

BOOK REVIEWS

Fee Rauert, *Das Kosovo — Eine völkerrechtliche Studie*, Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung, Wien 1999, xviii, 252pp. DM 53, öS 380, Sfr. 47. ISBN 3-7003-1265-2

Even before the wider international community began to notice the tragic events in Kosovo, the region had been a hot spot. And there is little hope that this could change in the near future. To shed light on this complicated situation is one of the aims of the present book.

The work begins with a sketch of the historical and political background of the conflict over Kosovo. The author first sets out the historical half-truths and myths as well as the psychological motives which underlie the strong emotional ties with Kosovo of both the Albanian and Serb population. She gives an account of those political and constitutional developments which have occurred since 1945 which finally led to the outbreak of open conflict in Kosovo. Special attention is devoted to the policy of the Yugoslav and Serb authorities towards Kosovo after 1981. This phase was characterized by an increasing political and constitutional weakening of the autonomy of the province of Kosovo, as well as by brutal suppression of the Albanian population and instances of ethnic cleansing.

In the next part the author outlines the legal status of Kosovo-Albanians both on the domestic and international level. It becomes evident that even if the constitution of the Federal Republic of Yugoslavia (FRY) in principle grants certain rights to minorities, there is an enormous gap between the constitutional text and the constitutional reality, paired with a lack of political will to implement effectively those minority rights provided for by the constitutions and laws of the FRY and the Republic of Serbia. With respect to the legal status of Kosovo-Albanians on the international level, the author argues that even if Kosovo-Albanians can be qualified as minority within the meaning of, for example, Article 27 ICCPR⁶⁶, there are no effective implementation mechanisms available. The survey of the International and European instruments and declarations concerning minority rights make it clear that their efficacy depends both on the willingness of the State concerned to enter into a dialogue and the level of political support for the minority by other States.

The fourth part discusses the issue of the right to self-determination, such a right having been repeatedly invoked by the Kosovo-Albanians. The author first shows that even though the right to self-determination is part of the framework of Yugoslav constitutional law, the Kosovo-Albanians are not in a position to invoke the right to self-determination and to secession since they are not considered a 'people' under domestic law. Therefore, a possible right to self-determination could stem only from international law. Stressing that discussions of the right to self-determination are rather theoretical since this right collides with the principle of sovereignty, the author gives an overview of the status and scope of the right to self-determination in international law. It is, however,

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emphasized that the Kosovo-Albanians could claim a right to self-determination.

The book concludes with a chapter on the question of a right to secession of the Kosovo-Albanians. The author argues that according to the traditional view, such a right exists only in situations in which there is a pattern of serious and systematic human rights violations. In the case of the Kosovo-Albanians this requirement is easily fulfilled. History suggests that other criteria may have been decisive for the European States in recognizing the statehood of Croatia and Bosnia-Herzegovina. According to the author it appears that inter alia the fact that both States formerly enjoyed the status of a Republic of the Former Yugoslavia was decisive. Should the European States insist on this criteria, there will never be an independent State for the Kosovo-Albanians since the Yugoslav Constitution does not recognize the status of Republic to Kosovo.

Although published after the NATO attacks on Yugoslavia, the manuscript was completed before the attempt to find a solution at Rambouillet and the outbreak of the hostilities. However, even without these last twists in the most recent history of Kosovo the book is enlightening. It is especially valuable for those who want to reach a deeper understanding of the facts and emotions underlying the conflict and the political and legal difficulties in reaching a solution. It becomes evident that a durable and peaceful solution for Kosovo can be reached only by negotiations between all parties. Perhaps the last two parts on the right to self-determination and the right to secession are slightly too long. These are, however, minor flaws which should not hide the fact that the book makes interesting reading and offers valuable insights into many political, legal and emotional questions concerning Kosovo.

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Philip G. Schrag, *A Well-Founded Fear: The Congressional Battle to Save Political Asylum in the America*, New York and London: Routledge, 2000, 343 pp.

