

the actors and the concrete difficulties that have arisen in its implementation. The content of the volume is briefly presented in the next Section.

### 5 *The Law Between Promises and Constraints*

The contributions to the collective volume address four main questions: *First*, which international and European legal obligations are binding both on the EU and on the Member States, and what constraints do they place – potentially and actually – on the international dimensions of EU migration and asylum policy? *Second*, does the law in the selected Member States (Belgium, Germany and Italy) provide for humanitarian admission procedures and, if so, what are the practices? *Third*, how do lawyers make use of existing provisions to obtain humanitarian admission, and how do refugees experience the functioning of current resettlement programs? *Fourth*, what are the prospects for future evolutions of the EU legal framework?

In the first part, several papers reflect on the limits of the current international and EU legal frameworks in regulating the situation of migrants who are outside European territory. Fundamental questions of human rights law and EU law are addressed, such as the extent of the jurisdiction of states and the scope of the EU Charter of Fundamental Rights. The paradoxes of the right to asylum are highlighted and questioned. Dirk Hanschel discusses the controversies surrounding the extent of the jurisdiction of the State under international human rights law. Drawing on the case law of the ECtHR and focusing on instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the author raises intricate questions of territory and jurisdiction that require nuanced answers. Stephanie Law discusses controversies surrounding the scope of EU law and of the EUCFR. She examines the relevant case law of the CJEU concerning the scope and implementation of EU law and analyses whether the application of the EUCFR is contingent on a territorial connection. The author advances the argument that territoriality is of no relevance to the application of the EUCFR. Sylvie Sarolea discusses the deficiencies in the current international and EU legal frameworks when it comes to dealing with the protection of migrants who are outside EU territory. She addresses the topic from a critical perspective and connects it with the broader issue of how to access justice.

In the second part, the national legal framework and practices regarding humanitarian admission are addressed in three selected Member States

(Germany, Belgium and Italy). A concrete understanding of the everyday practices of these States regarding humanitarian admission and of the corresponding legal issues is provided. Katia Bianchini explores Italian legislation and practices regarding humanitarian admission, while devoting particular attention to the implementation of ‘humanitarian corridors’. After explaining what the humanitarian corridors are, their legal basis, essential elements, and the potential for their replicability, she discusses their strengths and shortcomings. Pauline Endres de Oliveira analyses the conditions and procedures of the various humanitarian admissions programmes at the federal and regional (Länder) levels in Germany. She highlights the differences in procedure and in residence statuses. Serge Bodart analyses the Belgian legal framework on humanitarian admission and the limits on the judicial review performed by Belgian courts. He discusses the *X. and X.* ruling from the viewpoint of the domestic administrative tribunal over which he is now presiding and which requested a preliminary ruling from the CJEU.

In the third part, the concrete difficulties that have arisen in the implementation of existing provisions for humanitarian admission are highlighted. Tristan Wibault, the lawyer acting for the Syrian family in the *X. and X.* case, shares his experience of mobilising the law to obtain a humanitarian visa. He reflects critically on his own work by showing how, in practice and contrary to what the notion of ‘strategic litigation’ may suggest, lawyers tend to accompany as closely as possible the developments of a case, but are rarely in a position to develop, beforehand, a proactive and comprehensive strategy aimed at obtaining modifications of the legal framework. Sophie Nakueira, on the basis of the qualitative empirical data she collected during her extensive fieldwork in a refugee camp in Uganda, provides an account of the concrete difficulties vulnerable refugees face when trying to access resettlement programmes. She highlights and discusses the shortcomings and difficulties inherent in the implementation of the vulnerability criteria developed by the UNHCR to select refugees for resettlement, in a context where most of them are confronted with dire living conditions.

In the fourth part, concrete prospects for evolutions of the EU legal framework are being discussed. Catharina Ziebritski shows the emergence of an ‘EU resettlement law’ which, she argues, bears the promise of enhancing refugee protection if it remains aligned with the constitutional rationale of the CEAS. Eugenia Relano Pastor analyses the initiatives taken by the European Parliament to introduce a provision on humanitarian visas within the EU Visa Code, and the subsequent developments which ultimately led to the withdrawal of that proposal. She shows how the legal

tensions which have emerged before the CJEU and the ECtHR also had an impact on the debates within the European Parliament and among the EU institutions.

Jean-Yves Carlier concludes the volume by calling for renewed forms of global migration governance that would move beyond the strict dichotomy between open and closed borders. He makes the proposal of launching a broader reflection on how visas may be abolished in the long run, and to start admitting some kind of limited judicial review in those instances where the 'substance of the rights' of migrants is being threatened, for example, when the very essence of their fundamental rights is at stake.

