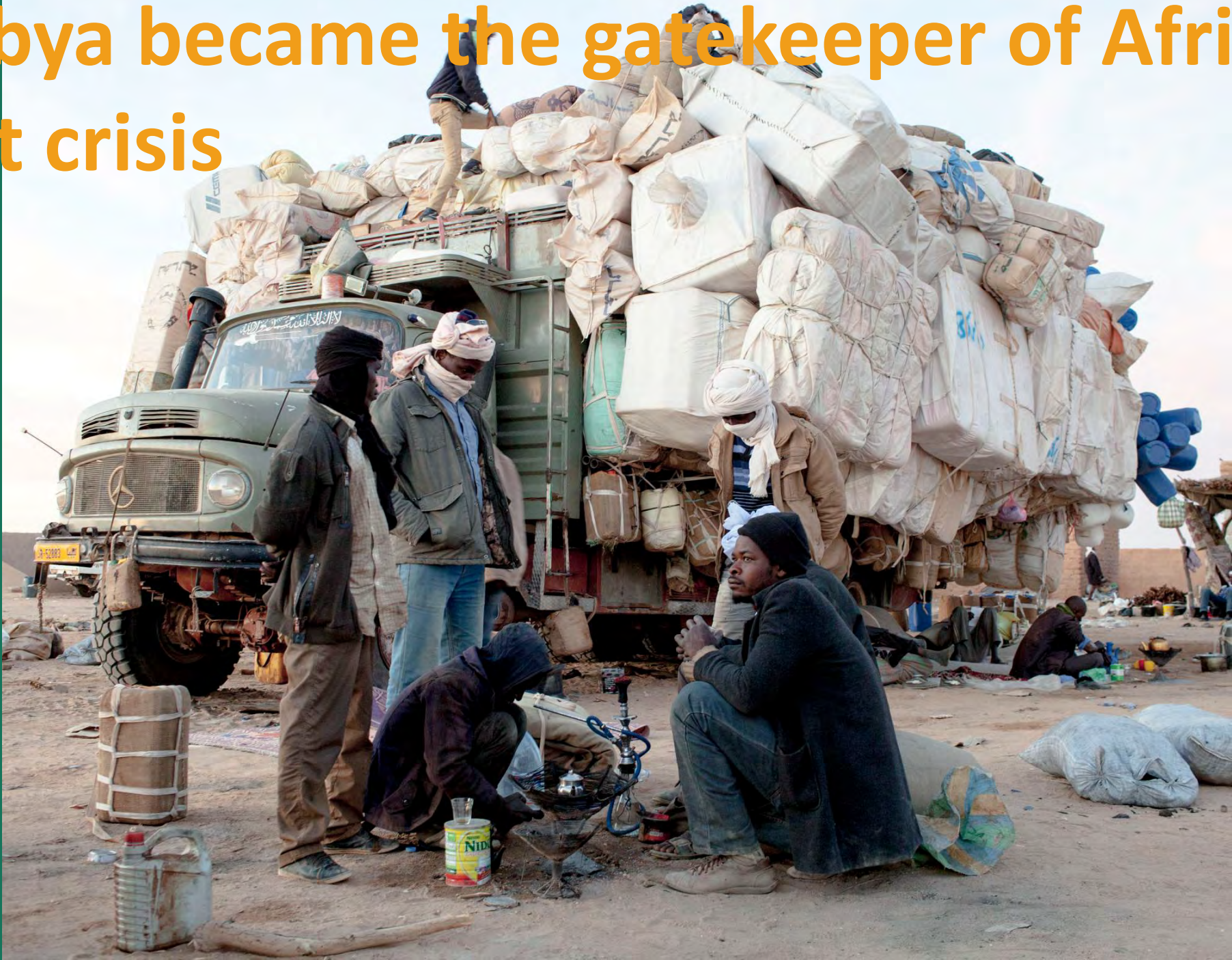


REFUGEE LAW IN CONTEXT: THE EVOLUTION OF INTERNATIONAL REFUGEE PROTECTION

Sept 11/12, 2017: Week 4-5

How Libya became the gatekeeper of Africa's migrant crisis



ANNOUNCEMENTS & SIGN UP FOR PRESENTATIONS:

1. Moamin report? Others?
2. Presentation dates—topics?

MOYNIHAN
INSTITUTE OF GLOBAL AFFAIRS

TRANSNATIONAL
NGO INITIATIVE



Ambassador Mark C. Storella
Deputy Assistant Secretary of State for Population,
Refugees and Migration

The Global Refugee Crisis – The Roles of Governments, Civil Society and International Organizations

The UN High Commissioner for Refugees estimates that today 65 million people have been forcibly displaced from their homes, of which over 22 million are refugees who have fled to escape persecution and conflict. This unprecedented level of forced displacement requires a global response. Ambassador Storella will discuss the roles of governments, international organizations, and civil society organizations in this crisis.

Ambassador Mark Storella, Deputy Assistant Secretary of State in the Bureau of Population, Refugees and Migration, is a member of the Senior Foreign Service with over 30 years of diplomatic service, including as U.S. ambassador to Zambia and Deputy Chief of Mission at the U.S. embassies in Belgium and Cambodia. He previously served as Senior Coordinator for Iraqi Refugees and Internally Displaced Persons at U.S. Embassy Baghdad. He is a graduate of Harvard College and the Fletcher School of Law and Diplomacy.

Friday, September 8, 2017
1:30pm – 3:00pm
341 Eggers Hall

For information on
accessibility, or to request
accommodation, please contact
Jusita Horan: 315-443-4927

Maxwell
Syracuse University

READINGS: WEEK 4

Finish: UN Refugee Convention 1951;

Begin: 1967 Protocol relating to the Status of Refugees;

Next up: Goodwin-Gill Basic instruments:

- 1946 Constitution of the International Refugee Organization – Extracts;
- 1948 Universal Declaration of Human Rights–Extracts: [UDHR](#) (especially Arts. 13, 14, 15)
- 1950 Statute of the Office of the United Nations High Commissioner for Refugees;
- 1967 United Nations Declaration on Territorial Asylum

Continue discussion: Irial Glynn, The Genesis and Development of Article 1 of the 1951 Refugee Convention, 25 J. OF REFUGEE STUD. Musalo et al., Ch1: The International Origins of Refugee Law (pp. 3-24)

Goodwin-Gill, Chapter 2: Refugees Defined and Described (15-50)

READINGS: WEEK 5

Week 5: Sept. 18/19 Public International Law II: Branches & Theories

Readings & Assignments:

- Musalo et al., Ch1: The International Origins of Refugee Law (37-63)
- **Selections from International Humanitarian Law (IHL) & Criminal Law:**
Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (GIV); Common Article 3; Protocols I & II; Rome Statute establishing the International Criminal Court
- UN, Human Rights Indicators: Guide to Measurement & Implementation
(skim—get familiar)
- ***Questions:*** Which regimes seem most compelling to guarantee basic protections for refugees? Why? Differences? Conditions?
- ***Research project & group presentation:*** Begin to think about what you might like to work on—individually, collaboratively?

CONTENTS

- 1. Cross-Cultural History of Concept of Refugee & Asylum in IL (Musalo, ch.1)**
- 2. History of Refugee Convention:
International Refugee Law as System to
Manage Forced Migration**
 - 1951 International Refugee Convention:
finish**
 - Thesis p/Readings**

CHAPTER 1:

Refugee & Asylum in Cross-Cultural History

THE 'BRASS TACKS' OF IL & REFUGEE LAW:

- **Where does it come from?**
- **Is it binding?**
- **Where is it located?**
- **How is it made?**
- **By whom?**

