

Winter 2011
Specialized Topics in Law 8
LAWG 518 001 (5859) & 009 (5860)
International Migration Law
FRANÇOIS CRÉPEAU

Syllabus

1. PRESENTATION

Since time immemorial, migrations have shaped human communities. History of Mankind is that of a continuous migration towards economic prosperity and political stability. Migration is a constant of civilisation. Borders are only a very recent and often ineffective barrier to migration.

During the last centuries, migrations have considerably increased, both in distance and in numbers. Continents have been populated by external migration, to the detriment of indigenous peoples. In the past fifty years, this movement has accelerated, due to the democratization of means of communication and mass transport. States nowadays wish for an immigration that can contribute to economic growth, but fear migrations that increase the poorer part of their population, destabilize eco-systems and multiply political conflicts.

States in the “New World” have adopted broad immigration policies, selecting “the best and the brightest”, including investors and entrepreneurs. Source countries are therefore losing a good portion of their human capital, a loss which is not really compensated by the remittances that many emigrant send back home.

The European Union has adopted a policy of free movement of capital, goods, services and persons within its common territory, therefore completing an integrated common market. This principle is not applicable to non European citizens and “Fortress Europe” certainly seems well established, as exemplified by the Melilla and Ceuta incidents in the fall of 2005, as well as the maritime activities of Frontex.

The 20th century has been that of the refugees and displaced populations. Communism, totalitarianism, decolonisation, cold-war proxy wars, post-cold-war ethnic conflicts have all taken their toll on human populations, forcing millions to flee. The legal concept of “refugee” has emerged and a status defined, now monitored by the United Nations High Commissioner for Refugees.

The ‘80s have seen a phenomenal increase of asylum seekers in western countries. Torn between their democratic and humanitarian principles, their short term economic and social objectives, as well as their ill-informed public opinions, most States have initially put in place deterrence mechanisms: restrictive interpretation of asylum, visa obligations, refoulements, deportation, detention, reduction of social benefit or of legal assistance, etc. They have also streamlined their refugee determination procedures.

The fall of the Berlin wall changes the international migration law paradigm and 9/11 completes the radical reconceptualization of the legitimacy of international migrations. Refugees are no longer freedom fighters against the communist arch-enemy, but come from the third world, pushed by generalized violence or political troubles as well as by harsh socio-economic policies. Irregular migration is placed at the heart of international criminality, next to drugs trafficking, arms trafficking or terrorism, and irregular migrants are thus systematically suspected of carrying with them insecurity, violence or even terror. Migration is now an international security concern.

These developments affect the implementation of numerous human rights protection regimes as they apply to foreigners: their universality is compromised.

One cannot escape the conclusion that many migrations will remain uncontrollable: in democratic States – (in contrast to police States ... and even then), borders cannot be sealed and territories cannot be made “migration-proof”. One will have to recognise that foreigners are human rights holders as much as citizens are, by virtue of their common humanity. In a renewed conception of citizenship, security and human rights must be reconciled and migrants should receive the protection required by their vulnerability.

2. COURSE OBJECTIVES

1. To learn the main concepts of international migration law.
2. To measure the diversity of the sources, to master the main legal instruments and to work with the doctrine related to asylum and border controls.
3. To understand the contemporary issues and challenges related to international migration law, including its relations to international human rights law and international humanitarian law, at the heart of the profound transformations of the universal international law regime.

3. COURSE PEDAGOGY

This is a seminar. The method will include presentations by the professor and the students, discussions of the mandatory readings, some viewing of videos and guest speakers.

The professor is available by appointment, and can be contacted by email (francois.crepeau@mcgill.ca).

4. COURSE ÉVALUATION

The evaluation will be divided between the following items:

1. Ten (10) points for oral participation in the seminar.
2. Fifteen (15) points for an oral presentation (approximately 8 minutes), during the student colloquium, on the subject of their research. The student colloquium is tentatively scheduled for **Saturday, 9 April 2010, 9am-5pm**.
3. Seventy-five (75) points for a written research essay of approximately 8,000 words (excluding notes and bibliography). Students will be encouraged to form teams of two. The students will not forget: the table of content, a table of abbreviations, properly cited footnotes or endnotes, the bibliography. The subject of the research must be approved by the professor. Deadline for submission of winter term essays and final papers to SAO is **Wednesday, 20 April 2011, at 15:00**.