The 'asylum crisis' in advanced industrial societies has received well-deserved attention in numerous books, reports and articles. Most legal studies focus on changes in asylum law and procedures, often criticizing governments for adopting excessively restrictive measures to deter the entry of asylum-seekers. Less studied are the political processes through which asylum reforms are adopted or, in rarer cases, rejected. Philip Schrag's *A Well-Founded Fear: The Congressional Battle to Save Political Asylum in the America* adds a needed perspective on the legislative and administrative processes affecting passage and implementation of reforms.

Schrag provides a detailed, exhaustive (and sometimes exhausting) review of the debate on asylum reform that took place in the United States in the mid-1990s. Writing as a participant-observer, Schrag is frank about his role in this debate: as an advocate of refugee protection who sought to defeat what he considered to be restrictive legislation. He focuses on three areas of legislation: provisions to establish numerical quotas on refugee admissions from overseas, time limits on applications for asylum, and expedited removal of persons seeking admission to the United States. Schrag sees each proposal, particularly in its

original version, to be a threat to refugee protection, but his explanations of the positions for and against the provisions are generally well balanced.

Schrag is intimately familiar with the asylum process in the United States, supervising a legal clinic at Georgetown University that represents asylum seekers. When he describes the implications of time limits and expedited proceedings, he speaks with the authority of someone who has interviewed *bona fide* refugees and knows the potential impact that restrictive measures could have on their ability to claim asylum. He provides specific case studies to buttress his points.

His experience with the refugee resettlement program is less extensive, and the description of the debate on resettlement admissions suffers by comparison. The book inadequately discusses some of the contexts in which proposals for new admission policies arose: for example, the continued preponderance of admissions under the refugee program to people from formerly Communist countries despite the collapse of Communism. He also fails to discuss disparities between UNHCR's assessment of resettlement needs, mostly for protection of refugees in first asylum countries, and US admission patterns, mostly for family reunion and orderly departure from countries of origin. (In the interests of fairness, it should be noted that the author of this review served as Executive Director of the federal commission that recommended some of the resettlement reforms considered by Congress.)

The great strength of the book is not, however, its discussion of the pros and cons of reforms but in the description of the legislative process itself, particularly the role of advocacy groups in influencing decisions. Schrag's principal aim in writing *A Well-Founded Fear* is to 'provide to students of the congressional process a window into the world of the advocates who try to affect the process.' In this endeavour, he succeeds brilliantly. The various actors involved in the refugee debate — both inside and out of Congress — are described with knowing detail as are the strategies that worked and failed. While some successes are happenstance, the book reveals the hard work and determination of those on both sides of the debate. As a lesson in civics, Schrag's account leaves the reader with one clear impression: a small group of committed advocates — armed with facts and stories about real people, rather than financial or political clout — can make a difference in the legislative process.

Equally interesting is the chapter on the implementation of the new legislation. Schrag and his colleagues failed to win every fight in Congress, but they turned to the regulatory process to make more palatable what they considered to be bad law. He strongly makes the case for the important role that administrative agencies play in interpreting legislative intent — for better or worse.

If there is one major weakness in Schrag's account it is the relative absence of discussion about the international context in which asylum reform took place. Focusing in such great detail on the US legislative and administrative process, *A Well-Founded Fear* largely ignores that similar proposals to restrict access to asylum procedures have been introduced in other countries with similar debate. In an increasingly interconnected world, one country's legislation can certainly be influenced, and in turn influence that of others. US policy makers were aware of developments elsewhere — for example, through participation in the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia. Similarly, many advocates were also

familiar with restrictions imposed in other countries, particularly in Europe, and feared that the United States would follow suit.

A Well-Founded Fear concludes with 16 lessons for public interest advocacy, a roadmap for those interested in influencing the legislative process. For those more interested in study than advocacy, the lessons include useful analytic insights into how Congress operates and how advocates must adapt to these realities. In either case, *A Well-Founded Fear* adds useful new insight to our understanding of the process of asylum reform.

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Ahmed Karadawi, *Refugee Policy in Sudan 1967–1984*. New York, Oxford: Berghahn Books, 1999. xxiii + 263. ISBN 1–57181–708–5.

