

Cambridge University Press

978-0-521-19820-2 - The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union

Edited by Guy S. Goodwin-Gill and Helene Lambert

Index

[More information](#)

INDEX

- academics, 54, 65, 146, 201
 accelerated procedures, 161, 175
 access, 31, 49, 78–9, 141, 159, 162
 Administration (Spain), 112, 121
 Administrative Court, 130, 138
 Administrative Court Procedure Act (Sweden), 199
 administrative courts (Germany), 57–84
 administrative courts (Italy), 102–4
 administrative judges, 39, 61, 73–8
 admissibility, 18–20, 114–16, 172–3
 adversarial system, 13
 AIT *see* Asylum and Immigration Tribunal
 Albania, 167
 Aliens Act (Belgium), 24, 33
 Aliens Act (Denmark), 174, 184
 Aliens Act (Germany), 58, 80, 81
 Aliens Act (Ireland), 153
 Aliens Act (Sweden), 187, 189
 Aliens Appeals Board (Sweden), 145, 187, 190, 191, 192, 193–4
 ambiguity, 229–31, 239
 appeals, 64, 116, 129–31, 172, 173–5, 190
 ARK, 79 *see* Asylrekurskommission
 Article 1A (1) Refugee Convention, 71
 Article 1A (2) Refugee Convention, 25
 Article 1C (5) Refugee Convention, 227
 Article 1D Refugee Convention, 139, 230–1
 Article 1F Refugee Convention, 47
 Article 31 Refugee Convention, 235–7
 Article 38 Refugee Convention, 207
 Article 68 EC Treaty, 8
 assessment of risk, 167
 Asylrekurskommission (ARK), 70–2
 asylum, 92–9
 see also refugee law
 Asylum Act (Spain), 111
 Asylum and Immigration Appeals Act 1993, 127
 Asylum and Immigration Tribunal (AIT), 69, 129–30, 138–40, 225–6
 asylum claims
 admissibility, 18–20
 asylum decisions, 153–9, 191–7
 Asylum Directorate, 128
 ‘asylum judges’
 asylum jurisprudence, 11
 asylum law *see* refugee law
 asylum procedures, 171–6, 189–91
 asylum rights, 89, 91, 110–13
 asylum seekers, 10, 55, 58, 60, 91–2, 108, 121, 172–3
 in-transit stops, 235–7
 Audiencia Nacional (Spain), 117, 119, 121, 123
 auditorat (Belgium), 32–3
 Australia, 45
 autonomous meaning, 224–7
 BAFI *see* Federal Office for the Recognition of Refugees
 Basic Law (Germany), 57
 Belgium, 14
 case law, 25–9
 civil law, 29
 judges, 23–4, 32–3
 legal culture, 31–2
 legal framework, 22–4
 merits of the claim, 20–2
 Refugee Convention, 25–7

Cambridge University Press

978-0-521-19820-2 - The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union

Edited by Guy S. Goodwin-Gill and Helene Lambert

Index

[More information](#)

256

INDEX

- Belgium (*cont.*)
 refugee law, 17–34
 refugee status determination, 17–29
 similar facts, 27–9
 transnational dialogue, 17–34, 30
- Benvenisti, Eyal, 218
- bias, 157
- Bingham, Lord, 2, 132, 229, 231–2, 236–7
- blood feuds, 167
- border applications, 115–16
- Bossi-Fini Act, 95–7
- Britain *see* United Kingdom
- CALL, 32–3 *see* Council for Alien Law Litigation
- Canada, 45, 47, 168
- case law, 10, 159–66, 177–9, 191–7, 204
see also transnational dialogue
 background information, 76
 Belgium, 25–9
 European Court of Human Rights, 29
 France, 40
 Germany, 63–5
 Spain, 119–23
 transnational referencing, 12
 United Kingdom, 220–37
- CEAS *see* Common European Asylum System
- Central Commission (Italy), 95, 99–101
- CGRSP *see* Commissioner General for Refugees and Stateless Persons
- Chechnya, 28
- child custody, 82–3
- civil code, 86, 87, 118
- civil courts, 99, 102–4
- civil law, 152
- civil society, 168
- Commissaire du Gouvernement (France), 36, 47
see also rapporteur public (France)
- Commissioner General for Refugees and Stateless Persons (CGRSP), 19
- Common European Asylum System (CEAS), 5
- Commonwealth, 4, 15, 144
- communitarisation, 15
- comparative law, 142
- compatibility arguments, 63
- Čonka v. Belgium (ECtHR), 29
- conscientious objection, 232–3
- consistent jurisprudence, 83
- constitutional asylum, 93–4, 105
- Constitutional Court (France), 35, 41
- Constitutional Court (Italy), 88
- continental jurisprudence, 138, 139, 140, 148
- Council for Alien Law Litigation (CALL), 21–2
- Council of State (Belgium), 22, 25, 32–3
- Council of State (France), 35, 36, 39, 42, 43, 51, 52
- Council of State (Italy), 103
- Council of the Bar and Law Society (Denmark), 174
- Cour de Cassation (France), 35, 42
- Court of Appeal, 69–70, 134–7, 148, 226, 227
- Court of Cassation (Italy), 86, 93, 94, 102
- Court of Session (Scotland), 137
- courts and foreign law, 67–78
- credibility, 164, 167
- cultural account of transnational dialogue, 31–4, 51–5, 143–8, 199–202
- database research, 68, 71, 73, 78
- Denmark, 14, 170–85
 appeals, 173–5
 asylum procedures, 171–6
 asylum-seekers, 172–3
 ‘domestication’ dilemma, 184–5
 foreign law, 170
 lawyers, 178–9
 reservation to EC law, 179–81
 transnational dialogue, 179–85
- deportations, 156
- detention, 98
- divergent interpretation, 64
- dualism, 182–4, 187, 201
- Dublin Convention, 47, 133, 137
- EC legislation, 6, 97–9, 120, 121, 149, 179–81

