of State for Home Dept [1997] 42, 63–4
Contemporary issues in refugee law

R (on the application of Umar) v. Sec of State for the Home Dept [2008] 304
R (on the application of Yogathas) v. Sec of State for Home Dept [2002] 43–4
Rantsev v. Cyprus and Russia [2010] 5, 151–6, 158
Rapid Border Intervention Teams 236–7

refugee camps
as alternative to refugee resettlement 20–22
as concentration camps 25
image of 21–2

Refugee Convention
Art. 1 (A–D) refugee status criteria 48–51, 96–7
Art. 1 (F) refugee status exclusions 262, 277–8, 280–82, 286–7
Art. 7 persons receiving assistance from other UN agencies 48
Art. 31 penal immunity 248
Art. 33 refoulement, restrictions on 73, 281–2
children as refugees
conference proceedings on 102–3, 112
and Convention on Rights of the Child 96–103, 113–14, 116
provisions on 93, 96–103, 116
and complementary protection doctrine 129–30
deserving, meaning of 73, 262–3, 265–6, 277–82, 285
drafting and development 31–2, 69–70, 260, 273
enforcement mechanisms 26, 42
excluded persons 8, 48–50, 72–3, 259, 277–8, 280–82, 286–7
prosecution of 9, 263–4, 282–5
gender/gender orientation, compatibility 207–13
internal relocation principle 43–4, 290–95
and abuse by non-state actors 297–9
interpretation
deserters/draft dodgers 43
limitations 27
‘particular social group’ 207–13
persecution 44–5, 210–13
UNHCR Handbook role in 41–5
non-refoulement provisions 73, 281–2
place in international law 23, 26–7, 69–70, 72–3
Preamble 261
protections under, temporary nature of 18–19
Protocol 2, 31–2
on refugees
and citizenship 73–4
excluded persons 2, 48–51, 72–4, 96–7, 259, 276–82
meaning of 14–15, 72, 96–7
receiving assistance from other UN agencies 48–50, 97
status of 2, 73–4, 276–82
war refugees 53–5
refugee law, generally
challenges 1–2
and citizenship 73–5
and global governance 63–7
and human rights/humanitarian law
importance in 26–7
interpretation, need for conformity/uniformity 127–9
relationship with 3, 23–4, 30, 72–3, 78–9, 87–8, 121–9
and surrogate protection 23–4, 30, 72–3
institutionalization, level of 66–7, 71–2
non-treaty based authorities, need for 45–6
politics of 18–22, 213–14
‘good’ nations vs. ‘bad’ 18–19
influences on 66–7
refugee resettlement, attitudes to 19–21
refugees as consequences of modern society 24
Index

refugees as temporary problem 19–21
‘safe third country’ principle 22, 242–6, 256
screening mechanisms 22
sovereignty, influence on 13, 18–19, 22, 25, 29, 255–7
state involvement trends 66–7
refugee resettlement
destination nations, attitudes to 19–20
in refugee camps 20–21
regionalization 19–20
trends 19–20
see also internal relocation
refugees
democratic regimes, relationship with 24–5
meaning of 14–15, 19
bogus refugees 29
international law interpretation 22–4, 29, 72
status of
and citizenship 73–5
as consequence of modern society 24
duties of refugees 73–4
and human dignity 74–5
and national security 80–81, 227–35
whether outside politics 24–6
trafficked persons as
protection and source control bias 4–5, 156–8, 164
and refugee status, compatibility 138–9, 140–41, 151–64
trends 1–2, 13, 19–21, 29
war refugees 53–4
subsidiary protections 54–61
‘refugees sur place’, interpretation 16–17
relocation principle see internal relocation
Russia, human trafficking 5, 151–6

Saadi v. Italy [2009] 80
‘safe third country’/’safe country of origin’ principle 22, 242–6, 256
Saul, Ben 280–81
Schengen Information System (EU) 240
Schmitt, Carl 24–6
Schmitt, Olivier 52–3
securitization, of asylum 1, 7–8
border/migration controls
mechanisms 22
purpose 240–42
and territorial sovereignty 7–8, 233–4, 236–9
detention
alternatives to 248
detention of children 252–4
facilities 250–52
forcible return, prohibition of 256
and principle of proportionality 250
private detention centres 251–2, 254
psychological/physical impact of 252–3
reasons for 248
and right to liberty 248–50, 256
trends 247–8
of vulnerable persons 252–4
international cooperation 235–42, 256
meaning of 227–8, 230
political influences on 230–32
criminalization of illegal entry 231–2, 255
human rights conflicts 255
national security, threat to 229–35
and state responsibilities 240–41
‘safe third country’ principle 22, 242–6
human rights violations by 245–6, 256
tracking/interception, of asylum seekers 235–42, 256
trends, reasons for 227–8
sexual orientation see gender-related persecution

