



BUILDING BRIDGES INSTEAD OF HIGHER WALLS

THE ARRIVAL OF REFUGEES IN
EUROPE: HUMAN RIGHTS AND
SECURITY

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Picture front page: unofficial refugee camp at Ellinikon International Airport, the former airport of Athens. (Justice and Peace, April 2016)

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Editors: Danilo Falzon, Hans Hommens, Radboud Reijn, Sophie Schellens and Sebastiaan van der Zwaan

Contributors: Emilio Jose Gomez, Frans Thoolen, Grace Buckley, Henrik Alberius, Madeleine Fredell, Nikos Voutsinos, Roderick Agius, Tom Claessens, and Wolfgang Buerstein.

Language Editor: Susan Horcajo

Lay Out: Urban Emotions, Nadia Colombo

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JUSTICE  PEACE
Local justice on a global scale

Justice and Peace The Netherlands

Riviermarkt 5
2513 AM The Hague
The Netherlands

Tel.: +31 (0)70 763 1499

www.justiceandpeace.nl

Facebook: www.facebook.com/JusticeandPeaceNL

Twitter: www.twitter.com/justice_peacenl

For more than forty-five years Justice and Peace Netherlands has actively promoted respect for human rights, human dignity, solidarity and social justice all over the world. Justice and Peace's approach is to link knowledge and expertise of our partners with a rights-based approach.

'our fate is shaped from within outward,
never from without inward' – *Jacques Lusseyran*

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Introduction

Over the past two years, European developments in migration and asylum policy have moved along a rapid course. Triggered by the arrival of large groups of refugees, European solidarity has been tested, existing faults in current asylum policies have erupted, and public debate has taken a stark polarized direction. Europe has responded by building walls and fortifying Europe even further. This analysis will show that the rationale behind this response is based on erroneous assumptions, focussing more on the symptoms of the arrival of refugees instead of addressing the humanitarian plight at hand. Alternatively, a more adequate response to the arrival of refugees has to be rooted in human rights for all, with accompanying new ideas and approaches. We will argue that an inclusive approach is the only viable option to safeguard the wellbeing of both refugees and Europeans.

We have all seen the pictures of what continues to occur at the southern and south-eastern borders of Europe. Images of small boats in the Mediterranean, packed with people, hardly suitable to sail the open sea, are grabbing our attention and conveying an atmosphere of struggle where people are trapped while trying to avoid European border controls. News abounds of dozens, sometimes hundreds, of people drowning before they can be rescued, with death tolls reaching a shocking new high in 2015 of more than 3,700 people dead in the Mediterranean Sea while struggling to reach European shores.^A The numbers for 2016 remain grim, with almost 3200 fatalities already by September 1.^B Upon crossing into Europe, mainly into Greece and Italy, most asylum seekers and refugees try to reach other European destinations, in search of safety and a humane standard of living. In this journey, refugees face difficult transits through Europe. European leaders are divided on the need to provide assistance to refugees, resulting in the lack of a shared, humanitarian answer to the challenges.

Asylum seekers and refugees are given (temporary) shelter in our own neighbourhoods, bringing global news headlines into our daily reality. This is an issue that seems to have divided both countries and local communities, resulting in polarized reactions. Concerns about terrorism, safety and social welfare dominate national and local debates. Meanwhile, a large group of people has accepted refugees as part of their communities and daily realities. They organize a wide range of initiatives in solidarity with refugees, such as arranging language classes, organizing joint suppers, providing clothes and food, and giving guided welcome tours in neighbourhoods. With negative messages focused on threats and fear dominating the media in many parts of Europe, this solidarity movement is often lost in the cauldron of debate.

The solidarity movement echoes the principles of humanity, human dignity and human rights for refugees. These principles resonate with the work and principles of Justice and Peace. A universal human rights perspective is the starting point of our analysis and actions. With popular

^A IOM Press Release, "IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015", available online at <http://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>.

^B IOM (2016) *Mixed Migration Flows in the Mediterranean and Beyond. Compilation of available data and information*

<http://migration.iom.int/docs/WEEKLY%20Flows%20Compilation%20No24%207%20September%202016.pdf>

discourse about refugees mostly framed around national security issues, our experiences are that the space for a human rights-based perspective in public debate, policies and political rhetoric is shrinking throughout Europe. Our commitment to helping refugees cannot be premised on cherry-picking, where refugees have to serve the European economic agenda. We have to value the human being, starting from a rights-based and solidarity approach. From our work in local communities to our presence at national and European policy making levels, we believe that alternatives based on humanity and solidarity are possible.

This report gives an assessment of current developments in Europe regarding the granting of asylum, specifically focussed on European Union policies and proposals. First, the report briefly elaborates on terminology and the basis of the analysis. The second section focuses on the external dimension of Europe's asylum policies. It shows that the current European approach of externalizing its responsibility for upholding the right to request asylum has grave humanitarian consequences and is in fact counter-effective. From the borders we move to asylum policy within Europe, examining the current Dublin Regulation and new proposals for a functioning asylum system in the EU. We highlight the importance of solidarity both among EU Member States and between states and refugees. In the last section, we examine the current hegemonic debate about refugees from a human rights perspective, demystifying many of the arguments used to legitimize the exclusion of refugees from our communities.

Painting the Picture: context, terminology and point of departure analysis

The world is facing the highest number of people forced to flee their homes since the Second World War. According to the UNHCR, 65.3 million people were displaced at the end of 2015, the highest number the organization has had to deal with in its history.^C Though most refugees seek refuge in their own regions, the sheer scale of displacement has resulted in increased numbers of people trying to reach Europe for safety. According to Eurostat, there were approximately 1,260,000 first-time requests for asylum registered in the EU in 2015, more than 2.5 times the number registered in 2013^D. Ninety-seven percent of the 2015 arrivals reached Europe after a dangerous journey via the sea^E. Due to the developments in EU policy aimed at managing migration flows, including the EU-Turkey Deal, sea arrivals in Europe have shown a gradual decline from their peak in October 2015. Arrivals in June and July of 2016 were considerably lower than those in the same months of 2015^F (see Figure 1).

But the number of global refugees is likely to continue increasing. The protracted Syrian conflict, military operations of the Islamic State in Iraq and Syria, the harsh oppression of human and civil

^C <http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>

^D http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics

^E <http://www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-iom>

^F <http://www.unhcr.org/figures-at-a-glance.html> (June 2016)

rights in Eritrea and South Sudan, and the volatile security situations in Afghanistan, Libya and Somalia displace thousands of people every day. Root causes of forced migration, such as human rights violations, social inequalities and climate change, are heavily influenced by macro-economic and geo-political developments.⁶ Reducing the number of people who have to flee their homes for safety thus requires a holistic strategy, including more egalitarian development, economic and foreign policies.

CROSSING THE MEDITERRANEAN - Number of arrivals

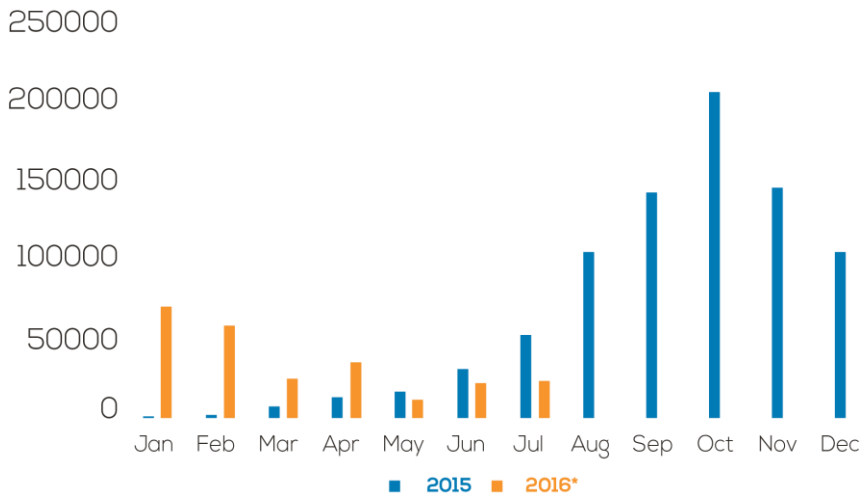


Figure 1 Source: UNHCR (jul 2016) "Refugees/Migrants Emergency Response - Mediterranean." <http://data.unhcr.org/mediterranean/regional.php>

