

Human Rights & Human Welfare

Volume 8 | Issue 1

Article 2

1-2008

Tugba Basaran on The Rights of Refugees Under International Law by James C. Hathaway. Cambridge: Cambridge University Press, 2005. 1239pp.

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Recommended Citation

Basaran, Tugba (2008) "Tugba Basaran on The Rights of Refugees Under International Law by James C. Hathaway. Cambridge: Cambridge University Press, 2005. 1239pp.," *Human Rights & Human Welfare*: Vol. 8: Iss. 1, Article 2.

Available at: <https://digitalcommons.du.edu/hrhw/vol8/iss1/2>



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Abstract

A review of:

The Rights of Refugees Under International Law by James C. Hathaway. Cambridge: Cambridge University Press, 2005. 1239pp.

Keywords

Refugee rights, United Nations, Refugee convention, International law

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The Rights of Refugees Under International Law by James C. Hathaway. Cambridge: Cambridge University Press, 2005. 1239pp.

The Rights of Refugees Under International Law is a well-researched comprehensive study of international refugee rights. This publication hardly requires a book review amongst legal scholars. Hathaway is a leading authority on international refugee law, widely acclaimed for his previous publications, in particular The Law of Refugee Status (1991). In this new colossal publication of over 1200 pages, Hathaway provides a detailed corpus of refugee rights based upon the 1951 U.N. Refugee Convention. Hathaway not only describes and interprets the Convention in the context of its drafting history, but he also provides an extended analysis of relevant national and international jurisprudence and an overview of customary governmental practices. The global breadth of this book combined with its detailed analysis of legal texts and practices make it a truly unique scholarly publication.

From the outset, this book places the emphasis on the *rights* of refugees. This is a timely accentuation. Contrary to common perception, refugees are not beneficiaries of *benevolence* – whether of host states or international organizations – but they are endowed with a number of clearly defined rights. Hathaway advocates these rights through a meticulous investigation of their substance. Whilst he does not hesitate to point his finger towards governmental practices that violate legal obligations, he avoids a partisan position by basing his analysis upon legal positivism. The legal foundation of the book is the 1951 U.N. Refugee Convention supplemented by international human rights law. This is an intentionally restrictive focus on the most widely accepted common denominators of refugee law.

The core of this book is the substance of refugee rights. After introductory chapters on legal sources and the history of the refugee rights regime, in chapter 3 Hathaway streamlines the Convention rights, from the perspective of refugees, into five categories: the rights of refugees under a state's jurisdiction; the rights of refugees present on a state's territory; the rights of refugees that are lawfully present; the rights of refugees that are lawfully staying; and finally, the rights of refugees with a durable residence. As Convention rights are a function of the attachment to the host state, refugee rights increase incrementally as they pass from one category to the next one. Hathaway tackles each of the above-mentioned categories in the subsequent chapters. Chapter 4 examines the rights of refugees who are not yet lawfully present and includes discussions of non-refoulement, arbitrary detention, penalization for illegal entry, rights to physical security and subsistence (food, shelter, healthcare), and available remedies to enforce rights and gain judicial and administrative assistance. Chapter 5 examines the rights of refugees who are lawfully present and investigates, amongst others, protection against expulsion, freedom of internal movement and self-employment. Chapter 6 scrutinizes the right of refugees who are lawfully staying; this includes the right to work, the right to professional practice, public relief and assistance, housing, and assistance for access to courts.

Hathaway exposes, from an array of sources with local variations, a clear core of refugee rights. A wide collection of historical and contemporary illustrations from across the globe, ranging from Afghanistan to Zimbabwe, supports his conclusions. Most impressive is the jurisprudence included in this volume. The table of cases is indicative of the breadth of the analysis: the emphasis lies with decisions of the International Court of Justice, the U.N. Human Right Committee, the European Court of Human Rights and national court decisions especially from

Australia, Canada, New Zealand, the United Kingdom and the United States. This reflects the overall tendency in this book to concentrate on Anglophone jurisprudence and literature. An extensive index of over hundred pages and detailed footnotes allow the reader to easily access all required information.

The Rights of Refugees Under International Law is a mandatory critical resource for legal scholars, legal professionals, policymakers, and graduate students. This book promises to become a leading treatise on refugee rights and should have a place on the shelves of all those who are concerned with human rights.

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January 2008*