This is an extraordinary book which academics and practitioners interested in refugees cannot afford to miss. In particular, government and UNHCR officials will find this study of the development of refugee policy in Sudan over nearly two decades extremely valuable. Ahmed Karadawi was in a position to enrich his rigorous scholarly analysis with his own direct involvement in refugee policy and his privileged access to materials and information. In fact, he not only spent sixteen years working for the Commissioner for Refugees in Khartoum, he was also an academic, who, having completed his doctoral research, played a central role in the establishment of the Refugee Studies Programme at Oxford University. Furthermore, in a field where perspectives from the south, as observed by Chimni, are still wanting, this study represents a significant exception.

Karadawi describes the main focus of his study as the ‘complexity of issues that result in (and from) . . . the power relationships arising from the diversity of actors involved at local, national and international levels’ in refugee policy (p. 27). He refers to the tension between, on the one hand, the process of internalisation of the refugee ‘threat’ whereby ‘refugees are brought under the control of the host country through specific decisions and laws’; and, on the other, the externalisation of responsibility resulting from the recognition that refugees are ‘a moral and political obligation of the international community’ with the attendant involvement of international and foreign actors in refugee matters. In Sudan, a centralised refugee policy emerged in the late 1960s in response to the arrival of large numbers of refugees, mainly from Ethiopia and Congo. The author dwells on the interplay between the domestic political scene, dominated then as it is now by the southern Sudanese question, and the responses to the refugee problem; in particular, as extremist views on the ‘rebellion’ in the south gained ground and many southern Sudanese sought refuge abroad, ‘support for dissident groups from neighbouring countries’ began to be considered counter-productive and contradictory (p. 31).

The analysis of the tension between the central government and the local authorities in the refugee-affected areas can help dispel the naive belief that the period after independence was a ‘golden age’ for asylum in Africa, when refugees were received open-heartedly and African hospitality always triumphed unabated.

The reality is much more complex: arguments against the presence of refugees were frequent, the attitudes of local authorities were not always favourable to the presence of refugees, and central governments often made refugee policy contingent upon regional alliances and enmities, as the case of Eritrean refugees in Sudan distinctly shows. In addition, security concerns were already one of the main determinants of refugee policy. This book therefore indirectly refutes the brouhaha about the supposed emergence of radically new challenges to the asylum regime in the 1990s that would justify a reformulation of refugee law and the search for new standards for receiving and hosting refugees. The experience of Sudan, on the contrary, illustrates that, although the socio-political context obviously changes constantly, the struggle to promote respect for the rights of refugees faced similar challenges then as it does now.

The kernel of Karadawi's analysis is in Chapters IV–VII. He begins with a detailed examination of the way in which power relations and competing interests within the Sudanese bureaucracy affected the development of refugee policy. It is here that the author's insider perspective is most beneficial since penetrating the complexity of relations within different sectors of state bureaucracies would have been very difficult, if at all possible, for an outsider. The main government body in charge of refugee policy in Sudan — the Office of the Commissioner of Refugees (COR) — had to grapple not only with a climate that became intensely hostile towards refugees in the late 1970s, but also with the antagonism of other government departments.

Whereas UNHCR was initially supportive of the efforts of COR to attenuate the hard line propounded by many within the government, a rift between UNHCR and COR developed as a result of UNHCR's hastened withdrawal of funding from settlements that had achieved 'self-sufficiency' and were thus deemed ready to be handed over to local authorities. The situation precipitated when COR initiated a fund-raising campaign independently of UNHCR in 1980. Perceiving this initiative as a direct challenge to its monopoly over access to international aid available for refugees, UNHCR coalesced with those elements in the government that had been hostile to the COR. The position of COR within the government had in the meantime been undermined following the transfer of the office to the Ministry of Home Affairs. Karadawi views the independent fund-raising initiative as the last attempt by the government to maintain control over refugee policy. After the failure of this initiative, by 1983, 'the government had lost its ability to control refugee policy, or to direct its implementation' while UNHCR emerged as 'the more active agent, which imposed its own priorities, particularly with regard to settlement policy and its attempts to promote the repatriation of refugees to Ethiopia'.

This book has come out rather belatedly, but its findings and analysis remain relevant today. This penetrating investigation of the Sudanese experience can offer guidance to policy-makers in an area where most actors, particularly international ones, appear loath to learn lessons from past mistakes.

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