Programme
1st Annual Conference
Refugee Law Initiative, University of London
29 June – 1 July 2016
About us

The Refugee Law Initiative is the only academic centre in the UK to concentrate specifically on international refugee law. As a national focal point for leading and promoting research in this field, the Refugee Law Initiative works to integrate the shared interests of refugee law scholars and practitioners, stimulate collaboration between academics and non-academics, and achieve policy impact at the national and international level. Visit www.sas.ac.uk/rli

School of Advanced Study

Founded in 1994, the School of Advanced Study at the University of London is the only institution in the UK that is nationally funded to promote and facilitate research in the humanities. It performs a vital role as a driving force for knowledge sharing across the humanities in the UK and beyond, and receives special funding for this purpose from the Higher Education Funding Council for England (HEFCE).

Supported by:

The John Coffin Trust
Institute of Commonwealth Studies

Programme

The inaugural Annual Conference of the Refugee Law Initiative (RLI) takes place from Wednesday 29 June to Friday 1 July 2016 in the Senate House of the University of London.

The chosen theme for the 1st RLI Annual Conference is ‘The Future of Refugee Law?’.

Recent years have seen refugee law doctrine moving in innovative new directions, as the discipline reflects deeply on its relationship to the wider field of international law. At the same time, refugee protection faces renewed challenges on the ground in a number of regions, not least in the refugee and displacement-related consequences of humanitarian crises such as Syria. The fifth anniversary of the RLI presents us with a timely opportunity to proactively consider the future of refugee law.

A Refugee Week 2016 event!
Senate House Floor Plans

Ground Floor

- Entrance
- Bloomsbury Room (Room G35)
- MacMillan Hall
- The Crush Hall
- Beveridge Hall
- Senate House Reception
- Lifts

First Floor

- Senate Room
- Grand Lobby
- Court Room
- Lifts
- Holden Room (Room 103)
- Chancellors Hall
## Day 1 – Wednesday 29 June

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<td>• ‘International Cooperation and Access to Asylum’ - Nikolas Feith Tan (Aarhus)</td>
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<td>• ‘The Direction of British Asylum Law and Practice: How Policy and Practice has Prefigured the Outcome of Asylum Litigation’ - John Campbell (SOAS)</td>
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<td>• ‘Statelessness in a Migratory Context: What Solutions Do Regional Legal Instruments Offer?’ - Caia Vlieks (Tilburg)</td>
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<td>• ‘Exploring Durable Solutions for Stateless People, Especially Facilitated Naturalization and Ex Lege Acquisition of Nationality’ - Tamás Molnár (Corvinus University of Budapest)</td>
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<td>• ‘The UK Statelessness Determination Procedure: A Failure of Protection’ - Sarah Woodhouse (Liverpool) / Judith Carter (Liverpool)</td>
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1200-1300  Lunch  Grand Lobby

1300-1430  Panel Session II

Stream 1 – The Shifting Boundaries of the Refugee Definition: Who Now Qualifies?
Chair: Karen Musalo (Hastings)  Chancellor’s Hall

- ‘Medical Refugee Claims and Resource Constraints’ - Stephanie Motz (Lucerne)
- ‘All That Glitters Is Not Gold: The Expansion of Refugee Protection in Latin America’ – Luisa Feline Freier (LSE)

Stream 2 – All at Sea in the Pacific: A Regional Approach to Maritime Asylum-Seekers?
Chair: Martin Jones (York)  Bloomsbury Room

- ‘Operation Sovereign Borders: Maritime Interdiction, Deflection and Detention at Sea’ - Peter Billings (Queensland)
- ‘ Forced Migration at Sea: The Case of South-East Asia’ - Bríd Ní Ghráinne (Sheffield)
- ‘Regional Dynamics: Indonesia and the Protection of Asylum-Seekers in Transit’ - Susan Kneebone (Melbourne)

Stream 3 – A Dangerous Direction: Rights of Refugees under Pressure
Chair: Hélène Lambert (Westminster)  Court Room

- ‘Detention of Asylum-seekers in the Israeli High Court of Justice: The Absent-Present 1951 Convention’ - Reuven (Ruvi) Ziegler (Reading)
- ‘A Race to the Bottom: The Deprivation of Property of Refugees’ - Shanthi Sivakumaran (Lamb Building Chambers)
- ‘Facing Increased Burdens, European States Should Streamline Their Processes by Standardising Their Family Reunification Conditions’ - Rachel Kerr (Lamb Building Chambers)
- ‘Immigration Detention in the UK: Navigating the Labyrinth’ - Sarah Singer (RLI)

1430-1500  Coffee  Grand Lobby

1500-1630  Panel Session III

Stream 1 – Future Directions in the Search for the True Meaning of Article 1A(2)…
Chair: Terje Einarsen (Bergen)  Court Room

- ‘The Continuing Search for the True Meaning of Protection within Article 1A(2) of the 1951 Convention’ - Hugo Storey (UKUT)
• ‘Working at a Working Definition of “Being Persecuted”’ - *Bruce Burson* (NZIPT)

• “Sailing Against the Wind” – Australia’s *Sui Generis* Approach to the Refugee Definition’ - *Linda Kirk* (ANU)

**Stream 2 – Solidarity, Burden-sharing and the Future of International Refugee Law**
Chair: *María-Teresa Gil-Bazo* (Newcastle)  
Chancellor’s Hall

• ‘The Origins of “Burden-Sharing” in the Contemporary Refugee Protection Regime’ - *Claire Inder* (UNHCR/Geneva)

• ‘Solidarity and Sharing of Responsibility for Asylum: Refugee Law Beyond Crisis – An Examination of the International and EU Legal Concepts and their Application’ - *Madeline Garlick* (UNHCR/Nijmegen)

• ‘Solidarity as a Legal Obligation and the Future of Refugee Law’ - *Violeta Moreno-Lax* (QMUL)

**Stream 3 – Climate Displacement: A New Legal Order?**
Chair: *Rebecca Thorburn Stern* (Uppsala)  
Bloomsbury Room

• ‘From Human Rights to Refugee Law: A Climate Change Legal Approach’ - *Cosmin Corendea* (UNU)

• ‘Climate Refugees: Beyond the Legal Impasse?’ - *Avidan Kent* (UEA) / *Simon Behrman* (UEA)

• ‘Internal Displacement, Environmental Disasters and Climate Change in Colombia: Ripping the Veil’ - *Beatriz Eugenia Sánchez* (Universidad de los Andes)

1630-1730  **Distinguished Keynote - Plenary Session**  
Chancellor’s Hall

• ‘Future Directions in International Refugee Protection’  
*Volker Türk* (Assistant High Commissioner for Protection, UNHCR)

1730-1900  **Conference Drinks Reception and Poster Session**  
Grand Lobby

• For all registered participants

• Please see full List of Posters at the end of this programme
Day 2 – Thursday 30 June

0930-1100 – Panel Session IV

Stream 1 – Non-refoulement, Asylum and Human Rights Law
Chair: Tamás Molnár (Corvinus University of Budapest) Court Room

- ‘The Future of Non-refoulement in International Refugee Law’ - James Simeon (York Toronto)
- ‘Futures for the Extraterritorial Application of the Non-refoulement Obligation in Human Rights Law’ - Ralph Wilde (UCL)
- ‘The Limits (and End) of Refugee Law: Developing a Broader Law of Asylum’ - Martin Jones (York)

Stream 2 – European Asylum Law: Challenges, Processes and Innovations
Chair: Violeta Moreno-Lax (QMUL) Chancellor’s Hall

- ‘Structural Limitations of the CEAS: Looking for a Way Out’ - Manuela Consito (Turin) / Valeria Ferraris (Turin) / Francesco Cherubini (Rome Luiss)
- ‘The Court of Justice of the EU: An Emerging Global Actor of Refugee Law?’ - Giulia Vicini (Université Paris 1)
- ‘The Interplay between Readmission and Access to Protection in Europe: The EU-Turkey Case’ – Mariagiulia Giuffré (Edge Hill)

Stream 3 – Legal Responses to Gangs, Criminal Violence and New Dynamics of Forced Displacement in the Americas and Africa
Chair: Sarah Singer (RLI) Bloomsbury Room

- ‘Particular Social Group and the Potential for the Protection of Women, Children and Individuals Fleeing Criminal Violence’ - Karen Musalo (Hastings)
- ‘Refugees from Organised Criminal Violence in Latin America: Context and Regional Responses’ - David James Cantor (RLI)
- ‘The ICRC’s Stocktaking Exercise on the Operationalization of the African Union IDPs Convention’ - Julie Tenenbaum (ICRC)

1100-1130 Coffee Grand Lobby

1130-1230 Distinguished Keynote - Plenary Session Chancellor’s Hall
- ‘Re-conceptualizing Durable Solutions as a Protection Challenge’ Walter Kälin (University of Bern)
### Panel Session V

#### Stream 1 – The Future of Solutions for ‘The Refugee Problem’

*Chair: Susan Kneebone (Melbourne)*

- ‘Refugee Resettlement as an Alternative to Asylum? The Case of Japan’ - *Naoko Hashimoto (Sussex)*
- ‘Brazil as a New Frontier for Receiving Refugees from the Current Crisis in Europe’ - *Uziel Santana (Anajure)*

#### Stream 2 – Temporary Protection and other Legal Responses to War ‘Refugees’

*Chair: Bulent Çiçekli (Zirve University)*

- ‘Subsidiary Protection in EU Law for Persons Fleeing Armed Conflict’ - *Mark Symes (Garden Court Chambers)*
- ‘Refugees from Armed Conflict: Situating the Customary International Law Rule of Temporary Refuge Today’ - *Hélène Lambert (Westminster)*
- ‘Temporary Protection A La Turca: A Pragmatic Solution or a Legal Barrier to International Protection’ - *Neva Öztürk (Ankara)*
- ‘Has Temporary Refuge Become a Customary International Law Principle?’ - *Meltem Ineli-Ciger (Suleyman Demirel University)*

#### Stream 3 – Generating Evidence on Displacement: from Needs to Solutions

*Chair: Natalia Baal (JIPS)*

- ‘The Kurdish Regional Government’s Area-Based Approach to Protection’ – *Vian Rasheed (Erbil Refugee Council)*
- ‘Understanding needs inside Syria: coordinating assessments in complex environments’ - *Boris Aristin (Assessment Coordinator, OCHA/iMMAP)*
- ‘Implementing Public Policy in Protracted Displacement Contexts: Colombia’ – *Oscar Iván Rico Valencia (Colombian Victims’ Unit)*
- ‘Official Statistics and Improving Data on Displaced Populations: Kosovo’ – *Vibeke Oestreich Nielsen (Division for Development Cooperation, Norway)*

### Coffee

1500-1530  Coffee  
Grand Lobby
### 1530-1630  Distinguished Keynote - Plenary Session

Chancellor’s Hall

- ‘Future Challenges in the Legal Protection of IDPs and Interface with Refugee Law’
  *Chaloka Beyani* (UN Special Rapporteur on the Human Rights of IDPs)

### 1800-2000  Conference Dinner (separate registration required)

Imperial Hotel
Day 3 – Friday 1 July

0900-1030  Panel Session VI

Stream 1 – Protection of Refugee and Stateless Children: What Role for Human Rights Law?
Chair: Catherine Bridgick (Oxford)  Holden Room

- ‘Preventing Childhood Statelessness through Fulfilment of the Child’s Right to Acquire a Nationality: The Role of the CRC’ - Laura van Waas (Tilburg)
- ‘Children Fleeing Armed Conflict: The (Increasingly Important) Role of the UN Convention of the Rights of the Child’ - Rebecca Thorburn Stern (Uppsala)

Stream 2 – EU Refugee Management: Implications for International Protection – ‘Breaking Bad’
Chair: Marie-Laure Basilien Gainche (University Lyon 3)  Chancellor’s Hall
Discussant: Elise Bernard (CERSA, CNRS)

- ‘Fight Against Smugglers: Does EU Law Protect Victims of Smuggling and Trafficking?’ - Matilde Ventrella (Wolverhampton)
- ‘Outsourcing Refugee Protection to Turkey’ - Izabella Majcher (Geneva)
- ‘The European Scheme of Relocation of Asylum-Seekers: Remarks and Perspectives’ - Marcello Di Filippo (Pisa)
- ‘From the Dublin System Fiction to the European Hotspots Creation: Omission to Protect’ - Alix Loubeyre (Université Paris 1)

Stream 3 – Mobility-based Refugee Protection as an Emerging Trend?
Chair: Reuven (Ruvi) Ziegler (Reading)  Bloomsbury Room

- ‘Is There a Future for In-country Processing? Evidence from US, Canadian and Australian History’ - Claire Higgins (UNSW)
- ‘Refugee Protection under Bilateral Treaties: Double Standards in Refugee Treatment or a Potential Form of Inter-Regional Burden-Sharing? (Case Study of Ex-Detainees from Guantanamo Seeking Asylum in Central Asia)’ - Khalida Azhigulova (Leicester)
- ‘Can Turkey Be a Model for the Protection of Syrian Refugees? The Differentiated System of Rights Created by the Temporary Protection Mechanism’ - Cavidan Soykan (Ankara)
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<td><em>Eleanor Sharpston</em> (Advocate General, Court of Justice of the European Union)</td>
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Day 1 Poster Session – List of Posters