CROSSING THE MEDITERRANEAN - Recorded fatalities / disappearances

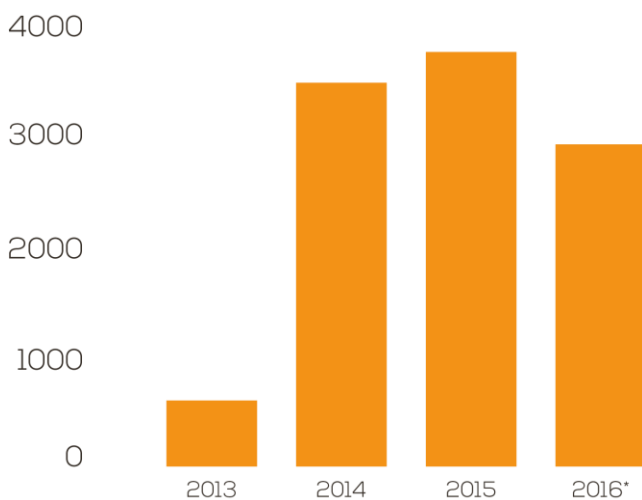


Figure 2 Source: IOM, "Missing Migrants Project" <http://missingmigrants.iom.int/mediterranean>

* Based on data gathered till July 2016

⁶ See Lindstrom, C. (2003) *Addressing the Root Causes of Forced Migration: A European Union policy of containment?* Refugee Study Center, Oxford. pp. 2-4. <https://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp11-addressing-root-causes-forced-migration-2003.pdf>

TERMINOLOGY AND BASIS OF ANALYSIS

Before continuing the analysis, it is necessary to offer clarification of the terminology used in this document that refers to different groups.

Irregular immigrants are immigrants who do not have the legal documentation to enter and/or stay in Europe. Among them are people migrating for economic reasons, leaving their home because of poverty or the wish to build a better 'economic' life in Europe.

Irregular immigrants who leave their country out of fear for their personal safety and apply for asylum are considered **asylum seekers**. In many cases they seek asylum in Europe, appealing for personal safety in order to make a better life under the protection of another country.

Once an asylum claim is granted, a person is considered to be a **refugee** in the judicial sense, following the 1951 Convention and Protocol relating to the Status of Refugees. In this paper we use the term refugee not in this judicial sense, but as a term for describing all those in need of international protection, having fled their home countries because of physical and psychological safety considerations, regardless of their legal status. In exceptional cases the terms "irregular migrants" or "asylum seekers" will be used in this analysis in order to highlight their difference from "refugees" as described above.

In general, this report covers the developments of Europe as a whole. Though the types of challenges differ per European country, in our view, it is Europe as a continent that is facing the task of granting large groups of people access to asylum, asylum processes, proper shelter and, eventually, integration. We will use the term EU when we are specifically talking about European Union policy or EU Member States.

The starting point of our analysis is a simple, yet often neglected one: the responsibility for the current refugee crisis does not lie with the refugees. There is a strong proclivity among some politicians and media outlets to assert that most of the people putting their lives at risk trying to cross the Mediterranean are not genuine refugees, but "economic migrants", people trying to find a better life in Europe for reasons of material welfare. The dominant rhetoric is that a solution for the crisis lies with blocking irregular immigrants and their attempts to make their way to Europe. We believe that this approach does not provide sustainable solutions and that the assumptions underlying it are not borne out by the EU asylum figures.

Research by the UNHCR demonstrates that more than two-thirds of the irregular immigrants arriving in the Europe via the Mediterranean Sea are from Syria, Afghanistan, Eritrea, Iraq and Pakistan (see figure 3). According to figures from Eurostat, a high percentage of asylum seekers from these countries (99% of Syrians, 94% of Eritreans, 52% of Afghanis, 63% of Somalis, and 20% of Nigerians) received refugee status with their first-time asylum application in 2015.^H Given the strict interpretation of refugee criteria used in these procedures, it is clear that the majority

^Hhttp://ec.europa.eu/eurostat/statisticsexplained/index.php/File:First_instance_decisions_by_outcome_and_recognition_rates_30_main_citizenships_of_asylum_applicants_granted_decisions_in_the_EU-28_1st_quarter_2016.png.

of the sea arrivals across the Mediterranean are not coming in search of economic benefit, but instead fleeing war, persecution and human rights violations in their home countries.

COUNTRY OF ORIGIN REFUGEES ARRIVING IN EUROPE



Figure 3 Source: UNHCR (jul 2016) "Refugees/Migrants Emergency Response – Mediterranean."
<http://data.unhcr.org/mediterranean/regional.php> –

The aim of this publication is not to deny or disprove that irregular economic migrants into Europe exist. They do exist, in increasing numbers, and often live in difficult circumstances in many European countries as their lack of legal status puts them at risk of exploitation by local employers. The question of labour migration and the current restrictive approach towards unskilled or semi-skilled labour (as opposed to highly-skilled “expats” who are much courted and encouraged to come) is one, however, that needs to be looked at separately from an analysis of refugees. Rhetorical conflation of the two terms is symptomatic of attempts by some to question the moral integrity of those in need of genuine international protection, thus putting them at further risk by delegitimising their need for support.

There are many valid security concerns when it comes to the arrival of refugees. The uncontrolled arrival of refugees in Europe has challenged security services in determining the background and motives of each person arriving. Recent terrorist attacks, deliberately targeting the fundamental freedoms and social cohesion of European society, have given rise to a possible connection between terrorism and the arrival of refugees. The fear and insecurity these attacks create have been projected on migrants and refugees, coupled with assumptions that they bring foreign and hostile values into European society. While this analysis does not delegitimise the security challenges Europe is facing, equating refugees with terrorists only plays into an agenda of hatred and disillusion. Refugees are actually fleeing from the same extremism and radicalisation existing in their own country. They deserve our support. Protecting the

fundamental freedoms and physical security of European citizens and refugees reflects, therefore, two sides of the same coin.

It is important to acknowledge the responsibility of Europe to respond to current challenges not by targeting refugees as the *source* of the problem, but by addressing *root causes*. This need to address the deeper sources of the crisis raises questions about the ways in which decisions by European countries individually and the EU collectively make a significant, often negative, contribution to the challenge of providing protection to refugees and to the context in which the situation has unfolded.

Summary

- The world is facing the highest number of refugees since the Second World War. Given political, economic and social developments in the world, this number is not likely to decrease.
- Clarity about irregular immigrants reaching Europe is needed in order to avoid misunderstandings or misuse for different agendas. The vast majority of irregular immigrants come from conflict countries and are granted asylum after their first application.
- Refugees should not be treated as the source of the problem; instead efforts are needed to address the root causes forcing people to flee their homes, such as violence, terrorism and radicalization in their countries of origin.

Mitigating asylum responsibility: obstacles to reaching European territory

So what has Europe been doing to address the challenge of managing refugee groups? In practice, the picture is increasingly mixed. As this section will show, Europe has no clear answer to the dilemma and is stuck between the right of every sovereign state to protect its external borders, on the one hand, and obligations under international law to respect the human right to 'seek and enjoy in other countries asylum from persecution' (Universal Declaration of Human Rights). A moral question underlying this dilemma is: How far should European countries and the EU go to facilitate people's applications for asylum and safety? In other words, to what extent is the EU responsible for arranging access to asylum applications beyond its borders? Elements of sovereignty and border control, as well as possibilities for granting safe passage make this a very complex issue.