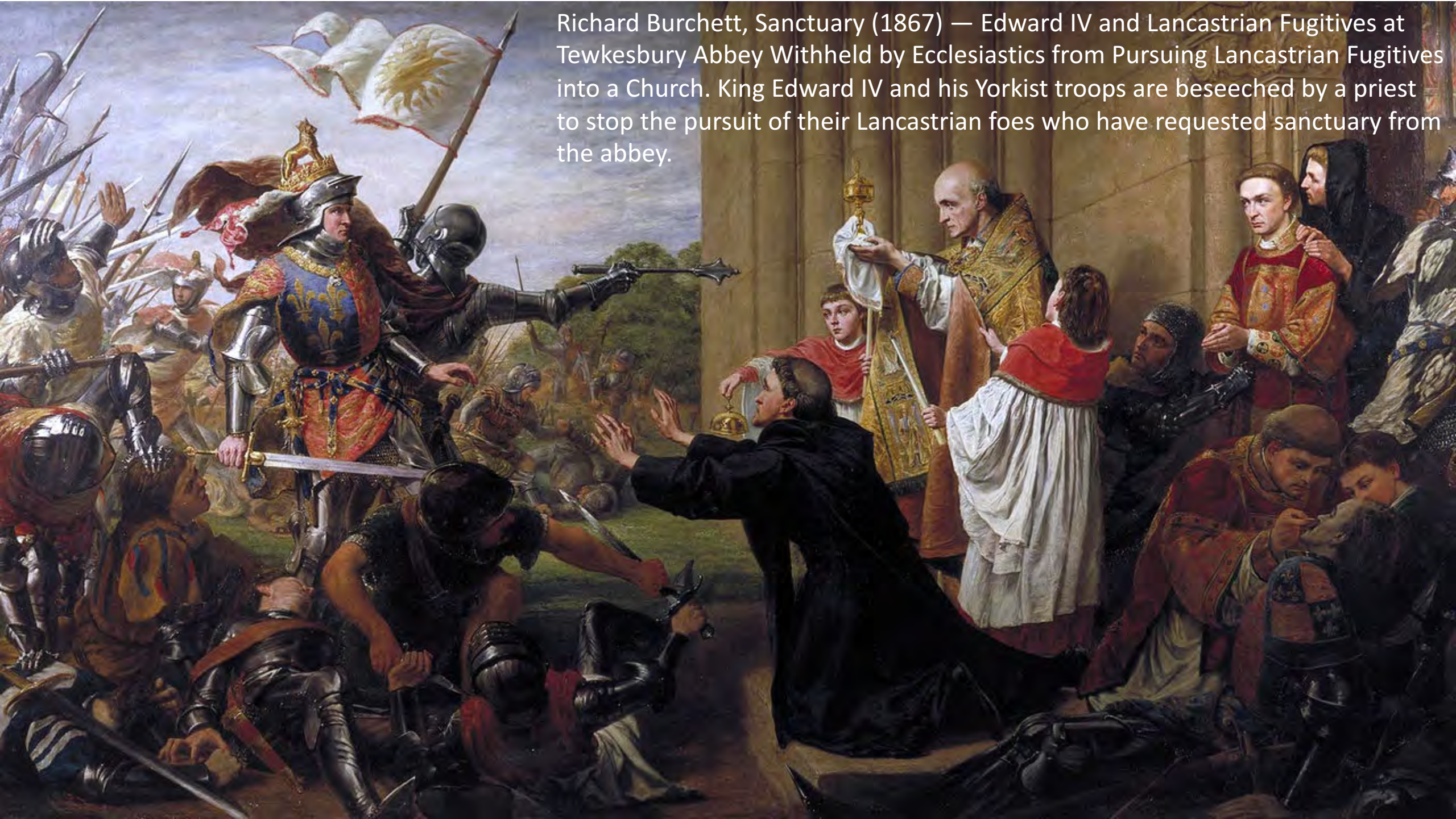
History & Origins of Refugee in IL

1. **Cross-cultural, cross-religious sheltering & protection of the stranger: which cultures? Why?**
 - Greek/Roman *xenos/xenia* (humble stranger/guest friend)
 - Rituals of hospitality: guest and host expressed in gifts, protection, shelter, favors
 - Greek god Zeus Xenios protector of guests: Theoxenia theme in Greek mythology: demonstrate mortal's virtue or piety by extending hospitality to humble stranger, really a disguised deity (theos) who bestows rewards: morality—any guest is treated as a disguised divinity
 - Islamic *ijara*: tribal/desert humanism
 - Christian sanctuary
- **Ancient harbingers of our contemporary institution of asylum ?**

Ovid, *Metamorphosis*, Book VIII: Baucis and Philemon (8 AD, Latin);
Peter Paul Rubens, 1630.



Richard Burchett, Sanctuary (1867) — Edward IV and Lancastrian Fugitives at Tewkesbury Abbey Withheld by Ecclesiastics from Pursuing Lancastrian Fugitives into a Church. King Edward IV and his Yorkist troops are beseeched by a priest to stop the pursuit of their Lancastrian foes who have requested sanctuary from the abbey.



Masjid Quba, 1st Mosque of Islamic history—Prophet Mohammad
laid first stones (622 CE): **hirja**



2. Legacy in Western cultural traditions:

- ❖ Greek/Roman concepts and model deities (Zeus) *xenos/xenia/Theoxenia* uses rituals of hospitality, protection, shelter, to demonstrate virtue by extending hospitality to stranger: **all guests may be disguised divinity → divine**
- ❖ Christian sanctuary: sacred place/shrine → **safe haven, beyond violence, the state/law**. In the church, fugitives were immune to arrest as per English law 4th-17th century. Church sanctuary is still observed—but not in legal sense.

3. Islamic/Pashtun/Mideast traditions:

- ❖ Ancient concepts of *ijara* and *aman*: tribal/desert humanism
- ❖ Pre-Islamic *istijara* or search for the *jiwar*/neighborhood: a stranger entering a bedoin tent would get protection
- ❖ Tribal hospitality is needed in desert—survival is not guaranteed without community.
- ❖ Violations of moral code (hospitality) resulted in loss of honor, cast out of community
- ❖ *Aman* (safeguard) is Islamic: temporary protection of stranger in Dar-el-Islam—legal form of Arab hospitality.
- ❖ Time frame: 3 days; 1 year (non-Muslim *Dhimmis*)

4. Right of Asylum: Summary

- ❖ Ancient juridical concept by which an individual persecuted (systematic mistreatment) by their own country is protected by another sovereign authority (supreme authority over some polity)—foreign country, medieval church sanctuaries.
- ❖ Right recognized by Egyptians, Greeks, Hebrews, Arabs, Christians, Islamic Law, etc.
- ❖ Descartes went to Netherlands, Voltaire to England, Hobbes to France—each offered protection to persecuted foreigners

5. Which of these Ideas Persist? Why?

CH 2: **HISTORY** OF THE REFUGEE CONVENTION GOODWIN-GILL; GLYNN

**Keeping in mind International
Refugee Law is a System to
Manage Forced Migration**

Development of 1951 Refugee Convention

1. League of Nations period (pre-1914-18)

- ❑ **Wars:** Balkans 1912-3; Near East Caucasus 1918-21; Greco-Turkish 1919-22; upheaval in Russia (1917)→ USSR: 1-2M refugees.
- ❑ Before WWI, Ottoman empire (young Turk Revolution 1908)—ethnonational communities at risk: Armenians, Assyrians, Chaldean, Kurds, minority Muslim groups, etc.
- ❑ Emergency relief provided most by charitable organizations: Joint Committee of the International Committee of the Red Cross & League of Red Cross Societies
- ❑ ICRC Called a Feb. 1921 organizational meeting to coordinate.
- ❑ Exchange of populations (bilateral) agreements: Treaty of Constantinople (1913); Turco-Bulgarian T (1813); Greek-Turkish Agreement (1914); Treaty of Neuilly (1919); Treaty of Lausanne (1923)

Development of 1951 Refugee Convention

2. League of Nations period (1914-18): Great War/WWI 1914-1918

- ❑ **Global war**—begun in Europe—though conditions were ripe elsewhere: Ottoman decline, Soviet revolution, etc.
- ❑ **70M military personnel (60M Europeans) mobilized**
- ❑ **Allies:** Triple Entente (Russian Empire, French 3rd Republic, UK/Great Britain (US, Japan, Italy) vs. Triple Alliance & Central Powers of Germany, Austria-Hungary (Italy, Ottoman Empire, Bulgaria)—reorganized and changed over time. Dominoes: A-H declared war on Serbia; Russia refused to demobilize so Germany attacked, invoking French alliance...
- ❑ **Trigger:** assassination of Archduke Ferdinand of Austria, heir to Austria-Hungary throne by Yugoslav nationalist 28 June 1914. A-H delivered ultimatum to Kingdom of Serbia & all previously built international alliances were invoked.
- ❑ **1918 end of empires:** German, A-H, Russia, Ottoman

Development of 1951 Refugee Convention

3. League of Nations period (1919-): Paris Peace Conf. Mandate System; Ethnic States

- ☐ National borders drawn & redrawn w/ new nations created
- ☐ German colonies given to victors
- ☐ Paris/Versailles Peace Conference 1919, Big Four (Britain, France, US, Italy, met 145X) imposed their terms in a series of treaties (32 nations, Central Powers): results
 - 1. League of Nations** formed to prevent repetition of global war/conflict.
Failed—with economic global depression, resurgent nationalisms, new, weak states, repressive terms for Germany, which contributed to WWII.
 - 2. 5 Peace treaties with defeated states:**
 - ☐ Treaty of Versailles w/ Germany—expansive reparations
 - ☐ German/Ottoman possessions redefined in terms of Mandate system (UK, France)
 - ☐ Redrawn national boundaries to correspond with ethnic belonging (not civic)

