

## CONTENTS

<i>Preface</i>	page xi
<i>Series Editor's Preface</i>	xv
<i>Table of Cases</i>	xvi
<i>Table of Treaties and Other International Instruments</i>	xxxiii
<i>Table of Domestic Statutes and Instruments</i>	xxxviii
<i>Table of Abbreviations</i>	xli
<i>Frequently Cited Sources</i>	xliii
<b>Introduction</b>	1
The Child Refugee: Overlooked and Incorrectly Assessed	3
A Child-Rights Framework	5
Methodology and Research Design	8
<b>1 Situating the Refugee Child in International Law</b>	13
Introduction	13
1.1 The Refugee and the Child – The International Legal Framework	16
1.1.1 <i>The Refugee Convention</i>	16
1.1.2 <i>The Convention on the Rights of the Child</i>	19
1.2 The Refugee Child – Signs of Alignment	22
1.3 A Child-Rights Framework	27
1.3.1 The <i>CRC</i> as a Procedural Guarantee	27
1.3.2 The <i>CRC</i> as an Interpretative Aid	28
1.3.3 The <i>CRC</i> as an Independent Source of Status	30
1.4 A Systemic Approach to Interpreting the <i>Refugee Convention</i>	31
	vii

1.4.1	The Interpretation of an International Treaty in Domestic Fora	32
1.4.2	A General ‘Rule’ of Treaty Interpretation	33
1.4.3	A Human Rights <i>Object and Purpose</i>	35
1.4.4	The <i>CRC</i> as a <i>Relevant Rule of International Law</i>	37
	Conclusions	43
<b>2</b>	<b>The Child and the Refugee Status Determination Process</b>	<b>44</b>
	Introduction	44
2.1	The Invisibility of Refugee Children	46
2.1.1	Unaccompanied or Separated Children	47
2.1.2	Accompanied Children	49
2.2	The Individual Assessment of Status	52
2.2.1	The Duty of <i>Non-Refoulement</i>	54
2.2.2	A Child’s Right to Be Heard	55
2.2.3	Implementing a Child-Centred Framework	60
2.3	Family Unity Procedures	69
2.3.1	Recommendation B	71
2.3.2	The Duty of Non-Separation	72
	Conclusions	78
<b>3</b>	<b>An Age-Sensitive Assessment of Risk</b>	<b>79</b>
	Introduction	79
3.1	The Refugee Definition and the <i>CRC</i>	79
3.2	The Well-Founded Fear Requirement	81
3.2.1	The Bipartite Understanding of Well-Founded Fear	82
3.2.2	Why Require a Child to Establish Subjective Fear?	84
3.3	Assessing the Objective Risk	89
3.3.1	A Shared Duty of Fact-Finding	90
3.3.2	Country of Origin Information	91
3.3.3	Similarly Situated Persons	93
3.3.4	A Liberal Benefit of the Doubt	93
	Conclusions	99

## CONTENTS

ix

<b>4 A Child-Rights Framework for Identifying Persecutory Harm</b>	101
Introduction	101
4.1 The Definition of ‘Being Persecuted’	102
4.1.1 A Human Rights Framework	103
4.1.2 Taking Human Rights on Their Own Terms	105
4.1.3 The Role of State Protection	109
4.2 The Definition of ‘Being Persecuted’ in Claims Involving Children	116
4.2.1 The Persecution of Children	116
4.2.2 The <i>CRC</i> as a Benchmark	123
4.2.3 What Does the <i>CRC</i> Add?	126
4.3 Four Case Studies	131
4.3.1 Domestic Child Abuse	132
4.3.2 Education	139
4.3.3 Separation from the Family	144
4.3.4 Psychological Harm	149
Conclusions	156
<b>5 Nexus to a <i>Convention</i> Ground</b>	157
Introduction	157
5.1 The Causal Link – The Predicament of Childhood	157
5.1.1 An Intention Requirement	158
5.1.2 The Predicament Approach	160
5.2 The <i>Convention</i> Grounds	165
5.2.1 Political Opinion	166
5.2.2 Religion	169
5.2.3 Membership of a Particular Social Group	172
Conclusions	185
<b>6 The <i>Convention on the Rights of the Child</i> as a Complementary Source of Protection</b>	186
Introduction	186
6.1 <i>Non-Refoulement</i> Under the <i>CRC</i>	188

6.1.1	Right to Life, Survival and Development	192
6.1.2	Right to Liberty and Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment	193
6.1.3	Freedom from Underage Military Recruitment	195
6.2	Article 3 as an Independent Source of Protection	196
6.3	An Overview of State Practice	203
6.3.1	International Models	203
6.3.2	Article 8 of the <i>ECHR</i>	206
6.3.3	The Removal of a Parent Where the Child Has a Right to Remain	213
6.3.4	The Discretionary Grant of Protection to Children on Humanitarian Grounds	218
6.3.5	Special Protection Measures for Unaccompanied Children	221
6.4	The Application of Article 3 as an Independent Source of Protection	223
6.4.1	Stage One: Determining the Best Interests of the Child	225
6.4.2	Stage Two: The Balancing Exercise	234
	Conclusions	238
	<b>Conclusions</b>	239
	<i>Annex 1</i> CRC, Preamble and Articles 1 to 41	243
	<i>Annex 2</i> Refugee Convention, Preamble and Article 1	257
	<i>Annex 3</i> Final Act of the Conference of Plenipotentiaries, Recommendation B (Principle of Family Unity)	260
	<i>Bibliography</i>	261
	<i>Index</i>	284