On the one hand, the pre-dominant approach of the EU has focused on territory and border protection. This has resulted in a strategy aimed at pulling up the draw bridge and increasing obstacles to the right to asylum by preventing people from reaching European territory where they could actually request it. Although there is an internationally accepted human right to

asylum,^I in practice, for most applicants, current immigration rules and visa restrictions of EU Member States leave few safe, legal possibilities to access asylum protection. Making European borders and societies safer from criminals is only to be welcomed, but the fallout is that elaborate border control techniques are aimed at the deterrence of asylum seekers, attempting to minimise their chances of successful entry into the EU. Preventing asylum seekers access European territory means that they cannot access the European responsibility to provide asylum. This responsibility, and burden, is in practice being shifted to non-European countries, thus externalizing the refugee challenge.

On the other hand, this restrictive approach to asylum policy has been complemented and at times challenged by another perspective that locates the needs of refugees closer to its core and is, on occasion, grounded in the human rights based approach. A number of rulings by the European Court of Human Rights (ECtHR)^J has led to changes in the approach. For example, the case of *Hirsi Jamaa and Others v. Italy*^K effectively established that border protection and refugee protection must, on the basis of existing human rights commitments, go hand in hand.

EXTERNALIZATION OF EU ASYLUM POLICY: THE EXAMPLE OF THE EU-TURKEY DEAL

On March 7, 2016, a framework of resettlement was agreed upon as a major step forward in the EU-Turkey deal, with the EU committing to resettle one recognised refugee from Turkish territory for every irregular immigrant readmitted to Europe (hereafter called the EU-Turkey deal). In exchange for increased stringency in border control measures by the Turkish authorities to prevent people travelling irregularly to Europe across the Aegean, the EU would provide an initial €3 billion of funding to Turkey.^L

The EU's commitment to resettling refugees from Turkey is a step in the right direction with regards to opening up safe and legal passage into Europe. As previously mentioned, the implementation of stricter border controls by Turkish authorities has been a significant factor in

^I In its Charter of Fundamental Rights, the EU has pledged that "[t]he right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union" (Art. 18, "Charter of Fundamental Rights of the European Union", <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12010P&from=EN>). For the text of the UN treaties, quoted see <http://www.unhcr.org/3b66c2aa10.html> (pp.13-45 for the 1951 UN Convention relating to the Status of Refugees and pp. 46-50 for the 1967 Protocol complementing the Convention).

^J The European Court of Human Rights is an international court and an institution of the Council of Europe. It was established to consider breaches of the European Convention of Human Rights by the Council of Europe's member states. For the text of the Convention, see <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.

^K A press release summarising the details of the decision can be found at: <http://hudoc.echr.coe.int/eng-press#%22display%22:%221%22,%22dmdocnumber%22:%22901572%22>. The full text of the decision is available at: <http://hudoc.echr.coe.int/eng?i=001-109231>.

^L <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>

the reducing numbers of irregular and unsafe sea-journeys undertaken to Europe. This, in turn, will help to reduce the numbers of deaths of refugees crossing the Aegean Sea. The EU's financial support aimed at improving material, social and psychological conditions for refugees in Turkey is also a positive step towards the sharing of responsibilities mandated under international and human rights law. Although the deal is in relatively early stages, the financial support has had some impact in improving the situation of refugees in Turkey.^M

Despite the promising aspects of the EU-Turkey deal with regards to resettlement, as the design and implementation of the deal have taken form, several humanitarian concerns have been flagged by the UNHCR, and other human rights and humanitarian organisations^N. In brief, these concerns centre around the autonomy and rights of refugees; the principles of non-refoulement and whether Turkey is a safe third country; the conditions for and treatment of refugees in Turkey being in violation of their fundamental human rights; and the use of reception centres as detention camps in both the EU and Turkey in order to facilitate the coercive movement of refugees. There are also significant practical barriers to effective implementation of the readmission and resettlement scheme. Previous resettlement schemes agreed on by the EU have either been ineffective or practically abandoned^O due to both the high levels of bureaucracy involved and the lack of political will by many Member States to accept large resettlements. Up until July 11, 2016, only 802 refugees from Turkey have been resettled in the EU.^P Readmission of irregular migration without substantial resettlement in return would amount to further externalisation of the EU's responsibility to take a fair share of the burden.

HUMANITARIAN CONSEQUENCES OF THE RESTRICTIVE APPROACHES OF EUROPE

The current numbers of refugees and the conditions they are living in, both just outside the border of Europe as well as in frontline and transit European countries, has been defined as a humanitarian crisis by the UNHCR. This situation can partly be explained by the impotence of Europe to deal with such high numbers of refugees. It does not, however, explain the whole picture. The restrictive approach taken by many European countries of limiting refugees arriving as much as possible has also played an important role in the creation of the humanitarian crises just outside European borders.

Refugees in countries neighbouring Europe (e.g. Egypt, Libya, Algeria, Morocco) often remain without rights and protection as they face difficulties in obtaining official refugee status. This

^M <http://eumigrationlawblog.eu/why-the-eu-turkey-deal-can-be-legal-and-a-step-in-the-right-direction/>

^N <https://www.amnesty.org/en/documents/eur44/3825/2016/en/>, <http://www.unhcr.org/news/briefing/2016/4/56fe31ca9/unhcr-urges-immediate-safeguards-place-returns-begin-under-eu-turkey-deal.html>

^O <https://www.eureporter.co/frontpage/2016/04/13/refugees-rethinking-the-eus-approach-to-refugee-resettlement-and-relocation-policy/>

^P *Communication from the European Commission to the European Parliament, The European Council and the Council. Fifth report on relocation and resettlement. Com (2016) 408 Final.* http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713-fifth_report_on_relocation_and_resettlement_en.pdf

means that they are vulnerable to police repression, are unable to work in order to sustain themselves and are excluded from most social services. Refugees stranded temporarily in European neighbouring countries often live in extremely precarious conditions and travelling on to Europe is frequently the only possible option to improve their situation. Despite the not insubstantial humanitarian assistance given by the EU to transit countries (see the box below) and accompanying efforts to grant refugees a status in these countries, the dominant preventive approach is ineffective in alleviating the humanitarian suffering of refugees along its borders. The “fight against irregular immigration”^Q is the result of seeing refugees not as victims of a desperate humanitarian situation, but as the root cause of a law-enforcement crisis.^R It ignores the ‘push-factors’ for refugees to come to Europe and does not make the situation of refugees in neighbouring countries, or of those wanting to reach Europe, better or safer.

Examples of refugee mistreatment come from, amongst other places, Libya, where many boats to Italy still set off. While the general situation of the rule of law in the country is extremely fragile for all, undocumented immigrants are amongst the worst treated. Kidnapping, imprisonment under deplorable conditions, and the extortion of ransom from family and friends of victims are perpetrated not only by police forces, but also by various paramilitary groups. Racism against black Africans is rampant, and finding a safe place to stay is very difficult. Finding work to pay for smugglers is hard, and exploitation by employers is very common, as is sexual violence.^S In other North African countries, irregularity poses similar problems: difficulties in finding adequate housing; police repression, often involving deportations to remote border areas in the desert; infrequent access to health care; sexual exploitation; and many more.^T Northern African countries should uphold international refugee law and should invest in humane living standards and the protection of refugees.

Humanitarian implications of EU-Turkey deal

Conditions faced by refugees in Turkey, as well as many aspects of the implementation of the EU-Turkey deal, have received much criticism and international attention. Given the complexity of political developments in Turkey in regards to the attempted coup and

^Q http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementationpackage/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf

^R http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementationpackage/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf, pg 9

^S For more information about the situation of immigrants in Libya, see Jesuit Refugee Service Malta, “Beyond Imagination: Asylum Seekers Testify to Life in Libya”, 2014, online available at <https://www.jrs.net/assets/Publications/File/Beyond-imagination-jesuit-refugee-service-malta-libya-report.pdf>.