To be presented during Drinks Reception (1730-1900)

Alphabetical Order - by Surname (2 pages)

• ‘Dashed Hopes and Crumbling Dreams – Why the Family Reunion Process in the UK Fails to Live Up to Its Intended Purpose’ - Rosie Brennan (Plymouth Refugee Family Reunion / Plymouth University)

• ‘Non-refoulement: A Latin American Perspective’ - Rodolfo Ribeiro Coutinho Marques (Federal University of Paraíba, Brazil)

• ‘Myths and Reality: Polish Policy and Law governing the Increased Inflow of Ukrainian Refugees, Migrants and Asylum-Seekers’ – Maciej Fagasinski (Refugee.pl Foundation)


• ‘From Supplicants to Agents – Shifting the Role of Refugees in the Normative Framework of Global Resettlement Programmes’ - Johanna Gördemann (University of Duisburg-Essen)

• ‘Risk Society: Challenges for Refugee Protection’ - Gabriel Haddad Teixeira (Centro Universitário de Brasília)

• ‘The Holocaust as a Reference Point in Israeli Refugee Case-Law’ - Ian Jaffe (MA Refugee Protection, RLI)

• ‘CEAS: Towards a Truly Common European Asylum System?’ - Vasiliki Kakosimou (Greek Asylum Service)

• ‘Temporary Protection in the context of the Current European Refugee Crisis: What lessons have been Learnt?’ – John Koo (London South Bank University)

• ‘Regionalism: Reception of Refugees and their Freedom of Movement on the African Continent’ – Nicholas Maple (RLI)

• ‘Citizen: Integral Status or One Label Among Many? Notions of Belonging and Securing Rights for Naturalised Burundian Refugees’ – Emily Miller (MA Refugee Protection, RLI)

• ‘The Detrimental Impact of Migration Control Policies on Human Rights Protection, with Particular Reference to the Prohibition of Torture and other Ill-Treatment’ – Lutz Oette (SOAS)

• ‘Freedom of Movement of Urban Refugees in Chad’ - Paola Perinetti (ICRC)

• ‘Informing Non-refoulement Obligations with Responsibility to Protect’ - Jenny Poon (Western University, Canada)
• ‘Heads Below the Parapet: The Threat of Arbitrary, Indefinite Immigration Detention as a Deterrent to Concerted, Refugee-Led Action to Combat This’ – Howard Rees (MA Refugee Protection, RLI)

• ‘The Principle of Cooperation in Refugee Field between General Principles of Law and Customary International Law’ - Rama Sahtout (Exeter)

• ‘Refugee Law, Forced Migration, and IDPs: Case of Georgia’ - Nona Tatiashvili (Tbilisi State University)

• ‘Private Sponsorship of Refugees - The New Face of Resettlement for the European Union’ - Laura Truesdell (RCIC, CYC)

• ‘Human Trafficking and Refugee Protection in Europe: The challenges while navigating from International Refugee Law to International Criminal Law and International Human Rights Law’ - Christos Tsevas (Greek Asylum Appeals Committees / University of Strasbourg and Democritus University of Thrace)

• ‘Potential in the Refugee Field for Burden-sharing and International Co-operation: The Case of Greece Lesvos as an Entry Point and Protection Challenges’ - Christina Velentza (Chatham House)

• ‘Sexuality-based Asylum Claims and the Law of Evidence: Towards a Human Rights Approach to Evidence Assessment?’ - Denise Venturi (Scuola Superiore Sant’Anna and KU Leuven)

* Note: All sessions, speakers, chairs, titles and times are provisional and may be subject to change at short notice on the day due to circumstances outside the control of the organisers.
Deborah Anker


Panel Session IV (Day 2) – Stream 3

This conference addresses the future of refugee law and its viability in light of a changing world (disorder) characterized by imploding states, and flight from forms of rights violations not specifically recognized in the UN Refugee Convention. It is argued that these contemporary realities are radically different from those of the more State-centric post-World War II order, which produced the UN Refugee Convention and other foundational human rights instruments.

The presentation begins from the contrary premise that, in some critical respects, refugee law has been remarkably innovative and adaptable. The presentation focuses broadly upon the non-State actor doctrine and then provides two specific examples in US law: flight from Central American ‘third generation’ gangs, and from gender violence, specifically domestic violence also described as ‘intimate partner’ violence in the US context. Although the focus is on US law, the presentation will reference interpretations by UNHCR, other international bodies and by some states parties.

The rise of powerful ‘third generation’ gangs in Central America since the late 1990s – particularly in El Salvador, Guatemala, and Honduras – and the efforts to suppress them has resulted in increased flight of Central Americans to the United States, at times reaching levels rivalling those of the Central American civil war eras. US law had long recognized the doctrine that non-state actors can be the agents of persecutory harm where the State is unable or unwilling to provide protection. In Central American gang cases, asylum eligibility has been established based on consideration of these third generation gangs as non-state actors or as quasi-State actors. As the jurisprudence has moved away from crude particular social group ground (PSG) formulations, other bases for protection have emerged in third generation gangs cases, such as political opinion, religion, race and more foundational PSGs such as family, gender and childhood status. The result is a more principled analysis and broader more holistic consideration of the refugee definition grounds emerging in this context.

Consideration of domestic violence claims necessarily involves recognition of non-state actors (intimate partners or spouses) as agents of persecution. It has also involved consideration of the failure of State protection applying feminist principles (laws and practices supporting violence against women).

For years, feminist refugee law scholars and practitioners urged adjudicators to consider “gender perse” as an immutable characteristic defining a PSG. Unfortunately a less coherent and less principled approach (collapsing all the elements of the refugee definition into the PSG formulation) came to dominate the jurisprudence. That is now changing as practitioners become more sophisticated and rely on sounder theory and consideration of the basic purposes of refugee protection.

Khalida Azhigulova

‘Refugee Protection under Bilateral Treaties: Double Standards in Refugee Treatment or a Potential Form of Inter-Regional Burden-Sharing? (Case Study of Ex-Detainees from Guantanamo Seeking Asylum in Central Asia)’
Panel Session VI (Day 3) – Stream 3

In its attempt to close the detention centre in the Guantanamo Bay, the USA faced a challenge when releasing some of its detainees. Some detainees could not be returned to their countries of origin due to ongoing civil wars there or due to a risk of persecution.

To address this issue, the USA was negotiating and entering into bilateral treaties with selected states across the globe that it considered safe to accept some of the Guantanamo detainees into their territories and provide them with a legal status. One of these states is Kazakhstan in Central Asia, where five former Guantanamo detainees of Yemeni and Tunisian origin arrived as asylum-seekers in late 2014.

Kazakhstan is a member of the 1951 Refugee Convention with a 2009 Refugee Law and a stand-alone refugee status determination procedure; and its asylum authorities apply a narrow interpretation of the Refugee Convention, thus excluding from refugee protection applicants fleeing serious and indiscriminate threats to life and physical integrity resulting from generalised violence. Moreover, asylum authorities require that applicants provide sufficient documentary evidence that they may face personal persecution in their countries of origin. As a result, asylum-seekers fleeing internal conflicts in Syria, Iraq and Afghanistan have been continuously rejected.

In this context, granting asylum to former Guantanamo detainees in Kazakhstan can be seen as an unexpected and somewhat positive development in a local asylum practice and policy. While the authorities are cautious not to call these people refugees, the status they enjoy much resembles a refugee status under the national Refugee Law.

This paper explores to what extent this ad hoc asylum privately negotiated between states could promote more advanced asylum practices in Kazakhstan or even open a way for an inter-regional burden sharing that could lead to more effective refugee protection broadly in Central Asia.

Roland Bank
‘The Mass Claim Situation in Asylum Procedures: A Challenge to Individual Asylum?’

Panel Session IV (Day 2) – Stream 2

Some European countries have seen unprecedented levels of new arrivals to their asylum-system in 2015. To name some of the most important, Germany has seen over a million of new arrivals registered with the intention to apply for international protection in 2015, of which some 476,000 managed to file a claim in that year. Austria had some 90,000 applications filed; Sweden, over 162,000… The trend has been continuing so far in 2016.

This has prompted a dramatic situation in the asylum systems, inter alia, leading to immense backlogs of pending claims. In Germany, for instance, this has led to a backlog of pending applications of some 360,000 cases at the end of 2015. The cases registered but not yet having filed an application formally must be added to this backlog – a sum which may be estimated at another 400,000 cases. These high numbers give rise to the question: Can every claim be assessed on its merits individually? What other approaches are there to manage such massive numbers of claims and do they undermine the protection under the 1951 Convention or the individual right to international protection as it is to be guaranteed by EU Member States according to the EU Qualification Directive?
Ana Beduschi


Panel Session VI (Day 3) – Stream 1

This paper evaluates the contribution of the Inter-American Court of Human Rights to the future evolution of international refugee law through the lens of the Court’s recent jurisprudence on the protection of migrant children’s rights. It argues that since the advisory opinion no. 18 of 2003, the Court has placed itself at the forefront of a novel approach to international migration law. In particular, the Court has developed bold interpretations of international law with impact beyond human rights law. Most controversially, this has included the construction of non-discrimination on grounds of nationality as one of the select realm of *jus cogens* norms.

This paper claims that in the advisory opinion no. 21 issued in August 2014, the Inter-American Court took a further step of introducing a distinctive layer of a generalist child-based protection approach into international refugee law. In practice, this approach would require, for example, the conduct of child-centred and gender-sensitive screenings upon children’s arrival in a country of transit or destination. In order to justify this approach, the Inter-American Court has not only transposed elements of international refugee law to the field of regional human rights law, but it has also appropriated concepts until then mostly circumscribed to the specific domain of the United Nations Convention on the Rights of the Child, including the principle of best interest of the child.

This novel approach deserves praise for its ambitious aims. However, its practical implementation may be impeded by States’ reluctance to accept the proposed extension of their legal obligations in relation to migrant children, especially in light of lingering doubts concerning the Court’s legitimacy to interpret international law outside its ordinary remit. Yet, the paper argues that the Court’s proactive approach should be seen as a powerful source of inspiration for the future development of international refugee law in general and for finding effective responses to the current global migration crisis in particular.

Peter Billings

‘Operation Sovereign Borders: Maritime Interdiction, Deflection and Detention at Sea’

Panel Session II (Day 1) – Stream 2

The paper is concerned with the extra-territorial maritime interdiction of asylum seekers intent on seeking refugee protection in Australia. This coercive practice, previously utilised in late 2001 in the wake of the Tampa affair (Operation Relex), was resuscitated in December 2013 as part of Operation Sovereign Borders (OSB). OSB is a border protection policy directed at promoting both border security and, ostensibly, human security (saving lives at sea), by deterring irregular maritime migration in the Indian Ocean north of Australia. The policy has proved effective insofar as it has dramatically reduced the numbers of boats arriving in Australian territory, and resulted in a substantial reduction in the number of maritime ventures, facilitated by people smugglers, attempting to reach Australia.

The paper explains and critically examines the revival of interdiction, deflection and detention at sea, a practice which is marked by a conspicuous lack of transparency, political accountability and legal oversight. The paper examines the various ways in which the Australian Government’s ‘turn-back’ policy has been executed, namely; (i) interception at sea, coupled with returns to neighbouring transit countries (‘tow-backs’); and, (ii) interceptions with either direct repatriations or with ‘safe’ third country returns (‘take-backs’). In so doing it explores the nature of Australia’s
public law powers that validate such actions and the relationship and commensurability of those municipal laws with international law obligations.

Finally the paper explores the reasoning of the High Court of Australia in the leading case of CPCF v Minister for Immigration and Border Protection (2015) in respect of the validity of the Australian Government’s decision to deprive Sri Lankan asylum seekers of their liberty, at sea, for nearly a month, in the course of attempting to return them to a safe third country - India. The High Court’s decision was not a ringing endorsement of the Australian Government’s interpretation of its public law powers and international law obligations. Notably, three (of seven) judges cast doubt on the correctness of the contentious decision in Ruddock v Vadarlis (2001) (the Tampa case), and several judges, including the Chief Justice, either did not embrace or expressly rejected the Commonwealth’s restrictive versions of its international refugee law obligations.

Catherine Briddick

‘The Future of Protection from Violence: Women Seeking Asylum under Refugee and Human Rights Law’

Panel Session II (Day 1) – Stream 1

The role and relationship of refugee and human rights law to other sources of law and to each other have been contested subjects of academic discourse, with views differing as to the nature of their inter-relationship and the impact on and primacy of each ‘branch’ of international law.

This paper examines these debates in light of recent legal and jurisprudential developments, taking as its focus each system’s response to women seeking protection from gender-based violence (in relation to the scope of protection offered for particular forms of violence, issues arising from the status determination process and women’s migration and access to asylum). The paper will, therefore, consider the potential impact of the Istanbul Convention, CEDAW’s General Comment 32 and recent jurisprudence (of, amongst others, the European Court of Human Rights) on women’s ability to seek international protection from violence. Tensions that underlie these developments, including the instrumentalisation of women’s claims and the positioning of certain women as ‘vulnerable’ and in need of special protection will be considered and their consequences explored.