Development of 1951 Refugee Convention

4. League of Nations period (1919-): Mandate System; Ethnic States

- **League of Nations (LON):** IGO founded 10 Jan. 1920-46 as a result of Paris Peace Conf. ending WWI to maintain world peace. US never joined.
- **League of Nations mandate:** legal instruments governing status for transferred territories post-WWI or internationally agreed-upon terms to administer territory on behalf of League of Nations.
- **Established under Art. 22 of [Covenant of the League of Nations](#)** (28 June 1919): **2 governing principles**—(1.) non-annexation of post-war territory; (2.) government administration as “sacred trust of civilization” to develop territory to benefit its native people → **facilitated into progressive development as fully independent states**
- League of Nations **dissolved post-WWII**, Yalta Conf. stipulated remaining Mandates placed under trusteeship of UN, subject to future formal agreements. Most League mandates (not S-W Africa) UN Trust Territories.

Development of 1951 Refugee Convention

5. League of Nations period (1919-): Mandate System; Ethnic States

- **All territories subject to LON Mandates** were previously controlled by defeated WWI states (Germany, Ottoman empire)—formal removal of their sovereignty & transfer of mandatory powers to victors/Allied Powers:
 - Paris Peace T/Treaty of Versailles (1919: Germany)
 - 1st 26 Arts. = League Covenant: Art. 22 Mandate System
 - Legitimacy questions (League unanimity vs. Big 4): SecState Lansing, Balfour
 - Treaty of Sevres (1920); Treaty of Lausanne (1923); San Remo Conf (1920): Ottoman
- **Not-protectorates in modern IL:** dependent territory granted some local autonomy & independence while still retaining suzerainty of greater sovereign state.
- **3 Classes of Mandates by development: A, B & C:**

ARTICLE 22.

- To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, **there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.**
- The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.
- The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

ARTICLE 22. Cont.

- **Class A Mandate:** Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.
- Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for **the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes** and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

ARTICLE 22. Cont.

- There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, **can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.**
- In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.
- **The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.**
- A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

Mandates in Africa and Middle East



1. French Mandate of Syria
2. French Mandate of Lebanon
3. British Mandate of Palestine
4. British Mandate of Transjordan
5. British Mandate of Iraq
6. British Togoland
7. French Togoland
8. British Cameroon
9. French Cameroon
10. Ruanda-Urundi
11. Tanganyika
12. South-West Africa

Development of 1951 Refugee Convention

6. Post-League of Nations period (1919-): 3 Classes of Mandates by development: A, B & C:

❖ **Class A Mandates/Ottoman: Administrative advice & assistance:**

1. UK Palestine & Transjordan 1923-48

➤ **Transjordan** → independent Hashemite Kingdom of 17 June 1946, Treaty of London (1946)

➤ **PA plan for partition failed.** Mandate ended 14/15 May 1948 (14 May Jewish Agency for Palestine declared state of Israel): until 1967, West Bank (Jordan) & Egypt-occupied Gaza

2. France Syria (1923-45): Mandate included Lebanon, Hatay (Turkey), Mandate terminated with joining UN 1945 as independent states

3. UK Iraq/Mesopotamia: not enacted, replaced by Anglo-Iraqi treaty of 1922, independent 1932

Development of 1951 Refugee Convention

6. Post-League of Nations period (1919-): 3 Classes of Mandates by development: A, B & C:

- ❖ **Class B Mandates/German territories West & Central Africa seen as needing greater level of control to “guarantee freedom of conscience & religion”**
- 1. Ruanda-Urundi (Belgium) 1922-46 → UN Trust Territory 1946 → independent Rwanda & Burundi 1962**
- 2. Tanganyika (UK) 1922-46 → UN Trust Territory 1946 → Tanzania (merged with Zanzibar) 1961/4**
- 3. Kamerun split 1922 into British & French Cameroon → 1946 UNTT → 1960**
- 4. Togoland: French & British 1922-1946 → UNTT → Togo & Ghana 1956**
- ❖ **Class C Mandates: German possessions in South West Africa & South Pacific Islands: administered under laws of Mandatory due to lack of development**

Mandate Class		# of Possessions	Independence	Mandatory Role
A	Ottoman empire	<ol style="list-style-type: none"> 1. Palestine & Transjordan (UK 1923-48) 2. Syria & Lebanon (France 1923-45) 3. Mesopotamia/Iraq (UK 1923-32 Anglo-Iraqi Treaty 1922) 	All full by 1949: Syria, Lebanon, Palestine, Jordan, Israel	Advise & progressive development toward independence
B	German ruled African colonies	<ol style="list-style-type: none"> 4. Ruanda-Urundi (Belgium, 1922-46→UNTT) 5. Tanganyika (UK 1922-46 → UN TT) 6. Kamerun: British & French Cameroon (1922-46→UN TT 7. Togoland: British & French (1922-46 → UNTT 	<p>All by 1962: Rwanda, Burundi (1962)</p> <ul style="list-style-type: none"> • Tanzania (merged Zanzibar 1961) • Cameroon (1961), Nigeria (1960) • Ghana (1960); Togo (1960) 	Need greater level of control to “guarantee freedom of conscience & religion”
C	German ruled	<ol style="list-style-type: none"> 8. German New Guinea (AU 1920-1949 →UN TT 1975) 9. Nauru (AU, UK, NZ 1920-47→UNTT) 10. German Samoa (NZ-UK 1920-1947 UNTT) 11. So.Pacific Mandate (Japan 1919-47) 12. South West Africa (So Africa 1922-45 not a UN TT) 	<ul style="list-style-type: none"> • Papua New Guinea (1975) • Nauru (1968) • Samoa (1961) • Palau, Marshall Islands, Micronesia, N. Mariana Islands • Namibia (1990) 	"best administered under laws of Mandatory as integral portions of its territory"

Development of 1951 Refugee Convention

6. Result of Post-League of Nations period (1920-46): Institutional & IL Development pre-UNHCR

1. Institutions:

- Nansen International Office for Refugees (1931-38)
- Office of the High Commissioner for Refugees coming from Germany (1933-38)
- Office of the High Commissioner of the League of Nations for Refugees (1939-46)
- Intergovernmental Committee on Refugees (1938-47)

2. International protection to refugees on the basis of IL instruments developed within the League of Nations framework:

- Arrangements of 5 July 1922, 31 May 1924, 12 May 1926 defining Russian & Armenian refugees in terms of “identity certificates” for refugees → documented refugees
- **Convention relating to the International Status of Refugees, 28 Oct 1933**, States undertook real obligations for Russian, Armenian, assimilated refugees → Nansen certificates, refoulement, labor conditions, etc.

7. Convention of 1933 as Model for 1951 Refugee Convention:

- **Art. 3:** “each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures (expulsions or nonadmittance, refoulement at borders) refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security and public order.”
- **9 states ratified: France, UK**
- **Nonrefoulement acquired status of international treaty law**

8. GLYNN: *Genesis & Development of Art. 1 1951 Refugee Convention*

1. UN Economic & Social Council (ESC) directed Sec-Gen to do a study on existing refugee protections
2. IRO (IGO founded 1946) created to deal with post-WWII massive refugee crisis; assumed UN Relief & Rehabilitation Administration agency's functions (1944 founded, part of UN 1945): ethnic exclusions; Western occupied armies
3. Figures with personal experiences.

UNHCR: UN High Commissioner for Refugees *

- **December 14 Dec. 1950 formation:** League of Nations → UN → UN Relief and Rehabilitation Administration (UNRRA, 1943-47) → International Refugee Organization (IRO-IGO 1946 founded, treaty entered into force 1948, covered Western armies & no Germans, helped 10M in Europe)
- **Only supposed to operate 3 years—non-permanent body.**
- **Mandate:** provide, on a non-political and humanitarian basis, international protection to refugees and to seek permanent solutions for them; also humanitarian assistance (mission creep?)
- **No longer Euro-centric:** Hungary 1956; decolonization in 1960s Africa; birth of Bangladesh; Vietnam War; Cold War conflict
- Active in 126 countries.