Cambridge University Press

978-0-521-19820-2 - The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union

Edited by Guy S. Goodwin-Gill and Helene Lambert

Index

[More information](#)

INDEX

257

- EC Qualification Directive 2004, 48, 120, 121, 128, 181, 205–6, 208, 237
- ECHR *see* European Convention on Human Rights
- ECJ *see* European Court of Justice
- ECtHR *see* European Court of Human Rights
- English language, 30, 49, 67, 198
- EU *see* European Union
- European Commission, 6
- European Convention on Human Rights (ECHR), 24, 105, 152–3, 187
- European Court of Human Rights (ECtHR)
- European Court of Justice (ECJ), 8–9, 84
- European Union (EU), 168, 205–6, 239
 communitarisation, 15
 judges, 1–16
 refugee law, 1–17
 exclusion clauses, 27
 express words, 227–9, 233
- fact-finding, 66
- Federal Constitutional Court (Germany), 83
- Federal Court (Canada), 167
- Federal Office for the Recognition of Refugees (FAFI) (Germany), 59
- female genital mutilation (FGM), 44, 234
- Fitzmaurice, Gerald, 220
- forced marriage, 45–7
- foreign citation, 217–18
- foreign law, 11, 14–15, 16, 176–85, 217
see also transnational dialogue
 cultural perceptions, 13
 Denmark, 170
 fact-finding, 66
 France, 41, 53, 55
 Germany, 66, 67–78
 Ireland, 151, 159–66
 Italy, 87, 99–105
 Sweden, 186–203
 United Kingdom, 126, 131–40
- France, 14
 asylum procedures, 37–41
 case law, 40, 56
 courts' use of foreign law, 41–8
 foreign law, 41–8, 53, 55–6
 judges, 52–3
 legal culture, 52
 National Asylum Court, 7
 refugee law, 35–56
 transnational dialogue, 48–55
- French language, 49, 67
- fundamental rights, 40
- Germany, 14
 asylum seekers, 58–60
 case law, 63–5
 courts' use of foreign law, 67–78
 foreign law, 66, 73–8
 judges, 61, 66, 73–8
 refugee law, 57–84
 refugee status determination, 28
 transnational dialogue, 78–84
- GG *see* Grundgesetz (Constitution of Germany)
- good faith, 216, 228
- Görgülü case, 82–3
- government asylum decisions, 192–3
- Gross, Leo, 208
- Grundgesetz (Constitution of Germany) (GG), 57
- Hale, Baroness, 234
- harmonization, 77, 168
 Denmark's reservation to, 179–81
- Hathaway, James, 4, 7, 27
- High Court, 130, 137
- High Court (Australia), 45
- High Court (Ireland), 161, 162, 163, 166
- HIV status, 164
- Hope Hanlan procedures, 155
- Hope, Lord, 221, 227
- Horvath principles, 165
- House of Lords, 69, 130, 132–4, 221, 226, 228, 232, 233
- humanitarian protection, 98, 128
see also protection
- IARLJ *see* International Association of Refugee Law Judges

Cambridge University Press

978-0-521-19820-2 - The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union

Edited by Guy S. Goodwin-Gill and Helene Lambert

Index

[More information](#)

