

CLIMATE CHANGE, DISASTERS, AND THE REFUGEE CONVENTION

Climate Change, Disasters, and the Refugee Convention is concerned with refugee status determination (RSD) in the context of disasters and climate change. It demonstrates that the legal predicament of people who seek refugee status in this connection has been inconsistently addressed by judicial bodies in leading refugee law jurisdictions, and identifies epistemological as well as doctrinal impediments to a clear and principled application of international refugee law. Arguing that RSD cannot safely be performed without a clear understanding of the relationship between natural hazards and human agency, the book draws insights from disaster anthropology and political ecology that see discrimination as a contributory cause of people's differential exposure and vulnerability to disaster-related harm. This theoretical framework, combined with insights derived from the review of existing doctrinal and judicial approaches, prompts a critical revision of the dominant human rights-based approach to the refugee definition.

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Climate Change, Disasters and the Refugee Convention Matthew Scott

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MATTHEW SCOTT

Raoul Wallenberg Institute of Human Rights and Humanitarian Law



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SERIES EDITOR'S PREFACE

Two of the most pressing challenges facing the world today are climate change and involuntary migration. Not only is each a real concern in its own right, but it is also increasingly clear that the two phenomena are deeply connected: climate change and other 'natural' disasters are not only devastating the environment, but they are also forcing more and more people to abandon their homes. While most climate-induced migration has thus far occurred within states, a growing number of persons feels compelled to seek protection abroad. And as the scale and pace of climate-induced migration increase, it is clear that more and more people will seek protection abroad as refugees. Is refugee status the right remedy for persons fleeing climate change and comparable disasters?

In this pioneering study, Matthew Scott begins by challenging the traditional objections to the recognition of refugee status in such circumstances – that the requisite element of discrimination is lacking, and that the harms involved are not 'persecutory'. But he goes much farther, engaging deeply and thoughtfully with the underlying 'hazard paradigm' that informs dominant understandings of refugee status as a whole. He makes a persuasive case that we can only do justice to emerging protection claims by paying more attention to the discriminatory social contexts within which exposure to serious harm arises. By making this shift to a 'social paradigm' of refugee status we can, he argues, see in the vulnerability of many individuals and groups precisely the hallmarks that should be understood to be the basis for the recognition of refugee status at international law.

Scott's analysis is especially important because it is both conceptually provocative and deeply attentive to relevant jurisprudence from around the world. This is no glib recipe for a reform that might be as unrealistic as it is appealing. *Climate Change, Disasters, and the Refugee Convention* instead beautifully bridges the divide between respect for extant law and legal process on the one hand, and the importance of pursuing reinvention in the service of critical human needs on the other. The result is a book that not only presents us with the first comprehensive analysis of the challenges of invoking refugee law to respond to the phenomenon of climate-induced migration, but that also leverages that analysis to push the boundaries of legal understandings of refugee protection in new and potentially productive directions.

James C. Hathaway
Editor, Cambridge Asylum and Migration Studies

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NOTE ON THE TEXT

In the absence of a neutral third person singular pronoun in the English language, this book adopts the female pronouns ‘she’ and ‘her’, rather than opting for the clumsy ‘he or she’ and ‘his or her’.

Owing to the multiple terms applied to individuals at different stages in the process of seeking recognition of refugee status, the term ‘claimant’ is used throughout the book as a general term. Where appropriate, more specific terms such as ‘appellant’ or ‘applicant’ are used.

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ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women 1979 / Committee on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination 1965 / Committee on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child 1989 / Committee on the Rights of the Child
ECHR	European Convention on Human Rights and Fundamental Freedoms 1950
ExCom	Executive Committee of UN High Commissioner for Refugees
FEWS	Famine Early Warning System
HRC	Human Rights Committee
IARLJ	International Association of Refugee Law Judges
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966
IFRC	International Federation of Red Cross and Red Crescent Societies
IHRL	International human rights law
ILC	International Law Commission
IPC	Integrated Food Security Phase Classification
IPCC	Intergovernmental Panel on Climate Change
IRO	International Refugee Organization
NZHC	High Court of New Zealand
NZIPT	New Zealand Immigration and Protection Tribunal
OHCHR	Office of the High Commissioner for Human Rights
RRTA	Refugee Review Tribunal of Australia
RSAA	New Zealand Refugee Status Appeals Authority
RSD	Refugee status determination
UKAIT	United Kingdom Asylum and Immigration Tribunal
UNFCCC	UN Framework Convention on Climate Change 1992

UNGA	UN General Assembly
UNHCR	UN High Commissioner for Refugees
UNHRC	UN Human Rights Council
UNISDR/UNDRR	UN Office for Disaster Risk Reduction
UNOCHA	UN Office for the Coordination of Humanitarian Affairs
UNSC	UN Security Council
VCLT	Vienna Convention on the Law of Treaties 1969