CHAPTER 3

The Perfect Storm: Sovereignty Games and the Law and Politics of Boat Migration

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1 Introduction

Europe being ‘flooded’ or ‘invaded’ by boat migrants is an often-invoked metaphor by those arguing that globalisation is fundamentally eroding State sovereignty. In the wake of the current global refugee crisis, hundreds of thousands of refugees and migrants risk their lives each year in the attempt to irregularly cross the Mediterranean. Many others never make it that far.1

The human tragedy of the present situation is undeniable. Yet, the response of the EU has focused almost exclusively on deterrence. Maritime border controls have been expanded and transformed with navy vessels, surveillance planes and radar stations creating a ‘virtual border’ across the Mediterranean. In addition, countries of origin and transit are increasingly conscripted to grant access to their territorial waters or, through their own authorities, effect migration control on behalf of the EU. While policies involving maritime interception and international cooperation to prevent migrants from departing are often framed in humanitarian terms – to prevent the loss of lives at sea – the fact is that these measures only tend to drive up prices and to force migrants to take longer, more risky and dangerous journeys.2

This near-obsession with border controls further seems hardly proportional to the scale of the problem. While the number of boat migrants apprehended by European authorities has been steadily increasing the last few years, the total is surprisingly modest when compared to the number of refugees and other persons in need of protection hosted by southern Mediterranean States such as Lebanon, Egypt and Libya. There is no denying that constantly shifting routes may put extraordinary pressure on individual EU Member States in the

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1 See further Tamara Last in this volume.
short term, but the current numbers are not something that the EU at large is not capable of managing.

What is it then about the situation of boat migrants that prompts such draconian measures? The present chapter argues that the current inability to adequately address the plight of boat migrants in the Mediterranean may perhaps best be understood as an instance of ‘the perfect storm’, i.e. a confluence of particular circumstances that in their sum aggravate the situation dramatically. From the perspective of coastal asylum/immigration States, the irregular migrant appears to have become the embodiment of the inability to protect and control access to that most sacred property of statehood, the sovereign territory. Compared to asylum-seekers arriving at the territory, the boat migrant is further lodged between competing duty-bearers and multiple legal regimes, creating a situation in which self-interested governments have been keen to disavow obligations by reference to the responsibility of other States or differing standards under international law. Last, but not least, the boat migrant has fallen victim to a dark aspect of globalisation, where States in the developed world are pursuing international cooperation in order to strategically shift or circumvent refugee and human rights obligations otherwise owed.

The following attempts to locate the boat migrant within these legal and political structures. It is not intended as a doctrinal legal analysis – something well covered by other contributions to this volume. Nor should the focus on the politics of law be taken to imply that international refugee and human rights law remains powerless in the face of the policies pursued. On the contrary, international law may be seen to have dynamically evolved, often exactly in response to these very policies.3 This relationship between law and politics, however, is key to understanding the current bouleversement in the Mediterranean and any attempt to force a more honest discussion in regard to the protection of those irregularly crossing the sea.

2 The Boat Migrant as a (De)marcation of Sovereignty

In a world where all individuals are assumed to be subjects of a territorial sovereign, the boat migrant not only transverses such boundaries, but in the process could be argued to challenge the very constitution of the system.

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