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EUROPE'S MIGRATION CRISIS: EUROPEAN UNION AT FAILURE

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Abstract: The paper examines the EU's challenges in the field of migration, and suggests how Brussels and EU governments might promote its own form of order, and suggestions on how to reframe current approaches to facilitate a more effective and appropriate response.

A European Agenda on Migration was published in May 2015 bringing together the different steps the EU must take to build a coherent and comprehensive approach to migration. However, EU member-states are still falling to find a mutual solution and adequate response, leaving hundreds of thousands of refugees and migrants vulnerable.

What are the origins of the current crisis? Why are the current policy instruments and actions insufficient to deal with it? What can be done to address the real causes of the present crisis? How can we enhance the EU's common action and set out an effective and efficient EU migration policy? This paper will try to give answers to these and other questions in order to explain the political, legal and institutional aspects of this highly complex phenomenon. In conclusion, a few proposals will be put forward for possible solutions.

Keywords: European Union, migration, refugees, crisis, solutions.

FIRST PREVIOUS QUESTION: ARE THE FACTS IN FAVOUR?

The migration/refugee issue is probably the most complex and controversial issue Europe is facing after the Second World War. Although it is not unique in its reasons, the current crisis became highly intensive political issue, on one side, generating political and public debates, while on the other side evokes tensions among EU member-states on how to cope with the constant flow of migrants, refugees and asylum-seekers, thus aggravating previous weaknesses in Europe's immigration system. The strong commitment, conviction and determination of those trying to reach the European borders, reflects the degree of despair and insecurity in their own states. In the meantime, EU and member-states still lacks of adequate response, leaving thousands of refugees and other migrants more vulnerable.

If we consider the facts, the situation is not looking any better on the ground, it is going even worse. Compared to 2014, the latest Frontex data shows that there is an increase of 149% of migrants flow in 2015. The numbers are rising because of the existence of other additional crossing-points. Today, it is not only the Mediterranean an option, but also the crossing-point at the border of Greece, on Hungarian border with Serbia and the port of Calais between UK and France. Migrants arrive through irregular channels in overloaded boats, by train through Balkans, on foot through Sahara or hidden in vehicles, but they are coming in large numbers.

If we look at the dark side of the crisis, the numbers are terrifying. In the past 15 years more than 22.000 men, women and children died trying to reach Europe by crossing the Mediterranean. Most of them were running from conflicts and poverty from states like Syria, Iraq, Somalia and South Sudan. Since 2014, more than 1 million people arrived on borders of Europe in search of better life. The death of migrants and refugees trying to reach shores of Italy, Greece and Spain in 2015 is more than 4.000, with an average of 11 deaths per day, a massive number with no signs of reduction.

We could also search for some irony in these numbers from one not long ago case study. In October 2013, since 366 migrants drowned in the Mediterranean near Italy, EU approved money for Italy to use its rescue patrols. These rescue patrols saved more than thousands of lives, until EU decided to withdraw the assistance, with an argument that the patrols with their rescue tasks are simply encouraging the migrants in undertaking dangerous journeys, knowing they have a bigger chance to be saved. After the death of 800 refugees in April 2015, EU reviewed its decision, promising the previous level funds.

Europe Migration Agenda was published in May 2015 uniting different steps from which EU should build coherent and comprehensive approach on migration. European Council meeting on 20th of July adopted a Resolution for relocation of 40.000 people from Italy and Greece and a Resolution for resettlement of 22.504 displaced persons from outside the EU.²¹ The Council formally should have adopted the decision in September, but member-states failed to agree regarding the distribution of asylum-seekers.

SECOND PREVIOUS QUESTION: WHAT IS THE PROFILE OF MIGRANTS/REFUGEES?

