

# Is the EU abandoning *non-refoulement*?

by Chiara Martini

*The right to seek and enjoy asylum from persecution is under serious threat in the European Union. Fortifying Europe against asylum seekers risks encouraging the illegal labour market and trafficking in human beings.*

After six years of decline in asylum applications Europe now hosts only five per cent of the world's refugee population. Only a tiny proportion of the world's 20 million refugees and asylum seekers ever get to Europe. In 2004 the 25 EU countries recorded 19% fewer asylum requests than in the previous year. Focusing on screening out as many applications as possible, and reflecting often unfounded fears of perceived abuse of the asylum system, harmonisation of European asylum policies has moved towards the lowest common denominator.

EU states are implementing the Hague Programme for closer cooperation in justice and home affairs by 2010.<sup>1</sup> This second phase of consolidation of European asylum policy focuses mainly on providing further powers to the state, rather than extending the rights of the individual. The 'fundamental rights' being guaranteed are those of the EU authorities and the various member states to repel those deemed to be illegal immigrants.

There has been progressive diminution of member states' obligations under the Geneva Convention. This is particularly the case with the refugee definition, which has resulted in excluding those at genuine risk of persecution from receiving international refugee protection. Germany and France, for example, exclude from refugee protection individuals fleeing non-state agents of persecution.

Recently developed concepts indicate departure from the principle of *non-refoulement* – the concept enshrined in the 1951 Refugee Convention that refugees should not be returned to places where their lives or freedoms could be threatened.

- The so-called 'safe third countries' are countries to which asylum seekers may be returned without their application having been examined and in which their application is supposed to be examined. This breaches the primary responsibility of the state in which the claim is lodged to provide protection.
- Under the 'accelerated procedures' provision, a wide range of asylum claims – more than 80% according to Amnesty International – are arbitrarily judged to be 'manifestly unfounded'.
- The 'super safe country' concept allows EU states to refuse to examine applications of an applicant who has travelled through a country which has ratified the Geneva Convention and the European Convention on Human Rights and which has an asylum procedure. Since there is no obligation on the 'super safe third country' to process the application, this practice denies asylum seekers the most basic right to be heard and gives rise to the risk that people will be passed indefinitely from state to state.

Responsibilities are not being equally shared among member states. Under the Dublin II Regulation, if it can be established that an asylum seeker has irregularly entered the borders of an EU state that country is responsible for examining the request for asylum. As a consequence, more asylum seekers are either being returned to a state on the periphery of the EU or choose not to lodge a formal asylum claim but instead travel on to another EU state. This provision penalises EU nations with exten-

sive external borders, particularly newly acceded states whose asylum systems are still weak.

The EU is allocating much higher levels of funding to border management/migration control activities – including the costly proposal to utilise biometrics in the Schengen Information System (SIS) and in residence permits – than to the improvement of refugee protection in non-EU countries. Proposals to establish an EU Border Management Agency and EU Border Police could give a legal basis to operations and measures that are already in place.

The second phase of development of a common European asylum policy has seen a radical departure from the commitment made in 1999 by EU leaders meeting in Tampere, Finland, to "work to-

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wards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*."

Fortified borders are not working as they are supposed to. They do not stop new arrivals and they fuel the illegal labour market and the trafficking in human beings. The EU has to adopt fair and efficient policies – based on genuine minimum standards – which share burdens and responsibilities equally among EU members and which address the root causes of forced migrations.

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1. See Morris T, 'Chequered progress towards a common EU asylum policy' FMR23, 2004 [www.fmreview.org/FMRpdfs/FMR23/FMR2307.pdf](http://www.fmreview.org/FMRpdfs/FMR23/FMR2307.pdf)