

ARRIVING AT A SOLUTION



FEATURE
STORY

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STRENGTHENING EUROPE'S RESPONSE TO REFUGEES: A ROAD AHEAD

ON SEPTEMBER 22, 2015, European Union leaders agreed to relocate 120,000 people in dire need of international protection who had arrived or were arriving in Greece and Italy en route to other EU states over the next two years. The decision observed that this number corresponded to approximately 43 per cent of the total number of third-country nationals who were in clear need of international protection and who entered Italy and Greece irregularly in July and August 2015; and also that this plan constituted fair burden sharing between Italy and Greece on the one hand, and the remaining Member States on the other, given the overall available figures on irregular border crossings in 2015.^[i]

^[i] Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece (22 September 2015) at <http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>.

^[ii] See e.g. UNHCR's Global Trends Report: World at War (May 2015), at <http://unhcr.org/556725e69.html>.



THE PRINCIPLE OF NON-REFOULEMENT – THE CORNERSTONE OF INTERNATIONAL REFUGEE LAW – PROHIBITS A REFUGEE’S FORCIBLE RETURN TO HIS/HER COUNTRY OF ORIGIN.



ACCORDING TO THE UNHCR, THE NUMBER OF REFUGEES AND MIGRANTS CROSSING THE MEDITERRANEAN SEA TO REACH EUROPE SINCE THE BEGINNING OF THE YEAR IS OVER 442,400, OF WHOM THE VAST MAJORITY LANDED IN GREECE AS WELL AS IN ITALY – 82 PER CENT OF THEM FROM THE WORLD’S TOP 10 REFUGEE-PRODUCING COUNTRIES, LED BY SYRIANS. **THE ESTIMATED NUMBER OF DEAD AND DISPLACED PEOPLE IS AROUND 3,000.** CHECKED AGAINST EARLIER DATA,ⁱⁱⁱ THESE NUMBERS SHOW THAT THE REFUGEE CRISIS IN EUROPE IS NOT A NEW NOR TEMPORARY PHENOMENON, BOUND TO PASS IN A FEW MONTHS (OR EVEN IN A ONE-YEAR SPAN). MOREOVER, THE CURRENT MIGRATION FLOWS INCLUDE PEOPLE FLEEING CIVIL WARS AND PERSECUTION I.E. PERSONS TYPICALLY QUALIFYING FOR ASYLUM UNDER THE 1951 REFUGEE CONVENTION, BUT ALSO PERSONS LEAVING THEIR COUNTRY IN SEARCH OF A BETTER LIFE (KNOWN AS ECONOMIC MIGRANTS).

THE GENEVA 1951 CONVENTION relating to the Status of Refugees provides for the right of asylum for those fleeing a well-founded fear of persecution on the ground of race, religion, nationality, membership of a particular social group or political opinion. The principle of non-refoulement – the cornerstone of international refugee law – prohibits a refugee’s forcible return to his/her country of origin. Syrians typically qualify for refugee protection, for Syria is a war torn country where the conflict made millions of victims over the last four years; the same is true of Afghanistan and Eritrea. The distinction between refugees and economic migrants is less obvious for people coming from other countries (e.g. Albania and Macedonia, which are European countries and EU candidates or Senegal, Morocco and Ivory Coast, considered amongst the most stable African countries).

Under EU law, the EU Charter of Fundamental Rights provides for the right to asylum in Article 18 and the prohibition of *refoulement* in Article 19. Article 78 of the Treaty on the Functioning of the EU (TFEU) provides for the creation of a Common European Asylum System (CEAS) that must respect states’ obligations under the 1951 Geneva Convention. Several legislative instruments have been adopted to implement this provision. They apply to most EU member states and some neighboring states, but not to the UK and Ireland. No true CEAS, however, has yet been put into place. The Dublin Regulation aims to determine rapidly the Member State responsible for an asylum claim, in order to prevent asylum seekers from submitting asylum applications to multiple member states. Usually, the responsible Member State will be the state through which the asylum seeker first entered the EU. There, migrants have an obligation to register and stay until their asylum requests have been processed - the procedure can take up to two years. Because of the routes migrants take, this has put a disproportionate burden on countries such as Italy and Greece, thus adding a very substantial legal burden to that already arising from their geographical position and the geopolitics of the

EU borders. The premise thereof is that the EU is an area of open borders and freedom of movement, with 22 of its 28 EU Member States participating in the Schengen area, where border checks are abolished. As a matter of fact, the Dublin system doesn’t work, and today the whole EU passport-free Schengen zone is at risk.

