

## BOOK REVIEW

**Mariagiulia Giuffré, *The Readmission of Asylum Seekers under International Law* (Hart Publishing 2020), 359 pages, ISBN 9781509902491 (hardback)**

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The *Readmission of Asylum Seekers under International Law* is a major achievement in many respects. First, it dives into an opaque, policy-driven and technical subject matter, primarily researched so far by non-lawyers. It bridges disciplines and draws on a plethora of sources including renowned authors in the field, international, regional and national law, case law and policy, as well as non-English commentaries. It clarifies the meaning of and interplay between concepts -including 'readmission' itself, which have been widely used in the international plane and the EU parlance, albeit with partiality and a minimal degree of precision. Most importantly, the book brings international refugee law up to speed with recent developments in state practice (e.g. EU-Turkey Statement, Italy-Libya cooperation) as well as closer to human experience on the ground.

In the aftermath of 2015, it was made clear that the outsourcing of asylum through agreements with non-EU countries and practices of readmission will be a major priority for EU migration policy (see, amongst others, the European Agenda on Migration, the Valleta Summit Political Declaration, the 2016 Partnership Framework with third countries). In the more recent European Commission's Communication *on a New Pact on Migration and Asylum* COM(2020) 609 final, it is stated that '*A common EU system for returns is needed which combines stronger structures inside the EU with more effective cooperation with third countries on return and readmission. It should be developed building on the recast of the Return Directive and effective operational support including through Frontex.*'<sup>1</sup> These European developments seen together with similar practices overseas such as the asylum cooperation agreements between the US and Central American countries and Australia's offshore processing agreements with Malaysia, Papua New Guinea (PNG) and Nauru are examples of the kind of debates Giuffré's book is highly relevant to.

Although the question of readmission of asylum seekers may appear a rather specific and limited in scope topic, the breadth and depth of the book's content is revealed already in the first pages of the introductory chapter. As stated in the opening sentence of the book 'THIS BOOK LIES at the junction of migration control and refugee protection.' Unpacking readmission, as a concept and as a praxis, entails opening international refugee protection's pandoras box: questions of state sovereignty, sources of law, international responsibility, jurisdiction, human rights standards, governance -to name a few, arise and seek for firm

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<sup>1</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM/2020/609 final p. 8.

answers -which are, indeed, delivered. The fact that the book zooms into the Council of Europe and European Union law adds to the complexity of the issues at hand, especially considering that EU asylum legislation does not regulate access to the territory, an issue primarily addressed by the EU legislation governing border control and irregular migration, complemented by ECtHR jurisprudence. This, coupled with the scarcity of previous legal analysis on the matter, makes Giuffré's endeavor courageous and commendable.

The *Readmission of Asylum Seekers* lies, also, at the junction of international relations and international law unraveling the untenability of the rigid doctrinal distinction between refugee law as public international law and European law on the one hand, and asylum in the context of national political decisions for durable solutions and transnational cooperation on the other.<sup>2</sup> The analysis in the book of readmission as a legal concept and as a practice reveals that refugee law scholarship may benefit from revisiting the notion that determining the definition of a refugee or the scope of the non-refoulement principle for instance, is deemed to be a technical legal task (associated with legal obligations and thus with formality, conceptual clarity, coherence), while interstate cooperative migration management remains a matter of diplomacy and political negotiations (associated with pragmatism, and thus with informality, discretion, focus on results, regionalism, and power relations).

The book essentially asks if and in what ways the implementation of readmission agreements may impact on the rights of those seeking protection in Europe. In order to do that, it first walks the reader through 'the basics' of international refugee law in a systematic and pedagogical manner: it clarifies the scope and content of the rights in question, namely the right to non-refoulement and the right to access asylum procedures before removal (Chapter two) and then it looks at the interplay between migration and border control measures, including readmission agreements and national decisions to return refugees to countries of origin or transit. Throughout this chapter, Giuffré, scrutinizes the evolution of the doctrine reconstructing aspects of refugee law, such as the principle of *non-refoulement* and access to protection, pulling together findings of various international bodies. Ironically, the chapter concludes with a remark on the fate of the two most widely discussed -at the moment- ECtHR cases concerned with border procedures, notably *Ilias and Ahmed v. Hungary* (2019, safe third country practices) and *N.D. and N.T. v Spain* (2020, pushbacks at the border). Giuffré is almost intuitively foreseeing that the reasoning of the majority of the judges in the *Khlaifia and Others v. Italy* case (2016) -where the mandatory nature of the procedural obligation to conduct personal interviews was disregarded, might shape the line of reasoning of subsequent decisions. As a result, migrants' rights will continue to depend on the discretion of police and border authorities, especially in times of crisis. What, perhaps, Giuffré could not tell at that time is that, arguments used to support dissenting views to the *Khlaifia* judgment will, in fact, be adopted later on by the majority (see Judge Dedov's 'own culpable conduct' claim<sup>3</sup> which was later on adopted by the Grand Chamber as the defining test in relation to Art. 4 Prot. 4 ECHR in *N.D. and N.T.* case).