^T About the situation of undocumented immigrants in Algeria and Morocco, see Andrew Galea Debono, Jesuit Refugee Service Europe, “Lives in Transition: Experiences of Migrants living in Morocco and Algeria”, 2012, available at <https://www.jrs.net/assets/Publications/File/JRSEuropeLivesInTransitionDec20121.pdf>.

resultant crackdown on civil society in the summer of 2016, the following discussion of the humanitarian situation there is not intended as a substantial review of the Turkish political context and how it may impact people's lives. Instead, the context analysis below provides a brief outline of the humanitarian issues surrounding the EU-Turkey deal as it stands. In July 2016, it was estimated that Turkey was hosting 2.5 million refugees in the country, most of whom came from Syria. Turkey was in the midst of revising its asylum and reception system in order to make it more in line with international and EU standards, when the first large numbers of Syrian refugees entered the country mid-2011. The arrival of large groups of Syrians has put a strain on these efforts: Turkey's administrative system is struggling to deal with the large number of asylum claims made every month. This comes on top of reports by human rights organisations documenting severe human rights violations occurring in detention centres.^U It is estimated that only 10% of Syrian refugees live in official refugee camps. Many others rely on the hospitality of the local population in the border region, which has recently showed signs of decline in the face of the considerable material burden for local populations. Aside from the immediate concerns of adequate food, shelter and sanitation, refugees face significant difficulties integrating into Turkish society. They are not afforded many of the rights guaranteed to them by the universal declaration of human rights, such as the right to work and access to education.^V

The EU-Turkey deal concerns a readmission scheme to Turkey for refugees who have entered Europe via Greece irregularly. Although Turkey makes significant efforts to shelter refugees, inhumane conditions faced by many refugees means that it is unclear that readmission of refugees back into Turkey is in line with the EU's responsibilities under international, EU and human rights law. Human rights organisations have questioned whether Turkey is a legitimate safe third country in light of evidence of severe human rights violations in detention centres and violations of the principle of non-refoulement by Turkish authorities. Therefore the readmission of refugees to Turkey raises serious concerns about the extent to which the EU is implicated in human rights violations which could well be suffered by these readmitted groups at the hands of Turkish authorities. To what extent is the EU violating the principle of non-refoulement through such actions? Thorough international monitoring should be made an imperative pre-condition for any future readmissions of migrants from the EU to Turkey.

^U<https://www.amnesty.org/en/documents/eur44/3022/2015/en/>

^VSee ECHO Factsheet Turkey: Refugee crisis (July 2016)

http://ec.europa.eu/echo/files/aid/countries/factsheets/turkey_syrian_crisis_en.pdf and Ahmet İçduygu, Migration Policy Institute 201, "Syrian Refugees in Turkey: The Long Road Ahead", pg.10.

<http://www.migrationpolicy.org/sites/default/files/publications/-TCM-Protection-Syria.pdf>

Humanitarian assistance by the EU in relation to the refugee crisis

According to the EU, the humanitarian assistance it provides to refugees in its direct neighbourhood (North Africa, Turkey and the Middle East) is not an instrument of external migration management, but a response to the needs of the refugees in those countries. Mentioning the principles of independence, impartiality, neutrality and humanity, the EU considers its donations to the region to be a humanitarian response. The EU's humanitarian aid is given through various schemes:^W

- In 2015, the EU provided over €21 million to the Western Balkans. This amount was mainly given to Serbia and the Republic of Macedonia as emergency assistance for these transit countries to be better able to cope with the arrival of large groups of refugees.
- Between 2011 and 2015, the EU provided €175 million to assist refugees in Turkey. In late 2015, an additional €3 billion was granted to Turkey to assist in its efforts to improve conditions and integration opportunities for refugees.
- In December 2014, the EU set up the first EU Trust Fund in response to the Syrian crisis, funded by Member States and Turkey. The fund was set up to address resilience needs of Syrian refugees living in Syria's neighbouring countries, and stood at just over €700 million as of March 2016. The total amount of aid administered through this schemes stands at €1.13 billion.
- The EU has donated €8 million to Libya since mid-2014 in order to assist internally displaced persons in the country.
- Through the EU Civil Protection Mechanism, the EU has provided material support to several EU and transit countries, including the provision of tents, beds, etc., for asylum seekers.
- The UNHCR, the World Food programme, the Red Cross and other direct refugee relief organisations were given extra funding by the European Council (€1 billion) and the European Commission (€200 million in 2015 and €300 million in 2016).

Source: http://ec.europa.eu/echo/refugee-crisis_en

Fortifying Europe against refugees increases their dependence on smugglers. If more legal avenues into Europe were opened, the smuggling industry would be much reduced. Although the correlation seems evident, this connection between the lack of legal pathways to Europe and the development of smuggling networks is rarely stated candidly in the discourse of political decision-makers. Factually, the extent to which European borders are fortified makes immigrant smuggling a highly profitable multi-million Euro business. In order to pay the smugglers,

^W http://ec.europa.eu/echo/refugee-crisis_en

refugees draw either on personal savings or support from family and friends back home, or they are forced to work irregularly, at risk of exploitation by employers and extortion by the police.^X

The policy focus of the EU on combating smuggling as a response to the tragedies of hundreds of migrants drowning in the Mediterranean Sea in April 2015 seems little to do with saving refugee lives. Instead of safeguarding migrant lives at sea, the policies appear to be designed to more efficiently close off the sea route across EU borders. In contrast, Europe's criminalisation of entrance to European territory by refugees, as well as the harsh border control regime, causes the smuggling business to flourish and professionalize.^Y Effectively, and ironically, it thus makes borders less, instead of more, secure.^Z

Summary

- A major focus within Europe has been on limiting the amount of refugees reaching European territory. The arrival of refugees has been framed as a security issue, with efforts focused on building walls, increasing border controls, destroying smuggling infrastructures, and shovelling responsibility to countries in the direct neighbourhood. Within this process, Europe disregards its international obligations towards refugees, as well as its leadership role as a normative actor in the field of human rights. The EU-Turkey deal has been an emblematic example of this approach.
- Though the European Union has provided material and monetary humanitarian assistance to help refugees in neighbouring countries, its preventive approach has often produced counter effective consequences for the humanitarian situation of many refugees.^{AA} In practice, in spite of

^X According to a report by Médecins Sans Frontières (2016): "Not only did the European countries and its member states collectively fail to address the urgent humanitarian and medical needs of refugees and immigrants arriving at external or internal EU borders, but the European Union's deterrence and anti-immigration policies – developed over the last 15 years and further strengthened in 2015 – have increased the demand for migrant smuggling networks and pushed people towards ever more dangerous routes which jeopardise their health and lives." (p. 4, Report: Obstacle Course to Europe. A Policy-Made Humanitarian Crisis at EU Borders.

http://www.msf.org/sites/msf.org/files/msf_obstacle_course_to_europe.pdf

^Y CEPS paper by Guild, Costello, Garlick & Moreno-Lax, "Enhancing the Common European Asylum System and Alternatives to Dublin", September 2015, pp. 1, 6-7, available online at <https://www.ceps.eu/-publications/enhancing-common-european-asylum-system-and-alternatives-dublin>

^Z Francois Crépeau, United Nations Special Rapporteur on the human rights of migrants, "Europe can stop human deaths and suffering, and regain control of its borders. Open Letter on EU border management", 29 September 2014, available online at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15119&LangID=E>.

^{AA} See for an analysis of existing and planned EU policies and actions to protect the human rights of migrants before entering the EU by sea or after they have left the territory of the EU, including recommendations, the study "Migrants in the Mediterranean: Protecting human rights", by the Directorate-General for External Policies of the European Parliament, available online at http://www.europarl.europa.eu/RegData/etudes/-STUD/2015/535005/EXPO_STU%282015%29535005_EN.pdf

all the security arrangements taken at European borders, humanitarian crises world-wide continue to worsen, and millions of people continue to suffer.

- The most effective way to manage the arrival of refugees and smuggling is to address the irregularity of entering Europe. People in the most desperate circumstances -- victims of war, political oppression and persecution -- need to be offered a viable alternative, one that respects their human rights and wellbeing. Therefore a change of perspective in the way this challenge is conceptualised is necessary.

