

Abrisketa Uriarte, J., *Rescate en el mar y asilo en la Unión Europea. Límites del Reglamento de Dublín III* (Aranzadi, Pamplona, 2020), 279 pp.

‘Missing migrants’ IOM project, which focuses on tracking deaths along migratory routes, announces in its website that 221 migrants have lost their lives in the Mediterranean only in 2021 (<https://missingmigrants.iom.int/region/mediterranean>). These figures hide stories of gross human rights violations, of people who have been forced to flee conflicts or situations of persecution in search of the protection that their countries are unable or unwilling to give them, of victims of human trafficking... The absence of legal and safe pathways to European territory has left smuggling networks in charge of managing these routes, placing migrants and people in need of international protection in a situation of extreme vulnerability. This, coupled with Europe’s obsession with preventing arrivals and externalising border control, makes irregular migration by sea a phenomenon that condemns hundreds of human beings to die in the attempt to reach a safe port.

The book *Rescate en el mar y asilo en la Unión Europea* is an authoritative and timely contribution to an unfinished and (maybe) unending debate: the European Union (EU) governance of migratory flows irregularly arriving by sea and the consequences of its ineffectiveness in the field of international protection. As is well known, despite being a phenomenon that the EU and its Member States have been confronted with for decades, they have not yet managed to provide an effective and very much needed human rights centered response to it.

In general terms, the book elaborates a comprehensive analysis on the convergence between migrant rescue at sea and access asylum protection in EU law. In this regard, the author assumes that the Common European Asylum System (CEAS) is ineffective for a variety of reasons. First, because neither applicants nor Member States conform to it in practice. Second, because it is a cumbersome and slow system. Finally, because it disadvantages States with external borders in the EU. As known, according to Dublin principles, if the criteria for determining the Member State responsible for examining a third country national application for international protection (minors, family unification, irregular entry) do not apply, the State responsible will be first Member State where the application was lodged. But the system built between 2011 and 2013 does not address the phenomenon of migrants and refugees to be arriving by sea, nor does it offer effective solutions to the question of disembarkation and its legal consequences. In this framework, the author concludes that while the package of measures envisaged in the New EU Pact on Migration and Asylum is being negotiated, the task of reforming the Dublin III Regulation is unavoidable. This is because, given that the final criterion for determining responsibility for examining an asylum application is the place where the application is lodged, it perpetuates a system that is unsympathetic to EU States with external borders. The system is also dysfunctional and, as said, ineffective.

The book is divided into an introductory note, four chapters and a general conclusion. The first chapter engages with the general legal framework in which Dublin III Regulation is embedded.

Here, the author provides an interesting analysis that traces the development of international refugee law and its connection to human rights protection. This analysis serves to frame the origins of the Area of Freedom, Security and Justice and CEAS. I firmly believe that this is a necessary analysis, insofar as it refers to the purposes that cooperation between the Member States and the common rules that they manage to agree on must not lose sight of.

Chapter two of the book deals with the substantive legal regime of Dublin III Regulation. The examination, and this is a general feature of the book, is exhaustive. After addressing the background of the system, it focuses on the principles that guide the application of the Dublin III Regulation, a system that has evolved on the basis of the search for a balance between “the criterion of responsibility and the principle of solidarity” (p. 100). Thirdly, the chapter examines one of the issues that I consider of central importance: that related to access to the procedure for examining an application for international protection. In this analysis, the author not only provides a detailed study of the criteria for determining the responsible Member State (pp. 121-137) and the so-called ‘discretionary clauses: the sovereignty clause and the humanitarian clause (pp. 137-144). I find it particularly valuable that she also reflects on what she calls “the systemic deficiencies that prevent relocation”, which have been identified by both the European Court of Human Rights and the European Court of Justice. By doing so, both European courts have set themselves up, also in this area, as the guarantors of the ultimate essence of the common asylum system: the protection of the rights of individuals in need of international protection.

Chapter three examines in detail the proposal on the reform of Dublin III Regulation launched in May 2016 by the European Commission. Thus, it first reviews what the author calls the main elements of the proposed reform of the Dublin III Regulation. Secondly, the chapter deals with the process that led to the launching of the Pact on Migration and Asylum in September 2020. The author is pessimistic about the Pact’s chances of redeeming one of the ‘cardinal sins’ of the CEAS: the disproportionate burden on Member States that delimit the EU’s common external border. This is because, although it introduces new criteria for determining the responsible Member State, it retains at the same time the criterion of the country of first entry. Therefore, “border states such as Spain, Greece, Italy, or Malta will continue to bear more pressure than the rest” (p. 181).

In chapter four, the author brilliantly addresses the questions of migrants’ rescue at sea and disembarkation in a safe harbour in connection with Dublin III Regulation. This forces the author to look at a scenario in which international law (in particular the regime deriving from the 1982 UN Convention on the Law of the Sea, the SOLAS and SAR Conventions, and the International Convention on Maritime Rescue) as well as EU law, all come together. A central question regarding this issue, as the author identifies, is that of disembarkation in a safe port. Is this an obligation imposed upon EU Member States? How does this duty relate to the obligations deriving from the principle of non-refoulement? How are these dilemmas solved in practice? What is the role of NGOs? These are the questions that the author brilliantly addresses in the last part of the book.

What is particularly interesting in Abrisketa’s analysis is that as well as being an exhaustive book, the fruit of genuine academic reflection, it is a profoundly honest work. Thus, the author draws our attention not only to the shortcomings of the system, which have been the subject of academic interest for decades, but also to its successes. From a strictly international law point of view, CEAS undoubtedly constitutes an advanced and necessary method of cooperation. And, in

this sense, it is an opportunity to achieve better governance of migration flows, which are, moreover, a phenomenon inherent to the history of humanity.

In sum, this book is an invaluable resource for all scholars, practitioners and students of EU asylum law and policy.

Carmen PÉREZ GONZÁLEZ  
*Universidad Carlos III de Madrid*