Following the doctrinal analysis, the book delves into the technicalities of particular readmission agreements and investigates their compatibility with international human rights

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<sup>2</sup> On this see David W Kennedy, 'International Refugee Protection' (1986) 8 Human Rights Quarterly 1.

<sup>3</sup> In his partly dissenting Opinion to *Khlaifia* Judgment, Judge Dedov argues that 'the applicants had put themselves in an unlawful situation, contrary to the presumption of the sovereign right of any State to control its borders'.

standards (Chapter three, four and five), as these have been established in the second chapter. In particular, the book identifies three categories of agreements linked to readmission drawing on the European experience of bilateral cooperation with third countries. Chapter three discusses the so-called *standard readmission agreements*, which regulate the transfer of persons between the contracting parties concluding that although the text of such agreements may not be *per se* contrary to international standards, their implementation may contribute to hampering access to protection.

Chapter four, looks into *diplomatic assurances* on the fair treatment of the deportees, as a tool casually used by European States to legitimize the removal of undesirable foreigners, considered to pose a threat to the host country. In what constitutes one of the boldest findings of the book, Giuffré challenges the reliability of diplomatic assurances, not only in terms of state compliance, but also as a matter of law. She shows how the exchange of assurances may affect the fairness of the procedures and influence the decision-making process upon arrival. In a nutshell, although assurances are legally permissible and likely to lower the risk of refoulement, they are proven ineffective in preventing ill-treatment, primarily, due to the way in which such ill-treatment is administered and takes place in practice. Strengthened monitoring mechanisms cannot, in fact, guarantee the detection of torture and the elimination of the personal risk for the deportee.

Finally, Chapter five, discusses *technical and police cooperation agreements* in the context of maritime migration control. Distinguishing between pre-arrival and post-arrival practices this chapter focuses on cooperation targeting individuals before setting foot on European soil, namely Italy-Libya pushbacks and Frontex maritime operations. Engaging with EU law, the law of the sea and law of international responsibility as well as drawing heavily on ECtHR and ICJ jurisprudence, this chapter demonstrates the relevance of readmission for migrants intercepted within the context of rescue operations at sea. The argument is that the more migration control is entrusted to a third country/partner the less chances exist for European states to control the fate of intercepted protection seekers.

The analysis of those three types of agreements against the backdrop of norms outlined in chapter two allows the author to, convincingly, explain the points where areas of law and policy considered to be distinct in terms of legal basis, objectives and temporality, do overlap; the intersection between refugees' access to territory and readmission in the context of extraterritorial migration control or the interplay between national and Union policy on readmission are two examples in this respect. Furthermore, Giuffré's methodological choice to systematize the bilateral agreements linked to readmission, instead of treating them as one body, offers the necessary nuance as to the way in which refugees' rights may be impacted and clarity as to the way forward.

The book answers its main question in the affirmative: the implementation of bilateral agreements linked to readmission can jeopardize protection, namely the right to *non-refoulement* and the right to access fair procedures and effective remedial mechanisms before removal. Giuffré contends, though, that the actual result (harm) is not uniform but rather takes varying degrees of intensity depending on the right breached, the agreement in question, and the context within which the agreement at hand is applied, including the time and space at which the encounter between the refugee and the State takes place.

The book ends with a section on suggestions for improvement revealing the authors view on the way forward. These suggestions are primarily concerned with the insertion in

the text of the various agreements, of specific clauses that would emphasize, whenever necessary, the need to distinguish between asylum seekers and migrants who do not fear persecution or the need to have procedural guarantees in place. The author, claims, that this will on the one hand enhance legal certainty and on the other hand ‘make fundamental rights part of ordinary business and bilateral cooperation’. What is striking here, is that this argument may be at odds with the book’s main contention, namely that looking at the text of an agreement is not the end of the story. Affection-clauses are to be welcomed yet, the question remains as to how this would make a difference in practice.

Where, I am convinced, the difference will be made is to the minds of international lawyers, EU lawyers, policy makers, and NGO groups who will read this book. These and all of us researching and teaching international and European refugee law should be grateful to Mariagiulia Giuffré for her valuable insights not only for the readmission of asylum seekers in international and European law but also for inviting us to rethink cooperation in international law through legal means.