

## Editorial

*International and European Migration Law*

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In a report released on 18 June 2012, the United Nations High Commissioner for Refugees ('UNHCR') established that due to major humanitarian crises worldwide (i.e. Côte d'Ivoire, Somalia, Sudan, and Libya), 2011 has been a record year for forced displacement across borders. The result has been 4.3 million people newly displaced, 800,000 of which were forced to flee their countries and become refugees. Overall, according to the UNHCR, there are 42.5 million refugees in the world. The majority, about four out of every five, seek shelter in neighbouring countries, resulting in large refugee populations in states such as Pakistan (1.7 million people), Iran (886,500), Kenya (566,500) and Chad (366,500). Humanitarian crises impacted the number of asylum applications in Europe and other industrialised countries as well: according to a statistical overview produced by the UNHCR in March 2012, the number of asylum applications increased by 20 percent in 2011 compared to 2010, in 44 industrialised countries (including European countries, the United States of America, Japan, Australia and New Zealand). For the 27 Member States of the European Union ('EU'), asylum claims increased by 15 percent. Considering the absolute number of individuals seeking refuge in the world, the amount of asylum applications in Europe and other industrialised countries concerns a relatively small group: in 2011, in the EU, only 277,400 asylum applications were registered, of which a relatively large part concerned asylum applications in the southern European countries, including Italy, Greece, and Malta.

Even if due to the economic crisis, this topic has tended to receive less attention recently, it is clear that in the last ten years migration policy has been an important subject on the national and European agenda. Numerous instruments dealing with different aspects of migration have been negotiated: from asylum and refugee law and border control, to family reunification, labour migration, and burden-sharing. The development of this migration policy is highly influenced by 'issues of the day', whether these are national elections, a sudden increase of migrants at the southern borders in response to developments in north African countries, need of labour migrants due to demographic shortages, or terrorist threats. Taking the agenda of 7 June 2012 as an example, we learn that the EU Ministers of Justice and Home Affairs are currently discussing not only their powers to reintroduce internal border controls in 'exceptional circumstances'; the implementation of a common framework for 'genuine and practical solidarity towards member states facing particular pressures due to mixed migration flows'; the state of play on the establishment of 'a common European asylum system'; but also an EU Counter Terrorism Strategy; and the implementation of the Schengen Information System II. This latter system is one of the EU databases used by the Member States for border and migration control and is part of the 'smart borders' project launched by the European Commission in 2008. This project involves an expensive, technology driven management of external borders, including the use of biometrics and a 'trusted' travellers program, a database on visa applications, and the registration of the entry and exit of every migrant in Europe. Furthermore, the 'smart borders project' refers to the use of high-tech monitoring systems of the high seas, including drones and satellites, to detect possible irregular migrants and terrorists.

Considering the aforementioned figures of the UNHCR on forced migration and the current developments in migration policies, the decision of the *Merkourios* Board of Editors to focus on international and European migration law can only be welcomed. The contributions in this issue deal with different aspects of migration law, yet they are all related to the efforts of national governments, whether unilateral, bilateral or within an international framework, to cope with migratory movements.

The contributions of Melanie Fink and Joanna Lenart specifically deal with decision-making at the EU level. Fink analyses the legitimacy and human rights concerns regarding the working agreement between Frontex and third (non-EU) countries. Frontex is the EU agency set up for the management and coordination of external border controls. Questioning the assumption that these working agreements merely concern technical relationships by which individuals cannot be affected, she points to current problems of democratic accountability and the protection of human rights. In *Fortress Europe: Compliance of the Dublin Regulation with the European Convention for the protection of Human Rights and Fundamental Freedoms*, Lenart describes the practical and legal problems of the so-called 'Dublin system', developed by the EU Member States to prevent asylum 'shopping' within the EU by appointing a state responsible for individual asylum applications. Describing the recent landmark judgments of both the European Court on Human Rights and the Court of Justice of the European Union in 2011, Lenart accurately points out the fact that the 'Dublin system' seems to be a tool for fighting the consequences and symptoms of asylum shopping, instead of addressing its causes. Both Kathleen McVay in her paper on refugees and the right to self-determination, and Sara Dehm in her case note on the decision of the Australian High Court,<sup>1</sup> further develop the idea of international responsibility for refugees and the failure of States to take up their responsibilities. The latter case note provides a revealing assessment of the Australian policy of 'outsourcing' refugee protection to countries - in this case Malaysia

1 *Plaintiff M70/2011 v Minister of Immigration and Citizenship* [2011] HCA 32; *Plaintiff M106 of 2011 by his litigation Guardian, Plaintiff M70/2011 v Minister of Immigration and Citizenship* [2011] HCA 32.

- that are not party to the UN Refugee Convention<sup>2</sup> and do not recognise refugee status in their national laws.

Finally, the role of international organisations in migration policy is highlighted in the interview with Ambassador Laura Thompson, Deputy Director General of the International Organisation of Migration. During this interview, Ambassador Thompson discusses not only the political and legal reasons behind States' failure to ratify the International Convention on the Protection of All Migrant Workers and Members of their Families,<sup>3</sup> but also touches upon the human costs of the aforementioned agreement between Australia and Malaysia, the problem of human trafficking, and the specific needs for extra protection of both women and children.

This issue of *Merkourios* concerns the international obligations of States to protect refugees and to respect fundamental rights of migrants. From different angles, the articles reveal that these international obligations cannot be swept away by transferring responsibilities to third States, by failing EU mechanisms of burden sharing, or by extraterritorial border control. Taking into account the aforementioned figures from the UNHCR that disclose a relatively small contribution from industrialised countries - including the EU Member States - to the universal protection of refugees, this is a welcome reminder. ■

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2 Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

3 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 93.