These developments will be contrasted with the ‘traditional’ refugee law approach that, ‘properly interpreted’, the refugee definition includes gender-related claims for protection. Working from the premise that feminist critiques of human rights law and responses to violence against women situated squarely within refugee law remain relevant, the paper will argue that whilst the process of ‘adding in gender’ to both refugee and human rights law may be ‘transformative’, a consideration of each system’s response to violence against women indicates that issues arising from women’s inclusion are far from being resolved and that, therefore, the future of such claims remains uncertain.

Bruce Burson

‘Working at a Working Definition of “Being Persecuted”’

Panel Session III (Day 1) – Stream 1

The concept of being persecuted is central to the refugee definition under Article 1A(2) of the 1951 Refugee Convention. Its interpretation by decision-makers is thus critical to the functioning of the global RSD system. It has long been recognised as desirable for there to be consensus as to its meaning and scope of application so as to avoid variability in outcome in similar fact situations, thereby reducing the right to asylum to something approximating a globally administered lottery.
This presentation will critically investigate the argument that, as means of promoting cross-jurisdictional consensus, the EU Qualification Directive (QD) should be regarded as an “essential juridical starting point” even outside the EU, with an onus on decision-makers in other jurisdictions to “show” that it does not “capture a universal meaning adequately”. The presentation will argue that treating the QD as a default universal template in such a manner is problematic. The QD’s approach to being persecuted requires decision-makers to engage in complex and unnecessary mental gymnastics which hinders efficient and principled decision-making, and its approach is at odds with developments in the wider international human rights law regime in which it purports to be anchored.

A wider issue raised by such QD-evangelism is that its status as an integral component of the CEAS will be seductive to states outside the EU. This risks ossifying international refugee law around controversial approaches contained within the QD, amenable to the pragmatic and political concerns of some states, but with patchy buy-in among practitioners, academics, and UNHCR.

More broadly, the presentation further argues that, historically, a particular strength of consensus in refugee law has been its multi-polarity, with many important issues settled by an organic process of jurisprudential cross-fertilization by courts. If the future of refugee law is increasingly characterised by a multiplicity of state-imposed definitions, this potentially undermines the ongoing capacity for such consensus to be achieved, giving rise to an increased risk of fragmentation of the global RSD system. This risk is enhanced where the jurisprudence emerging under such frameworks is self-referencing in its logic and reasoning, without engagement with the wider body of international refugee law jurisprudence. The presentation will argue that approach of the CJEU is a case-in-point of self-referencing jurisprudence, further weakening the argument that the QD should be regarded as an essential juridical starting point outside the EU.

David James Cantor

‘Refugees from Organised Criminal Violence in Latin America: Context and Regional Responses’

Panel Session IV (Day 2) – Stream 3

This paper examines the shifting context of refugee flows in Latin America, concentrating particularly on the issue of forced displacement provoked by organised criminal groups in the countries of the Northern Triangle of Central America. The paper first presents an overview of the extraordinary levels of social violence currently experienced by these countries and ties them to the dynamics of organised criminality. It then analyses how these patterns of violence have generated distinctive patterns of forced displacement. Finally, it identifies the particular legal, policy and practical challenges that these ‘new’ flows of displaced persons present for humanitarian actors involved in the protection of refugees and internally displaced persons in this region and beyond.

John Campbell

‘The Direction of British Asylum Law and Practice: How Policy and Practice has Prefigured the Outcome of Asylum Litigation’

Panel Session I (Day 1) – Stream 2

By examining asylum litigation over time, I argue that the British state, and the Home Office in particular, has used existing law, legislated new law, created policies and used the immense resources at its disposal to decisively change the operation of the entire asylum system. The result of this process is not merely to create a slightly unequal ‘playing field’ on which litigation occurs; the effect has been to create an increasingly steep, rapidly changing and unfair pitch against which
counsel for asylum applicants must struggle to secure status for their clients.

This conclusion emerges from extended anthropological fieldwork which has built upon the work of anthropologist Laura Nader who argued that in the US ‘the direction of law is dependent in large measure on who is motivated to use the law and for what purposes’ (2001-2: 661). I argue that the direction of legal reforms, legislation and Home Office asylum policy and practice has created barriers which have effectively limited access to justice and profoundly ‘prefigured’ the outcome of asylum litigation in ways that reinforce restrictive state policies and contravene the UK’s international legal obligations.

Manuela Consito, Valeria Ferraris and Francesco Cherubini

‘Structural Limitations of the CEAS: Looking for a Way Out’

Panel Session IV (Day 2) – Stream 2

The aim of the paper is to analyze the nowadays challenges of asylum seekers legal protection in the EU. The CEAS is everything but common and evidence is clear: allocation of asylum seekers is unfairly resting on few Member States (MSs); the notion of “third safe country” is encountering a systemic crisis; the examination of the asylum applications is often ruled by chance rather than by law. The CEAS is as matter of fact a “refugee roulette”, using the impressive expression of US scholars (Schrag, Schoenholtz, Ramji-Nogales) that immediately describes the game that an asylum seeker plays when she/he has to interact with Member States (MS) asylum systems.

Eurodac, established as a tool to avoid asylum shopping, has been questioned by the refusal of the asylum seekers of having the fingerprints taken and it is changing into a database used for law enforcement purposes, rather than a guarantee for the functioning of the Dublin system. The multiform nature of CEAS certifies the end of the “Dublin paradox”, which is based exactly on the presumption (largely rebutted) of consistency of national asylum systems. Due to the unbearable receptions conditions of asylum seekers in some Member States, Courts of several Member States have ruled against the Dublin returns to Italy and Greece and the European Court of Human Rights (M.S.S. v. Belgium and Greece; Tarakhel v. Switzerland) stated that returns to Greece and Italy under Dublin Regulation may violate the European Convention on Human Rights. Unforeseeable outcomes of the decisions, disparities in asylum adjudication between Member States and among different adjudication authorities located in different areas of the same Member State cause tensions between universal and regional refugee law. Inconsistency has beaten the path for a mutual mistrust which, at the moment, is jeopardizing one of the very foundations of the European integration: the Schengen Area.

Eventually the EU definition of common rules about the asylum adjudication procedures is revealing some lack under the effectiveness of the equality principle’s point of view. Such issues could be the basis for a further discussion about the possible new directions of the asylum seekers EU policies and law, especially through the discovery and the definition of new connections between EU and regional migration law. Since the arrival moment until the end of the adjudication process about the migrant’s status, what measures should be outlined in order to promote good practices that could become the basis for new good rules? Which is the better choice to enforce such rules? Is it the promotion of a new role of the EU agencies involved in the asylum processes, the promotion of new powers at the EU level or the enhancement of mutual recognition of the MSs’ administrative decisions?

On this basis, the paper is intended to address three main issues:

1) identification of institutional obstacles that prevent EU institutions from developing a more consistent asylum policy;
2) the unintended consequences (or more than intended but undeclared consequences) of the border controls measures;

3) the measures that have to be taken, from MSs and EU institutions possibly in a renewed institutional framework, to develop a less unpredictable and more consistent asylum policy.

Cosmin Corendea
‘From Human Rights to Refugee Law: A Climate Change Legal Approach’

Panel Session III (Day 1) – Stream 3

In the light of the recent failures to offer protection to people in quest of protection all over the world, there is clearly a regrettable lack of respect for the human rights of those seeking refuge. Under international human rights law and customary international law, States have obligations to respect the rights of the migrants/refugees and to protect against return, if those persons face a real risk to human rights violations. More, under international law, States should treat people (including migrants, refugees or asylum-seekers) with dignity and respect, and acknowledge their human rights by not implementing/abandoning policies which prevent migrants from safe passage and legal access to protection. While international refugee law does not refer to environmental threats (persecution or conflict), this doesn’t exonerate States of their obligations mentioned above or of their obligations, in general, to address the needs of people searching for protection, irrespective of status.

Based on a rights-based approach which will emphasise the bottom-up standpoint as imperative in the post-2015 Paris Agreement, and the progressive interpretation of law methodology which will underline the need of hybrid approaches in addressing refugee law/migration as subsidiary effect in relation to human rights in the legal context of climate change, the expected outcomes of the paper are as follows:

How rights and hybrid approaches apply to climate risks and migration/refugee scenarios at local, national and international level;

How to use hybrid legal tools in climate-induced migration/refugee cases to increase the protection of the people involved in the process;

To address the questions of legitimacy and sovereignty under international law of a State without a territory lost due to climate change triggers, and provide preemptive legal solutions to potential legal risks associated with this unparalleled state of affairs, and the predictable humanitarian crises.

Marcello Di Filippo
‘The European Scheme of Relocation of Asylum-Seekers: Remarks and Perspectives’

Panel Session VI (Day 3) – Stream 2

In 2015, the solidarity principle enshrined in Article 80 TFEU received (albeit partial) substance through a scheme of redistribution in the (almost) whole territory of the EU of asylum seekers arrived in Greece and Italy. Notwithstanding the support by the Commission and the Parliament, the discussions among Member States proved arduous, and the decision making process suffered these political divergences. Two ad hoc decisions No. 2015/1523 & No. 2015/1601) were finally adopted in September 2015. It will be interested to compare this EU plan with some precedents where the European States faced the challenge of alleviating the burden faced by first arrival
countries (management of Bosnian displaced persons in the 90’s, the Eurema project in favour of Malta between 2009 and 2011). Additionally, numerous legal issues arise through a careful reading of the two decisions and an exam of their (so far) disappointing implementation. Among others, the debatable limitation to some nationalities of asylum seekers, the poor discipline of the procedure to be followed and the scarce role recognized to the same asylum seekers, the need of a proper coordination with procedural rules of the Dublin Regulation and of the valorization of the genuine links of the asylum seeker and the State of relocation, the unbalanced definition of supervision mechanisms and the excessive intergovernmentalism of the whole process. Many critical remarks concerning the two decisions will be used to formulate suggestions with the view to correct some defects of the above mentioned approach.

**Terje Einarsen**

The Universal Asylum System: Towards Termination or Reinforcement?

Panel Session I (Day 1) – Stream 1

The contemporary refugee crisis in the Middle East and in Europe calls for reviewing the universal asylum system. Principally caused by the Syrian war, the crisis has put the human right “to seek and to enjoy asylum” and the 1951 Refugee Convention under unprecedented strong pressure. This poses the following questions: Should the current refugee system be kept as it is? Should part of it be reformed and multilateral conventions revised? Or should the world community abandon the system altogether? If Europe indeed were to abandon key refugee law principles, what would replace it? Is instead reinforcement a better response?

This paper takes stock of various existing proposals for termination, revision and reinforcement of the asylum system. The paper argues that the universal right for refugees to access foreign temporary state protection should be upheld. The paper next explores possible ways of reinforcing the current asylum regime, particularly through a new UN mechanism of leasing safe state territories for protection purposes. It would complement and not replace the principal position of the UNHCR. The paper concludes that although establishing such UN-protection areas might be desirable from a refugee protection point of view, it is probably not feasible for reasons of power politics. This leaves politicians at all levels with fewer tools than they ideally could and should have had at their disposal in situations when most needed; such as mass flight caused by the Syrian multi-level war.

Consequently, status quo might be the most realistic option. However, one may also witness a breakdown in European solidarity and common values. It is arguably therefore an urgent matter to discuss what tools should be added to the existing toolkit of refugee protection mechanisms to facilitate responses to mass flows of refugees and ensure the operation of a well-functioning universal refugee regime in the future.

**Luisa Feline Freier**

‘All That Glitters is Not Gold: The Expansion of Refugee Protection in Latin America’

Panel Session II (Day 1) – Stream 1

“Latin America displays the best laws and the most generosity for refugees in the world.” (Philippe Lavanchy, Former UNHCR Director for the Americas, 2008)

In recent years experts have hailed Latin America as the new avant-garde of generous asylum and refugee policies. Understanding the extent and sustainability of Latin America’s liberal approach to
refugee protection holds important theoretical and normative implications for refugee studies and politics. The first part of the paper offers a short review of the characteristics and variance of refugee policy liberalization in the region and its relationship to universal refugee law. The second part of the paper offers a detailed analysis of two of the most generous frameworks in the region, Argentina and Mexico, with one of the least progressive laws in the region, Peru, testing their compliance with international human rights law. The third part of the paper analyses the implementation of refugee law liberalization for the cases of extra-continental asylum seekers and the resettlement of Syrian refugees in the region. The paper ends with some considerations regarding the future sustainability of expanded refugee protection and international co-operation in the region.

Sarah Elliott and Jean-Pierre Gauci

Who Needs the Convention? Re-assessing the Relevance and Function of the 1951 Refugee Convention

Panel Session I (Day 1) – Stream 1

With the recent surge in global displacement impacting upon Europe, the 1951 Refugee Convention has become the subject of extensive political and academic debate. In the wake of renewed calls for its revision or repeal, this paper critically engages with the instrument and discusses its current purpose as both a source and a statement of rights and obligations for refugees and States alike. It first shows that given the developments in international human rights law and regional refugee law instruments since its adoption, the impact of such a repeal would be more politically symbolic than legally meaningful.