Germany was the first country to suspend the Dublin Regulation in August 2015, on the basis of the so-called sovereignty clause, which allows EU member states to invoke humanitarian considerations to process requests of asylum seekers outside the country of first entrance. To deal with the large and growing influx of migrants, Germany was also the first country to reintroduce border controls on September 13, 2015. This has set in motion a domino effect in the passport-free Schengen zone, with Austria deciding to do the same while Slovakia and the Czech Republic have reinforced their borders. Croatia, an EU member that does not participate in Schengen, also shut its borders. Hungary, an EU member and a Schengen partner, sealed its frontier with Serbia, a Schengen external border. Under EU law, in the case of “unforeseeable” circumstances, member states can reintroduce border controls within the Schengen zone for 10 days, with a possibility of extending it up to two months. Since 2013, Schengen had only been suspended six times.

The Summer of 2015 probably will be remembered in Europe for the economic crisis prompted by Greece’s unsustainable public debt. But the current migratory crisis has shown worldwide one of Europe’s most serious paradoxes. Not only does the EU recognize that asylum is a fundamental right, and that granting it is an international obligation of all its 28 Member States, the European Convention on Human Rights (ECHR) also offers an important remedy to redress or even prevent a breach of the Convention to any individual within the jurisdiction of its 47 Council of Europe member states (including the 28 EU countries) claiming to be a victim of his/her rights.

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As recently as September 1, 2015, for example, the European Court of Human Rights found Italy in breach of its human rights obligations in a case concerning the detention and repatriation to Tunisia of clandestine migrants who had landed on the Italian coast in 2011 during the events linked to the "Arab Spring".ⁱⁱⁱ

Europe today is at the forefront in the protection of individual human rights, but it has struggled – and at times, failed – to cope with collective/global challenges. Faced with the recurring tragic events in the Mediterranean and the unprecedented migratory flows at the EU external borders, the provisional measures so far adopted by the EU are insufficient. The Dublin system, and the perverse logic that underpins it, remains in place. The temporary and exceptional relocation mechanism over two years from the frontline member states Italy and Greece, entails only a temporary derogation from the rule according to which these countries would otherwise have been responsible for the examination of an application for international protection. The Decision is intended merely to address an emergency situation, and is all the more unsatisfying as adopted by majority voting (with Romania, the Czech Republic, Slovakia and Hungary voting against and Finland abstaining, while Denmark and the United Kingdom are not participating). Finally, the measures agreed upon relate to asylum seekers only. The rights of asylum seekers, however, are only a part of the problem to be addressed. The decision leaves it to the affected Member States to deal with the enormous mass of economic migrants and their repatriation or resettlement, in spite of the principles of solidarity and fair sharing of responsibility between the Member States, which should govern the Union policy on asylum and migration (Article 78(3) TFEU).



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^[iii] ECtHR, *Khlaifia and Others v. Italy* (application no. 16483/12), at <http://hudoc.echr.coe.int/eng?i=001-115507>.

AGENDA 2030, THE SUSTAINABLE DEVELOPMENT GOALS, AND THE NEW MULTILATERALISM

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strong monitoring schemes at regional and global levels. The engagement of stakeholders should not be seen as merely a tool, but rather as a critical element in making the commitment to "leave no one behind" a reality. In order to accomplish this objective, capacities will need to be strengthened and new ones will need to be created in all places.

Finally, the test of respecting the universal, interlinked and indivisible nature of Agenda 2030 will demand a multi-sectoral approach to its implementation and monitoring, which goes beyond the siloed engagement of the MDGs. This adaptation will need to happen within governments and amongst stakeholders, including civil society. The United Nations will also need to adjust or become "fit" for its new purpose of supporting its Member States in achieving these ambitious Goals.



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Moreover, we expect that the inclusive and open modalities set by the post-2015 process will inspire the following intergovernmental processes at the United Nations, bringing "We, the peoples", closer to the multilateral space. The current global and local challenges demand such as openness.

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