



# States, the Law and Access to Refugee Protection

Fortresses and Fairness

— STUDIES IN INTERNATIONAL LAW —

Edited by

Maria O'Sullivan  
and Dallal Stevens

B L O O M S B U R Y

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## STATES, THE LAW AND ACCESS TO REFUGEE PROTECTION

This timely volume seeks to examine two of the most pertinent current challenges faced by asylum seekers in gaining access to international refugee protection: first, the obstacles to physical access to territory and, second, the barriers to accessing a quality asylum procedure—which the editors have termed ‘access to asylum justice’. To address these aims, the book brings together leading commentators from a range of backgrounds, including law, sociology and political science. It also includes contributions from NGO practitioners. This allows the collection to offer interdisciplinary analysis and to incorporate both theoretical and practical perspectives on questions of immense contemporary significance. While the examination offers a strong focus on European legal and policy developments, the book also addresses the issues in different regions (Europe, North America, the Middle East, Africa and Australia). Given the currency of the questions under debate, this book will be essential reading for all scholars in the field of asylum law.

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## Preface

This book brings together a number of commissioned contributions by leading commentators in the field of asylum law, including a selection of the best papers presented at an international conference organised by Maria O'Sullivan and Susan Kneebone on refugee law and policy at the Monash Prato Centre in Italy in 2014 entitled 'Access to Asylum: Current Challenges and Future Directions'. The volume examines what we consider to be two of the most pertinent current challenges faced by asylum seekers in gaining access to international refugee protection: first, the obstacles to physical access to territory and, second, the barriers to accessing a fair and effective asylum procedure—which we have termed 'access to asylum justice'. In doing so, we have attempted to give readers a broad perspective on these issues. Thus, we chose contributors from a range of backgrounds, including academics from the fields of law, sociology and political science. We also sought the invaluable practical insight of non-governmental organisation (NGO) practitioners. Furthermore, while there is analysis of European legal and policy developments, the book also addresses law and practice in different regions including South Africa, the Middle East (Lebanon), Australia and the United States (US). Within Europe, we have included practical insights from the important border states of Hungary, Bosnia and Herzegovina and Croatia.

Refugee law and policy is a fast-moving area of law. We have made every attempt to provide an up-to-date analysis of the issues. To that end, the book deals with recent jurisprudence and developments that have not yet been analysed to any significant extent in the literature, such as the new asylum legislation in Turkey (the Law on Foreigners and International Protection 2014); the decision of the UK Supreme Court on fast track procedures (*Detention Action v Secretary of State for the Home Department* 2014); the decision of the High Court of Australia on the applicability of procedural fairness to the detention of asylum seekers at sea (*CPCF v Minister for Immigration and Border Protection* 2015), and the fluctuating legal approach to asylum seekers in the Levant countries of the Middle East. The information contained herein is accurate as of 30 June 2016.

We take this opportunity to thank a number of people for their contribution. We are grateful to Hart Publishing for commissioning the book and to Hart editorial staff: Bill Asquith, Sinead Moloney and Emily Braggins for their valued work on the volume. We acknowledge the contributors for their excellent chapters in this book. Particular recognition is given

to those working in small NGOs who devoted their personal time to this endeavour when, in some cases, confronting extremely difficult circumstances of increased migration to Europe in 2015–16. We also thank Susan Kneebone for her role in organising the conference, which was the springboard to this volume, and Natalie Kyneswood, who worked closely with us for several months undertaking the final formatting and style guide checks. Her assistance was invaluable.

Finally, we express our gratitude to our institutions—Faculty of Law, Monash University and the School of Law, University of Warwick—for their ongoing support of our research and work in the areas of asylum and refugee law and policy.