The paper goes on to argue that a critical aspect of the contemporary relevance of the 1951 Refugee Convention and a potential renewed function or aspiration, is for it to act as an a catalyst for State cooperation as urged by its preamble, especially when read in conjunction with Article 35. Article 35 requires State parties to the 1951 Refugee Convention to cooperate with UNHCR in order to enable the agency to exercise its functions, as set out in its Statute and in particular, that of supervising the application of the Convention and of promoting the execution of any measures calculated to improve the situation of refugees. The paper discusses the meaning of ‘cooperation’ as found in the 1951 Refugee Convention and its potential effect in practice. It further highlights areas where such cooperation becomes difficult; for instance, in light of varied definitions of who is a refugee worldwide, the scope of who can be subject to inter-State responsibility sharing becomes problematic.

The paper concludes by making a number of recommendations on how the 1951 Refugee Convention’s preamble and provisions could be understood and amended in order to ensure more effective protection – concluding with a much needed restatement of what the 1951 Refugee Convention actually stands for today.

Nikolas Feith Tan

‘International Cooperation and Access to Asylum’

Panel Session I (Day 1) – Stream 2

The right to asylum is under pressure in the developed world. The dominant response to irregular migration among developed states is one of control. A refugee seeking protection in Europe, Australia or the United States faces a range of barriers to access asylum. At the border they may encounter border controls or physical barriers such as fences. Even before the refugee reaches the border, migration controls may affect his or her ability to access the territory of the asylum state.
This is due to a range of extraterritorial measures, ranging from visa controls in states of origin or transit, carrier sanctions, or interdiction on the high seas. These measures form a broader trend of ‘externalisation’ of migration control that exploits perceived or real gaps in human rights and refugee law.

A relatively new aspect of migration control is measures are undertaken in cooperation with origin or transit states. Thus, while the refugee is in transit in, for example, Morocco, Malaysia or Mexico, barriers lie in their path implemented by the transit state itself, such as immigration detention, exit controls, or joint patrols. This paper focuses on the rise of this form of migration control: international cooperation preventing access to asylum. The defining feature of this set of policies is the cooperation component, whereby a traditional asylum state undertakes extraterritorial measures in cooperation with a developing state (or states) to prevent access to asylum in the first state.

This paper firstly provides an empirical account of current trends in cooperative measures implemented. This paper then seeks to take a birds-eye approach to the rise of international cooperation on migration control, considering not just the extraterritorial actions of developed states, but assessing the access to and quality of protection under such cooperation schemes.

**Madeline Garlick**

‘Solidarity and Sharing of Responsibility for Asylum: Refugee Law Beyond Crisis - An Examination of the International and EU Legal Concepts and Their Application’

Panel Session III (Day 1) – Stream 2

Solidarity and responsibility-sharing among States for the international protection of refugees has been addressed in multilateral resolutions, political rhetoric, legal debate and academic theorizing for decades. Among international lawyers, solidarity is seen by some as an emerging principle of international law, while for others, it is little more than a ‘means of avoiding any tangible commitment while at the same time appearing virtuous’. In some fields of public international law, shared interests, cooperation frameworks and binding obligations around solidarity, cooperation and sharing of responsibility are defined in treaties and evidenced by State practice, notably in the fields of environmental law, military cooperation and international development. International refugee law, by contrast, contains limited explicit references to these principles. The Preamble to the 1951 Convention requires States to cooperate ‘considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of the problem of which the UN has recognised the international scope and nature cannot be achieved without international cooperation.’ However, the Convention defines neither the form that cooperation should take nor its practical requirements. While States have been prepared to contribute financial aid to assist refugee-hosting countries which require it, agreement has never been achieved at international level to share more equitably among them the responsibility to receive and protect refugees.

In the European Union, Article 80 of the Treaty on the Functioning of the European Union provides that asylum policy and its implementation shall be governed by the principle of solidarity and fair sharing of responsibility. To give effect to this principle, in addition to common legislative standards, funding instruments have been adopted and practical cooperation arrangements put in place. Yet unharmonised practice, a dysfunctional Dublin system allocating responsibility for claims, and insistence on maintaining autonomous national institutions and policies have led many to consider that EU solidarity for asylum in the EU is merely a slogan, contradicted by practice and disavowed in political debate.

This paper will consider the legal nature, scope and content of the principles of solidarity and fair sharing of responsibility in international and EU law on asylum and international protection. It asks
María-Teresa Gil-Bazo

‘Limitations on the Sovereign Right of States to Grant Asylum’

Panel Session I (Day 1) – Stream 2

The right of States to grant asylum as an exercise of their sovereignty has long being recognised. States are free to grant asylum to anyone they choose, including individuals excluded from refugee status under Article 1F of the UN Refugee Convention. But such right is not absolute. International law increasingly imposes obligations on States which may restrict their sovereign power to grant asylum. Such obligations include the fight against impunity in relation to certain crimes of international law (such as torture or war crimes), as well as duties of international cooperation (such as those established under the International Criminal Court Statute or the UN Charter). While exclusion from refugee status pursuant Article 1F of the UN Refugee Convention has long been the object of scholarly attention, little has been written on the limitations on the power of States to grant asylum as an exercise of State sovereignty. In the current climate where refugee protection takes place against a background of security concerns and irregular transnational movements of refugees and migrants, it becomes necessary to explore the broader context of international law where States’ powers (either individually or within international organisations) are exercised.

This paper will explore the historical background to the limitations on the powers of State to grant asylum, from extradition agreements to international human rights treaties and the UN Charter.

Mariagiulia Giuffré

‘The Interplay between Readmission and Access to Protection in Europe: The EU-Turkey Case’

Panel Session IV (Day 2) – Stream 2

On 18 March 2016, the EU and Turkey have reached an agreement providing for ‘rapid return of all migrants not in need of international protection crossing from Turkey to Greece and to take back all irregular migrants intercepted in Turkish waters.’ Taking the EU-Turkey deal as a case study, this paper aims to analyse whether and to what extent the implementation of readmission agreements may hamper refugees’ access to protection. By studying readmission vis-à-vis refugees’ access to protection, this study pulls together areas of law and policy that are generally considered neatly distinct, and therefore unrelated also in a temporal sense. Particularly in situations of informal
border controls or massive arrivals of migrants and refugees, there exists a risk for asylum seekers, who have transited through ‘safe third countries’, to be removed by means of a readmission agreement. Refoulement can thus occur as a consequence of accelerated return mechanisms jeopardizing the right to access both asylum procedures and effective remedies before return.

**Naoko Hashimoto**

‘Refugee Resettlement as an Alternative to Asylum? The Case of Japan’

Panel Session V (Day 2) – Stream 1

Refugee resettlement has been known as one of the international “responsibility-sharing” mechanisms in protecting refugees. Under the current international refugee protection regime, no country has a legal responsibility to accept refugee through resettlement, while over 30 countries have already established a regular resettlement scheme. Why do countries accept refugees through resettlement? What is the motive behind it? This paper suggests that resettlement might be used as an alternative to granting asylum to spontaneous arrivals. This hypothesis will be tested by scrutinising the case of Japan, one of the countries which have recently launched a regular resettlement programme.

Japan has been traditionally known for being extremely restrictive in providing protection for asylum-seekers who have spontaneously arrived in Japan. Ever since Japan ratified the 1951 Refugee Convention in 1981, it has only recognised 633 persons as refugee under the Convention. The refugee recognition rate has hardly ever surpassed 0.2%, which is one of the lowest among the OECD countries. Nevertheless, the Japanese Government has voluntarily and unilaterally started the refugee resettlement programme in 2008, under which approximately 100 Myanmar refugees have been hitherto resettled to Japan from Thailand and Malaysia. Why did Japan embark upon the refugee resettlement programme? What factors have facilitated such a drastic decision? What are the objectives and purposes? This paper argues that it was introduced partly as an alternative to granting asylum to those spontaneously arriving in Japan. It will do so by looking at the historical trends and statistics of protection and asylum provided by Japan between 1978 and 2014. The paper will also analyse positive and negative implications of such a “shift” from asylum to resettlement.

**Claire Higgins**

‘Is There a Future for In-country Processing? Evidence from US, Canadian and Australian History’

Panel Session VI (Day 3) – Stream 3

In-country processing, sometimes known as ‘orderly departure’, enables people in refugee-like situations - but who have not yet fled their homes - to be processed within their countries of origin and then resettled abroad.

A number of scholars have suggested that in-country processing could be used more widely by countries of resettlement in order to offset restrictive border controls and remove the need for an individual at risk to undertake a potentially hazardous journey across an international border. Yet the literature on this method of processing is limited and studies are largely confined to programs implemented by the US. As a result, the varied reasons why and how States have been motivated to use in-country processing as part of their resettlement programs, and the arguments for and against its use, are not well documented.
This paper presents original research into in-country programs operated by Canada and Australia over the last thirty years, and combines this with reflections on US programs to discuss a number of intersecting motivations for this method of processing. The paper details how in-country programs can be used to serve strategic purposes for the resettling State, in terms of both domestic politics and foreign policy. For example, in-country programs may serve as a means of addressing the concerns of ethnic communities or human rights advocates within the resettling State, while avoiding public statements about refugee protection. In-country programs may also constitute a discrete or a highly public comment on a country-of-origin’s human rights record, dependent on the bilateral relationship between the two States. In considering how in-country programs may improve refugee protection today, the paper examines the benefits and limitations of this method, including issues surrounding the safety of applicants, the criteria on which selection is based, and the nature of the decision-making process.

Claire Inder

‘The Origins of “Burden Sharing” in the Contemporary Refugee Protection Regime’

Panel Session III (Day 1) – Stream 2

The crisis in Syria, which has given rise to the largest refugee outflow in many decades, has once again thrown into relief a recurring tension in the global refugee regime. On the one hand, the regime is premised on the understanding that individual host States will provide protection to refugees on behalf of the international community. On the other, State contributions as host countries are necessarily unequal, even arbitrary. At the end of 2014, primarily by virtue of geographic proximity to refugee origin countries, States in the “global south” hosted 86 per cent of the world’s refugees. This is not just a “north-south” issue however: within regions such as Europe there are also concerns about the uneven distribution of State responsibilities for refugees - a concern that has significantly magnified with the large increase in arrivals in Greece during the course of 2015.

At the heart of these tensions is a key set of principles: international cooperation, solidarity, burden sharing and responsibility sharing (CSBR) between States in the refugee regime. Recital 4 of the preamble of the 1951 Convention relating to the Status of Refugees (1951 Convention) expresses this as follows:

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation.

Literature, policy and practice on CSBR in the refugee regime are abundant. Indeed, since at least the 1970s there has been an almost cyclical rise and fall in academic and policy interest in CSBR, coinciding largely with high-profile, mass refugee crises. However each period of resurgence of interest in CSBR seems to involve an entrenchment, rather than a reconsideration, of certain assumptions. One assumption is that CSBR, while an important and certainly desirable part of the international refugee regime, is not legally relevant in that regime, is vague in terms of its scope and the obligations it imposes on States, and is insufficiently operationalized by States in practice.

Through an analysis of the travaux prépartoires of the 1951 Convention, this paper will serve as a first step in reconsidering some of the assumptions surrounding the principle of CSBR in international refugee law. I will explore, from a legal and historical perspective, the intentions of the drafters of the 1951 Convention in inserting recital 4 into the preamble. I will argue that the travaux prépartoires suggest both more clarity about the meaning and scope of CSBR than is generally
accorded in contemporary discussions; but that they also reveal ambiguities that continue to impact our understanding of the principle today.

**Meltem Ineli-Ciger**

‘Has Temporary Refuge Become a Customary International Law Principle?’

Panel Session V (Day 2) – Stream 2

The idea that there is a customary international law principle which has a broader scope than the customary norm of the non-refoulement is not new. It is argued that there is a customary norm which specifically protects persons from being returned to situations of ongoing armed conflict, referred to as the principle of temporary refuge. Deborah Perluss and Joan Fitzpatrick Hartman argued in 1985 that “the customary norm of temporary refuge prohibits a state from repatriating foreign nationals who find themselves in its territory after having fled generalized violence and other threats to their lives and security caused by internal armed conflict within their own state.” In a recent article, Professor Guy S. Goodwin-Gill argued, “Temporary refuge is a critical normative step in the effective international protection of those displaced by armed conflict, massive violations of human rights and or indiscriminate violence; and it is firmly and soundly customary international law, in the practice of states, and in their understanding of obligation.” This paper revisits these views and examines whether the principle of temporary refuge has become a customary international law principle in the light of recent developments in law and state practice. Furthermore, the paper investigates whether state practice following the Syrian displacement and migration crisis in Europe changed the outcome of this debate. The first part of the paper defines the principle of temporary refuge, discusses its origins, its relevance for persons fleeing armed conflict and its relationship with the principle of non-refoulement. Building on this analysis, the second part of the paper examines whether the principle of temporary refuge satisfies opinio juris and state practice requirements in the light of International Law Commission’s work on identification of customary international law.

