

# *Fordham International Law Journal*

---

*Volume 28, Issue 5*

2004

*Article 1*

---

## Introduction & Dedication

Gil Loescher\*

\*

Copyright ©2004 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

# Introduction & Dedication

Gil Loescher

## **Abstract**

This issue is dedicated to Arthur, and the Articles that appear within reflect his broad interests and concerns regarding human rights, refugees, and international law. During his last year at the Council on Foreign Relations, Arthur turned his attention to the Palestinian refugee issue and wrote an Essay on practical solutions to the Palestinian refugee question. That Essay appears within these pages. Arthur reviews the past experience with durable solutions—repatriation, resettlement, and local integration—for other protracted refugee situations as well as lessons from past compensation arrangements and their applicability to the Palestinian situation. He concludes by arguing that Palestinian refugees have many things in common with refugees in other parts of the world and that a settlement of the Palestinian refugee question requires a comprehensive approach linking these various components. A closely related Article on Palestinian refugees in Gaza by Susan Martin, John Warner, and Patricia Fagen draws on the lessons of other post-conflict and post-occupation situations to identify ways in which the international community can help ensure a successful disengagement of Israel from Gaza.

## INTRODUCTION & DEDICATION

*Gil Loescher\**

Arthur Helton's death in Baghdad on August 19, 2003 is a tragic loss to his family, friends, and colleagues. This tragedy also impacts heavily on refugees and human rights victims all around the world.

I first met Arthur in the early 1980s when he headed the Asylum Project for the Lawyers' Committee for Human Rights. He was representing Haitian asylum seekers in Brooklyn. When I visited him in his office he was standing amid enormous piles of case files stacked on his desk and all over the floor. He was on the phone with a newspaper reporter calmly explaining to her the injustices suffered by Haitian asylum seekers at the hands of the Immigration and Naturalization Service. During repeated visits, I was to learn that Arthur did a huge amount of important work that touched the lives of all those around him. For many years he taught a course on refugee and asylum law at New York University Law School. He was a strong force for good and mentor to many human rights activists.

In recent years I got to know another side of Arthur. At the Open Society Institute and later at the Council on Foreign Relations, I learned to appreciate the broad range and seriousness of Arthur's scholarship. He taught courses at the Central European University in Budapest and at Columbia University in New York. His writings aimed to influence a wide range of actors, including the military and academic communities, international organizations, and activists.

This issue is dedicated to Arthur, and the Articles that appear within reflect his broad interests and concerns regarding human rights, refugees, and international law. During his last year at the Council on Foreign Relations, Arthur turned his attention to the Palestinian refugee issue and wrote an Essay on practical solutions to the Palestinian refugee question. That Essay appears within these pages.<sup>1</sup> Arthur reviews the past experience with durable solutions — repatriation, resettlement, and

---

\* Professor, Centre for International Studies, University of Oxford.

1. See Arthur C. Helton, *End of Exile: Practical Solutions to the Palestinian Refugee Question*, 28 *FORDHAM INT'L L.J.* 1325 (2005).

local integration — for other protracted refugee situations as well as lessons from past compensation arrangements and their applicability to the Palestinian situation. He concludes by arguing that Palestinian refugees have many things in common with refugees in other parts of the world and that a settlement of the Palestinian refugee question requires a comprehensive approach linking these various components. A closely related Article on Palestinian refugees in Gaza by Susan Martin, John Warner, and Patricia Fagen draws on the lessons of other post-conflict and post-occupation situations to identify ways in which the international community can help ensure a successful disengagement of Israel from Gaza.<sup>2</sup>

Perhaps Arthur's strongest academic contributions were in the fields of international human rights and refugee law. It seems appropriate, therefore, that three Articles focus on various aspects of the implementation of refugee law in the United Kingdom and the United States and on the application of international humanitarian law in the case of refugees and internally displaced persons. Eleanor Acer discusses the broad array of new restrictive policies, new institutional arrangements and immigration enforcement measures adopted by the U.S. government in the aftermath of the September 11, 2001 terrorist attacks.<sup>3</sup> Unfortunately, but almost predictably, as a result there has been a decline in due process and the undermining of some of the basic protections of international refugee and human rights law. Refugees have become "securitized" and redefined as agents of insecurity and terrorism, even though there is little indication that terrorists have moved within refugee circuits. Geoffrey Care examines how the United Kingdom has attempted to handle its legal obligations under the 1951 Refugee Convention and the European Convention on Human Rights under the pressure of rising numbers of asylum seekers to the United Kingdom and increasing backlogs.<sup>4</sup> After tracing the major legislative attempts to reform the asylum system in recent years, he discusses the specific but limited role of the judiciary in protecting the

---

2. See Susan Martin, John Warner & Patricia Fagen, *Palestinian Refugees in Gaza*, 28 FORDHAM INT'L L.J. 1457 (2005).

3. See Eleanor Acer, *Refuge in an Insecure Time: Seeking Asylum in the Post 9-11 United States*, 28 FORDHAM INT'L L.J. 1361 (2005).