258

INDEX

- Illegal Immigrants Trafficking Act
 2001 (Ireland), 158
 immigration, 91
 Immigration, Asylum and Nationality
 Act 2006, 131
 Immigration Residence and Protection
 Bill 2008 (Ireland), 157, 159
 Immigration Rules (UK), 127
 Immigration Service (Denmark), 172,
 173, 175
 immunity, 235
 in-country applications, 116
 INIS *see* Irish Naturalisation and
 Immigration Service
 initial decisions, 128–9
 Integrated Commissions (Italy), 99
 International Association of Refugee
 Law Judges (IARLJ), 5, 195
 International Court of Justice (ICJ),
 215
 ‘international friendliness’
 international law, 24, 64, 82, 148, 152,
 187–8, 199, 201, 206
 interpretation of, 213–41
 national law consistency, 83
 internationalism, 152
 internet, 78, 79
 ‘invisible traffic’, 10, 55, 73, 75, 88, 105,
 142, 183, 195
 Iran, 28
 Iraq, 72, 186, 202
 Ireland, 15
 asylum decisions, 153–9
 case law, 11
 foreign law, 151, 159–66
 refugee law, 150–69
 transnational dialogue, 150–69
 Irish Naturalisation and Immigration
 Service (INIS), 157
 Israel, 230
 Italy, 14
 asylum procedures, 92–9
 asylum-seekers, 91–2
 foreign law, 87, 99–105
 judges, 86, 88
 key practitioner survey,
 104–5
 legal culture, 85–8
 refugee law, 89–99
 transnational dialogue, 85–106
 journals, 78, 79, 145
 judges
 Belgium, 23–4, 32–3
 conceptual frameworks, 32–3, 52–3,
 144–5, 200–2
 European Union, 1–16
 France, 52–3
 Germany, 61, 66, 73–8
 Italy, 86, 88
 mentality, 14
 Spain, 117–19
 Sweden, 195–6, 202
 United Kingdom, 125, 138–40, 142,
 144–5
 judicial mentality, 14
 judicial pragmatism, 183
 judicial reviews, 161, 163, 172, 175–6,
 181–2
 jura novit curia, 118
 juris database (Germany), 68, 71
 jurisprudence, 10–11
 see also refugee law
 Kosovo, 71
 language, 30–1, 49, 67, 79,
 141, 198
 Lauterpacht, Hersch, 215, 216
 Laws, Lord Justice, 135
 lawyers, 178–9
 legal argumentation, 122, 123
 legal culture, 31–2, 52
 legal internationalism, 152
 legal positivism, 200
 living instrument approach, 231–7
 Lloyd, Lord, 222
 Local Commissions (Italy), 96–7, 98,
 99, 101, 105
 magistrates (Spain), 121–2, 123
 Mance, Lord, 237
 ‘Martelli’ Act (Italy), 90
 merits of the claim, 20–2
 Migration Board (Sweden), 186, 189,
 190, 191, 192

Cambridge University Press

978-0-521-19820-2 - The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union

Edited by Guy S. Goodwin-Gill and Helene Lambert

Index

[More information](#)

INDEX

259

- Migration Court of Appeal (Sweden), 190, 191, 194–5, 198, 202
- Migration Courts (Sweden), 189, 191, 194, 198
- migration law, 17
- military service, 232–3
- Montesquieu, 22
- NAM *see* New Asylum Model
- National Asylum Court (France), 7, 38–9, 40, 42, 49, 50, 52, 53, 54
see also Refugee Appeals Board (France)
- National Commission (Italy), 95, 106
- national courts, 213, 219
- national judiciaries, 2
- National Transformation Act (Germany), 81–2
- Nationality, Immigration and Asylum Act 2002, 129
- New Asylum Model (NAM), 131
- non-governmental organizations (NGOs), 54, 100, 146, 202
- OAD, *see* Spanish Office on Asylum and Refuge
- obscurity, 229–31, 235
- OFPRO (Office français de protection des réfugiés et apatrides), 38, 49, 50
- onwards movement of refugees, 235–7
- oral hearings, 161–2, 190
- Palestinian refugees, 230–1
- Peczenik, Aleksander, 200
- Permanent Refugee Appeals Commission (PRAC) (Belgium), 20–1, 25
- persecution, 26, 43, 44–5, 69, 80, 82, 120, 134, 164, 227, 232, 233
- policy harmonization, 3–9
- positivism, 200
- PRAC, 26, 27, 28 *see* Permanent Refugee Appeals Commission
- pragmatism, 183
- precedents, 23, 62, 118
- prerogatives, 39
- Privy Council, 154
- prostitution, 45
- protection, 27, 165, 167, 223, 228
- Protection Review Tribunal (PRT) (Ireland), 158
- Rapporteur public (France), 36, 42, 43, 47
- RAT *see* Refugee Appeals Tribunal
- rational account
of transnational dialogue, 30–1, 48–51, 141–2, 198–9
- Reed, Robert, 217
- Refugee Act 1996 (Ireland), 155–6, 164
- Refugee Appeals Board (Denmark), 170, 172, 174–6, 177, 181–2, 182, 183
- Refugee Appeals Board (France), 38, 42, 43–8, 49, 55
see also National Asylum Court (France)
- Refugee Appeals Tribunal (RAT) (Ireland), 151, 156–7, 162, 166–8
- Refugee Convention, 4, 9, 21, 24, 38, 57, 65, 71, 72, 80–1, 89, 105–6, 111, 112, 113, 127, 133, 136, 139, 148, 154, 160, 204, 205–6
- interpretation of, 144, 206–20, 218, 222–41
- living instrument approach, 231–7
- Refugee Council (Denmark), 175
- refugee law, 15, 17
- Belgium, 17–34
- Denmark, 170–85
- domestic dynamic, 33, 53–5, 145–8
- European Union, 1–16
- France, 35–56
- Germany, 57–84
- Ireland, 150–69
- Italy, 89–99
- Spain, 107–24
- Sweden, 186–203
- transnational approach, 9–16
- United Kingdom, 127–40
- Refugee Legal Centre (RLC), 146–8
- refugee status determination (RSD), 17–29, 70–1, 89–91, 94–9, 153–9, 210–11