League of Nations (1919-1946) Arts. 1-26 Treaty of Versailles/Paris (63 became MS 1920-1939; 42 founding members)			
1920 Founding Members	<ul style="list-style-type: none">• Argentina (left 1921, resumed 1933); Australia• Belgium; Bolivia; Brazil (w/d 1926); British Empire;• Canada; Chile (withdrew 14 May 1938); Republic of China; Colombia; Cuba; Czechoslovakia (1939 occupied by Germany)• Denmark• El Salvador (withdrew 1937)• France• Greece; Guatemala (withdrew 1936)• Haiti (withdrew 1942); Honduras (withdrew 1936)• India; Iran (Persia until 1934); Italy, Kingdom of (w/d 1937)• Japan, Empire of (w/d 1933)	<ul style="list-style-type: none">• Liberia• Netherlands; Nicaragua (withdrew 1936); Norway; New Zealand• Panama; Paraguay (withdrew 1935); Peru (withdrew 1939); Poland; Portugal• Romania (withdrew 1940)• South America; Spain (withdrew 1939); Sweden; Switzerland• Thailand (Siam before 1939)• Uruguay• Venezuela (withdrew 1938)• Yugoslavia, Kingdom of (known as Kingdom of Serbs, Croats & Slovenes until 1929)	
1920	Austria; Bulgaria; Costa Rica (w/d 1925); Finland; Luxembourg; Albania	1921	Estonia; Latvia; Lithuania (all occupied/annexed by USSR 1940)
1922	Hungary, Kingdom of (w/d 1939)	1923	Irish Free State (Ireland 1937); Abyssinia (Ethiopia)
1924	Dominican Republic	1926	Germany (w/d 1933)
1931	Mexico	1932	Turkey; Iraq, Kingdom of
1934	Union of Soviet Socialist Republics (USSR expelled 1939); Afghanistan, Kingdom of; Equator	1937	Egypt, Kingdom of

CHAPTER 3:

Theses: Readings →
Goodwin-Gill, Glynn, Musalo
Student Volunteers

1. Irial Glynn, “The Genesis and Development of Article 1 of the 1951 Refugee Convention”:

- Art 1. definition of Refugee emerges in **contestation**, one ongoing
- Many perspectives but 2 still relevant: (1.) American restrictive legal (enumerated categories) vs. (2.) cosmopolitan, open, ‘political’ or ‘humanitarian’ refugee definition. This resettled post-WWII displaced but shut the door to future unwelcomed guests (7 UNRWA; 8)
- This debate is thus no new phenomenon—but a historical structural feature of the Convention: our own modern continuation of contrasting views put forward by different people, agencies, nations in formation of 1951 Refugee Convention.
- **Epigraph:** Why should we care? ‘The less clear the definitions are, the more scope there will be for divergences of interpretation’

CHAPTER 4:

Text of the 1951 Convention Relating to the Status of Refugees

Articles 1-2:

- **Source norms:** Art. UN Charter (1945) on human rights & 14 UNHCR (1948) recognizes right of persons to seek asylum from persecution in other countries—not a treaty...
- Recommendations, Preamble & State Parties—**nonwestern**
- Art. 1 Definition refugee (A-F): exclusions
- Art. 2 **Duties of refugee:** Every refugee has duties to the country in which he finds himself, conform to its laws and regulations, public order.

Legal Definition of Refugee & Asylum

Art. I of the 1951 Convention as amended by 1967 Protocol:

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

Article 13.

UDHR 1948

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

CHARTER OF THE UNITED NATIONS

AND

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE



SAN FRANCISCO · 1945

CHARTER OF THE UNITED NATIONS

WE THE PEOPLES OF THE UNITED NATIONS
DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS
TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

DEFINITION OF THE TERM "REFUGEE"

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1933, or the Statute of the International Refugee Organization; Decisions of non-eligibility taken by the organization during the period of its activities; or

(2) As a result of events occurring since 1 January 1979 and founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group or political opinion outside the country of habitual residence if the person has no other country to which he or she is unwilling to avail himself or herself of protection;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

Ch1. General Provisions

GOODMAN-GILL: CH1, REFUGEE DFN

1. **Law limits definition of refugee (Art. 1)—**
excludes (i.e., economic, whose solution lies in development & immigration policy).
2. **History: Legal instruments 1922-46—group or category of persons approach:**
 - League of Nations (1920-1946): outside their nation; without protection of State
 - Selective political process-Russians, Germans, WWII victims (not all)→ political

GOODMAN-GILL: CH1, REFUGEE IN IL

1. Refugee in IL occupies a place of **tension**: State sovereignty (territorial integrity, self-preservation) vs. humanitarian aspiration & obligations.
2. Let's not forget that tension—in such spaces are **politics, power**. That's where law comes in, to try to equalize/regulate power.
3. How to maximize this tension for benefit of refugees—making State sovereignty interests into an asset (not obstacle).

B.(1) For the purposes of this Convention, the words “events occurring

before 1 January 1951” in article 1, section A, shall be understood to mean either:

- (a) “events occurring in Europe before 1 January 1951”; or
- (b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
- (6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Articles 3-13:

- **Art. 3: Non-discrimination** in applying convention as per race, religion, country origin.
- **Art. 4: On religion**, accord refugees same treatment as nationals.
- **Art. 5:** Convention doesn't impair other domestic refugee rights.
- **Art. 9:** war, national security, exceptional states can impact determination of refugee status.
- **Art. 13:** accord to refugee treatment as favourable as possible (not less than aliens) as per property.

Article 2

GENERAL OBLIGATIONS

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3

NON-DISCRIMINATION

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4

RELIGION

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

Article 5

RIGHTS GRANTED APART FROM THIS CONVENTION

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6

THE TERM “IN THE SAME CIRCUMSTANCES”

For the purposes of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

EXEMPTION FROM RECIPROCITY

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8

EXEMPTION FROM EXCEPTIONAL MEASURES

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9

PROVISIONAL MEASURES

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10

CONTINUITY OF RESIDENCE

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.
2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article II

REFUGEE SEAMEN

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II: Juridical Status

Article 12

PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13

MOVABLE AND IMMOVABLE PROPERTY

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14

ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic, and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Articles 15-19:

- **Art. 15: Right of association:** as per non-political and non-profit-making associations, trade unions, states shall accord refugees most favourable treatment (foreign nationals).
- **Ch3: Employment, Art. 17-19:** right to work—most favorable treatment as per foreign national.

- 1) Art. 13 Movable/Immovable Property
- 2) Art. 15 Rights of Association



Migrants & refugees from Iran mouths sewn shut sit on railway tracks as they wait to cross the Greek-Macedonian border on (Nov. 2015)

REFUGEE 27 JANUARY 2016

Danish MPs approve seizing valuables from refugees

Package of measures to deter asylum seekers passed, including confiscation of cash and valuables exceeding \$1,450.



Article 15

RIGHT OF ASSOCIATION

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16

ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III: Gainful Employment

Article 17

WAGE-EARNING EMPLOYMENT

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
 - (a) He has completed three years' residence in the country;
 - (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;
 - (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18

