

**Refugee Law and Policy: A Comparative and International Approach** (Fourth edition).

By Karen Musalo, Jennifer Moore, and Richard A. Boswell. Durham NC: Carolina Academic Press, 2011. 1220pp. \$100 (hb). ISBN 978 1 59460 83 1.

In this fourth edition of the casebook, Musalo, Moore, and Boswell devote 14 chapters to discuss the legal principles in refugee law upon which refugee protection hinges in the light of US law, the 1951 Refugee Convention and its 1967 Protocol. In so

doing, it addresses underlying policy considerations, and the impact which global changes over the last two decades have had on these principles.

The text opens with an overview of the evolution of modern law on refugee protection, tracing its roots to early experiences in providing safety to 'wayfaring strangers' via institutions such as '*ijara*' and '*aman*' amongst Muslim communities, and 'sanctuary' in Judeo-Christian traditions, before turning to the League of Nations which established the first High Commissioner for Russian Refugees, and eventually the United Nations and its 1951 Convention. This aptly reminds the reader that while social, economic, political, and legal factors have changed over the centuries, the central ideals of providing safety and guaranteeing the well-being of those whose lives are at risk have remained broadly the same throughout history, and possibly shall continue to do so into the foreseeable future.

Refugee protection involves an array of critical questions, including who is a refugee, what rights and obligations does s/he have, and what are States' obligations towards them. Although they might appear straightforward questions, they are often controversial because the legal and factual construction of normative expressions such as 'well-founded fear of persecution' and 'expel or return' found in the legal texts on refugee protection are prone to a multiplicity of interpretations. The interpretation of key legal texts and the extent to which a potential refugee must establish fear of persecution depend on a host of complex factors, including policy considerations and other interests, including political concerns. The book attempts to answer these crucial questions, with chapter two, for example, examining some of the core international norms of refugee law and protection, such as the *principle of non-refoulement* in light of State practice. This chapter explores US practice, including an analysis of the courts and institutions responsible for immigration and refugees issues, and it highlights the contradictions of US refugee policies and practice as demonstrated by its treatment of Haitian and Cuban refugees, before drawing a comparison with European and South African practice.

The legal rules and principles on refugee status, which occupy the bulk of the book, are covered under chapters three to thirteen. These chapters examine the thresholds of risk required to qualify for refugee status, the nature of the harm and various forms of persecution, claims for refugee status on the basis of political opinion, religion, race, nationality, and membership of a particular social group. They include a discussion of exclusion from protection as a refugee of any person who has committed the crimes defined in Article 1F of the 1951 Refugee Convention and US law. Procedural guarantees and the rights of refugees, and the challenges of proving a claim for refugee status are addressed, concluding with an analysis of contemporary challenges to refugee protection and in particular the 'tension between political expediency and collective responsibility' (p. 1101).

The authors present the materials and analysis in a format that is accessible and their overall treatment of refugee law, in its various aspects, is comprehensive. They achieve this by using cases, including concurring and dissenting opinions, excerpts from legal journals, relevant national legislation, policy documents and directives, and commentary to illuminate the legal principles in refugee law and the tensions and contradictions between competing policy choices made by States and their explicit international obligations to provide protection to those persons legitimately entitled to international protection. In addition, legal and policy issues are followed by a set of notes and questions which provoke thought and provide further clarification.

Although the book is largely about US refugee law and policy, albeit in a comparative perspective, it draws additional experiences from Australia, Canada and Europe, and to some extent South Africa; together, its treatment of US refugee law and policy in the light of the 1951 Refugee Convention and its related Protocol of 1967, means it speaks to an international readership, and students, academics, and practitioners will find this book useful.

A comment about some historical facts and referencing is warranted. First, at page 19 the authors assert that UNHCR was created by the General Assembly in 1951 while on page 23 they claim that the General Assembly established UNHCR in December 1949. Both are incorrect and could confuse readers. Although UNHCR started operations in January 1951, it was created by General Assembly resolution 319 A (IV) of 3 November 1949 and its functions were redefined or modified by General Assembly resolution 428 (V) of 14 December 1950. Second, at page 65 of the book, Joan Fitzpatrick's article is referenced to volume 33 of *Virginia Journal of International Law* (1994) 13, while the correct reference to said article is 35 *Virginia Journal of International Law* (1994–1995) 13.

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