**Martin Jones**

‘The Limits (and End) of Refugee Law: Developing a Broader Law of Asylum’

Panel Session IV (Day 2) – Stream 1

Contemporary refugee law has been criticised for an excessive focus on the interpretation of its central definition. This focus presumes that inclusion in the definition provides a significant benefit to a refugee in the form of protection. However, this presumption is belied both by recent developments within UNHCR (its strategic retreat from refugee status determination) and by the absence of refugee-specific protection regimes in jurisdictions that are home to a majority of the world’s refugees (notably in the Middle East and much of Asia). In the face of these limits to refugee law, it is suggested that the preferable approach is a strategy of legal engagement based upon a broader law of asylum decoupled from the refugee definition. The alternative “political” approach (described as one based on the idea of negotiating “protection space”) is assessed and dismissed; the contemporary case of refugee protection in Hong Kong is used as proof of concept for such a strategy. The implications of such a strategy for refugee protection in developed jurisdictions (North America and Europe) and in jurisdictions of the Global South (South East Asia) will also be discussed.
Liliana Lyra Jubilut and André de Lima Madureira

‘Why Not a General Theory for Durable Solutions for Refugees?’

Panel Session V (Day 2) – Stream 1

One of the main gaps in International Refugee Law seems to be the lack of a general theory on durable solutions. Even if it is possible to argue that this problem also exists in relation to international protection, it seems rather acute in relation to durable solutions, as there are no written obligations and standards that ascertain (i) what rights refugees are entitled to after recognition and (ii) the policies to guarantee them. A general theory for durable solutions needs to be created for a better future of International Refugee Law if the aim is the integral protection of refugees. Such a theory needs to be based on four main foundations. First, it should depart from the assumption that durable solutions are an intrinsic and integral part of protection and, secondly, that they are a direct consequence of non-refoulement as States have obligations in respect of refugees within their territory/jurisdiction. This is so due to the fact that every refugee is entitled to human rights and that there are minimum standards of rights and obligations that derive from human rights treaties. In this sense, a third foundation is that an approximation of said theory with International Human Rights Law is essential and would allow for the enhancement of durable solutions given that, if there are no written norms on them in International Refugee Law documents, they are abundant in human rights obligations. The fourth key element would be the need to measure durable solutions’ efficacy. This would allow for assessing whether or not the solutions are actually positing perspectives for refugees and granting them access to rights. We propose that a discussion on this topic needs to be started and that the four points should be the basic parameters which a general theory for durable solutions for refugees should follow.

Rachel Kerr

‘Facing Increased Burdens, European States Should Streamline Their Processes by Standardising Their Family Reunification Conditions’

Panel Session II (Day 1) – Stream 3

In the light of increased burdens, it is desirable that European states streamline their processes by standardising family reunification conditions.

The Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recognises refugees’essential right’ to family unity, by recommending States to take measures to ensure the protection and maintenance of families. This right is additionally covered by a substantial body of norms in international human rights law.

Both the European Directive on the right to family reunification and national legislation across member states draw a distinction in relation to the right to family reunification between refugees and individuals entitled to subsidiary protection.

The current context is one of an increased influx of people fleeing areas of armed conflict where there is a potential need to determine those entitled to international protection within a broader group of those entitled to subsidiary protection. Confronted by this, recent action by Denmark may be seen as the beginning of a broader pattern of States taking actions, which increase the differential between international and subsidiary protection. This paper will argue that conditions for family reunification should not depend on the specific legal status granted to an individual.
Increasing the difference in conditions for family reunification between those with international protection and a likely broader group entitled to subsidiary protection might prove a short sighted policy, because it risks increasing strain on the overall system through maintaining or increasing motivation for ‘upgrade’ from subsidiary protection to international protection. This paper will argue that effective measures to address the current influx should include establishment of family reunification standards common as between international and subsidiary protection, consistent with international human rights obligations.

**Avidan Kent and Simon Behrman**

‘Climate Refugees: Beyond the Legal Impasse?’

Panel Session III (Day 1) – Stream 3

With the exception of a vague call ‘to avert, minimize and address displacement related to the adverse impacts of climate change,’ the recent ‘Paris Agreement’, concluded under the United Nations Framework Convention on Climate Change (UNFCCC), had little to say on the matter of climate refugees. Indeed, beyond identifying the problem itself and pointing out the gaps in refugee law, little has been said on the topic by researchers or lawyers. A very few have tried to argue that links can be made to human rights law to fill the protection gap (McAdam and Saul); others have attempted to draft a new convention for climate refugees (Docherty & Giannini; Hodgkinson and Young).

It appears that from a legal point of view, we have reached an impasse in regards to climate refugees. Even that moniker is highly disputed, as the refugee is a legal term of art (Goodwin-Gill), which insists on persecution as the key criterion. And yet, detailed studies all suggest that the issue of climate refugees will become a defining issue of the present century, with up to 500 million becoming displaced as a result of climate change.

From the perspective of international lawyers, this problem is aggravated when one considers the often discussed ‘fragmentation of International Law’. Should climate refugees be considered as an ‘environmental’ matter, to be dealt with by Environmental Law? Or as an issue best addressed through the expertise and underlining legal rationales of Refugee Law? The unfortunate reality is that neither of these regimes currently claim jurisdiction over this phenomenon.

Furthermore, it seems that neither of these two regimes possess, on their own, a sufficient set of tools for addressing this problem; while the first (Environmental Law) possesses tools such as available financing mechanisms (e.g. the finance mechanisms available under the UNFCCC) as well as potential legal grounds for attributing responsibility and liability (e.g. customary international rules, such as the prohibition on the creation of transboundary environmental harm), the second (Refugee Law) possesses institutional expertise with respect to the concept of protection.

We offer some suggestions for how this impasse might be broken. By reframing the question in terms of international rights and responsibilities, not merely humanitarianism or shoehorning into existing legal frameworks, and in the spirit of Article 31 of the Vienna Convention on the Law of Treaties (VCLT), which represents in international law the attempt at harmonisation and a holistic reading of the law, in context and not in isolation, we argue that pragmatic, and creative future pathways may be achieved.

In this paper we portray the phenomenon of climate refugees as a matter that should be addressed holistically, by both Refugee, and Environmental Law. Based on the authors’ expertise in both fields (this paper is the result of a collaboration between a refugee lawyer and an environmental
lawyer), and with the help of theoretical frameworks developed by IR authors, notably ‘institutional interactions’ (Gehring & Oberthür) and legal techniques, notably Article 31 VCLT, we intend to propose a framework that will be more effective and realistic in addressing a migration crisis that is likely to dwarf any that we have seen so far.

Linda Kirk

“‘Sailing Against the Wind’: Australia’s Sui Generis Approach to the Refugee Definition’

Panel Session III (Day 1) – Stream 1

On 18 April 2015, the amendments contained in the Maritime and Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth) came into effect. The purpose of the amendments is to introduce into Australian law a refugee law system that is ‘independent and insulated from international refugee law and the Refugee Convention’ and to ensure that Australia is ‘not subject to the interpretations of foreign courts or judicial bodies which seek to expand the scope of the Refugees [sic] Convention well beyond what was ever intended’ by Australia or its Parliament.

The amendments codify key concepts of the refugee definition including ‘refugee’ and ‘well-founded fear of persecution’ and introduce provisions into the Migration Act that are intended to modify existing Australian and internationally accepted approaches to interpretation of the scope of the Refugee Convention.

In contrast to the international practice of numerous State parties to the Convention, the Australian Parliament has, through these recent changes to the Migration Act, sought to introduce a sui generis approach to the interpretation of the refugee definition that diverges from international refugee law jurisprudence and practice. In so doing Australia is ‘sailing against the wind’ in resisting the international move towards the adoption of an autonomous meaning of the terms of the Convention, including the definition of a ‘refugee’ under Article 1A(2).

Susan Kneebone

‘Regional Dynamics: Indonesia and the Protection of Asylum-Seekers in Transit’

Panel Session II (Day 1) – Stream 2

In this paper I analyse the response of the Indonesian government to the protection of asylum seekers in transit to Australia and contrast this with its role as a regional player in Southeast Asia, to illustrate the tensions between that role and its position under bilateral arrangements with Australia, which are aimed at externalising Australia’s obligations under the 1951 Refugee Convention. The purpose of this paper is to demonstrate the limits of the power of actors on the fringe of a region (Australia) and the importance of regional actors and factors.

Although not a party to the 1951 Refugee Convention, Indonesia has long acknowledged international principles and its obligations in its Constitution and its laws. Moreover its participation in the Asian-African Legal Consultative Organisation (AALCO) from 1956 demonstrated its awareness of broader issues of refugee protection. This is in contrast to its recently amended Law 6\2011 ‘Concerning Immigration’ which focuses on irregular migration and the creation of smuggling offences, although acknowledging in the preamble that:

… today’s global development drives greater mobility of people in the world … protection and promotion of the human rights are required …
In practice, however, Indonesia tolerates the presence of asylum seekers on its soil, and cooperates with both the UNHCR and IOM regarding their processing and management. Australia is a key funder of the activities of these two institutions in Indonesia.

Indonesia is also a member of regional processes, such as the Bali Process (Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime) (of which it is co-chair with Australia), and ASEAN (Association of South East Asia Nations). Neither of these processes has a strong protection role for refugees.

Using the example of Indonesia’s role in the 2015 Rohingya refugee ‘crisis’, I will argue that Indonesia’s interests in managing migration lie more within the regional framework discourse than in doing Australia’s bidding. This conclusion has universal implications for effective regional responses to refugee crises.

**Hélène Lambert**

‘Refugees from Armed Conflict: Situating the Customary International Law Rule of Temporary Refuge Today’

*Panel Session V (Day 2) – Stream 2*

This paper focuses on temporary refuge (or temporary protection) as a rule of customary international law, separate and independent from refugee law and *non-refoulement*, and binding on all states. It examines the practical applicability of the rule of temporary refuge to ‘war refugees’ today, in order to test how the rule is ‘responding, growing, contracting, and refining under the lens of daily practice by States and international institutions’ [Guy S. Goodwin-Gill, ‘Non-Refoulement, Temporary Refuge, and the ‘New’ Asylum Seekers’, in Cantor and Durieux (eds) Refuge from Inhumanity? War Refugees and International Humanitarian Law (Brill/Nijhoff 2014) 433-459, at 447]. Hence, it seeks to identify a working regime of refugee protection that integrates general practice accepted as law (e.g. international cooperation and burden-sharing).

Responses by the most concerned states have been a mix bag. The paper examines states’ response to the plight of refugees in the three most affected neighbouring countries to Syria (Jordan, Lebanon, and Turkey) and contrast it with that of three EU member states (Germany, Bulgaria, and the UK). The response by countries further afield, such as Canada, the USA, and Australia, is also briefly considered, as is the position of the UN, the UNHCR, the EU, and the Council of Europe as further manifestations and/or evidence of daily state practice accepted as law.

**Alix Loubeyre**

‘From the Dublin System Fiction to the European Hotspots Creation: Omission to Protect’

*Panel Session VI (Day 3) – Stream 2*

The scale of the so-called ‘refugee crisis’ has highlighted the urgent need for a new and fairer distribution system to receive asylum seekers among Member States. The emergency relocation mechanism was presented only as a “limited and temporary derogation” to the Dublin regulation, that the Commission proposed to amend in September 2015 [COM (2015) 450]. The current Dublin system (Regulations No. 604/2013 & No. 603/2013) is the main legal tool available to Member States to “share the burden of migrant inflows” to the European Union. Based on the fiction that national asylum systems are equivalent and provide comparable guarantees to people in need of international protection, and imposing to the State which borders have been irregularly crossed
the examination of asylum applications, the Dublin system has been criticised for its inefficiency and inability to protect asylum seekers from Human rights violations. It has also become an incentive for some States at the external edge of the Schengen territory to refuse entry to people in need of protection, in order to avoid becoming responsible for their asylum claims, and for the EU to establish ‘hotspots’ in Italy and Greece. Closing external borders and reintroducing controls at internal borders question the very idea of a burden-sharing mechanism of asylum claims in between Member States and even the European commitment to offer efficient access to protection for people who need it.

Izabella Majcher

‘Outsourcing Refugee Protection to Turkey’

Panel Session VI (Day 3) – Stream 2

The external dimension of the EU migration policy relies on involving neighbouring non-EU countries in EU’s efforts to control its external borders. Typically, the EU provides financial and technical assistance or visa free regimes in exchange for signing readmission agreements and preventing migrants from coming to the EU. A new agreement signed with Turkey on 29 November 2015 can be considered as another manifestation of the external dimension of the migration policy. The EU offered Turkey 3 billion Euro in return for Ankara’s cooperation in tackling the refugee and migratory crisis. Precisely, Turkey will prevent migrants and asylum-seekers from reaching European soil. Non-citizens risk being stranded in Turkey, without access to international protection and adequate humanitarian assistance. They may even be sent back to countries where they face risk of ill-treatment. The concerns that the agreement may have devastating impact on the migrant’s rights have already come true. Only a few days after the agreement was signed, Turkish coastguard arrested some 3,000 migrants and asylum seekers to prevent them from attempting to cross the Aegean Sea. The presentation will critically discuss the human rights implications of the November 2015 EU-Turkey agreement, and more generally of the EU policies which outsource refugee and human rights protection to countries with weak adherence to international norms.