SELF-EMPLOYMENT

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19

LIBERAL PROFESSIONS

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Article 20
RATIONING

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21
HOUSING

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22
PUBLIC EDUCATION

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

CHAPTER IV: Welfare

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23

PUBLIC RELIEF

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

LABOUR LEGISLATION AND SOCIAL SECURITY

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

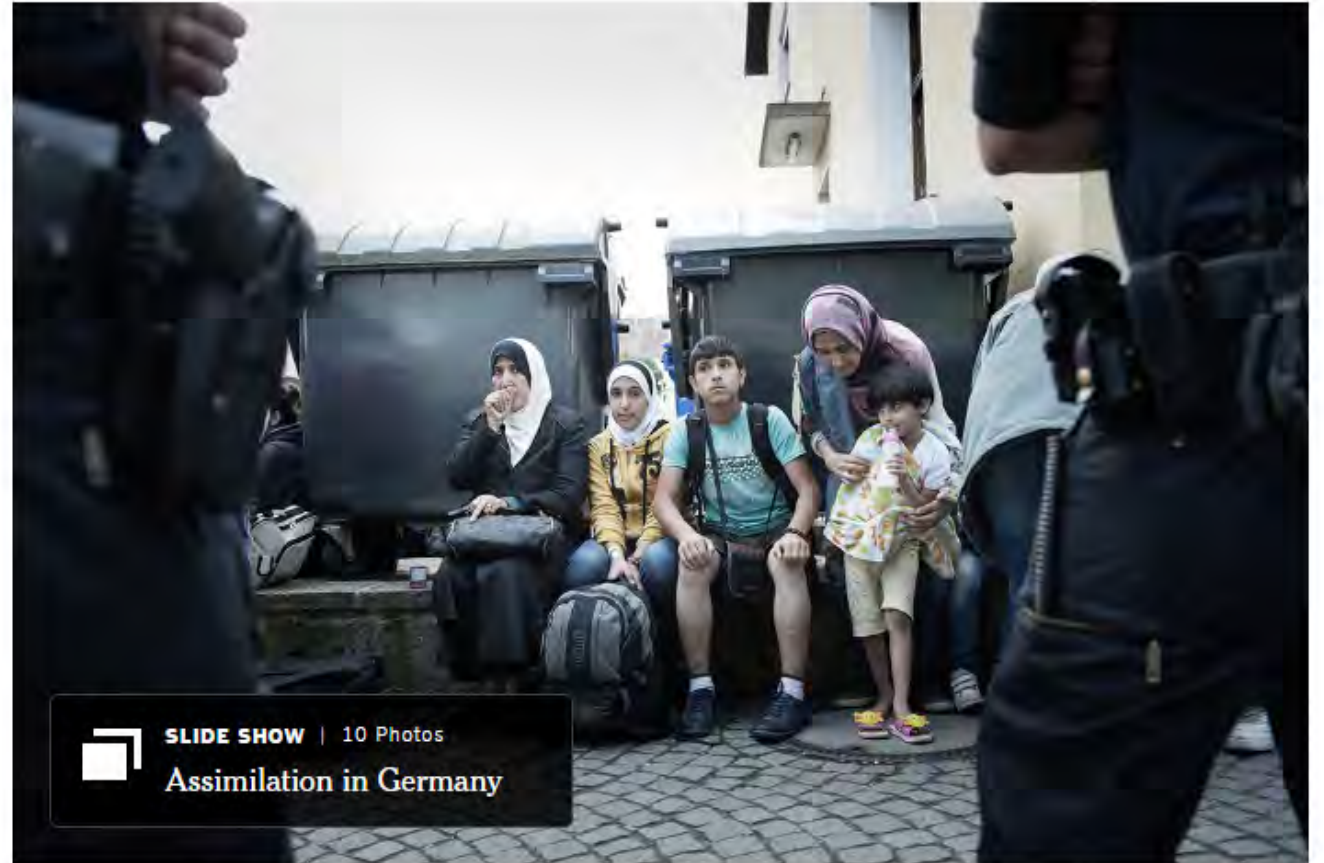
(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

- 1) Art. 17 Wage
earning
Employment
- 2) Common language:
 - ❖ “as favorable as possible”
 - ❖ “accorded the same treatment” as nationals, foreign aliens, immigrants
 - ❖ “sympathetic consideration”

Germany Works to Get Migrants Jobs

By LIZ ALDERMAN SEPT. 17, 2015



SLIDE SHOW | 10 Photos
Assimilation in Germany

Laetitia Vancon for The New York Times

PASSAU, Germany — As [Germany](#) struggles with [a surge of migrants](#) and has at least temporarily clamped down on new arrivals, Nematullah Jasor may serve as a symbol of the way forward.

CHAPTER 2: ARTS. 20+

Ch4: Welfare

- **Art. 20. Rationing:** same treatment as nationals.
- **Art.21. Housing:** accord to refugees as favorable as possible—not less favorable than aliens in same circumstances.
- **Art.22. Public education:** 1. elementary ed.—same treatment as nationals. 2. Beyond, not less favorable than to aliens & recognition of foreign certificates, diplomas, degrees...
- **Art. 23. Public Relief:** same treatment as nationals.

Arts 24-28

- **Art. 24. Labor & Social Security:** accord to refugees lawfully staying in their (Same pay, benefits)
- **Art. 25: Administrative assistance:** Contracting state will help with assistance from foreign state authorities for documents, certifications, etc.
- **Art. 26. Freedom of movement:** shall accord to refugees right to choose place of residence to move freely subject to regulations applicable to aliens.
- **Art. 27 & 28. Identity papers/Travel docs:** State will provide...

Arts 29-31

- **Art. 29. Fiscal charges:** will not impose upon refugees duties, charges or taxes higher than those
- levied on nationals
- **Art. 30: Transfer of assets:** enabled to transfer those to a resettlement country.
- **Art. 31. Refugees unlawfully in country:** shall not impose penalties on account of illegal entry or presence from territory in which their life was threatened in Art. 1 definition, **provided...**

- 1) Art. 26 Freedom of Movement—is it free? Standard?
- 2) Art. 27 Identity papers
- 3) Art. 31 Unlawful entry (Ayan Hirsi Ali)
- 4) Art. 32/33 Expulsion—is this *refoulement*? Why does NS trump status?

'Merkel out!': PEGIDA supporters vent fury after Cologne attacks

#Refugees

Police fired tear gas and water cannon at far-right protesters angry at Germany's open policy towards receiving refugees



German far-right supporters demonstrate at Cologne's train station on 9 January, 2016 (AFP)



MEE and agencies

Saturday 9 January 2016 15:47 UTC

Last update: Saturday 9 January 2016 23:49 UTC



15



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149

Arts. 33

- **Art. 32. Expulsion:** 1. shall not expel a refugee lawfully in their territory save on grounds of national security or public order; 2. in accordance with due process of law. 3. reasonable period to relocate...
- **Art. 33: Prohibition on return/refoulement:** 1. no state shall expel a refugee to territories where his life or freedom is threatened on account of race, religion, nationality, membership. 2. Benefit of provision may not be claimed by refugee whom there are reasonable grounds for regarding as a danger to security, convicted of serious crime. danger to community

Arts. 34-35

- **Art. 34. Naturalization:** Make every effort at assimilation and naturalization...
- **Ch6: Art.35. Cooperation of State w/UN:** 1. cooperation with UNHCR, 2. reports/data.
- **Art. 36** Provide information to UN on Convention implementation.
- **Art.36.** Replaces prior conventions.
- **Art. 38-46:** Procedural e.g. Settlement of Disputes: ICJ.

CHAPTER 3:

Beyond Words/IL: How the System Evolves & Works?

NY case
Protocol

Procedural Issues...

- 1) Art. 35 Cooperation with UNHCR/High Commissioner for Refugees (Refugee Agency)
 - ❑ First role—provide data: conditions of refugee; Convention implementation; domestic laws in force
- 2) Conflict of interpretation on Convention/Protocol → International Court of Justice
- 3) Art. 39: Ratification process: when and where (occupied territories as in Art. 40)
- 4) Art. 42 Reservations—exceptions

VIENNA CONVENTION¹ ON THE LAW OF TREATIES

The States Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

¹ Came into force on 27 January 1980, i.e., on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 84 (1):

State	Date of deposit of the instrument of ratification or accession (a)	State	Date of deposit of the instrument of ratification or accession (a)
Argentina*	5 December 1972	Morocco*	26 September 1972

ples of international law embodied in the Charter of principles of the equal rights and self-determination equality and independence of all States, of non-irs of States, of the prohibition of the threat or use of or, and observance of, human rights and fundamental