Satvinder Singh Juss and Colin Harvey - 9781782547662
Downloaded from Elgar Online at 12/18/2018 12:30:57AM
via free access
Contemporary issues in refugee law

Simmonds, Beth 91
soft law, advantages and disadvantages 39–40, 63–6
South Korea, conscientious objectors 178–80
sovereign control and border/migration controls 7–8, 233–4, 236–9
refugees/illegal immigrants, impact on 13, 18–19, 22, 25, 29, 255–7
Spijkerboer, Thomas 213
'state of exception' 24–5
state protection, doctrine of
good faith protections vs. protection from harm 15–16
and objection to military service 191–4
and refugee crisis, relationship between 15–16
Syria, conscientious objectors 187
SZBP v. MIMIA and RRT [2005] 146–7
terrorism, threat of
and asylum, influence on policy 232–4
counter-terrorism and human rights, conflicts between 79–82, 85–7
Thailand, human trafficking 162–3
TI v. UK (App No. 43844/98) 84
Trafficking Protocol 138–9, 141–4
Art. 3 definitions 143–5
Art. 4 scope of protections 143
Art. 5 criminalization of trafficking 143
Art. 6 state obligations and discretion 149
Art. 7 status of person in receiving state 149
Art. 8 repatriation provisions 149
Art. 14 rights of trafficked persons under international law 150, 164
due diligence obligations 150, 156, 158
protections for victims under 149–50
state obligations 142–3, 150–56
Treskiba v. Canada [2009] 190
Turkey
asylum seeker detention trends 247–8
conscientious objectors 180
Ullah, Re. Application for Judicial Review [2007] 37
UNCRC see Convention on the Rights of the Child
UNHCR, generally
on child refugees
best interests principle 130–36
policy development 109–10
promotion of Convention 110–12
right to participation 118–21
and crisis nature of refugees 21
establishment and development 31, 69–70, 259–60
Procedures Directive 223
purpose 31, 70
on Refugee Convention interpretation
excluded persons 286
gender-related violence and fear of persecution 210–13
refugees obtaining aid from other UN agencies 51
see also Refugee Convention;
UNHCR Guidelines; UNHCR Handbook
UNHCR Guidelines/Notes
on categories of risk 58–9
on gender-related persecution 6, 139–40, 197–202, 206–7
evidentiary/credibility difficulties 223
human rights/humanitarian law developments 198–9
interpretation developments 199–200
‘particular social group’ categorisation 206–7
Yogyakarta Principles 199–200
on internal relocation principle 292–4
on interpretation of persecution 124–5
Index

asylum seekers, right to judicial review 249
best interests principle 135–6
on child refugees/asylum seekers 101, 135–6
on conscientious objectors 171–3, 186
detention, of asylum seekers 249–51, 254
on internal relocation 10, 290, 295, 303–5
on ‘safe third country’ principle 243
United Nations, generally
background 267
human rights treaty regime 271–3
purpose 267–71, 286–8
Universal Declaration of Human Rights 76–7, 269–70
United States
detention, of asylum seekers 247, 250, 254
on gender-related persecution 210–13
international cooperation 8, 238–9, 243
on ‘safe third country’ principle 243–4
Universal Declaration of Human Rights
Art. 1 right to human dignity 76–7
Preamble 269–70
VXZJ v. MIMIA [2006] 141–2
war crimes
exclusion from refugee status 8, 259, 262, 278–9, 284–5
war refugees
EU subsidiary protections 54–61
as special cases under UNHCR 53–4
‘well founded fear’, of persecution and refugee status, interpretation 16–17, 34–6, 70, 78–9, 273–4

Satvinder Singh Juss and Colin Harvey - 9781782547662
Downloaded from Elgar Online at 12/18/2018 12:30:57AM
via free access
and trafficked persons 144–8, 159–64
women see gender-related persecution
Working Group on Refugee Children at Risk 109–10
World Wars I and II humanitarian impact 266–7
persons excluded from refugee status 278
UN, influence on establishment 267–8, 286–7


ZH (Tanzania) v. Sec of State for Home Dept [2011] 135–6
Zolfargharkhani v. Canada [1993] 186