EXTERNALISING THE EU'S ASYLUM POLICIES: PROBLEMATIC ALTERNATIVES

Several measures have been proposed to address the costs of humanitarian assistance and threats that refugees face in countries neighbouring Europe, such as investing in regional shelters and reception and external European refugee reception centres. Sometimes some appropriate principles are presented in these suggestions; however, as the analysis will show, they provide, at most, a partial solution (as with the monetary assistance mentioned above) to the challenge of current refugee arrivals.

Regional shelters and reception

One suggestion is to strengthen the provision of shelter and other fundamental rights within the affected region. Instead of people making the long and often dangerous journey to Europe, it is argued that it is safer, easier, cheaper and less culturally uprooting for refugees to shelter in countries neighbouring their homes.

In practice, this proposal has little transformative potential. Firstly, it is important to note that the share of refugees globally that find shelter in Europe is small. According to the UNHCR, of the approximately 65.3 million forcibly displaced persons in the world, 86% find shelter in what the UN calls "developing countries".^{BB} The countries hosting the most UNHCR registered refugees are Turkey (2.5m), Pakistan (1.6m), Lebanon (1.1m), Iran (979,400) and Ethiopia (664,100).^{CC} For comparison, there are approximately 1.5 million recognized refugees living in the 28 EU Member States, Norway, Switzerland and Iceland.^{DD} It turns out, shelter in the immediate region is already the default option for most having to flee from war and humanitarian crises (see figure 4).

^{BB} In UN statistics, refugees are further subdivided as those registered by the UNHCR and those registered by the UNRWA, a support agency set up in 1949, one year before the UNHCR was established, to provide for the needs of Palestinian refugees from what today is the state of Israel. The refugees registered by the UNRWA number ca. 5.1m, thus the remaining number of refugees registered by UNHCR is 14.4m. This latter figure is the basis for the figure of 86% given here. (For all statistics given in this paragraph up to this point, cf. "World at War. UNHCR Global Trends 2014", p. 2, <http://unhcr.org/556725e69.html>)

^{CC} <http://www.unhcr.org/figures-at-a-glance.html>

^{DD} *ibid.*

As mentioned earlier, refugees that receive shelter in neighbouring countries often live in extremely inadequate conditions. Under these conditions, with many neighbouring countries in a state of crisis and already overwhelmed with the task of sheltering large amounts of refugees, the plan to increase that number faces considerable obstacles. A significant increase in funding for the governments responsible and the refugee support organisations involved would be a necessary, but possibly still insufficient, precondition. Given the large burdens that states like Turkey, Lebanon and Jordan are already carrying as a result of sheltering millions of refugees, it is clear that even increased support for these efforts would be only a partial solution to the current challenges regarding refugees.

TOP REFUGEE HOSTING COUNTRIES

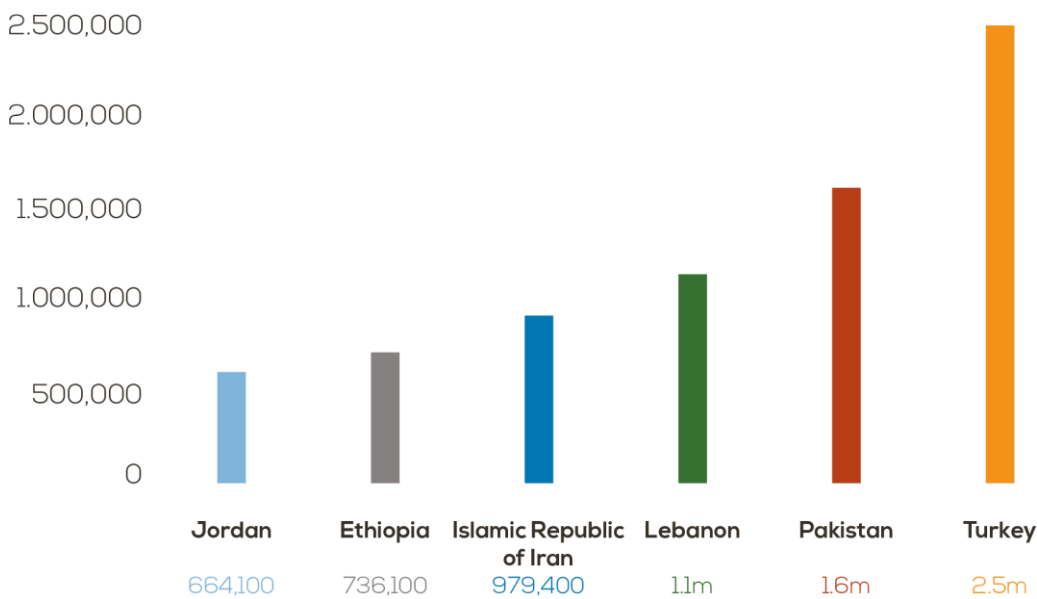


Figure 3 Source: UNHCR (Aug 2016) 'Figures at a glance' <http://www.unhcr.org/figures-at-a-glance.html>.

The EU and resettlement schemes

Resettlement is an instrument used in conjunction with humanitarian assistance that helps alleviate the pressure that high numbers of refugees places on countries in the region (notably Lebanon, Jordan and Turkey). Resettlement is defined as the admission, with a permanent residence status, into EU Member States of refugees who have been granted asylum in a non-European country. Relocation, another term often used, is for intra-EU movement of refugees.^{EE} Individual EU Member States, using annual quotas, have been involved in resettlement schemes of the UNHCR for many years.

Resettlement is a good policy that allows for the simultaneous taking of responsibility for refugees, ensuring their safe passage, practicing solidarity with countries hosting many refugees, and controlling and addressing the arrival of refugees in a secure manner.

^{EE} See <http://www.resettlement.eu/page/resettlement-relocation-or-humanitarian-admission-we-explain-terminology>

European countries can step up resettlement efforts and back up promises with political will and necessary resources.

External refugee reception centres

Another proposal is the creation of external EU refugee reception centres. These are envisaged as places outside of European borders where a people's eligibility for refugee status could be checked. After a positive decision, they would then be spared the dangerous ordeal of attempting to reach Europe irregularly and would instead be accepted into a resettlement scheme. Though at first sight there are many positive aspects to such a plan, such as the avoidance of a dangerous sea voyage, there are important critical elements that cannot be overlooked.

- The EU is committed to Conventions and Union legislation with regards to providing an asylum process on its own territory. Shifting this responsibility to border countries of the European Union would have significant legal and human rights implications.
- Non-EU countries would host the EU asylum system, making the EU heavily dependent on such countries. This includes arrangements with the various host countries regarding adequate refugee shelter facilities during the procedure, including accommodation, food, sanitary facilities, and arrangements to fund guarantees of access for applicants to the centres, as well as ways of dealing with rejected applicants.
- The political stability of many EU neighbouring countries is of great concern for the implementation of such a plan. Political instability in Libya, for instance, has already resulted in a vulnerable situation for refugees waiting to travel to Europe. This also raises questions on how the EU can guarantee the human rights of refugees in countries with already dubious human rights records.

The limitations outlined above make it clear that reception centres in non-EU countries could only be a subsidiary solution to the task of providing access to EU asylum procedures.

Summary

- European countries have an international obligation towards refugees in terms of guaranteeing their right to access asylum. The rationale of externalisation, also present in the approach of preventing refugees from reaching the EU in the first place, is, on its own, not an appropriate response. Many of the externalising proposals entail dubious arrangements with third countries or are practically and legally very difficult to implement. In many cases, the wellbeing of the refugee is not taken into account.
- Efforts by Europe to improve the situation of refugees outside its borders are needed and very much welcomed. However, the push factor to look for safety in Europe is omnipresent and refugees will continue trying to reach Europe. A strategy for legal and safe ways to enter

Europe^{FF}, such as resettlement, providing shelter and processing asylum claims *within* Europe is therefore ever present.

Asylum policy in Europe: Patching up the Dublin Regulation

As a basic fact, it is useful to note that the arrival of refugees to Europe is not a new phenomenon; on the contrary, refugees have been present in European society for centuries. As the following graphic shows, recent numbers of asylum applications are relatively high, though one must take into account that the EU as such has also expanded over the years.