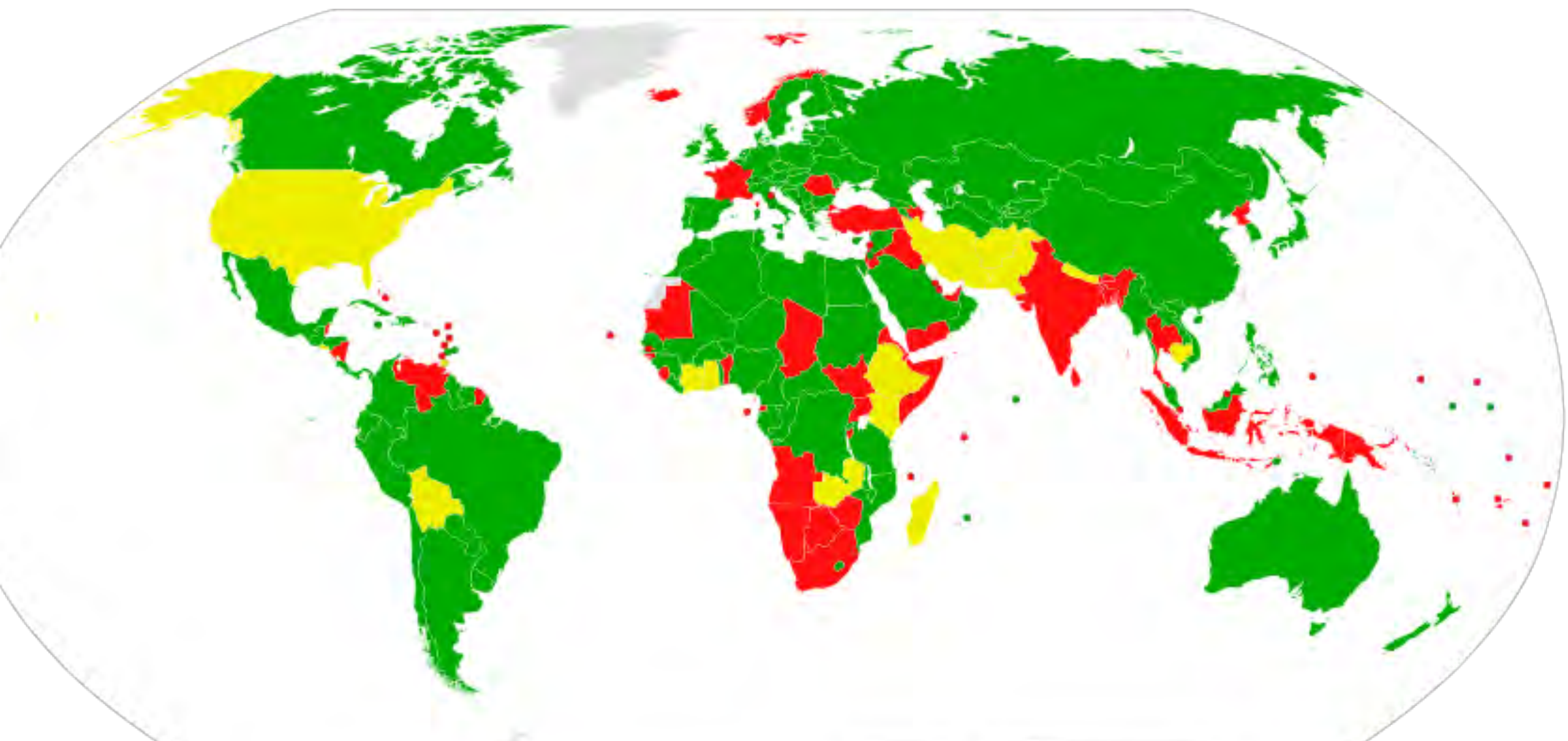
.., on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 84 (1):

Date of deposit of the instrument of ratification or accession (a)	State	Date of deposit of the instrument of ratification or accession (a)
ber 1972	Morocco*	26 September 1972
1974 a	Nauru	5 May 1978 a
1979 a	New Zealand	4 August 1971
1971	Niger	27 October 1971 a
er 1970 a	Nigeria	31 July 1969
ber 1971 a	Paraguay	3 February 1972 a
ber 1976 a	Philippines	15 November 1972
1976	Republic of Korea	27 April 1977
t 1977	Spain	16 May 1972 a
er 1974 a	Sweden	4 February 1975
iry 1977	Syrian Arab Republic*	2 October 1970 a
iber 1979	Togo	28 December 1979 a
1974	Tunisia*	23 June 1971 a
1970	United Kingdom of Great Britain and Northern Ireland*	25 June 1971
iber 1975 a	United Republic of Tanzania*	12 April 1976 a
1972 a	Yugoslavia	27 August 1970
y 1973 a	Zaire	25 July 1977 a

force for the following State on the thirtieth day following the date of accession with the Secretary-General of the United Nations, in accordance with

Date of deposit of the
instrument of accession (a)
3 January 1980 a

.)
I declarations made upon ratification or accession, see p. 501 of this volume.



Vienna Convention on the Law of Treaties (signed 1969; force 1980) By 2014, 114 states ratified (192) UN Member States; 15 signed

Protocol relating to the Status of Refugees

The Protocol was taken note of with approval by the Economic and Social Council in resolution 1186 (XLI) of 18 November 1966 and was taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966. In the same resolution the General Assembly requested the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol. **Entry into force 4 October 1967, in accordance with article VIII**

CHAPTER 3: LAST WEEK

Right of Asylum:

- ❖ Ancient juridical concept by which an individual persecuted (systematic mistreatment) by their own country is protected by another sovereign authority (supreme authority over some polity)—foreign country, medieval church sanctuaries.
- ❖ Right recognized by Egyptians, Greeks, Hebrews, Arabs, Christians, Islamic Law, etc.
- ❖ Descartes went to Netherlands, Voltaire to England, Hobbes to France—each offered protection to persecuted foreigners

1. Migration vs. Forced Migration

- **Migration/Immigration:** Movement of people into destination country of which they are not natives or do not possess citizenship to settle as permanent residents, naturalized citizens, temporary, migrant, or foreign worker.
- **Forced Migration:** The movement of refugees and internally-displaced people by conflicts, natural, man-made disasters, famine, development projects, climate, etc. (IASFM)
- **Types of Migration** based on causal factors are conflict-induced displacement; development policies and projects displacement; disaster-induced displacements.

2. Legal Definition of Refugee & Asylum

Art. I of the 1951 Convention as amended by 1967 Protocol:

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

2. Legal Definition of Refugee & Asylum

Asylum: Discretionary provision by States of formal legal status to refugees, defined as individuals with a well-founded fear of persecution on one of 5 enumerated grounds.

Non-Refoulement: the absolute obligation, a *jus cogens* or peremptory norm, on state parties not to return refugees to countries in which their lives or freedom would be threatened (M5).

3. Categories of Forced Migrant: Status Hierarchy

- 1. Refugees:** Legal definition enshrined in 1951 Convention, Art. 1: person residing outside country of nationality, unable or unwilling to return due to “well-founded fear” of persecution by race, religion, nationality, political/social group or opinion.
 - **Best off of all forced migrants—clear legal status & entitled to protection of the UN Refugee Agency (UNHCR)**
- 2. Asylum seeker:** migrant who has moved across international border in search of protection—but refugee status is TBD.

Categories of Forced Migrant: Hierarchy (cont.)

3. Internally displaced persons (IDP): Persons forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters, and who are within the territory of their own country:

➤ **internal refugees do not have same legal status & institutional support as those who cross international borders.**

4. Development, environmental & disaster displaces:
external or internal

Categories of Forced Migrant: Hierarchy (cont.)

5. Smuggled persons: moved illegally for profit; partners in illegal (unequal) transaction

6. Trafficked persons: coerced or moved illegally for exploitation; profit often comes from their sale and exploitation (services, labor).

7. Stateless persons *: Art. 1 Convention relating to the Status of Stateless Persons (1954): lack of citizenship; a person who is not considered as a national by any State under the operation of its law.

5. Refugee Law: US Domestic Law

- ❖ Legal mechanisms by which individuals fleeing persecution may be granted asylum (or withholding of deportation).
- ❖ US Code: TITLE 8—ALIENS & NATIONALITY
Immigration and Nationality Act (INA)
- ❖ US law: which individuals may find refuge in US—regulating, restricting access (M4)

6. International Refugee & Asylum Law:

- ❖ Based in IL—treaties, customs, *opinio juris*, principles
- ❖ IL = legal responsibilities of States in conduct w/ each other, international entities, global commons (Law of the Sea, space) individuals (rarer)
- ❖ Interdependent constellation of legal sources in public international law: IHL, Refugee Law, IHRL
- ❖ **Tension:** UNHCR (v. States) charged with vindicating the rights of all victims of persecution, deprived of formal or effective protection by states of origin (M4)

6. International Refugee Law (cont.):

- ❖ Only after status determined—international legal personality of refugees recognized—do states have a basis for providing domestic legal protections (asylum).
- ❖ When states deny asylum, work of UNHCR begins—how to provide solutions when states won't provide protection.
- ❖ **Musalo:** “dilemmas of refugee protection in an inter-state system emphasizing the prerogatives of national sovereignty...” Advocacy...

Parties to 1951 and 1967 Convention & Protocol

- The Convention was drafted and signed by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to General Assembly resolution 429 (V) of 14 December 1950. The Convention was adopted on 28 July 1951; in accordance with Article 43, it entered into force on 22 April 1954. The Protocol was adopted on 31 January 1967; it entered into force on 4 October 1967 in accordance with its Article VIII.

