

## THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW

States are increasingly challenging the logic of simply assimilating refugees to their own citizens. Questions are now raised about whether refugees should be allowed to enjoy freedom of movement, to work, to access public welfare programs, or to be reunited with family members. Doubts have been expressed about the propriety of exempting refugees from visa and other immigration rules, and even about whether there is really a duty to admit refugees at all. This book presents the first ever comprehensive analysis of the human rights of refugees set by the UN Refugee Convention, including analysis of its history and application by senior courts. Hathaway links these standards to key norms of international human rights law, and applies his analysis to the most difficult protection challenges faced around the world. This is a pioneering scholarly work, and a critical resource for advocates, judges, and policymakers.

JAMES C. HATHAWAY is James E. and Sarah A. Degan Professor of Law at the University of Michigan, and is a leading authority on, and is widely published in, international refugee law. He is the founding director of the University of Michigan's innovative Program in Refugee and Asylum Law, in which students have the opportunity to study refugee law from international, comparative, and interdisciplinary perspectives. He is also Senior Visiting Research Associate at Oxford University's Refugee Studies Programme. Hathaway was previously Professor of Law and Associate Dean of the Osgoode Hall Law School (Toronto), and has been a visiting professor at the American University in Cairo, and at the universities of Tokyo and California. He regularly provides training on refugee law to academic, non-governmental, and official audiences around the world.

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James C. Hathaway  
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LAW

JAMES C. HATHAWAY



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*In memory of Lisa Gilad*

“[D]ecisions had at times given the impression that it was a conference for the protection of helpless sovereign states against the wicked refugee. The draft Convention had at times been in danger of appearing to the refugee like the menu at an expensive restaurant, with every course crossed out except, perhaps, the soup, and a footnote to the effect that even the soup might not be served in certain circumstances.”

Mr. Rees, International Council of Voluntary Agencies (Nov. 26, 1951)

“[I]t was clearly in the best interests of refugees that [the Refugee Convention] should be cast in a form which would be acceptable to governments, thus inducing them to accept at least certain commitments . . . Otherwise, they would be obliged to enter reservations which would probably exclude even those minimum commitments. Liberalism which was blind to the facts of reality could only beat the air.”

Mr. Rochefort, Representative of France (Nov. 30, 1951)

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## ACKNOWLEDGMENTS

This book has evolved over the course of more than a decade. It was inspired by a call from the refugee law pioneer Atle Grahl-Madsen, shortly before his death. Professor Grahl-Madsen asked me to consider preparing a comprehensive analysis of the rights of refugees, drawing freely upon notes which he had authored during the 1960s (which were subsequently published in full by UNHCR in 1997). Grahl-Madsen's prescient vision was to link an updated study of the rights derived from the Refugee Convention with analysis of relevant norms of international human rights – thus yielding a truly comprehensive understanding of the refugee rights regime. As always, Grahl-Madsen was ahead of the curve: he foresaw that the days in which recognition of refugee status would lead with relatively little debate to respect for relevant legal entitlements would not last forever, and that there was therefore an urgent need for the academy to consolidate a clear understanding of the international legal rules that define the baseline entitlements that follow from refugee status. This book is my effort to do justice to his vision.

My own sense was that the study of legal norms would be most fruitful if tested against the hard facts of refugee life on the ground. The design for a mixed legal–empirical study emerged with the generous support of colleagues at York University's interdisciplinary Centre for Refugee Studies, in particular David Dewitt, Winona Giles, Diana Lary, and Penny Van Esterik. The university supported the launch of this research by awarding me the Walter L. Gordon Research Professorship for the academic year 1994–1995; the research effort itself was generously funded by Canada's Social Sciences and Humanities Research Council. At the same time, the International Academy of Comparative Law kindly appointed me General Rapporteur for a transnational study of the implementation of refugee rights around the world: with the extraordinary support of a team of twenty-eight National Rapporteurs, the analytical framework which grounds this book emerged. As the footnotes throughout this volume make clear, I remain enormously indebted to this group of eminent scholars who shared my commitment to developing an understanding of refugee rights capable of meeting real challenges in often difficult circumstances.

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This book is dedicated to my dear friend Lisa Gilad – social anthropologist, advocate for social justice, and refugee law decision-maker – who died tragically before she could see her inspired agenda to better the lot of refugees through to completion. Lisa was committed to the view that law could make a critical difference to the welfare of refugees, and worked tirelessly to inspire a humane understanding of protection principles among her colleagues, as well as in the broader community of persons working with refugees in government, academia, and on the front lines. My hope is that this study will contribute to the work of others who, like Lisa, believe that refugee protection can best be assured by a steadfast commitment to clear rules, interpreted in context, and applied with compassion.

James C. Hathaway  
Ann Arbor, Michigan  
December 2004

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