ASYLUM APPLICATIONS IN THE EUROPEAN UNION

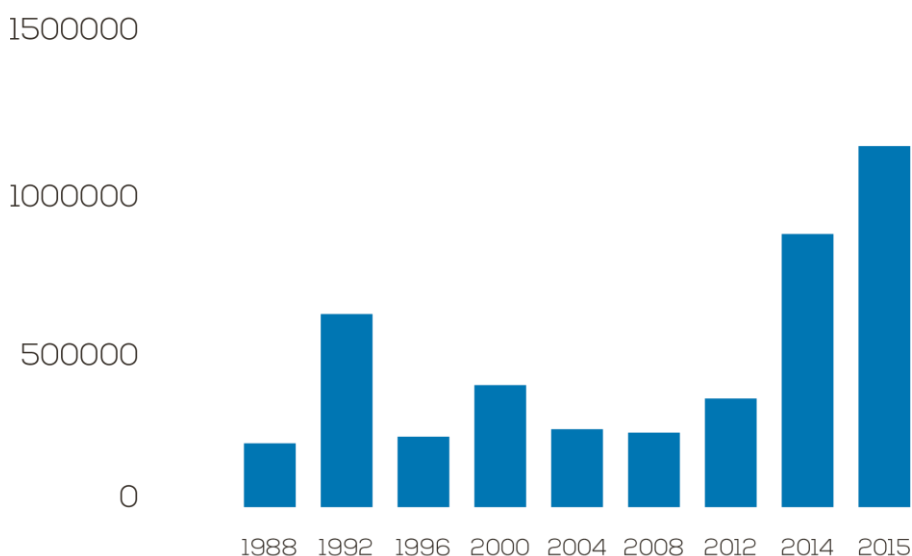


Figure 4 Source: Eurostat

Due to the process of European integration, arrangements have been made to manage the responsibility for provision of shelter and asylum procedures on a Europe-wide level. These have been formalised in the Dublin Regulation, which was initially agreed upon in 1990, entered into force in 1997 and reviewed in 2003 and 2013. In 2016, a third round of review was initiated. From 1999 onwards, the EU has sought to create a Common European Asylum System (CEAS), with the mandate of harmonising asylum standards and procedures throughout the EU. In 2010, the European Asylum Support Office was established to contribute to the creation of the CEAS,

^{FF} For possibilities to open safe passage and legal ways to enter see: Europe, the Justice and Peace factsheet: Safe passage to Europe <http://www.justiceandpeace.nl/userfiles/files/Justice%20and%20Peace%20Factsheet-%20Migratie%20Safe%20Passage%20EN%20web.pdf>

as well as to support cooperation between Member States in the field of asylum and assist Member States to deal with high numbers of refugees.^{GG}

The key rationale of the Dublin Regulation is to determine which member state is responsible for the examination of a certain asylum claim. This is done in accordance with criteria in the following hierarchical order: family considerations, previous visa or residence permits in the EU, and, finally, the country of irregular entry. Within the current Dublin Regulation, due to several loopholes, there is the possibility of responsibility shifting between countries. In addition, there is currently no mechanism for burden sharing in case a Member State faces an extraordinarily high number of asylum requests.

The Dublin Regulation already had visible problems before arrival of large numbers of refugees in mid-2015. This increase only magnified and unravelled the system's severe shortcomings. Firstly, in practice, the criterion of "country of arrival" has dominated the responsibility assessment. As a result, European border countries, such as Italy and Greece, have borne the brunt of sheltering asylum seekers within the EU. Accommodation for the sheltering of refugees has met neither quality nor quantity standards. Health care and education are often either insufficient or entirely absent, general material provisions necessary to secure a dignified living standard are lacking, and work permits and suitable jobs are unavailable to refugees. In 2011, the ECtHR temporarily prohibited deportations of asylum seekers back to Greece, as living conditions for asylum applicants in that country did not do justice to basic needs and human dignity.^{HH}

Secondly, the emphasis on the country of entry criteria does not take into account the needs and agency of refugees. With better prospects in Northern European countries, many refugees abscond from registration in the country of entry and travel further through Europe. Several countries have taken unilateral action to prevent this, especially since, as in the case of Greece, Member States were not able to send refugees back to the country of first entry according to the Dublin criteria. It is worth noting that differences in asylum procedures, provisions and recognition rates per country contribute to the secondary movements of refugees. The lack of harmonisation within the CEAS is a significant problem in the practical implementation of the Dublin Regulation.

Summary

- The aim of the Dublin Regulation to allocate asylum responsibility to a specific Member State is a just one, but, in practice, it has failed to establish a working system based on solidarity. The increased number of refugees has only deepened already existing problems.

^{GG} See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

^{HH} See *European Court of Human Rights, Case of M.S.S. v. Belgium and Greece, Application no. 30696/09*, online available at https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/case-mss-v-belgium-and-greece-application-no-3069609_en.

- With the country of entry being the most dominant criteria in the Dublin implementation, countries on the borders of Europe (i.e., Greece and Italy) have always dealt with an uneven burden in responsibility.
- Secondary movement of refugees has existed long before the mid-2015 peak in the arrival of refugees. The humanitarian situation in Italy and Greece, differences in asylum policies within the EU, and livelihood prospects are among the drivers for secondary movement by refugees.

PATCHING UP THE GAPS: IMPLICATIONS OF AD HOC AND STRUCTURAL MEASURES

The significant faults of the Dublin system were magnified with the arrival of refugees since mid-2015. Panic led many European countries to close their borders, leaving tens of thousands of refugees stranded in desperate humanitarian situations, both in European border countries and countries on the so-called Balkan route. Since then, many ad hoc measures have been implemented in order to, at the very least, regain some measure of control over the backlogged situation, with 'solidarity' touted as the main rationale for these emergency measures, such as hotspots, emergency relocation schemes and readmission agreements. However, as the analysis below demonstrates, solidarity on a European political level has not materialised. In addition, ad hoc measures and subsequent proposals have had serious human rights implications.

Hotspots

In June 2015, the European Council decided to create so-called 'hotspots' on European territory, in Italy and Greece, for the purpose of quicker identification and asylum application processes. European agencies were to aid national authorities in this process, with the aim of quickly verifying the legitimacy of an application in order to determine if an asylum seeker can travel to another European country. The aim of such centres was to alleviate the pressure on Greece and Italy and prevent refugees from travelling irregularly further into Europe. In theory, the concept of hotspots could work if several conditions are met: Firstly, hotspots and accompanying processes should comply with international human rights standards. Secondly, sufficient resources (especially human) should be made available to ensure a quick decision-making process in regards to granting an asylum claim and giving asylum seekers more certainty about their status. Thirdly, all EU Member States need to show solidarity and be actively involved in the relocation of asylum seekers from hotspots. Finally, hotspots should not be detention centres for asylum seekers. Only open centres that respect the rights of refugees will encourage asylum seekers to make use of a hotspot.

Unfortunately, these conditions have not been met. Initially, the creation of hotspots was severely delayed due to administrative ambiguity and a lack of human resources. In addition, since the EU-Turkey deal of March 7, 2016, hotspots have turned into detention camps, with refugees being very limited in their freedom to leave the centre. Instead of registration centres, the focus is now on return. As a sign of protest, humanitarian organizations have left the

facilities.^{II} The question to be asked is whether the hotspots are practically feasible, and whether they are, in their current state, in accordance with human rights standards.^{JJ}

Dublin adjustments: Relocation and responsibility

To alleviate the pressure Greece and Italy were facing and to discourage secondary travel by refugees, the EU has agreed to an emergency relocation system. One hundred twenty thousand asylum seekers located in Greece and Italy would be relocated to other EU Member States, making those Member States responsible for the asylum procedure.^{KK} At first glance it looks like solidarity, but delving deeper into the requirements and criteria shows that the largest burden remains on Greece and Italy. Only refugees whose nationalities have a 75% approval rate are eligible for relocation, meaning that Greece and Italy keep the 'difficult' cases. Reports on the process of relocation show that, in practice, few relocations happen. By July 11, 2016, only 3056 persons were relocated.^{LL} Reasons for the stalled process are multiple, but are largely symptomatic of a lack of political will. This was evidenced by the difficulty of coming to an agreement on emergency relocation, due to opposition of the Visegrád group (Hungary, Slovakia, Czech Republic and Poland) as well as other reasons. Bureaucratic loopholes, stalling of the relocation process, multiple objections under the banners of 'national security' and 'lack of capacity', as well as slow processing in Greece and Italy, are only a few of the many obstacles the ad hoc relocation system is facing.