States Parties (as of April 2015)ⁱ

Total number of States Parties to the 1951 Convention:	145
Total number of States Parties to the 1967 Protocol:	146
States Parties to both the Convention and Protocol:	142
States Parties to one or both of these instruments:	148

States Parties to the 1951 Convention only:

Madagascar, Saint Kitts and Nevis

States Parties to the 1967 Protocol only:

Cabo Verde, United States of America, Venezuela (Bolivarian Republic of)

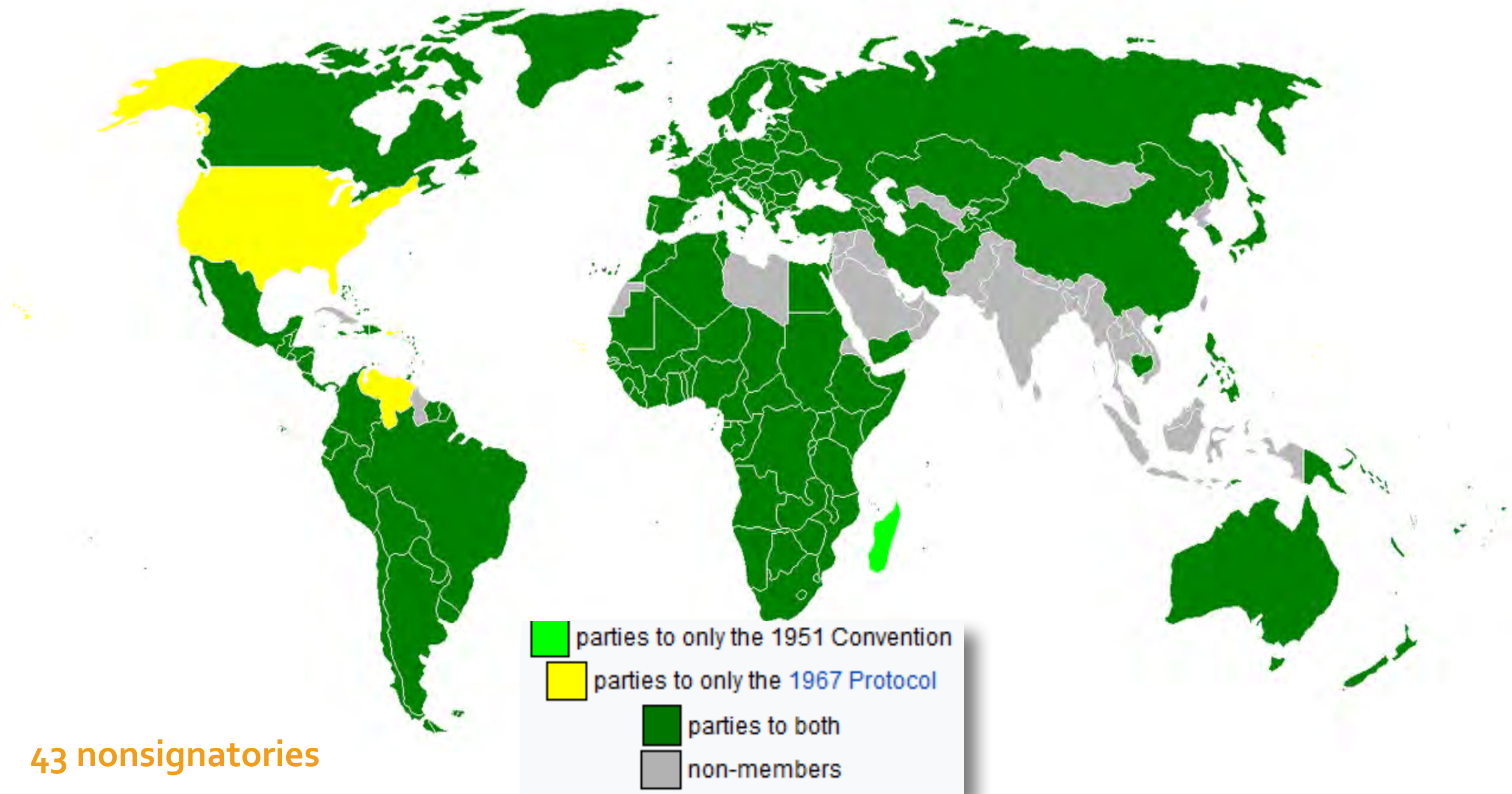
9. GLYNN: *Genesis & Development of Art. 1 1951 Refugee Convention*

❖ **Tension:** Why, if refugees represent such a broad array of people, did the definition contained in the 1951 Convention maintain that a person fleeing a natural disaster or a civil war failed to qualify (Teitelbaum 1984: 75), unless they had 'a well-founded fear' of persecution?

9. GLYNN: *Genesis & Development of Art. 1 1951 Refugee Convention*

❖ Answer:

1. Longstanding **tension**—who in different eras & circumstances can claim this right (and responsibility)?
2. **Conventional**—the Convention sets the definition. Law is formalized agreements (contract) with exclusions/inclusions



Legal Definition of Asylum & NR

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- ❖ **Musalo:** “dilemmas of refugee protection in an inter-state system emphasizing the prerogatives of national sovereignty...” Advocacy...

INTERNATIONAL MIGRATION LAW (IOM):

- No comprehensive legal instrument or framework governs migration, a set of legal rules constrain, regulate, and channel state authority over migration.
- Rules created via state-to-state relations, negotiations & practice
- Framework for cooperative migration governance: Reflects primarily the interests of states, their nationals and interstate relations
- Non-binding instruments and multilateral and bilateral treaties
- There are customs
- Recognition of human rights of migrants and need for HR promotion and protection by states
- IGO: International Organization for Migration (IOM) 1951 migration management frameworks (160+ member states).

APPENDIX: CHAPTER 1:

Last Time: Takeaways?

Why study international legal dimensions to the movement of peoples?

1. Unprecedented people on the move globally—not since WWII, Refugee Convention 1951: 65M displaced; 21M refugees; most kids
2. Challenge our assumptions: Developing World/Global South is shouldering burden in hosting nations and sending nations
3. Tells us about our new conditions and challenges: Globalization; Technological revolutions (info, transport, communication); climate change (climate refugees)
4. Longstanding preoccupation of IC—since 1948 UN Charter: Why? State system depends upon population regulation & flows, as does peace, security, territorial integrity
5. Getting migration right defines the governance strength of a state—sovereign integrity

Proximate & long-term causes? Causes indicate potential solution areas...

- Conflict & postconflict transition
- Persecution, Oppression
- Economics
- Climate change
- Governance & repression
- Lack of rule of law
- Globalization: economic integration, information & transportation revolutions

What role can law and policy play? Why interdisciplinarity?

1. Rule-based approach to stubborn social problems
2. Public policy recognizes certain problems impact everyone—some obviously worse—hence, we need a collective action solution.
3. Need social scientific perspectives & empirical basis, data for best laws & policies.
4. Without these tools, migration dynamics can get worse—security, development & humanitarian implications.

CHAPTER 1:

Last Time? Key Definitions & Additions...

law, n.1

View as: Outline | [Full entry](#)

OED | Oxford English Dictionary
The definitive record of the English language

Pronunciation: Brit.  /lɔː/, U.S.  /lɒ/,  /lə/

Forms: OE **lagu** (oblique cases *lage*, nom. and acc. pl. *laga*, once *lagan*; in comb. *lah-*), ME ... ([Show More](#))

Frequency (in current use): ●●●●●●●●

Etymology: Late Old English (c1000) *lagu* strong feminine (plural *laga* ... ([Show More](#))

I. A rule of conduct imposed by authority.

* *Human law.*

1.

a. The body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding on its members or subjects. (In this sense usually *the law*.) †Also, in early use, a code or system of rules of this kind.

[As the word was in Scandinavian a plural, though adopted in Old English as a singular, this collective sense is etymologically prior to that of 'specific enactment' (sense 2).]

a1000 *Laws of Ethelred* (Schmid) vi. c. 37 gif he hine laðian wille..do ðæt be ðam deopestan aðe..on Engla lage, and on Dena lage, be ðam ðe heora lagu si.

11.. *Anglo-Saxon Chron.* anno 1064 (Laud) He niwade ðær Cnutes lage.

c1275 (• ?a1200) *LA3AMON Brut* (Calig.) (1963) l. 3143 þa madeð heo ane læ3e [c1300 *Otho* la3e] and læide 3eon þat leode.

a1400 (• a1325) *Cursor Mundi* (Vesp.) l. 19270 þe wick þai hald þe lagh for drede.

a1500 (• c1425) *ANDREW OF WYNTOUN Oryg. Cron. Scotl.* (Nero) iv. l. 672 [He] gouernyt wiþe lauche þe lande.

