

## BOOK REVIEW

### THE LAW OF REFUGEE STATUS

James C. Hathaway, Michelle Foster, *The Law of Refugee Status*, 2nd edition, Cambridge: Cambridge University Press, 2014, Pp. 773, ISBN: 9781107688421.

The issue of refugees is one of Europe's hot topics, on which many researchers are contributing from various angles and doctrinal backgrounds. Increasing numbers of migrant deaths in the Mediterranean prompted to the forefront old debates on asylum, jurisdiction, responsibility and burden sharing. International law is an instrument of refugee protection which is in no way perfect, but still offers the only adequate framework for humane dealing with this issue. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) has inspired a plethora of state practice emerging from the interpretation by national courts of what is the earliest universal human rights treaty.

The book *The Law of Refugee Status* by James C. Hathaway and Michelle Foster is one of the essential texts on every refugee lawyer's bookshelf. Its second edition is dramatically revised from the first and includes all the transformation in international law that has occurred in the twenty-three years between the two editions. National courts have gained in prominence as they are called upon to interpret international norms and treaties. This heterogeneous body of law is influencing international affairs through the trans-judicial dialogue. The Law of Refugee Status is, however, not only a compendium of jurisprudence but rather a comparative analysis of interpretative variations of the refugee definition under the Refugee Convention.

It might be said that the topic of refugees, notwithstanding its practical value, has still not attracted the proper attention from international legal scholars worldwide. One reason could be that the obligations under the Refugee Convention are typically embedded in domestic immigration and administrative law which are part of national legal scholars' field of study. However, the aim of the modern refugee policy is exactly to pull the refugee and asylum law from the remit of domestic immigration control and to bring it within the domain of international human rights protection.

The authors thread a very uneven ground then, as they delve into provocative discussions of many central international legal debates. They engage into a principled treaty interpretation and dissect the notion of trans-judicial communication, explore the Refugee Convention's definition through a human

rights lens by transposing human rights obligations across the treaty regimes and present a wide range of human rights violations in countries of origin and the ways in which the law regards them in time and space. The dynamics of refugee law, by the authors, reflects the changing frontiers of international and human rights law more generally, by changing the meaning of established institutes such as: extra-territorial jurisdiction on the high and territorial seas or in airport transit zones, persecutions that are based on grounds such as sexual orientation, deprivation of economic, social and cultural rights, responsibility under the doctrine of joint criminal enterprise. The authors note that this change is a consequence of the interpretation of rights drawn from the main universal human rights treaties onto the refugee definition of the Refugee Convention, but also because of a variety of interpreters on the international plane - the United Nations High Commissioner for Refugees (UNHCR), the European Court of Human Rights and an array of other international, regional, state and civil society actors. For international lawyers this shows how norms converge across the fragmented treaty regimes.

The problem for readers in the European region might be that the authors concentrate primarily on the Anglo-American jurisdictions and the wider community of Commonwealth states, considering the case law of the USA, the United Kingdom, Canada, Australia and New Zealand, and only to a lesser extent that of some member states of the European Union implementing the Refugee Qualification Directive.

The book is structured around the definition of the refugee from the UN Convention. There are seven chapters which represent seven issues that the authors identify as needing to be addressed by decision-makers prior to the recognition or denial of the refugee status in accordance with the Convention: alienage; well-founded fear; serious harm; failure of state protection; nexus to civil and political status; needing protection and deserving protection.

The authors criticize the lack in international law of a treaty-monitoring body that generates authoritative, fact specific and nuanced case law. The authors argue that, unlike other human rights treaty-monitoring bodies, the parameters of supervisory functions of the UNHCR as the guardian of the Refugee Convention fall short of the authority to mandate particular interpretations of the Article 1 refugee definition. The authors, therefore, insist on a principled treaty interpretation that requires international treaties to be applied in line with the provisions of Article 31 of the Vienna Convention on the Law of Treaties, with an emphasis on the humanitarian object and purpose of the agreement. The authors are of the view that the treaty interpretation should adapt to the nature of human rights agreements as instruments embodying individual and not state rights. Therefore, they do not look agreeably on the practice of departure of national authorities in their interpretation from the humanitarian objectives of the treaty.

To conclude, *The Law of Refugee Status* is a comprehensive and interesting book. It is very much in the spirit of our era since it deals with a controversial topic and it offers brave new insights and suggestions for the problems that this topic creates. The Refugee Convention remains the primary international legal mechanism for millions seeking protection from persecution. Therefore, members of the international community will continue to discuss and clash on its purpose and value through its interpretation. International lawyers that offer insights into the true paths of its interpretation, armed with this book in hand, will definitely come in handy.

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