



A 362341

---

EUROPEAN MONOGRAPHS

# **Europe and Refugees**

## **Towards an EU Asylum Policy**

Ingrid Boccardi

Y



**KLUWER LAW INTERNATIONAL**

THE HAGUE - LONDON - NEW YORK

# TABLE OF CONTENTS

<b>Preface and Acknowledgements</b>	xii
<b>Table of Abbreviations</b>	xiii
<b>Introduction</b>	xv
<b>1 The International Protection of Refugees</b>	1
I.1 General Principles	1
I.2 Principal International Instruments for the Protection of Refugees: the 1951 Geneva Convention and the 1967 New York Protocol	3
I.3 Refugee Protection Through International Organisations: The UNHCR	16
I.4 Other International Instruments of Protection and Regional Initiatives:	19
I.4.A Other international organisations involved in the protection of refugees	19
I.4.B Other international instruments of protection	20
I.4.C Regional approaches to protection	22
I.5 Concluding Remarks	24
<b>2 The Beginnings of European Political Co-operation on Asylum and the Schengen Laboratory</b>	27
II.1 The Beginnings of European Political Co-operation on Asylum	27
II.2 The Schengen 'laboratory'	33
II.3 Critical Issues of the Schengen Asylum Framework	41
II.3.A The 'refugees in orbit' problem	41
II.3.B The 'asylum shopping' phenomenon	43
II.3.C 'Jurisdictional' harmonisation and compatibility with the Geneva Convention	44
II.3.D Visa policy and carrier sanctions	47
II.4 The 1990 Dublin Convention on State Responsibility for Asylum Applications and Schengen	54
II.5 The 1991 Commission Communication	56
II.6 Concluding Remarks	59

TABLE OF CONTENTS

<b>3</b>	<b>The Maastricht Treaty and European Co-operation</b>	61
III.1	The New Provisions of the Maastricht Treaty on Asylum Co-operation	61
III.2	The Implementation of the Maastricht Working Programme on Asylum	70
III.3	The Three Edinburgh Initiatives of December 1992:	74
III.3.A	The Resolution on manifestly unfounded applications	75
III.3.B	The Resolution on a harmonised approach to questions concerning host third countries and the problem of readmission agreements	78
III.3.C	The Conclusion on countries where there is generally no serious risk of persecution	84
III.4	Information Exchanges: The Setting up of CIREA and its Activities	88
III.5	Concluding Remarks	90
<b>4</b>	<b>Asylum Co-operation Between Maastricht and Amsterdam</b>	93
IV.1	The 1994 Commission Communication on Asylum and Immigration	93
IV.2	Visa Regulations and Their Impact on Asylum Co-operation	95
IV.3	Implementation Measures of the Dublin Convention	98
IV.3.A	Means of proof in the framework of the Dublin Convention	98
IV.3.B	Harmonisation of expulsion policies	100
IV.4	The Council Resolution on Minimum Guarantees for Asylum Procedures	101
IV.5	The Joint Position on the Harmonised Definition of the Term 'Refugee' in Art. 1 of the Geneva Convention	107
IV.6	Burden-sharing and Temporary Protection Issues	111
IV.7	New Priorities for Asylum Co-operation: An Assessment of the Third Pillar Working Structures and the New 1996 JHA Work-Programme	115
IV.8	Concluding Remarks	117
<b>5</b>	<b>The IGC and the Amsterdam Treaty</b>	121
V.1	The Beginning of the IGC Negotiations on the Third Pillar	121
V.2	The Dublin Proposal of December 1996	125
V.3	The Amsterdam Treaty Provisions:	131
V.3.A	The new Part III, Title IV of the EC Treaty	131
V.3.B	The Protocol on asylum for nationals of EU Member States	140

V.4	Flexibility and Closer Co-operation Measures: Their Impact on the Asylum Field	143
V.4.A	The general provisions on 'closer co-operation'	144
V.4.B	The Protocols on the position of the United Kingdom, Ireland and Denmark and the Schengen Protocol	146
V.5	Concluding Remarks	151
<b>6</b>	<b>After Amsterdam: Towards an EU Asylum Policy?</b>	<b>155</b>
VI.1	The Austrian Strategy Paper on Migration and Asylum Policy	155
VI.2	The New Action Plan on Establishing an Area of Freedom, Security and Justice	160
VI.3	The New Challenges: Temporary Protection and Burden-sharing in the Light of the Kosovo Crisis	164
VI.4	The Tampere European Council: Towards a 'Common European Asylum System'	173
VI.5	The European Refugee Fund and the Temporary Protection Directive	180
VI.6	The Draft Directive on Minimum Standards for Granting and Withdrawing Refugee Status	184
VI.7	The Reforms of the Nice Treaty	191
VI.8	The EU Charter of Fundamental Rights and Refugee Protection	195
VI.9	Towards a Comprehensive EU Asylum Policy: Searching for a Long-term Action Plan	197
<b>7</b>	<b>Conclusions – Towards an EU Asylum Policy and the Future of Refugee Protection in Europe</b>	<b>201</b>
VII.1	European Asylum Harmonisation: A True EU Policy?	201
VII.2	European Refugee Initiatives, International Asylum Obligations and Human Rights Protection in the EU: The Balance Between 'Protection' and 'Control'	205
VII.3	Building an Effective EU Asylum Policy While Ensuring Refugee Protection: Harmonisation and the Way Forward	209
	<b>Annex</b>	<b>213</b>
	<b>Bibliography</b>	<b>221</b>
	<b>Table of Cases</b>	<b>237</b>