1548 *Hall's Vnion: Henry VIII* f. ccxlvii All offices had by dower..to be confiscat & spent to the vse and custome of the law.

1600 *SHAKESPEARE Merchant of Venice* iv. i. 175 The Venetian law cannot impugne you as you doe proceed.

1662 *Bk. Common Prayer* Pref. Injoynd by the Lawe of the Land.

1726 *SWIFT Gulliver* II. iv. v. 69 But he was at a Loss how it should come to pass, that the Law, which was intended for every

Law = System of rules designed, developed, and enforced through government institutions to regulate individual & social behavior

Structure of forms of traditional law-making in Western societies:

1. Legislators → Legislation → resulting in statutes
2. Executive-made law: regulations, administrative law, executive orders
3. Judge-made law: precedent, case law
 - Common law systems: precedent as binding
 - Civil law systems (legislature codifies, centralizes) e.g., EU, Canon law
4. Criminal & Civil law:
 - Conduct considered harmful to society, social order, can result in criminal punishment, guilt, imprisonment
 - Resolution of disputes between individuals and organizations, victim compensation vs. punishment for crimes

Definitions:

1. International Law: Rule-based systems governing relations between states:

- States-made law
- Framework for international relations
- Generally, consent-based governance (global governance)—state not obligated to abide by rules unless expressly consented to a particular code of conduct

2. Source? Where defined?

- Long predates UN Charter (1945), but a good place to see formalized IL
- ICJ/World Court, Peace Palace, The Hague, Netherlands (all 193 parties)

CHARTER OF THE UNITED NATIONS
AND
STATUTE OF THE
INTERNATIONAL COURT OF JUSTICE



SAN FRANCISCO · 1945

CHARTER OF THE UNITED NATIONS

WE THE PEOPLES OF THE UNITED NATIONS
DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS
TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Sources of International Law:

- 1. Treaties between States:** source of obligation under law
- 2. Custom:** Customary international law & peremptory norms (*jus cogens*) derived from the practice of States (overriding principles of IL from which no derogation is ever permitted)
- 3. General principles of law recognized by civilized nations;** and as a subsidiary means for the determination of rules of international law
- 4. Judicial decisions** and the writings of the most highly qualified publicists

Sources of IL: Art. 38, Statute of International Court of Justice

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

The **Statute of the International Court of Justice** integral part of UN Charter as specified by Ch. 14 (Charter) which established ICJ. The statute's chapters are:

- Chapter I: Organization of the Court (Articles 2 - 33)
- Chapter II: Competence of the Court (Articles 34 - 38)
- Chapter III: Procedure (Articles 39 - 64)
- Chapter IV: Advisory Opinions (Articles 65 - 68)
- Chapter V: Amendment (Articles 69 & 70)

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Treaties between States:

Vienna Convention on the Law of Treaties (Vienna 23 May 1969):

- **"Treaty"**: international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation
- **Agreements, Conventions, Exchanges of Notes, Protocols—main source of IL (States/IGOs)**
- Why binding on States parties? A rule of customary IL – *pacta sunt servanda* (*agreements must be kept*)– which requires all States to honor their treaties. Sources of obligation under law.

Art2(1) &(7): Sovereignty

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

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Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international

disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

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CHAPTER II MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

VIENNA CONVENTION¹ ON THE LAW OF TREATIES

The States Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

¹ Came into force on 27 January 1980, i.e., on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 84 (1):

State	Date of deposit of the instrument of ratification or accession (a)	State	Date of deposit of the instrument of ratification or accession (a)
Argentina*	5 December 1972	Morocco*	26 September 1972

ples of international law embodied in the Charter of principles of the equal rights and self-determination equality and independence of all States, of non-irs of States, of the prohibition of the threat or use of or, and observance of, human rights and fundamental

.., on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 84 (1):

Date of deposit of the instrument of ratification or accession (a)	State	Date of deposit of the instrument of ratification or accession (a)
ber 1972	Morocco*	26 September 1972
1974 a	Nauru	5 May 1978 a
1979 a	New Zealand	4 August 1971
1971	Niger	27 October 1971 a
er 1970 a	Nigeria	31 July 1969
ber 1971 a	Paraguay	3 February 1972 a
ber 1976 a	Philippines	15 November 1972
1976	Republic of Korea	27 April 1977
t 1977	Spain	16 May 1972 a
er 1974 a	Sweden	4 February 1975
iry 1977	Syrian Arab Republic*	2 October 1970 a
iber 1979	Togo	28 December 1979 a
1974	Tunisia*	23 June 1971 a
1970	United Kingdom of Great Britain and Northern Ireland*	25 June 1971
iber 1975 a	United Republic of Tanzania*	12 April 1976 a
1972 a	Yugoslavia	27 August 1970
y 1973 a	Zaire	25 July 1977 a

force for the following State on the thirtieth day following the date of accession with the Secretary-General of the United Nations, in accordance with

Date of deposit of the
instrument of accession (a)
3 January 1980 a

.)
I declarations made upon ratification or accession, see p. 501 of this volume.

Custom: Customary international law & peremptory norms (*jus cogens*) derived from the practice of States

- Oldest source of IL—rules binding upon states
- Not a written source (unlike treaties)
- E.g. requiring States to grant immunity to visiting head of State
- 2 elements:
 1. Widespread and consistent State practice (settled)
 2. *Opinio Juris*: a belief in legal obligation/duty

INTERNATIONAL LAW: SOURCES

Sources: Customary law (consistent state practice + *opinio juris* or sense of legal obligation, codified in [Vienna Convention on the Law of Treaties](#)); Conventions or treaties, international agreements by contracting parties following IL basic standards of international conduct by member states under UN Charter); jurisprudence; general principles common to systems of national law (secondary source of international law).

Peremptory norms (*jus cogens*), permitting no derogation.

Consent-based governance

TREATY IN INTERNATIONAL LAW:

Treaty: formal agreement between sovereign states in writing; central to the conduct of international relations: Treaties of Westphalia (1648), foundation of the modern state system; Treaty of Paris (1814), defined the end of the Napoleonic era; Versailles Treaty (1919), informed world leaders how *not* to secure postwar peace; modern system of world trade in 1948 General Agreement on Tariffs and Trade; 1995 Marrakesh agreement creating the World Trade Organization; post–World War II security arrangements 1949 North Atlantic Treaty and 1955 Warsaw Pact; 1960s human rights treaties creating the “rights revolution.” Agreement, protocol, covenant, pact, etc.

ICJ opinions

‘Not only must the acts concerned be a settled practice, but they must also be such, or be carried out in such a way, as to be **evidence of a belief that this practice is rendered obligatory by the existence of a rule requiring it. ... The States concerned must feel that they are conforming to what amounts to a legal obligation.**’ (*North Sea Continental Shelf* cases, ICJ Reps, 1969, p. 3 at 44)

‘In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should in general be consistent with such a rule; and that **instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule.**’ (*ICJ in Nicaragua* ICJ Reps, 1986, p. 3 at 98.)

STATE: KEY UNIT OF INTERNATIONAL SYSTEM

1. With Peace of Westphalia (1648), from 17-19th centuries European development of concept of **sovereign "nation-state"**: why?
2. **Sovereign state** under IL: juridical entity represented by one central government w/ sovereignty over geographic area & boundaries.
3. In IL sovereign states have **4 features**: regular/permanent population, defined territory & boundaries, one government; capacity to enter into state relations: 1933 Montevideo Convention on the Rights and Duties of States
4. Sovereign—not dependent nor subjected to any other power or state.

HISTORY, INTERNATIONAL SYSTEM, UNITS

- ❖ The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.
- ❖ **Nation (cultural entity) + State (political entity)**
- ❖ **Nationalism—defined often by ethnicity, language, cultural heritage, ancestry**
- ❖ **Civic definitions of belonging—US (not “race,” ethnicity).**

GLYNN: *Genesis & Development of Art. 1* *1951 Refugee Convention*—why emphasize Definitions in Law?

- ❖ Epigraph: 'The less clear the definitions are, the more scope there will be for divergences of interpretation' Michael Hacking (IRO) to Paul Weis (IRO), 4 February 1950
- ❖ 19th revolutionary refugees who wandered Europe: Mazzini, Marx, Bakunin (18th century too) vs.
- ❖ 20th century refugees are not those who 'dared to defy established powers with the pen, the revolver, or in armed campaigns'—but people escaping persecution, wars and humanitarian disasters: E.g. over 1M Russian refugees who left homeland after the 1917 Russian Revolution, the ensuing civil war, 1921 famine.