Tamás Molnár

‘Exploring Durable Solutions for Stateless People, Especially Facilitated Naturalization and Ex Lege Acquisition of Nationality’

Panel Session I (Day 1) – Stream 3

Durable solutions for stateless persons (covered by the 1954 New York Convention) are different from those available for refugees, but there are common elements. These durable solutions should address both stateless populations in situ and in migratory context as well. Besides confirming nationality for those people who are stateless in the country of their birth and ancestry, or granting nationality ex lege to them, the most adequate durable solution for stateless persons found in a migratory situation is facilitated naturalisation. It addresses what is really missing for them: nationality. In addition to ex lege and facilitated acquisition of nationality, in exceptional cases, resettlement of non-refugee stateless persons might also be conceived as a durable solution, but this is still a rarely used option.

This paper aims at exploring different kinds of durable solutions for stateless people according to the context of statelessness. It first explores facilitated naturalisation of stateless persons under
international law, which stays quite overlooked in academic literature, by analysing and comparing the relevant standards of the 1954 New York Convention, UNHCR ExCom Conclusions and case-law of various treaty bodies (e.g. Human Rights Committee, CERD) as well as regional treaties such as the 1997 European Convention on Nationality and regional soft law instruments elaborated within the Council of Europe. It is then briefly followed by depicting the international law framework relating to the acquisition of nationality by operation of law (ex lege) or through non-discretionary procedures in case of existing stateless populations (under the 1961 Convention on the Reduction of Statelessness, UNHCR Guidelines and other recommendations). When mapping the current state of international law and general trends in State practice in this regard (also highlighting some shortcomings and gaps), this piece will assess the perspectives of an emerging human rights norm as well, i.e. the right to be considered for naturalisation (as an emanation of ius connectionis). Finally, the paper shortly discusses resettlement of non-refugee stateless persons as an exceptional measure and evaluates its sporadic practice so far.

Overall, my contribution pinpoints that the main durable solutions for stateless people are still either acquisition of nationality by operation of law (for large stateless groups living in their own country), or in case of a migratory situation, facilitated naturalisation in each individual case in their State of residence. As a consequence, resettlement of non-refugee stateless persons is just a subsidiary and very special means for getting them out of legal limbo. The efficient use of both principal avenues (ex lege acquisition of nationality and facilitated naturalisation) strongly needs the enhanced cooperation between States and better, human rights-driven domestic implementation of and full compliance with their undertaken international obligations.

Violeta Moreno-Lax

‘Solidarity as a Legal Obligation and the Future of Refugee Law’

Panel Session III (Day 1) – Stream 2

Talks about the importance of solidarity within the refugee law regime are not new. The international protection system is predicated on international cooperation and discussions about ‘burden sharing’ have been common in the recent past. The preamble of the 1951 Convention contains precisely a reference to the need for ‘international co-operation’ for a ‘satisfactory solution’ to be found to situations of forced displacement, ‘considering that the grant of asylum may place unduly heavy burdens on certain countries’. Perspectives on the principle, however, vary, with stark differences between countries along the ‘North-South’ axis. And although some forms of ‘responsibility sharing’ have been agreed in certain circumstances, there seems to be no codified ‘solidarity obligation’ in legally binding form at the universal level, which diminishes the legal strength of the principle and its practical traction as an ordering standard to apportion responsibility for ‘durable solutions’.

Yet, this paper will argue that there is more than meets the eye. It will concern itself with discussion of two fundamental questions surrounding the principle. First, it will inquire about the normative content of solidarity, maintaining that, contrary to conventional wisdom, the principle does have a legal meaning, deriving from the principles of effectiveness and good faith encapsulated in the pacta sunt servanda rule governing multilateral treaty commitments. This conclusion will lead to a discussion on the relevant dimensions of the principle. Although international refugee law obligations, as other international legal duties, are based on reciprocal commitments between States, it will be maintained that, as erga omnes obligations, the agency and rights of individual refugees should also be taken into account in any debate regarding how to implement solidarity
and deliver ‘solidarity outcomes’ on the ground. This re-configuration of solidarity, along the lines of accepted canons of international law, will help establish the meaning and scope of this rule, so fundamental to the survival and future development of refugee law in the international sphere.

**Stephanie Motz**

‘Medical Refugee Claims and Resource Constraints’

Panel Session II (Day 1) – Stream 1

Refugees with serious medical conditions may be threatened in the most existential way, facing a risk to their lives and physical integrity, or treatment that is inhuman and degrading. Yet, in practice their claims still encounter various legal hurdles. One recurring theme is the difficulty of proving a causal link between the Convention ground (for instance, the person’s disability or medical condition) and the denial of medical treatment. In particular, countries of origin may be subject to significant resource constraints, leading to a denial of a causal link to a Convention ground.

In an attempt to distinguish meritorious claims from those which lack the necessary nexus, courts have developed different responses. Canadian courts, for instance, rely on an ‘unwillingness v. inability test’, distinguishing between situations where a country is generally unable to provide adequate health care and those where health care is denied to some on a discriminatory basis (Covarrubias v. Canada, 2006 FCA 365, [40], unsuccessfully challenged in Spooner v. Canada, 2014 FC 870). In New Zealand, the tribunal has held that the closer the nexus between non-enjoyment of a socio-economic right and a basic subsistence existence, the more demonstrable and cogent any resource based explanation for state failure to meet this minimum obligation must be (Refugee Appeal No. 75221, [2005] NZRSAA 289, [101]).

In my presentation I will examine whether it is more appropriate in medical refugee claims to assess whether the Convention ground such as disability is a contributing factor to the predicament in which the refugee finds himself, irrespective of resource constraints. Secondly, I will argue that the issue of resource constraints is more appropriately addressed when assessing whether the lack of medical treatment amounts to ‘being persecuted’ based on a socio-economic rights analysis of ‘serious harm’.

**Karen Musalo**

‘Particular Social Group and the Potential for the Protection of Women, Children and Individuals Fleeing Criminal Violence’

Panel Session IV (Day 2) – Stream 3

The definition of “particular social group” (PSG) has increasingly assumed importance, and been a subject of controversy, as it becomes the means by which the scope of the Refugee Convention’s protection may be expanded. In the United States, adjudicators have ignored UNHCR guidance and imposed more onerous requirements for PSGs than in the UNHCR Social Group Guidelines.

Beginning in the 1990s, the controversy over the definition of PSGs in the US was fought over the protection of women who flee gender-based persecution. It took more than ten years of litigation to establish that women fleeing partner violence may constitute a PSG for purposes of protection, and the viability of many other gender-based claims remains unresolved.

The recent increase in Central American children to the US has brought to the forefront the question of PSGs defined by child status. Although many children are unaccompanied, a substantial number...
flee with their families, attempting to escape the escalating levels of violence committed by gangs and organized crime (OC). In these cases, as in the cases of women fleeing gender violence, PSG has been interpreted and applied in an exceedingly restrictive manner, often resulting in the tragic return of asylum seekers to death.

This paper will discuss how the interpretation of the PSG ground in the US is not only inconsistent with international norms, and constitutes a clear divergence from prior US jurisprudence, but is also an exercise in unprincipled decision-making, motivated more by limiting protection than by faithfully applying the refugee definition. The paper will also discuss salient aspects of the patterns of violence against women and children – both intra-familial and at the hands of gangs and organized crime – and will demonstrate how the proper interpretation and application of the refugee definition would extend protection in a large number of northern triangle claims for asylum.

**Bríd Ní Ghráinne**

‘Forced Migration at Sea: The Case of South-East Asia’

Panel Session II (Day 1) – Stream 2

At the time of writing, the term ‘Mediterranean crisis’ is making headlines. However, the plight of migrants fleeing Burma and Bangladesh by sea has passed largely unremarked by western politicians. This crudely-termed game of ‘human ping-pong’ involved the Thai, Malaysian, and Indonesian authorities turning back boatloads of people, leaving about 8,000 people stranded at sea. Many on board the ships are members of Burma’s minority Rohingya population, who lack citizenship, endure systematic discrimination, have limited access to education and healthcare, and cannot move around freely. Further, the legal framework regarding human security, border control, human trafficking, and regional security in respect of this ‘crisis’ is unclear.

This paper will examine the legal framework applicable those crossing the Andaman Sea owing to a fear of persecution. First, it will set out the nature of the problem in terms of numbers, reasons for flight, political, and logistical considerations. Secondly, I will argue that defining the Rohingya as refugees is of little assistance, as the states concerned are not parties to the 1951 Refugee Convention. Nonetheless, it will argue that the actions of turning back the boats is illegal because these states are bound by various provisions concerning the obligation to render assistance to ships in distress at sea and numerous relevant human rights provisions. This paper will conclude by illustrating that the more developed framework in Europe has not necessarily meant that migrants in Europe are better off than those in the Andaman Sea, and will identify questions left open for further discussion.

**Neva Öztürk**

‘Temporary Protection A La Turca: A Pragmatic Solution or a Legal Barrier to International Protection?’

Panel Session V (Day 2) – Stream 2

Today, Turkey hosts more than half of the total number of Syrian refugees. This is not only a challenge for Turkey in terms of the numbers but also in developing a sustainable legal regime. Throughout its history, Turkey has experienced a number of mass refugee influxes given that it is located in the crossroads of many countries in the region that have been in perpetual turmoil. However, it has been only couple of years since Turkey has established its legal regime on
temporary protection. The cornerstone of the Turkish temporary protection regime is a by-law [Temporary Protection By-law (TPB)] issued by the Board of Ministers, as a part of Turkey’s renewed and seemingly progressive legal framework related to asylum. The main objective of the new legal framework was to harmonize the Turkish asylum system with that of the EU’s, and strike a balance between security and fulfilling the responsibility of providing international protection to refugees. TPB, reflects a totally different approach especially on matters of access to international protection statuses, transparency and legal security. The By-law suspends access to international protection, restricts certain fundamental rights with no clear and lawful reason, lacks objectivity on the cessation of the protection and provides no legal security for the voluntary return. This approach is reminiscent to the Europe’s ex-Yugoslavian and Kosovo experience where the provision of non-refoulement protection alone was deemed sufficient at that time. Turkey in this way seems to be adopting the same approach as a practical matter to deal with the current refugee crisis. This tendency reflects a pessimistic image for the future of temporary protection, demonstrating that nothing has changed since the 90’s and the same old question remains; is temporary protection a pragmatic solution or a barrier to international protection?

Beatriz Eugenia Sánchez
‘Internal Displacement, Environmental Disasters and Climate Change in Colombia: Ripping the Veil’
Panel Session III (Day 1) – Stream 3

Along 2010 and 2011 Colombia faced exceptionally strong rainfalls, caused by La Niña phenomenon. The rain turned into catastrophic flooding and landslides, affecting 88% of municipalities. More than 3 million people were affected, 33% of which lost their homes. Around a half of such people will not be able to return home and should be relocated elsewhere. In spite of the fact that national authorities developed complex ad hoc measures to relief and rebuild the affected communities, they did not recognize the mere existence of environmental displacement. Months later the National Congress approved a new Act, creating a whole new system to deal with environmental disasters. Once again, it did not recognize the effect of catastrophes on human mobility.

At this point two questions arise. First of all, why the relationship between displacement and climate change (or even displacement and environmental disaster) remain invisible to the Colombian authorities? Secondly, is it possible to make visible such connections and formulate a specific public policy to relief and protect the environmental migrants?

This paper presents an array of reasons explaining the State blindness. The country development model (based on extractive industries), the way that disaster risk management has been conceived along decades, and the idea of armed conflict as the solely cause of internal displacement, are the main reasons. The paper also explores the way to rip off the veil that prevents authorities from recognizing the existence of environmental displacement, allowing the creation of a public policy built upon a rights-based perspective.

Uziel Santana
‘Brazil as a New Frontier for Receiving Refugees from the Current Crisis in Europe’
Panel Session V (Day 2) – Stream 1

This paper intends to analyze how the Brazilian system of protection to the refugees works, especially the role of civil society organizations, and how Brazil can contributes to the current refugees crisis as a new frontier of receiving and integrating refugees.
One of the recent contributions of Brazil to the Refugee Crisis is the called ‘open-door’ policy, the Brazil’s special visa programme for people affected by the Syria conflict. Since 2013, Brazilian consulates in the Middle East have been issuing special visas under simplified procedures to people affected by the Syrian conflict to travel to Brazil, where they then present an asylum claim. In 2015, Brazil’s Secretary of Justice Mr Beto Vasconcelos signed an agreement with UNHCR to extend the ‘open-door’ policy for two more years.

Under the agreement, UNHCR and Brazil agreed to a set of activities to make the process of granting the special visas more efficient and secure. Better procedures will be in place to identify families and people with special needs who may qualify for a special visa for Brazil. Not only Syrian nationals, but also others affected by the Syrian conflict can benefit from this programme. The renewed cooperation between UNHCR and Brazil includes the exchange of information and expertise in Jordan, Lebanon and Turkey.

The Brazilian experience on receiving and integrating refugees, especially those coming from Middle East and North Africa, can be taken as examples of a national system of protection to the refugees that involves the Government, NGOs and civil society in general, the population and the media.

However, there is much else to do, and one of the biggest challenges to Brazil is to improve its immigration policies, laws, and practices into conformity with international human rights standards, and extend them to the protection asylum seekers, refugees, victims of human trafficking, and other vulnerable groups in the context of human mobility.

Finally, we recommend to the Brazilian Government to take actions to firm an agreement of international cooperation with EU in order to improve refugee protection and respect for human rights.

