

James C. Hathaway and Michelle Foster

The Law of Refugee Status: Second Edition (Cambridge: Cambridge University Press, 2014) 693pp., ISBN 9781107688421, €139.00 (hb).

Twenty three years after the publication of the seminal first edition of *The Law of Refugee Status*,¹ international refugee law professor James Hathaway has finalised the long-awaited second edition of the book, this time in co-authorship with Michelle Foster. The adjective seminal is no overstatement for the 1991-work, which is one of the most important books worldwide on international and comparative refugee law. It has been cited and used in appellate judgments around the world and has effectively influenced and determined the interpretation of the refugee definition laid down in the 1951 United Nations Convention Relating to the Status of Refugees² ('Refugee Convention').³ However, the landscape of international refugee law has changed significantly since 1991, which made an update of the first edition highly necessary.

The book is written from a comparative legal perspective. It deals with case law on the refugee definition in several countries, and compares the outcomes and the bearing thereof on the international definition. The amount of case law examined and analysed by the Hathaway and Foster is impressive. The book includes a large number of national decisions from common law countries (Australia, Canada, the United States, the United Kingdom, and New Zealand), but also discusses a considerable number of cases from civil law jurisdictions such as Belgium, The Netherlands, France, Switzerland, Spain, and Germany.⁴ This demonstrates the truly comparative nature of refugee law, which is highlighted by the authors by identifying and assessing the inter-court communication (mostly between the English speaking courts).

1 J.C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991).

2 Convention relating to the Status of Refugees, 189 UNTS 2545, 28 July 1951, entry into force 22 April 1954.

3 Cf. Article 38(1)(d) of the Statute of the International Court of Justice, which lists "the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law". Works with a comparable formative influence are A. Grahl-Madsen, *The Status of Refugees in International Law*, vols. 1 & 2 (Leiden: Sijthoff, 1966, 1972); G.S. Goodwin-Gill and J. McAdam, *The Refugee in International Law: Third Edition* (Oxford: Oxford University Press, 2007).

4 The book includes the case law of 22 convention states, yet note that 147 states are party to either the Convention or its Protocol. It is, however, not the aim of the authors to cover refugee law applied in all Convention states, but to provide the best interpretation of the refugee definition, see *infra*.

As in the 1991 *Law of Refugee Status*, the analysis of the book is strictly confined to the refugee definition laid down in Article 1 of the Refugee Convention (as amended by its 1967 Protocol).⁵ Article 1 of the Refugee Convention defines who is a legal refugee, to wit, someone who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country (Article 1A). Article 1 furthermore includes several cessation clauses in Article 1C (such as establishment in another country, changed circumstances in the country of origin) and exclusion clauses in Article 1D, 1E, and the notorious Article 1F, which prescribes the exclusion of (international) criminals from refugee status. Refugee status is highly-desired: qualification leads to an entitlement to the rights laid down in Articles 2 to 34 of the 1951 Convention – such as labour and education rights and most prominently the prohibition of expulsion, *non-refoulement*.⁶

Few international treaty provisions are applied as often by national decision-makers as Article 1 of the Refugee Convention. The European Union (EU) alone received 435.760 asylum applications in 2013 meaning that EU Member States decide on a daily basis whether asylum seekers are in need of protection.⁷ A diverse group of actors – decision-makers, judges, attorneys, NGOs – deal with refugee protection based on the Refugee Convention and are continuously confronted with important contemporary issues and challenging questions, such as distinguishing between perpetrators and victims of persecution, determining whether an asylum seeker from Uganda is truly homosexual, whether an asylum seeker without documents is really from an Al Shabaab-area in Somalia, whether someone who has participated in the Green Movement in Iran runs the risk of persecution, whether a woman who suffers from domestic violence in Iraq should be given refugee status etc. etc. These questions all relate to the refugee

5 Protocol relating to the Status of Refugees, 606 *UNTS* 267, entry into force 4 October 1967. The Protocol removed the Refugee Convention of its temporal and geographical limits.

6 Not covered in this book, but in J.C. Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005). It should be noted that most of the countries that host the largest number of refugees, are not party to the Convention. In these countries protection is often limited to the prohibition of *refoulement*, which is generally considered a norm of customary international law.

7 European Asylum Support Office (EASO), *Annual Report: Situation of Asylum in the European Union 2013*, July 2014, 13. Note that this also includes applicants for subsidiary protection, on which, see *supra*.