A structural relocation system is one of the two major changes to the Dublin Regulation proposed by the European Commission on May 5, 2016, as part of the Dublin Review.^{MM} With a view to learning from the practical difficulties the emergency relocation measure is facing, the permanent relocation system will be simplified considerably. The structural relocation mechanism would be automatically triggered if a country exceeds 150% of its calculated capacity to process asylum applications, with asylum applicants then being relocated to EU Member States whose capacity usage is under 100%. Preferences of the EU Member States and the asylum seekers would not be taken into account in order to avoid lengthy procedures. Enlarging the family criteria for refugees, taking into account a broader approach to the term "family", is projected. The second major change is that a shift in responsibility between states is no longer

^{II} <http://uk.reuters.com/article/uk-europe-migrants-greece-unhcr-idUKKCN0WO0S3>

^{JJ} Strik, T (2016) *The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016* <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=22612&lang=en>

^{KK} <http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>

^{LL} *Communication from the European Commission to the European Parliament, The European Council and the Council. Fifth report on relocation and resettlement. Com (2016) 408 Final.* http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/-fifth_report_on_relocation_and_resettlement_en.pdf

^{MM} *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)* http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf

possible. This is meant to discourage both Member States from bureaucratically stalling and asylum seekers from absconding from supervision.^{NN}

The proposed changes are a step in the right direction. They aim to prevent the chaos and humanitarian crisis of 2015 and early 2016 by looking at ways to have more equal burden sharing and swifter application procedures. However, proposals need to be further fine-tuned in order to truly have the humanitarian situation of refugees at heart. Currently the voice and preference of the refugee is conspicuously absent. Firstly, the proposals lay-out the responsibilities of asylum seekers who, in case they do not comply, can be sanctioned and deprived of certain shelter conditions. This raises serious human rights concerns. Deprivation of rights should never be used as a sanctioning tool. Also in light of the proposals for harmonisation of asylum procedures and measures to coerce third countries into cooperating with EU migration policy, it looks like the EU wants to limit the rights and agency of the refugee as much as possible, all for the purpose of discouraging refugees from arriving, preventing secondary movement and stringently controlling refugees. Finally, along with the new proposals are more significant ways for Member States to stall responsibility decisions. Shorter time limits for decisions are welcome, but making them non-binding can leave refugees in limbo. Making the EU asylum system more efficient should not come at the expense of refugees themselves.^{OO}

Harmonisation

Part of the problem with the current Dublin Regulation lies in the difference in treatment of refugees across the Member States. There is no high and equal standard of treatment among Member States. Vast differences exist in the eventual outcome of the asylum procedure, reception conditions, the respect of rights during the asylum application process and after the final decision (social assistance, family reunification), and the length of the process. This encourages secondary movements: refugees travelling within Europe to the country they perceive to be the best option for fulfilling their human rights and setting up a new life. Better harmonisation within the EU would not only discourage secondary movements, but also equalize the opportunities for refugees within the EU.

To achieve equal treatment and harmonisation within the CEAS, the European Commission issued a Communication on April 6, 2016, containing proposals to reform the CEAS. Considering that the proposals include issues such as solidarity and responsibility, as well as suggestions on how to broaden legal avenues for refugees to enter the EU, there are positive elements contained in the Communication. However, the proposals' main aim is to decrease the 'pull factor' for refugees to come to the EU. The central premise is to make the EU less attractive as an option for refugees. It illustrates the tactic of discouraging refugees from coming to the EU. There is a critical flaw with this logic: its total disregard of the 'push factor'. Refugees are fleeing violence and humanitarian crises in search of safety and human dignity. In addition, the harmonisation proposals are based on lowering the overall standards for respecting the rights of refugees across the EU. This 'normative dumping' cannot be justified under the banner of

^{NN} See http://europa.eu/rapid/press-release_IP-16-1620_en.htm

^{OO} See Hruschka, (2016) *Dublin is dead! Long live Dublin! The 4 May 2016 proposal of the European Commission* <http://eumigrationlawblog.eu/dublin-is-dead-long-live-dublin-the-4-may-2016-proposal-of-the-european-commission/>

harmonisation. Equal treatment must be achieved, both from a human rights perspective and from a practical perspective, but not at the cost of universal human rights.

Cooperation with third countries

As previously mentioned, an effective asylum and migration policy does not stand alone. Developmental, economic, and human rights policies have a significant impact on the arrival of refugees in Europe. Cooperation with third countries is therefore key. The EU has acknowledged this for a long time, establishing several cooperation treaties with third countries. The EU wants to step up these collaborations, mainly aimed at continuing the reductions in the number of refugees coming to Europe and ensuring that rejected irregular migrants can and do leave European territory. On June 7, 2016, a Communication was published, inspired by the EU-Turkey deal, outlining a new approach in this regard, where conditionality instruments would be used in order to 'encourage' third countries to cooperate with the European migration agenda. The Communication proposes withholding or increasing funding and economic cooperation to third countries on the basis of their willingness to accept readmissions.

Civil society has been swift in its condemnation of this proposed conditionality. There are many concerns about the respect for human rights, the ethics of this approach and EU cooperation with countries whose track record on human rights is, to say the very least, questionable. If the EU wants to pursue a holistic approach, it should at least also encourage third-countries to ratify human rights, refugee rights and labour rights treaties. In a joint statement, co-signed by Justice and Peace The Netherlands, numerous organisations state: *"If the EU wants to call for more global solidarity, it needs to set the right example. The EU, a project built on the rubble of a devastating war, is about to embark on a dark chapter of its history. We urge EU leaders to choose a rights-based system to manage migration, based on a viable long-term strategic vision, rather than pursuing an unattainable and inhumane deterrence objective and thereby abandoning its core founding principles."* Amongst other propositions, the organisations propose a commitment to a foreign policy that reduces and prevents protracted conflict, one of the main push factors for refugees.^{PP}

Current ad hoc measures and structural adjustment proposals illustrate the general lack of solidarity that is endemic in the EU with regards to asylum and refugee policy. As eventually enshrined in the EU Treaty on the Functioning of the EU in Article 80, relating to asylum, failing to adhere to solidarity in shared decision-making will *'eventually undermine the legal order of the EU'*.^{QQ} This lack of solidarity is not only evident among the Member States, but, even worse is that it also exists between Member States and the refugees themselves -- those who are coming to Europe in search of a safe place to live, a place where their human rights can finally be acknowledged. Assuming that Europe's human rights records is a so-called 'pull-factor' for refugees can never be sufficient justification for proposing to withhold the rights of refugees in order to keep them away. Human rights are universal. The arrival of refugees is a challenge of

^{PP} Joint NGO statement ahead of the European Council of 28-29 June 2016. NGOs strongly condemn new EU policies to contain migration (published June 27, 2016) http://picum.org/picum.org/uploads/file_-Final%20joint%20NGO%20statement%20with%20signatories.pdf

^{QQ} Adviescommissie voor Vreemdelingenzaken (2015) *Sharing Responsibility. A proposal for a European Asylum System Based on Solidarity*. <https://acvz.org/wp-content/uploads/2016/03/Sharing-responsibility.pdf>

everyone: for Europe as a whole, for all Member States, for citizens of Europe and, not least, for the refugees themselves. Starting from a perspective of respect for human rights and solidarity, where the agency and dignity of refugees are respected, is the only way the EU can build an asylum system that sustainably addresses the challenge at hand.