Matthew Scott
‘Changing the Climate: Reconceptualising the Application of International Refugee Law in Disasters’
Panel Session I (Day 1) – Stream 1

When academic and institutional authorities rejected the notion of the ‘climate refugee’, they did so predominantly by focusing on the difficulties in establishing that individuals at risk of being exposed to ‘the adverse impacts of climate change’ had a well-founded fear of being persecuted for a Convention reason. As discussion of protection of cross-border disaster-displaced persons has matured, culminating in the international endorsement of the Nansen Initiative’s Agenda for the Protection of Cross Border Displaced Persons in the Context of Disasters and Climate Change, consideration of the application of the Refugee Convention has stagnated. This article articulates a reconceptualization of the Refugee Convention in situations of disaster, drawing on states positive obligations under international human rights law, the emerging field of international disaster law, and insights from the fields of disaster risk reduction and response. Under this approach it becomes possible to see how the severe, differential impacts of a disaster have the potential to transform ‘mere’ discrimination into persecution for a Convention reason. A detailed example relating to the predicament of Reewin and Bantu people during the 2011 famine in Somalia is provided, and a conclusion is reached that assessing the risk of future harm presents greater practical as well as conceptual challenges than questions relating to whether individuals may be exposed to persecution for a Convention reason in situations of disaster. The Refugee Convention continues to have limited application in disasters, but a coherent conceptual framework for determining the circumstances in which it does apply is essential for ensuring that those entitled to its protection receive it.
James Simeon

‘The Future of Non-Refoulement in International Refugee Law?’

Panel Session IV (Day 2) – Stream 1

Non-refoulement, a preemptory norm, is the prohibition against sending anyone back to their country of origin or former habitual residence to possible persecution. This paper will interrogate three pertinent questions with the intent of illuminating the future of non-refoulement in international refugee law: how has the fundamental basis of non-refoulement evolved and developed since the 1951 Refugee Convention and its 1967 Protocol came into force, 22 April 1954 and 4 October 1967?; what are States’ present non-refoulement practices in international refugee law?; and, given its current standing and trajectory, or course of development, what will be the likely state of non-refoulement in the foreseeable future, say, over the next twenty-five years? If international refugee law is premised on the essential legal principle of non-refoulement, then, how it will likely evolve over the next two and half decades will have a significant bearing on the development of international refugee law over the next generation. The focus of analysis will concentrate on three relevant questions regarding non-refoulement today and its likely jurisprudential development over the foreseeable future: (1) extradition and prosecution – the 1951 Refugee Convention poses no obstacles to either – assuming that neither is persecutory in itself and the person is successfully prosecuted abroad and serves their sentence, then, there must be a pre-existing agreement for their return to the country of asylum to avoid indirect refoulement; (2) given the non-refoulement proscription to capital punishment, what are the foreseeable prospects for the universal abolition of the death penalty?; (3) Article 33(2) gives exceptions to the principle of non-refoulement: national security and danger to the community. Given the requirement for restrictive interpretation, what constitutes “exceptional circumstances” in each of these instances? Such an in depth analysis should yield useful insights into the near future possibilities of non-refoulement and ipso facto international refugee law.

Sarah Singer

‘Immigration Detention in the UK: Navigating the Labyrinth’

Panel Session II (Day 1) – Stream 3

As lawyers we tend to have certain ideas about how law ‘works’ in society, and immigration law in particular acts to the benefit and/or detriment of individuals. However, when we dig a little deeper into the operation of law in practice we see that law can play out in different ways. This paper draws on interviews conducted with asylum seekers detained in a number of locations across the UK and explores how they, as subjects, perceive and experience UK immigration law. What is revealed is that individuals’ experience of law is largely influenced by a variety of (non-legal) factors which as lawyers we may not readily engage with on a regular basis. Indeed, it appears that it is the minutiae, the small practical details, which have the largest impact on how individuals experience the UK’s immigration system, as felt particularly by those most vulnerable – detained asylum seekers.

Shanthi Sivakumaran

‘A Race to the Bottom: The Deprivation of Property of Refugees’

Panel Session II (Day 1) – Stream 3

In January 2016, Denmark passed an amendment to the Aliens Act (Bill no. 87) which will enable authorities to seize the property of asylum seekers as part of a policy to deter refugees from
seeking asylum in Denmark. This marks a possible turning point in refugee law as several states in Europe consciously seek to create conditions less favourable than neighbouring states in order to discourage refugees, creating a potential “race to the bottom” in asylum protection.

This paper will address whether the deprivation of refugees’ property as part of a policy to discourage refugees from seeking asylum is consistent with international law. First, this paper will argue that the search and subsequent compulsory seizure of their property subjects asylum seekers to inhuman and degrading treatment. As the ECtHR held in MSS v Belgium and Greece (2011) 53 EHRR 28, asylum seekers are members of a particularly underprivileged and vulnerable group who require special protection and the compulsory seizure of their property is arguably sufficient to engage Article 3 ECHR and Article 7 ICCPR. Secondly, the discriminatory nature of the law will be addressed. Denmark maintains that the amendment is not discriminatory as it will impose the same requirements on Danish citizens requesting social assistance. This paper will explore the limitations of this analogy and why the law will still fall foul of the principles of non-discrimination enunciated in Article 26 ICCPR, Article 14 ECHR and Article 13 of the UN 1951 Refugee Convention. Finally, the right to property enshrined in Art.1 Protocol 1 ECHR is considered. The paper will address the inherent conflict in requiring refugees to ‘pay their share’ and the need to strike a fair balance between refugees’ individual rights and the interests of the community as required by the ECtHR in Sporrong and Lonnroth v Sweden [1983] ECHR 5.

Cavidan Soykan

‘Can Turkey Be a Model for the Protection of Syrian Refugees? The Differentiated System of Rights Created by the Temporary Protection Mechanism’

Panel Session VI (Day 3) – Stream 3

Turkey has become the biggest refugee hosting country in the world with the arrival of Syrians since April 2011. More than two and a half million Syrians are registered under the temporary protection mechanism in the country. With its introduction in 2014, this temporary protection mechanism started a two-tier system in Turkey for non-European asylum applicants. Due to Turkey’s geographical limitation to the 1951 Refugee Convention, while non-Syrian asylum seekers still have to register with both UNHCR and the newly founded Directorate General of Migration Management for a conditional refugee status according to the Law on Foreigners and International Protection, Syrians are subject to the Temporary Protection Regulation. This regulation suspended international protection applications of Syrians and closed them the other track, i.e. the resettlement option. This caused a differentiated system of rights for the people with international protection needs in Turkey. For instance, although primary and secondary educations are compulsory and available free for all children living in Turkey regardless of their nationality, there is a parallel formal education system only for Syrian primary and secondary school age children with the establishment of ‘temporary education centres’ both inside and outside of camps. Similarly, the Turkish government is planning to create a parallel system of health by employing Syrian doctors for Syrian patients in 2016.

This paper will look at this two-tier protection system created after the introduction of Temporary Protection Regulation. Focusing on the rights, the paper will critically analyse this differentiated system from the perspective of human rights. The paper will argue that creating a parallel system of rights will hinder the long-term integration of Syrians in Turkey.
Robert Stewart

‘Refugee or Migrant: Does Your Refugee Status Move with You?’ (co-author - Kirsten Fisher)

Panel Session VI (Day 3) – Stream 3

Given the current refugee crisis in Europe, with individuals and families from the Middle East and the Horn of Africa and elsewhere fleeing their home countries for safer and more prosperous lands, an interesting question arises regarding the sticking-power of the status of “refugee”: Do individuals retain their refugee status if they move beyond their first country of arrival? For example, should Syrian refugees who attempt to leave their original host country (such as Lebanon or Jordan) to escape the poor living conditions and highly vulnerable situation afforded them there but not for reasons that in and of themselves would confer refugee status under the 1951 Refugee Convention be considered refugees by the next country they attempt to enter, with all of the rights that the status bestows? Or should they, as British Prime Minister David Cameron and others suggest, be regarded as economic migrants? The Convention seems unhelpful in answering this question. The Convention clearly defines a refugee as someone who 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”, and specifically outlines the conditions under which the Convention ceases to apply to a person who otherwise meets the criteria for refugee status, but does not mention movement between host states. Different states seem to conduct themselves in ways that imply very different understandings of the retention of refugee status, therefore demonstrating no customary international law that speaks to this issue. This paper attempts to answer this question by examining the letter and spirit of the original 1951 Convention and the 1967 Protocol, whether there is evidence of any emerging norms in this regard, and the ethical considerations and the concrete implications for the individuals to whom this question applies.

Hugo Storey

‘The continuing search for the true meaning of protection within Article 1A(2) of the 1951 Convention’

Panel Session III (Day 1) – Stream 1

The current migration crisis has provoked increased scrutiny of the four walls of the 1951 Refugee Convention, with proponents on one side calling for wider scope to be given to refugee protection and proponents on the other side calling for reduced scope.

The tensions are compounded by the fact that over 60 years on there is still no accepted definition of protection within the meaning of Article 1A(2). Even though it is now widely accepted that this provision concerns protection in the country of origin (not external or diplomatic protection), the search goes on for definitive answers as to:

Whether the protection can or should be state protection only

What definition is to be given within refugee law to “the state”

What is meant by protection by the state

By whom and in what form can protection be provided or the need for it obviated

The contents and or necessary qualities of the protection involved

The interrelationship between protection in an applicant’s home area and (assuming no protection there) protection in an alternative part of the country: does the latter require resort to a different concept of protection (as seemingly advocated by Hathaway and Foster among others)
For decision-makers in the EU, answers to one or two of these questions are prescribed by law in the form of the (recast) Qualification Directive. However, even on matters such as which entities can be actors of protection and the meaning of “internal protection”, the Directive contemplates a five year review cycle and there will doubtless be pressures for more changes to be made to the wording of Article 7.

It will be argued that many of the criticisms that have been levelled at Article 7 of the recast Directive are misplaced but in any event have diverted attention away from the fact that this provision identifies a number of qualities that protection must possess which provide for the first time a firm basis for a clearer understanding of the essential components of protection within the meaning of Article 1A(2).

It will also be argued that whether a state provides effective protection is ultimately a threshold question requiring a holistic analysis which takes into account what is done protectively by all kinds of actors, including civil society actors.

Mark Symes

‘Subsidiary Protection in EU Law for Persons Fleeing Armed Conflict’

Panel Session V (Day 2) – Stream 2

This paper will address the scope and meaning of Article 15(c) of Directive 2004/83. In it I shall review the authorities and arguments relating to the interpretation of the provision and argue that, given the plain intention that it extends the protection previously available via other human rights obligations, its meaning is best effected by reference to, but not control by, components of international humanitarian law (IHL), and that a broad approach should be taken to the assessment of the threats to life and person that render an individual eligible for subsidiary protection, to take account of advance indicators of impending crisis such as a lack of humanitarian access and medical assistance.

The author’s strategy is to look firstly at the broad objectives of the subsidiary protection regime; secondly to analyse the drafting history, the structure of the article and its context; thirdly to consider the relevance of IHL to the provision’s interpretation; fourthly to cast an eye over the ambit of refugee protection for civilians fearing armed conflict in order to determine quite what it is which subsidiary protection aims to complement, before moving onto a detailed examination of the constituents of Article 15(c) and how they are, and might be, interpreted.

Julie Tenenbaum

‘The ICRC’s Stocktaking Exercise on the Operationalization of the African Union IDPs Convention’

Panel Session IV (Day 2) – Stream 3

The purpose of this paper is to develop an analysis of normative and practical measures that States may adopt to implement their obligations based on the Convention, in order to enhance the concrete impact of the Convention on the ground in terms of improving protection and assistance of IDPs.

The ICRC will assess how the Kampala Convention is being operationalized by States who have ratified it and have, or have not yet, adopted implementing legislation. Moreover, it will look at practical measures taken by States who have not ratified the Kampala Convention but have adopted domestic normative frameworks on the protection of IDPs (e.g. based on the Guiding Principles or the Great Lake Region Protocols), as well as by States who have no domestic framework in place.
Based on the good practices as well as gaps identified on the ground, the ICRC will develop a set of lessons learnt and concrete and pragmatic recommendations aimed at assisting States in the operationalization of the Kampala Convention, with the ultimate aim of increasing their capacity to meet the multi-faceted needs of IDPs in their context.

The findings of the paper will be used to engage in evidence-based advocacy with State authorities regarding their legal obligations vis-à-vis IDPs and how to improve their response to displacement in their respective context. They will also serve to develop targeted interventions on strengthening the national legal framework governing assistance to and protection of IDPs, including through domestication and implementation of the Kampala Convention, to address the specific protection and assistance concerns about the situation of IDPs as identified in each context.

**Rebecca Thorburn Stern**

‘Children Fleeing Armed Conflict: The (Increasingly Important) Role of the UN Convention of the Rights of the Child’

Panel Session VI (Day 3) – Stream 1

Armed conflict is today one of the main reasons for people to seek international protection. The UNHCR estimates that by the end of 2014 approximately 60 million people were forcibly displaced worldwide; numbers unlikely to decrease in 2015 and 2016. The UNHCR estimates that more than half of the people fleeing their homes are children.