Cambridge University Press

978-0-521-19820-2 - The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union

Edited by Guy S. Goodwin-Gill and Helene Lambert

Index

[More information](#)

260

INDEX

- Residence Act (Germany), 81
 risk assessment, 167
 RLC *see* Refugee Legal Centre
 RSD *see* refugee status determination
 Russia, 28
- safe third country, 173
 Schengen Convention, 47, 180
 scholars *see* academics
 Scotland, 137
 Slaughter, Anne-Marie, 4
 social group, 44–7, 136, 164, 167, 233
- Spain
 admissibility, 114–16
 asylum procedures, 114–17
 asylum seekers, 108, 121
 case law analysis, 119–23
 immigration, 107–8
 international treaties, 117
 judges, 117–19
 lawyers, 122
 legal order, 110–13, 117–19
 refugee law, 107–24
 transnational dialogue, 119–23
- Spanish Office on Asylum and Refuge (OAR), 115, 116
- special reviews
 unfounded applications, 175–6
- state practice, 214
 state prerogatives, 39
 state protection, 27, 165, 167
 Steyn, Lord, 133, 145, 224, 226
 style of judgments, 31–2, 52, 143–4, 199–200
 subsequent practice, 209, 212, 238, 241
 subsidiary protection, 94–5, 98, 101
 Supreme Court (Denmark), 181
 Supreme Court (Ireland), 159, 163
 Supreme Court (Spain), 114, 117, 118
 Supreme Court (UK), 130
- Sweden, 14
 asylum procedures, 189–91
 case law, 191–7
 foreign law, 186–203
 government decisions, 192–3
 international law, 187–8
 judges, 195–6, 202
 judicial system, 188–91
 legal framework, 200–2
 refugee law, 186–203
 transnational dialogue, 197–202
- tape recordings, 162
 time constraints, 31, 49, 141, 198
 torture, 132, 134
 training, 142, 199
 transnational dialogue, 50–1, 179–85, 204
 Belgium, 17–34, 30
 France, 48–55
 Ireland, 150–69
 Italy, 85–106
 Spain, 119–23
 Sweden, 197–202
 United Kingdom, 140–8
- transnational refugee law, 9–16
see also refugee law
- travaux préparatoires, 229–30, 236, 237
- treaty interpretation, 213–17
see also international law; Refugee Convention
- Tunisia, 101
 Turkey, 46, 61
 ‘Two-Worlds Doctrine’, 80–4
- unfounded applications, 175–6
- UNHCR (United Nations High Commissioner for Refugees), 111, 122, 144, 192, 220, 240–1
- UNHCR Guidelines, 228, 229, 234, 240
- UNHCR *Handbook*, 196, 210–13, 223, 224–7, 228
- United Kingdom (UK), 14, 15, 125–49, 163, 219
 asylum decisions, 127–40
 case law, 220–37
 foreign law, 126, 131–40
 judges, 125, 138–40, 142, 144–5
 refugee law, 127–40
 transnational dialogue, 140–8
- United Nations High Commissioner for Refugees *see* UNHCR; UNHCR Guidelines; UNHCR *Handbook*

Cambridge University Press

978-0-521-19820-2 - The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union

Edited by Guy S. Goodwin-Gill and Helene Lambert

Index

[More information](#)

INDEX

261

United States (US), 167

VCLT *see* Vienna Convention on the
Law of Treaties

Verwaltungsgericht (VG), 59

Vienna Convention on the Law of
Treaties (VCLT), 12, 82, 148,
208–9, 214, 216, 238

Von Arnim procedures, 154

Waldron, Jeremy, 217

Warsaw Convention on International
Carriage by Air, 221–2

welfare organizations, 146

Woolf, Lord, 223, 226

written law, 23

<http://www.pbookshop.com>