

2016

Book Review: Joseph Rikhof, *The Criminal Refugee: The Treatment of Asylum Seekers with a Criminal Background in International and Domestic Law*

Angus Gavin Grant

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/olsrps>

 Part of the [International Law Commons](#)

Recommended Citation

Grant, Angus Gavin, "Book Review: Joseph Rikhof, *The Criminal Refugee: The Treatment of Asylum Seekers with a Criminal Background in International and Domestic Law*" (2016). *Osgoode Legal Studies Research Paper Series*. 165.
<http://digitalcommons.osgoode.yorku.ca/olsrps/165>

This Article is brought to you for free and open access by the Research Papers, Working Papers, Conference Papers at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Legal Studies Research Paper Series by an authorized administrator of Osgoode Digital Commons.

OSGOODE HALL LAW SCHOOL

LEGAL STUDIES RESEARCH PAPER SERIES

Research Paper No. 34

Volume 12, Issue 7, 2016

Book Review: Joseph Rikhof, *The Criminal Refugee: The Treatment of Asylum Seekers with a Criminal Background in International and Domestic Law*

Journal of International Criminal Justice, 2012.

Angus Gavin Grant

This paper can be downloaded free of charge from:

<http://ssrn.com/abstract=2649107>

Further information and a collection of publications from the Osgoode Hall Law School Legal Studies Research Paper Series can be found at:

<http://www.ssrn.com/link/Osgoode-Hall-LEG.html>

Editors:

Editor-in-Chief: Carys J. Craig (Associate Dean of Research & Institutional Relations and Associate Professor, Osgoode Hall Law School, York University, Toronto)

Production Editor: Kiana Blake (Osgoode Hall Law School, York University, Toronto)

Osgoode Legal Studies Research Paper No. 34
Vol. 12/ Issue. 07/ (2016)

**Book Review: Joseph Rikhof, The Criminal Refugee: The Treatment of
Asylum Seekers with a Criminal Background in International and
Domestic Law**

Journal of International Criminal Justice, 2012.

Angus Gavin Grant

Abstract:

Book Review of Joseph Rikhof, The Criminal Refugee: The Treatment of Asylum Seekers with a Criminal Background in International and Domestic Law.

Keywords:

International Refugee Law, Exclusion from refugee status

Author(s):

Angus Gavin Grant

Osgoode Hall Law School, York University

E: gusgranovsky@gmail.com

Joseph Rikhof, *The Criminal Refugee: The Treatment of Asylum Seekers with a Criminal Background in International and Domestic Law* (Republic of Letters Publishing, 2012) 650 pp. € 75.00 (Hardback) ISBN 9789089791115

It is explicit in the 1951 *United Nations Convention Relating to the Status of Refugees* that those who have committed serious crimes should not come under its umbrella of protection. In the provocatively titled *The Criminal Refugee: The Treatment of Asylum Seekers with a Criminal Background in International and Domestic Law*, Canadian government lawyer Joseph Rikhof embarks on a detailed analysis of the law of refugee status in the context of its limitations and restrictions for those thought to have a criminal background.

The work is a comprehensive (if somewhat spottily edited) volume, beginning with an exploration of the origins of asylum as a concept that is both rooted in antiquity and embedded in the development of international human rights law. From this vantage point, Rikhof proceeds to an analysis of two central concepts in refugee law: first, exclusion from refugee status (for those who are thought to have committed various proscribed acts); and second, *refoulement* (the removal of an individual to the likelihood of persecution). The study is comparative in nature, focusing primarily on the views of the United Nations High Commissioner for Refugees and the approaches of those countries that have ‘contributed the most’ to the twin concepts of exclusion and *refoulement*.

The bulk of the study focuses on the interpretation and application of Article 1F of the *Refugee Convention* that excludes from refugee protection, *inter alia*, those believed to have committed war crimes and crimes against humanity, serious non-political crimes and those guilty of acts “contrary to the purposes and principles of the United Nations.” The chapter sets out in considerable detail the intersections between refugee law and other legal domains, such as international criminal law, extradition law and domestic criminal law, all in an effort to compare the convergence, and remaining differences in states’ approaches to refugee determination for those suspected of some form of criminal past. The subsequent chapter on *refoulement* explores the application of Article 33(2) of the *Convention* and the various processes devised by states to deal with those deemed to be a security threat within the country of asylum, an area in which Rikhof sees considerable international consistency. The book then concludes with a brief examination of ‘alternative remedies’ that may be available to states in situations where they cannot remove an individual because of the risk of torture, a risk to life or a risk to cruel treatment. These remedies include domestic prosecution, extradition, detention and humanitarian solutions.

The work is a very helpful resource to those, researchers and practitioners alike, who engage in comparative analyses of the approaches of the (largely) Western world on the limits of state obligations to provide asylum to those perceived to have a criminal past. The problem, of course, and the one shortcoming of *The Criminal Refugee*, is that the situation of those fleeing violent countries is rarely a simple matter of criminal and victim. Rikhof presupposes, as a departure point for much of the book, the fact of refugee criminality and pays comparatively little attention to the larger and more interesting question of the reliability and accuracy of state

decision making on these issues. In a realm of stripped down procedural rights and low standards of proof, it is often this question that is most contested and vexing.¹ And this gets to one of the central dilemmas of refugee determination: that is, in a common pool of applicants, how to ensure that violators of human rights are excluded from refugee protection, whilst simultaneously ensuring that victims of abuses are protected.² Wrongly excluding refugee claimants from the protection they require does not protect victims of international crimes and does not promote justice; the opposite in fact, mistaking victim for perpetrator in this context exposes the former to the risk of expulsion, and consequently, to the risk of further abuse.

Rikhof does not (and, perhaps as a government lawyer, cannot) delve into these weighty normative issues, but to the extent that he has provided a detailed reference guide as to how Western countries treat asylum seekers deemed to have committed criminal acts, he has provided a valuable contribution.

Angus Grant
Barrister & Solicitor
PhD Candidate Osgoode Hall Law School
angusgrant@osgoode.yorku.ca

¹ Unlike the criminal law standard of proof, the exclusion of refugee claimants under Article 1F(a) is based on the *sui generis* “serious reasons for considering” standard. For a recent discussion of the standard, see the recent decision of the Supreme Court of the United Kingdom in *R (on the application of JS) (Sri Lanka) v Secretary of State for the Home Department*, [2010] UKSC 15.

² The Supreme Court of Canada recently considered this issue in *Ezokola v Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40, concluding that the preceding 20 years of Canadian jurisprudence had been overly expansive in its approach to exclusion, thus potentially excluding from refugee protection at least some who were deserving of it.