Contents

11	
Table of Cases	
Table of Treaties and Other International Instruments	
List of Abbreviations	xxxiii
Introduction	1
1 Origins and Developments of Arrangements to Allocate	
Responsibility for the Protection of Refugees	9
1.1 Fundamental Concepts	10
1.1.1 The international legal framework of refugee protection:	
historical background 10	
1.1.2 The establishment of the United Nations High Commissioner for Refugees 12	
1.1.3 The 1951 Geneva Convention Relating to the Status of Refugees	13
1.1.4 Refugees and asylum 15	
1.2 The Refugee Situation at the End of the 1970s	17
1.2.1 'Refugees in orbit' 20	
1.2.2 The 1977 United Nations' conference on territorial asylum 21	
1.2.3 Conclusions of the Executive Committee of the	
High Commissioner's Programme 23	
1.2.4 The Council of Europe 26	
1.3 The European Union	30
1.3.1 The European Commission's proposals 30	
1.3.2 The 1985 Schengen Agreement and the 1990	
Implementing Convention 33	
1.3.3 The elaboration of the Dublin Convention 35	
1.3.4 The Amsterdam Treaty and the 'Communitarisation' of	
visas, asylum, immigration, and other policies related to the	
movement of persons 36	
1.3.4.1 'An area of freedom, security and justice' 36	
1.3.4.2 Provisions on asylum, refugees, and displaced persons	
(Article 63.1 and 2 ECT): harmonizing asylum laws in the European Union 38	
1.3.4.3 The British/Irish and Danish 'opt-outs' 41	
1.3.4.4 The next stage: the Lisbon Treaty 43	
1.4 Conclusion	44

xvi Contents

	Safe	e Third Country Practices, Readmission, and		
	Ext	raterritorial Processing	45	
	2.1	2.1 Safe Third Country Practices		
		2.1.1 Definition 46		
		2.1.2 Origins and development 47		
		2.1.2.1 Effective protection 52		
		2.1.2.2 Contact between the asylum seeker and the		
		third country and consent of the third state		
		to the removal 56		
		2.1.2.3 Procedural issues concerning the application of the		
		safe third country concept 59 2.1.3 Conclusion 66		
	22	Readmission Agreements	67	
	2.2	2.2.1 Definition 67	07	
		2.2.2 Evolution of readmission agreements 67		
		2.2.3 Characteristics 69		
		2.2.4 Readmission as a component of the European Union's		
		external dimension of asylum and immigration policies 71		
	2.3	Extraterritorial Processing	78	
		2.3.1 Origins 78		
		2.3.2 European proposals for extraterritorial processing 78		
		2.3.3 Analysis 81		
	2.4	The Way Forward	83	
	2.5	Conclusion	87	
5	Allo	ocation of Responsibility for Examining an Application		
	for Asylum under the Dublin Regime		89	
	3.1	Elaboration of the Dublin Regulation	90	
	3.1 Principles 3.2 Principles		91	
		3.2.1 Only one State is responsible for examining an application		
		for asylum 92		
		3.2.2 The State responsible is under the obligation to guarantee		
		effective access to the asylum procedure 92		
	2 2	3.2.3 Scope 94	05	
	3.3	Criteria Determining the State Responsible	95	
		3.3.1 Family unity 96		
		3.3.2 Visa and residence permit 101		
		3.3.3 Illegal crossing of the territory of a Member State 101 3.3.4 Control of the entry of the alien into the territory		
		of the Member States 102		
		3.3.5 The humanitarian and 'sovereignty' clauses 102		
		7		