Summary

- Since mid-2015, the EU has taken many ad hoc measures and proposed long term adjustments in order to regain some kind of control over the arrival of refugees and the asylum process in the EU. These measures have focused on the regulating entries (hotspots), creating a fair asylum responsibility allocation (relocation systems), streamlining asylum systems (harmonisation) and ensuring possibilities for refugees to leave the EU (re-admission agreements with third-countries).
- Many of these measures were long overdue and are a step in the right direction. However, amid the crisis and political unwillingness in many Member States to adhere to solidarity, many of these measures disregard the basic human rights of refugees themselves. The desire to gain control over the situation currently comes with a trade-off of lowering the human rights standards for refugees. This is unacceptable. The human rights of refugees should come first and their universality and indivisibility should be acknowledged. Considering respect for human rights and solidarity as the starting point is the only way the EU can build an asylum system that sustainably addresses the challenges at hand.

A rights-based approach for a welcoming Europe

On the local level, there have been quite a significant number of European citizens showing solidarity with refugees. People helping voluntarily in refugee camps, organising activities for refugees in local shelters and setting up language classes are just a few examples of actions people have taken in solidarity with refugees. Their actions, characterized by providing voluntary humanitarian assistance or initiating integration activities throughout Europe, are an example of human rights, dignity and solidarity in action. Such people show that a rights-based approach is the way forward in dealing with the challenge at hand. This solidarity movement is not a minority effort in Europe. Unfortunately, in public debate and the media, the movement is overpowered by the 'fear and security first' discourse. European and national politicians can use this movement and its norms as a leading example, instead of enacting the normative dumping currently underway.

Opposition to a rights-based approach is dominating much of the debate at European, national and local levels. A wide range of reasons are used to justify this resistance. A closer look at these reasons shows that there are multiple dynamics at play, going beyond the mere question of sheltering refugees in Europe. This document will now provide a brief commentary on the prevailing discourse surrounding the arrival of refugees in Europe.

CULTURAL:

DOES THE ARRIVAL OF REFUGEES THREATEN THE EXISTING CULTURAL FABRIC OF EUROPEAN SOCIETIES?

Opponents to a rights-based approach have stated that refugees do not fit into the existing cultural fabric of European societies and bring alien values that clash with and threaten European cultural roots. While living together in multicultural settings does require an effort from all involved and can lead to conflicts and disagreements, these challenges have been present in European societies, to different degrees, for centuries. Cultural values have always been dynamic: they need to be affirmed and committed to in practice. They cannot be lost unless their persuasiveness wanes. Religious diversity has been an especially strong driver of the idea of fundamental human rights. History teaches that granting rights to minorities does not undermine the status of the majority. Intercultural encounters contribute to the refinement of all cultural traditions involved. Over time it creates a common ground and a cultural consensus for coexisting.

Fears of cultural marginalisation among majority groups in European societies are more connected to more general fears of decline in a world full of unpredictable change rather than to a destructive potential of foreign cultural values. People are losing their sense of individual control and security. Large macro developments are at play here, such as globalisation, individualism and secularisation. However, to fuel their own political agenda, some politicians use fear-based discourse to present the arrival of refugees as a threat to the European freedom and security values. Often the rhetoric comes with xenophobic and racist overtones.

Terrorist attacks in Europe have been connected with the arrival of refugees, with fears that extremism and radicalisation existing in the countries of origin are being brought to the European continent. Security challenges in Europe are real and will increase if more terrorist attacks take place in Europe. The arrival of refugees adds to this insecurity, since terrorists can misuse the current chaotic situation of refugees travelling to Europe. Getting a better grasp on who is entering Europe through the screening of refugees is needed. Security concerns are legitimate and must be taken seriously, but cannot be an excuse to dehumanize refugees as a whole, or to misuse this group for the advantage of different political agendas. The media and politicians must refrain from opportunistically linking the arrival of refugees with issues such as terrorism, sexual violence or a decline in social cohesion.

This is not to say that the many citizens on the local level who are making an effort for the wellbeing of refugees do not have these fears, but they believe in a rights-based and humane approach to tackling these fears and possible threats. Incidents will always be there, but that should not be generalized to a whole group.

POLITICAL:

IF WE DISMANTLE THE BARRIERS TO THE EUROPEAN WAY OF LIVING, WITH RIGHTS AND WELFARE, WOULD THAT BE AN OPEN INVITATION TO ALL REFUGEES ALL OVER THE WORLD?

Sometimes refugee protection is assumed to be an unintended pull-factor, that adopting a rights-based approach to asylum policy will create incentives for refugees and other migrants to come to Europe. Therefore from this argument, some believe that it follows that a deterrent asylum policy is necessary to prevent this. While this is an argument that is often used in the political discourse, its validity has never been comprehensively substantiated. As was shown earlier in this publication, when making the decision to flee, refugees do not focus on the situation in their countries of destination, but in their home (and transit) countries. The notion of openness to refugee protection acting as a pull factor for refugees is based on false assumptions, namely that refugees can fully 'choose' their destination. Moreover, it also serves a role in dehumanising refugees, as they are not discussed as human beings with rights, but, instead, their unfortunate situation is used to "send a message" to others fleeing war and persecution.

ECONOMICS:

WHY SHOULD EUROPEANS SPEND MONEY ON THE SHELTERING AND INTEGRATION OF NON-EUROPEANS, WHILE THEY ARE ALREADY FACING AUSTERITY CUTS?

It is argued that sheltering and integrating refugees is too expensive and takes too much money away from other, more important, social services. There has already been deep austerity cuts in social services throughout Europe. Another argument is that European economies cannot integrate a large number of refugees, as integration includes providing a perspective to take responsibility for economic contributions. With increased poverty and unemployment rates in the last few years, people have fundamental concerns about the impact on their own welfare.

Many of these arguments are fuelled by the recent economic crisis and subsequent austerity measures that have had a huge impact on the welfare of European citizens. However, from a rights-based perspective, we cannot look at whose rights and priorities come first. We should look into initiatives that can tackle the challenges of refugees and Europeans together, instead of differentiating them. While the economic capacity of some EU countries is less than that of others, and sheltering refugees definitely brings costs, it is a mistake to see the issue only in economic terms. A solution comes only when many pull their weight, and reduce poorer countries' fears that they will be stuck with a disproportionate burden. A commitment to values such as solidarity and human rights can make a stronger and freer society; the issue cannot be reduced to a budgetary choice alone. It is about the questions of what kind of society we want to live in, what our foundational values are and, specifically, what value we give to the lives of those who need protection. Further, a full appreciation of economic arguments also needs to take into

account that refugees do have a contribution to make to European societies as economic data show that economic possibilities for refugees do exist.^{RR}

Refugees are people in search of safety and we, as fellow human beings, have the individual responsibility to adhere to their rights and dignity. There are legitimate concerns and challenges in regards to safety, welfare and social cohesion in Europe. However, as the solidarity movement on the local level is already showing us, there are many ways to deal with it in a sustainable and humane manner. The leadership shown by citizens on the local level should be taken to heart by the leaders of Europe. It is the only way to ensure human rights and dignity for all.

Summary

- The arrival of refugees has triggered many anxieties in European communities. Many of these anxieties have to be placed in the wider context of globalization, individualization and economic developments. In addition, people have legitimate security concerns relating to fundamental freedoms and physical safety in Europe.
- Unfortunately, many of these anxieties have been misused by people who, with xenophobic and racist agendas, target refugees as the source of the problem. This has led to a severe polarization within societies, prompting fierce opposition to a rights-based approach as a way to deal with the challenges at hand. Often the human rights and dignity of refugees are being set aside.
- The local solidarity movement shows us that there is an alternative, one which takes the dignity of the refugee as its basis. It overcomes challenges and fears by taking a solidarity and rights-based approach. This movement should be supported and expanded and used as an example by European leaders as they look for ways to manage the refugee situation.

^{RR} IMF says refugee influx could provide EU economic boost. *The Guardian* 20-01-2016, <http://www.theguardian.com/business/2016/jan/20/imf-refugee-influx-provide-eu-economic-boost>