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July 2016

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**Dr Dallal Stevens** is a Reader and Director of Research at the School of Law, University of Warwick. Her research interests focus on refugee and asylum law and policy. She has published numerous books, peer reviewed journal articles, book chapters and reports, including *UK Asylum Law and Policy: Historical and Contemporary Perspectives* (Sweet & Maxwell, 2004) and *Refugee Protection and the Role of Law: Conflicting Identities* (Routledge, 2014) edited with Susan Kneebone and Loretta Baldassar. Recently, she has been considering the impact of globalisation on asylum and her current research is concerned with the protection of refugees and forced migrants in the Middle East, and the movement of people across the Mediterranean to Europe. Stevens' work has been supported by external grants from the British Academy, the Arts and Humanities Research Board, and the ESRC. She has acted as an adviser to a number of national bodies, including the Home Office and Parliament and has served as a trustee for the former immigration law advisory agency in the UK—the Immigration Advisory Service—and for the Electronic Immigration Network. Stevens is on the editorial board of the *Journal of Immigration, Asylum and Nationality Law* and *Law and Humanities*.



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## *Abbreviations*

AAT	Administrative Appeal Tribunal (Australia)
AATA	Administrative Appeals Tribunal Act 1975 (Australia)
AIDA	Asylum Information Database
AITP	Act on International and Temporary Protection (Croatia)
ANC	African National Congress
BiH	Bosnia and Herzegovina
CAT	Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CBP	Customs and Border Patrol (US)
CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CJ	Chief Justice
CJEU	Court of Justice of the European Union
COI	Country of Origin Information
CoE	Council of Europe
CPT	Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CTRRO	Cape Town Refugee Reception Office
DFT	Detained Fast Track (UK)
DFID	Department for International Development (UK)
DGMM	Directorate General of Migration Management (Turkey)
DIBP	Department of Immigration and Border Protection (Australia)
DNSA	Detained Non-Suspensive Appeals (UK)
DPA	Dayton Peace Accords
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EMN	European Migration Network

EPIM	European Program for Integration and Migration
EU	European Union
Ex Comm	Executive Committee of the High Commissioner's Programme
FCC	Federal Circuit Court (Australia)
FRA	Fundamental Rights Agency
FTP	Fast Track Procedure (Australia)
FTR	Asylum and Immigration Tribunal Fast Track Procedure Rules 2005 (UK)
FTT	First Tier Tribunal (Immigration and Asylum Chamber) (UK)
GDP	Gross Domestic Product
GPS	Global Positioning System
HCA	High Court of Australia
HHC	Hungarian Helsinki Committee
IAA	Immigration Assessment Authority (Australia)
IAAAS	Immigration Advice and Application Assistance Scheme (Australia)
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Persons
ILO	International Labour Office
IMF	International Monetary Fund
IOM	International Organisation for Migration
NAAU	National Asylum Allocation Unit (UK)
NIA	Nationality Immigration and Asylum Act 2002 (UK)
NGO	Non-Governmental Organisation
MA	Migration Act 1958 (Australia)
MHRR	Ministry of Human Rights and Refugees (BiH)
MoI	Ministry of Interior (Croatia)
MoS	Ministry of Security (BiH)
MP	Member of Parliament
MPA	Maritime Powers Act 2013 (Australia)
MRD	Migration and Refugee Division of the AAT (Australia)
MSAAA	Movement and Stay of Aliens and Asylum Act (BiH)
OAU	Organisation of African Unity
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OFPRA	<i>L'Office français de protection des réfugiés et apatrides</i>

OHCHR	Office of the United Nations High Commissioner for Human Rights
OIN	Office of Immigration and Nationality (Hungary)
OSCE	Organisation for Security and Cooperation in Europe
PAIG	Protection Application Information and Guides (Australia)
PJCHR	Parliamentary Joint Committee on Human Rights (Australia)
PSO	Protection Screening Officer (US)
RMA	Registered Migration Agent (Australia)
RRO	Refugee Reception Offices (South Africa)
RRT	Refugee Review Tribunal (Australia)
RRO	Refugee Reception Offices (South Africa)
RSD	Refugee Status Determination
RSDO	Refugee Status Determination Officer (South Africa)
SCA	Supreme Court of Appeal (South Africa)
SSHD	Secretary of State for the Home Department (UK)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPC	Tribunal Procedure Committee
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UMAs	Unlawful Maritime Arrivals (Australia)
UNODC	United Nations Office on Drugs and Crime
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees
US	United States
USAID	United States Agency for International Development
WB	Western Balkans

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