Contents	xvii
3.4 Procedure 3.4.1 Transfer of the asylum seeker to the responsible State 111	111
3.4.2 Rules of evidence 115	
3.4.3 Identification of the asylum seeker: the Eurodac Regulation 117 3.5 Assessment	121
3.6 Conclusion	121
4 The Impact of Safe Third Country Practices on Inter-State Relations	127
4.1 Protection Elsewhere or Mere Transit: The Relevance and	
Scope of Article 31 CSR	127
4.2 International Cooperation to Protect Refugees: Solidarity,	120
Burden-Sharing, and Good-Neighbourliness 4.2.1 The principle of solidarity and burden-sharing 139	138
4.2.1.1 International instruments 140	
4.2.1.2 Burden-sharing and non-refoulement 144	
4.2.1.3 International practice 146 4.2.1.3.1 Fiscal burden-sharing 147	
4.2.1.3.2 Physical burden-sharing 150	
4.2.1.3.3 Comprehensive approaches 156	
4.2.1.4 The legal relevance of the principle of solidarity and	
burden-sharing 161 4.2.1.5 Safe third country practices and burden-sharing 164	
4.2.2 The principle of good-neighbourliness 167	
4.3 Conclusion	170
5 States' Obligations Towards Refugees	173
5.1 The Obligation of Non-Refoulement	173
5.1.1 The obligation of non-refoulement under	
international refugee law 174 5.1.1.1 Nature and scope of Article 33 CSR: the prohibition	
of expulsion or return ('refoulement') 174	
5.1.1.2 States' obligation to implement the Refugee	
Convention 181	
5.1.2 <i>Non-refoulement</i> under international human rights law 187 5.1.2.1 <i>Non-refoulement</i> under the European Convention on	
Human Rights 189	
5.1.2.1.1 Applicable standard 191	
5.1.2.1.2 Jurisprudence of relevance to safe third	
country practices 194 5.1.2.2 Article 3 of the Convention Against Torture 199	
5.1.3 Non-refoulement as a customary obligation 204	

Contents

	5.2	Other Human Rights Obligations 5.2.1 The right to seek and enjoy asylum from persecution 209 5.2.2 The right to leave one's country 212 5.2.3 Other relevant international refugee law and human rights	209	
	5 2	obligations 214		
	5.3 Removal to a Safe Third Country and States' Obligations: The			
	Content and Scope of Effective Protection 5.4 Conclusion			
	7.4	Conclusion	221	
6	Sup	ervision at the Level of the European Union	223	
	6.1	The Court of Justice under the EC Treaty	224	
		6.1.1 Remedies before the European Court of Justice 224		
		6.1.1.1 Failure to comply with the Treaty: Articles 226 and 227 ECT 225		
		6.1.1.2 Review of the legality of Community acts 227		
		6.1.1.2.1 Reviewable acts 228		
		6.1.1.2.2 Grounds for annulment 228		
		6.1.1.2.3 Applicants 228		
		6.1.1.3 Failure to act: Article 232 ECT 232		
		6.1.1.4 Preliminary ruling: Article 68.1 ECT 232		
		6.1.1.5 Competence to rule on the interpretation of Title IV ECT 236		
		6.1.2 Consequences of the British/Irish and Danish 'Opt-out' 237		
		6.1.3 Intervention of UNHCR in ECJ proceedings 237		
		6.1.4 Assessment of existing remedies 238		
	6.2	The European Court of Justice and Fundamental Rights	240	
		6.2.1 Fundamental rights as general principles of European Community law 240		
		6.2.2 The European Court of Justice and the European Court of Human Rights 242		
		6.2.3 Fundamental rights in European Treaties 245		
		6.2.4 The latest twist: the Charter of Fundamental Rights 247		
	6.3	Conclusion	249	
C	hapt	er 7 International Supervision	251	
	_	Supervisory Mechanisms Relevant to the Protection		
	,	of Refugees and Asylum Seekers 251		
		7.1.1 Supervision by or on behalf of the organization 252		
		7.1.1 The Executive Committee of the		
		High Commissioner's Programme 252		
		7.1.1.2 UNHCR's function of international protection 255		
		7.1.1.2.1 The crisis of protection: UNHCR in		
		the 1990s 257		

/	7				
/	0	n	+0	10	+0
ш	. / /	11	ν	VI	/ \
	///	10			νJ

xix

7.1.1.2.2 UNHCR's position on safe third country practices 258 7.1.1.3 Article 35 CSR 261 7.1.1.4 Advisory opinion from the International Court of Justice 264 7.1.1.5 Human rights charter-based bodies 264 7.1.2 Supervision by States: Article 38 CSR 265 7.1.3 Supervision by individuals 266 7.2 Future Prospects 7.2.1 Supervision by or on behalf of UNHCR 267 7.2.1.1 UNHCR's international protection mandate 267 7.2.1.1.1 The Global Consultations and the Agenda for Protection 267 7.2.1.1.2 Regulating secondary movements:	267
7.2.2 Supervision by individuals 282	
7.3 Conclusion	284
Conclusion	285
Select Bibliography Index	289 335

*