The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection

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“I have made it abundantly clear to the Coast Guard that we will turn back any refugee that attempts to reach our shore”¹.

I. Introduction

This declaration of US President G.W. Bush is symptomatic of how sea-borne migration is perceived as a problem or even hassle by the destination states despite the presence of refugees in dire need of protection. Sometimes states deny the refugee character of a flow of migrants or invoke security concerns to refuse protection and to justify the non-admittance or the removal. Arrivals by sea of asylum-seekers challenge not only the interpretation and application of the right of asylum, and in particular the principle of non-refoulement, but also the existing rules related to the freedom and the safety of navigation.

Migration flows by sea are not a new phenomenon and ever since the Indochinese crisis² in the seventies, they are well known under the expression “boat people”. Dealing with arrivals of thousands of Vietnamese irregular migrants to the coasts of neighboring states, the international community was forced to notice that international law had a gap: it had no useful and effective instruments to deal with migrants at sea, and in particular with asylum-seekers.

The chief problems that still remain have been to identify the rights and the obligations of the concerned states³ in the different maritime


³ Several states might be concerned by the arrival of asylum-seekers by sea: first of all the coastal state or state of destination; the national state of the