4. See Geoffrey Care, *The Judiciary, The State, and The Refugee: The Evolution of Judicial Protection in Asylum — A U.K. Perspective*, 28 FORDHAM INT'L L.J. 1421 (2005).

interests of asylum seekers in the United Kingdom. François Bugnion reviews the protection that the law of armed conflict affords refugees and displaced persons, and the particular role of the International Committee of the Red Cross in overseeing the implementation of international humanitarian law.<sup>5</sup>

Arthur would also have been interested in two of the most pressing contemporary refugee problems. These are the issues of protracted refugee situations, particularly in the developing world, and the vexing problems associated with repatriation from long exile in host countries and the return of rejected asylum seekers by Western governments. The international community largely focuses on certain highly visible refugee emergencies and ignores protracted refugee situations. Yet, as Merrill Smith points out, the majority of today's 11.5 million refugees are trapped in protracted refugee situations and many of them have been "warehoused" in camps for ten years or more.<sup>6</sup> This Article discusses past and current policies and programs of host countries and the international community that effectively deny basic human rights, including the right to a livelihood, to refugees in prolonged exile. The U.S. Committee for Refugees has launched an international campaign to end warehousing and to enable refugees to enjoy their basic rights and live as normal a life as possible until a durable solution is found for them. The campaign welcomes support from scholars as well as practitioners, including from law schools. Finally, Joanne van Selm analyzes the problem of return to a country of origin seen from a European perspective.<sup>7</sup> She discusses the policy dilemmas associated with the return of rejected asylum seekers or of illegal entrants to their countries of origin and questions whether a more realistic and humane policy might combine the ideal of return with pragmatic approaches to local integration in the European host countries.

From late 2002 to August 2003, Arthur and I were co-columnists of the Humanitarian Monitor for [opendemocracy.net](http://opendemocracy.net), an

---

5. See François Bugnion, *Refugees, Internally Displaced Persons and International Humanitarian Law*, 28 *FORDHAM INT'L L.J.* 1397 (2005).

6. See Merrill Smith, *Development Without Refugee Rights? A Civil Society Response*, 28 *FORDHAM INT'L L.J.* 1479 (2005).

7. See Joanne van Selm, *Return Seen From a European Perspective: An Impossible Dream, an Improbable Reality, or an Obstruction to Refugee Policy?*, 28 *FORDHAM INT'L L.J.* 1504 (2005).

international opinion weekly that addresses many of the key issues of our time. Our columns focused on refugee and human rights crises worldwide and how these problems are dealt with (usually inadequately and without knowledge of the lessons of the past) by international and national institutions and Non-Governmental Organizations. This was an initiative from which I constantly learned new things.

As our tenure with *opendemocracy.net* coincided with the buildup to and the subsequent invasion of Iraq, we focused our articles on the probable humanitarian consequences of the war and its aftermath. Arthur and I traveled to Baghdad on August 18, 2003 to investigate for ourselves the conditions there and to make recommendations to policymakers. We were meeting with Sergio Vieira de Mello, the U.N. Special Envoy in Iraq, when a thousand kilogram bomb was exploded, killing Arthur, Sergio, and twenty others, and severely wounding me and many others.

I have thought a lot about Arthur since then. We had been good friends for a long time but this experience has somehow brought us closer together. In recent years Arthur undertook a new physical regimen that meant he lost weight and became incredibly fit. He trained himself to run in the New York Marathon. In my own recovery I seek to emulate Arthur's strength of character and determination. In a way I feel I am running my own personal marathon now and draw upon Arthur's example. I am sure he would approve. In fact I think he is quietly smiling at the progress I am making and would be pleased to know that he continues to be an inspiration to all of us who work in the refugee and human rights fields. He would be especially proud of this issue of the *Fordham International Law Journal*.