The evaluation criteria for the essay will be:

1. the quality and relevance of the legal qualification of the issue;
2. the rigour et imagination in the research and reasoning;
3. the handling of the sources; and the quality of the referencing (notes and bibliography);
4. the quality of the material presentation and of the written language (spelling, syntax, grammar and style).

Please keep a copy of all the essays handed in for correction.

5. READINGS AND DOCUMENTS

The webpage of the course contains:

- This syllabus
- A select bibliography
- Suggestions for essay topics
- Useful links
- All the mandatory readings for the course

The webpage of the course is on the website of the Hans & Tamar Oppenheimer Chair: www.oppenheimer.mcgill.ca

The documents subject to copyright on this webpage are protected by a login and a password, to be disclosed to the students on the first day of the seminar.

The students are also invited to consult the website for further information and documentation.

6. TIMETABLE

Week 1.	2010.01.05:	Introduction: the foreigner
Week 2.	2010.01.10-12:	The global migration regime
Week 3.	2010.01.17-19:	Territorial sovereignty and borders
Week 4.	2010.01.24-26:	The international refugee protection regime
Week 5.	2010.01.31-02.02:	The contemporary challenges of refugee protection (1)
Week 6.	2010.02.07-09:	The contemporary challenges of refugee protection (2)
Week 7.	2010.02.14-16:	The new migration security paradigm
<i>Week 8.</i>	<i>2010.02.21-23:</i>	<i>Reading week</i>
Week 9.	2010.02.28-03.02:	Migrant smuggling and the interception of “irregular migrants”
Week 10.	2010.03.07-09:	The fight against trafficking in persons
Week 11.	2010.03.14-16:	Internally displaced persons and humanitarian intervention
Week 12.	2010.03.21-23:	The free movement of persons in Europe
Week 13.	2010.03.28-30:	Conclusion: The foreigner as citizen
<i>Week 14.</i>	<i>2010.04.04-06:</i>	<i>Classes Cancelled</i>
Week 14.	2010.04.09 (Saturday):	Student Colloquium
<i>Week 16.</i>	<i>2010.04.20:</i>	<i>Deadline for submission of winter term essays and final papers to SAO</i>

7. SUGGESTED ESSAY TOPICS

On refugees :

- One exclusion clause in the international definition of the refugee
- UNRWA and the protection of Palestinian refugees
- The protection of refugee women
- The protection of refugee children
- The administration of refugee camps
- The protection of fleeing victims of civil war
- The "temporary protection" regimes in Europe
- The « externalisation » of refugee protection in Europe
- The concept of "safe third country" et the US-Canada Agreement
- The protection of refugees by International Human Rights Law
- The role of UNHCR in one armed conflict (Bosnia, Rwanda, East Timor, Kosovo, etc.)
- The complementary roles of UNHCR and ICRC
- The role of NGOs in refugee protection
- Sponsoring refugees in Canada
- The welcoming of asylum seekers in Quebec (or another province)

- Refugee determination in Canada
- Anti-terrorism measures and refugee protection
- The protection of internally displaced persons
- Refugee health and international law and practice

On migrants :

- Immigration policies and demography
- Immigration policies and the economy
- Immigration policies and geopolitical power
- Immigration policies, diversity and multiculturalism
- Migrants and « reasonable accommodation » in Quebec and Canada
- Irregular migrants interception practices abroad
- International police cooperation against irregular migration
- The role of intelligence services against irregular migration
- Frontex and Euro-Mediterranean cooperation against irregular migration
- The Barcelona Process
- The Puebla Process
- Migration controls and economic cooperation
- The free movement of non-European citizens in Europe
- Temporary migration programmes
- The fight against clandestine labour
- The fight against migrant smuggling
- The fight against trafficking in persons for forced labour
- The fight against trafficking in persons for the sex trade
- The fight against terrorism and the protection of migrants' rights
- Women and migration
- Migrants and the fight against discrimination
- Migrants and the right to equality
- The protection of fundamental rights of migrants
- The legal status of the irregular migrant
- The rights of migrant children
- The detention of migrants
- The expulsion of migrants
- Migrants and access to citizenship
- Rethinking citizenship and nationality
- Political participation of migrants

Students may suggest other topics.

All students will have different topics.

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