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Sixth Colloquium on Challenges in International Refugee Law: Introduction

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SPECIAL FEATURE: SIXTH COLLOQUIUM ON CHALLENGES IN INTERNATIONAL REFUGEE LAW

Introduction

*James C. Hathaway**

Not every person who has a well-founded fear of being persecuted because of who she is or what she believes is a refugee under international law. Mindful of the critical importance of maintaining faith with both the governments and citizens of asylum countries, the 1951 Refugee Convention requires the exclusion of several categories of persons whose admission is adjudged to threaten the systemic integrity of the refugee regime[1]–including where there are "serious reasons for considering that [an asylum seeker] has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments. . ."[2]

Because of this provision, refugee law has in many ways been at the coalface of international criminal law practice in recent years. Whereas specialist international criminal tribunals have prosecuted only a relatively small number of persons, refugee status decision-makers consider the international criminal law-based exclusion of literally thousands of persons each year. These adjudicators must engage the often highly complex normative standards of the still-evolving international criminal law system on the basis of what are usually disputed factual claims, with keen awareness that an erroneous decision will lead either to the sending back of an innocent person to face persecution, or alternatively to the admission to protection of a serious criminal.

The goal of the Sixth Colloquium on Challenges in International Refugee Law was to develop a principled and workable framework to guide the process of considering the exclusion from refugee status of persons believed to have committed international crimes. Working with highly respected scholar, advocate, and former UNHCR decision-maker Professor Jennifer Bond of the University of Ottawa, a group of senior Michigan law students first researched the issue from the optic of both international law and comparative state practice.[3] Professor Bond then drew on this

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1. Convention relating to the Status of Refugees art. 1(F), July 28, 1951, 189 UNTS 137. The three clauses of Article 1(F) speak to persons seeking to evade liability for serious domestic criminality, those who are guilty of acts contrary to the purposes and principles of the United Nations, and those who have committed the enumerated international crimes. *Id.*

2. *Id.* art. 1(F)(a).

3. The members of the Comparative Asylum Law seminar in fall 2011 who conducted this research were Rita Bezak, Mariel Block, Celia Figlewski, Lara Finkbeiner, Catherine

research to author a comprehensive background study which was refined by a second group of senior Michigan law students.[4] A select group of highly regarded international scholars and jurists was then invited to meet with a third group of Michigan law students in Ann Arbor over three days in March 2013 to debate the issues raised in the revised background study, published in this issue, and to agree to the standards that comprise the "Michigan Guidelines on the Exclusion of International Criminals."[5]

It is our hope that, as in the case of earlier Michigan Guidelines on the International Protection of Refugees,[6] these unanimously agreed standards will inspire a thoughtful and principled debate among scholars, officials, and judicial and other refugee law decision-makers committed to the legally accurate and contextually sensitive application of international refugee law norms.

Glazer, Pauline Hilmy, Ian Love, Emilie Miller, Sarah Pack, Renee Schomp, Lindsay Smith, Jessica Soley, and Carlos Torres.

4. The members of the Refugee Law Reform seminar in fall 2012 who vetted and refined the draft study were Katherine Blair, Sean Dickson, Leah Engle, Laura Finkbeiner, Betsy Fisher, Meredith Garry, Catherine Glazer, Palmer Lawrence, Sarah Oliai, Michael Pinjuv, Timothy Shoffner, Robby Staley, John Whitaker, and Alisa Whitfield.

5. *Michigan Guidelines on the Exclusion of International Criminals*, 35 MICH. J. INT'L L. 3 (2013).

6. Earlier guidelines have also been published in the *Michigan Journal of International Law*. *The Michigan Guidelines on the Right to Work*, 31 MICH. J. INT'L L. 293 (2010); *The Michigan Guidelines on Protection Elsewhere*, 28 MICH. J. INT'L L. 207 (2007); *The Michigan Guidelines on Well-Founded Fear*, 26 MICH. J. INT'L L. 491 (2005); *The Michigan Guidelines on Nexus to a Convention Ground*, 23 MICH. J. INT'L L. 210 (2002); *The Michigan Guidelines on the Internal Protection Alternative*, 21 MICH. J. INT'L L. 131 (1999). For an easily accessible collection of all previous Michigan Guidelines, see *Refugee Caselaw Site*, REFUGEECASELAW.ORG, http://refugeecaselaw.org/MichiganGeneralGuidelines.aspx (last visited August 26, 2013) (re-publishing the Michigan Guidelines in English, French, Arabic, and Russian).