It has long been argued that the UN Convention on the Rights of the Child (CRC) has an important role to play in the assessment of a child’s eligibility for international protection. The provisions most often referred to are Articles 6 and 37 (the principle of non-refoulement) and Article 3.1 (the best interests of the child). References to the CRC are also included in international and national legal instruments and in guidelines on protection status determination. That the CRC could as well as should have an impact on these assessments thus seems uncontroversial. Several factors however contradict this presumption. One is the limited weight accorded to the CRC in national law in many countries; a second is the lack of implementation of a child-sensitive perspective when interpreting international, EU and national asylum law; a third is the limited extent to which children in practice are considered rights-holders in general.

Against this backdrop, this paper aims to analyse the role of the CRC, the general principles in particular, in the assessment of a child’s claim for international protection from armed conflict with a particular focus on complementary protection. The CRC is discussed both as an instrument for interpreting the need for protection and as a complementary basis for protection, and it is argued that the CRC could be used more frequently and more effectively than what currently seems to be the case. In addition, it is discussed whether the CRC, given recent tendencies in several European countries to limit protection grounds, could be given a more prominent role when arguing the need and right to international protection for a child fleeing from armed conflict and generalised violence.

**Laura van Waas**

‘Preventing Childhood Statelessness through Fulfilment of the Child’s Right to Acquire a Nationality: The Role of the CRC’

Panel Session VI (Day 3) – Stream 1

In late 2014, UNHCR launched a global campaign to end statelessness within a decade. A central element of this campaign is to prevent new cases from arising, including by ensuring that no child
is born stateless (Action 2). This is a not insignificant challenge: every year, tens of thousands of children are denied the right to acquire a nationality. Indeed, UNHCR estimates that a child is born stateless every 10 minutes.

As an increasing array of actors turn their attention to the problem of childhood statelessness, a key question is what tools international law has to offer. The Convention on the Rights of the Child (CRC) is the most universally ratified human rights instrument in the world and enshrines the right of every child to a nationality in its article 7. With a Committee empowered to undertake a periodic review of state parties’ performance in the fulfilment their obligations and a growing number of states party to the 3rd Optional Protocol (providing for an individual complaints procedure) the CRC is an extremely potent mechanism for preventing childhood statelessness. However, the general consensus among experts in the statelessness and child rights fields has been that while the CRC confirmed every child’s right to a nationality, it was less prescriptive on the corresponding duty of the state. Actors working to end statelessness placed greater emphasis on the 1961 Convention on the Reduction of Statelessness as the mechanism through which childhood statelessness can be addressed (despite it being weaker, less widely ratified and without a supervisory apparatus), and underutilised the CRC.

Drawing on analysis carried out by the Institute on Statelessness and Inclusion, this paper explores the full potential of the CRC to contribute to the fight against childhood statelessness. It discusses how the CRC’s guiding principles serve to strengthen the interpretation of the child’s right to a nationality and offers an evaluation of the role that the Committee on the Rights of the Child has played, to date, in promoting measures for the prevention of childhood statelessness.

Matilde Ventrella

‘Fight Against Smugglers: Does EU Law Protect Victims of Smuggling and Trafficking?’

Panel Session VI (Day 3) – Stream 2

The European Agenda on Migration appears to reinforce one more time the fight against migrants’ smugglers, asserting dismantling their business model will reduce migration flows to Europe. The EU and its Member States decided a military intervention which aims to bomb the boats migrants use to venture through the Mediterranean (EUNAVFOR-MED, recalled SOPHIA). Concentrated therefore on controlling migrants’ smuggling, the EU policies don’t distinguish in between victims of smuggling and smugglers themselves. Victims could cooperate with law enforcement authorities to detect smugglers which operate from their countries of origin to Europe. They could testify and support investigations on smuggling of migrants. It has been demonstrated that often national police have detected criminal networks with the support of victims of smuggling who have testified against their smugglers. However, in order to obtain this objective, the concept of smuggling of migrants should be reformed and victims of smuggling should be granted the same level of protection granted to victims of trafficking. Instead, they do not have any rights and are returned to their countries of origin. This paper will propose legal alternatives to the automatic return of victims of migrants smuggling and will focus on the role Europol should be given in order to fight adequately against smuggling of migrants and in the meantime protecting the victims of this crime, in order to ensure refugee law will not be altered by / in Europe.
Giulia Vicini

The Court of Justice of the EU: An Emerging Global Actor of Refugee Law?

Panel Session IV (Day 2) – Stream 2

Recent literature has very much focused on the increasing role of the CJEU in implementing a common asylum policy between EU member States. The interest of the literature is easily explained. Firstly, the CJEU is the first supranational actor to provide a binding interpretation of the 1951 Geneva Convention relating to the status of refugees. Other international actors involved in the protection of refugees are bereft of effective powers concerning the interpretation of the convention provisions. Some authors have indeed defined the CJEU as the first supranational asylum court. Secondly, although the jurisprudence of the CJEU only binds EU Member States, its impact is likely to extend beyond the European borders in light of the so-called ‘global reach’ of European Refugee Law, namely the tendency of the European asylum regime to be emulated in other regional integration systems.

This paper aims to assess the potential of the CJEU as a global actor of refugee law. In particular, it wonders whether the CJEU interpretation of the 1951 Refugee Convention provisions has a vocation to apply beyond the EU borders. It is argued that the EU court suffers from structural shortcomings that render it unsuitable to interpret the provisions of an international universal agreement such as the Refugee Convention. Due to these shortcomings, the CJEU is indeed developing an autonomous and strongly EU-oriented interpretation of the 1951 Convention. The paper will engage in a critical analysis of the CJEU jurisprudence. This analysis will show that more than the outcome of a reasoned interpretation of an international agreement, the CJEU asylum jurisprudence is the result of a three-way compromise between Member States’ interpretative approaches, the need to ensure the EU institutional balance and the protection of individuals. This circumstance is likely to prevent the CJEU from becoming an interpretative authority of international refugee law.

Caia Vlieks

‘Statelessness in a Migratory Context: What Solutions Do Regional Legal Instruments Offer?’

Panel Session I (Day 1) – Stream 3

Statelessness is a global phenomenon affecting more than 10 million people. It often results in persons being marginalized and left unprotected. Lack of nationality prevents these individuals from fully enjoying a wide range of basic human rights. Despite international treaties and increased attention to statelessness, this issue remains unresolved, as is evidenced by the fact that UNHCR recently estimated that a child is born stateless somewhere in the world every ten minutes. Part of the number of stateless persons can be referred to as stateless migrants: statelessness persons who are migrants, or have a migratory background, and who have no (or no significant) ties to the country they reside in (yet). This paper focuses on stateless migrants in light of Europe’s current refugee crisis, as it is well possible that European countries will be under more pressure than ever to respond to this specific matter against this background. The paper therefore considers whether regional legal instruments are beneficial to solving statelessness in the migratory context by looking at the Council of Europe (CoE) as a case study. The CoE has adopted different instruments in order to ensure that European states cooperate and coordinate their nationality laws in order to deal with – inter alia – statelessness. It thus presents an interesting case study on this topic. The paper analyzes the legal instruments of the CoE on nationality and statelessness, including the European Convention on Nationality, and examines the solutions they offer, but also identifies gaps that exist, as regards the specific group of stateless migrants and their children.
**Ralph Wilde**

‘Futures for the Extraterritorial Application of the Non-refoulement Obligation in Human Rights Law’

Panel Session IV (Day 2) – Stream 1

For some time international human rights law has been invoked to provide complementary protection for individuals from that provided in international refugee law. One key potential area of complementary protection concerns the extraterritorial application of the non-refoulement obligation, relevant to such issues as the interception, ‘push back’ and detention of migrants, especially given the continuing challenges to the idea that the 1951 Refugee Convention applies extraterritorially. The present paper explores the future potential of human rights law in this regard, addressing different aspects of this question from two contrasting standpoints. Looking backwards, this involves trying to construct a holistic approach to applicability based on the sparse and highly situation-specific human rights law decisions that have been issued so far in relation to maritime interception, push-back and detention. Looking more to the present/very recent past, and addressing underlying policy considerations, it addresses recent challenges that have been made to the validity of this regime in the context of the migration ‘crisis’ in Europe, especially as it implicates southern European states. Such challenges include the charge that an extraterritorial obligation of non-refoulement in human rights law is incentivising people to put their lives at risk, and places disproportionate ‘burdens’ on particular ‘frontline’ states given the absence of burden-sharing obligations that would mitigate this. The paper will provide a critical evaluation of the potential futures of the human rights law non-refoulement obligation, then, by both seeking to map out the full contours of applicability based on relevant case law, and appraising this with reference to the underlying policies at issue.

**Sarah Woodhouse and Judith Carter**

‘The UK Statelessness Determination Procedure: A Failure of Protection?’

Panel Session I (Day 1) – Stream 3

The UK is a signatory to the 1954 Convention relating to the status of Stateless Persons, but was slow to provide stateless persons with any systematic protection. The UK’s first Statelessness Determination Procedure was only introduced in April 2013. Liverpool Law Clinic, part of the University of Liverpool, has offered a unique, specialised statelessness project, involving students engaged on Clinical Legal Education modules to support casework and making applications under the UK’s statelessness determination procedure. Some of our clients, almost all of them refused asylum seekers, have been recognised as stateless and others have on-going challenges to refusals of leave to remain or are awaiting a decision.

The paper will draw on our practical experiences in order to offer a comparison of the definition of a stateless person set out in the Convention and emerging in domestic law, in particular contrasting the Convention and UNHCR Handbook on the one hand with Home Office Guidance and UK case law on the other. Critical analysis will be offered that will assist in explaining the low recognition rate of stateless persons; in 2015, less than 20 cases had been recognised as stateless, and around 300 refused. The paper will also compare the rights of stateless persons set out in the Convention and those available to recognised stateless persons in the UK.
Reuven (Ruvi) Ziegler

‘Detention of asylum-seekers in the Israeli High Court of Justice: The Absent-Present 1951 Convention’

Panel Session II (Day 1) – Stream 3

This paper builds ‘No Asylum for “Infiltrators”: The Legal Predicament of Eritrean and Sudanese Nationals in Israel’ (2015) 29(2) JIANL 172, as well as my previous commentaries on the judgments of the Israeli Supreme Court, sitting as a High Court of Justice (HCJ), in HCJ 7146/12, HCJ 8425/13, and HCJ 8665/14. The above judgments quashed, respectively, the ‘Law for the Prevention of Infiltration’, Amendment #3, 4, and (part of) 5. The legislative schemes, authorising lengthy detention of non-deportable ‘infiltrators’ (as Israeli law defined them), were held to be unconstitutional, violating the rights to human dignity and to liberty, enunciated (respectively) in Articles 2, 4, 5 of Basic Law: Human Dignity and Liberty.

The paper appraises the light treatment that the 1951 Convention relating to the Status of Refugees (1951 Convention) received in the above-mentioned HCJ judgments, reflecting on the implications thereof for refugee law adjudication globally. While Israel is a signatory to both the 1951 Convention and to the 1967 New York Protocol, it has not incorporated them into its domestic legislation. The HCJ judgments invoke the ‘presumption of interpretive consistency’ of Israeli law with international law (applicable in ‘dualist’ systems absent incorporation of an international treaty into domestic law), yet the HCJ refrained from engaging in legal scrutiny of the compatibility of the impugned legislative schemes with relevant provisions of the 1951 Convention.

Now, judicial determination regarding incompatibility with Israel’s treaty obligations would not have brought about the petitioners’ desired constitutional remedies, because primarily legislation can only be declared invalid pursuant to constitutional provisions. Nevertheless, the court’s consistent reluctance to engage in refugee law analysis has two regrettable ramifications from an (international) ‘rule of law’ perspective: First, it serves to reify the state’s repeated claim that its legislation is compatible with the state’s international law obligations, as the latter should be interpreted in light of Israel’s ‘unique’ situation. Second, it amounts to shirking responsibility of the HCJ qua agent of international law adjudication to guide the state in implementing its treaty obligations. Abdication of this judicial role is particularly worrying in an area of international law such as refugee law where, absent binding international adjudication, it falls primarily to domestic courts to articulate jurisprudential principles.

It is contended that two pertinent provisions the 1951 Convention were noticeably absent from the HCJ’s assessment in the above judgments: Article 31 (‘refugees unlawfully in the territory’) coupled with Article 34 (‘naturalisation’). It is noteworthy that, whilst Israel’s ratification of the 1951 Convention (and its accession to the 1967 New York Protocol which removed the 1951 Convention’s temporal and geographic restrictions) were subject to several statements and reservations, none of them concerned Articles 31 and 34. Hence, Israel may be presumed to be committed to full implementation of these provisions. The paper argues that the HCJ ought to have assessed whether the perceived penalisation of ‘infiltrators’ (including those who have applied for asylum and can be considered presumptive refugees’) for their unauthorised entry complies with Article 31(1); whether restrictions on the movement of non-deportable ‘infiltrators’ are ‘necessary’ as per Article 31(2); and whether the state’s explicit legislative aim to restrict the movement of persons deemed by the state to be non-deportable in order to ‘prevent their settlement’ is compatible with the Article 34 obligation to ‘as far as possible facilitate the assimilation...’ of refugees.