As abovementioned, the flow of refugees and migrants in Europe undoubtedly and dramatically increased. But, also the profile of those arriving in Europe dramatically changed. Traditionally, majority of migrants seeking entrance in Europe were individual men. Today, whole families travel together, in some cases with elder and immovable relatives and often with small children. According data from UNHCR, 13% of new arrivals in 2015

²¹ <http://www.consilium.europa.eu/en/meetings/jha/2015/07/20/>

were women and 18% children. Routes they undertake are quite dramatic, mostly with swift shifting because of border restrictions or safety concerns in transit countries. The situation with children migrants, especially those travelling alone, is of great concern. There are reports of children with no accompaniment and disappearing immediately after their arrival in Europe, raising the fears that they might fall in the hands of human traffickers.²²

According to UNHCR, in 2015 more than 80% of migrants and refugees arriving in Europe come from the first ten countries that produce refugees. More than 50% are from Syria, 15% from Afghanistan, 6% from Eritrea and 4% from Iraq – all of them in conflicts or crisis. Largest number of asylum applications in EU is from Syria, but applications from Afghanistan and Eritrea are also in significant number.²³ Also, there are a large number of people seeking entrance in Europe whose eligibility for international protection is complex or maybe travel mostly for economic reasons. These people use the same routes as those running from conflicts.

Significant is the situation of Lebanon. In recent years the number of Syrian refugees accepted by Lebanon reached 1.2 million people. This is more than the number of migrants in whole Europe and 50 times more than the agreement of EU member-states for resettlement of migrants in the future. In the last 12 months, young educational women and children are being noticed arriving in Lebanon from Syria. They are leaving Syria because that the peace resolution for the conflict is not becoming evident. Increased border restrictions introduced by Lebanon during 2015 means that it is difficult for Syrian refugees to access Lebanon; all entry access are denied except those with proofs of having financial assets necessary for residence. Even before the actual situation, EU member-states tend to look at any large-scale migration as a threat to their sovereignty, national borders and economies. Most of the EU member-states duly reacted, strengthening the controls of illegal access to their territories.²⁴ These increased restrictions were not effective in stopping the flow of migrants and refugees; instead, they resulted in increased effort for arriving in Europe.

THIRD PREVIOUS QUESTION: WHAT ARE THE SOURCES OF THE CURRENT CRISIS?

There are several reasons for the actual refugee crisis. The first is the change evoked by conflicts and civil wars in the Middle East and the political turmoil in Africa resulting in disintegrated, barely functional or destructed states, incapable of securing security and prosperity for its own citizens. Today, most of the states from the region, such as Jordan and Lebanon, are home for these refugees. But there are little or no chances for integration or security in states of first destination. These states neither have the capacities or the mechanisms for adequate response and the new flow of refugees from Syria and Iraq seriously endangers their security. Consequently, most people choose to go to Europe, where the right of asylum is guaranteed.

The radical changes introduced by the Arabian Spring and the removal of dictators in most of the Arabian states gave fresh impulse on migration movement. The crisis in Syria that escalated in high complex and long intern conflict evoked massive resettlement of people in and out of the country. More than 12 million Syrian people are in need of humanitarian aid and over 4 million are displaced. Iraqis people, also confront with the revival of violence and conflicts, including the influence of the so-called Islamic State. This does not mean that the people in Africa do not deserve or are not prepared for democracy, but the way these changes happened, the speed of events and the management of consequences left many pies in the sky.

Another aspect of the crisis might assign to the lasting conflicts in many African states characterized with weak economies, repression and lack of freedom, dysfunctional institutions and dictatorship. Migrants around Sahara are from Afghanistan, Somalia, South Sudan, Central African Republic, Mali, Nigeria, Eritrea and others, where long lasting conflicts and crisis are threat for millions of lives, forcing them to leave its states in search of safety and security. In the meantime, the international community response is totally inadequate. According to UNHCR, 86% of Syrian refugees in Jordan and 70% in Lebanon live below the poverty line.

The failure of the international community to address these conflicts, violence and human rights abuses in states of origin is another key factor in favour of the illegal migration wave in Europe. Both, international political frame for ending the conflict in Syria and clear international strategy for addressing the conflict in Iraq are missing. Afghanistan is far away of real stability, despite the years of international intervention and the international community seems clueless in ending the long lasting conflict in Somalia.

Member-states and the EU itself failed to understand the hidden depth of ethnical and religious separation and to estimate the consequences of these fundamental changes. The test at the beginning proved to be very difficult for the European foreign policy, at that time struggling around the establishment of the European External Action Service and the inner political dichotomy regarding implementation of the Lisbon Treaty. Therefore, the EU approach on challenges caused by the migration/refugee crisis was mostly reactive instead of proactive and oriented simply on shaping events.

²² Squires, N., "More Than 5,000 Migrant Children Disappear in Italy after Crossing the Mediterranean". *The Telegraph*, 25 June 2015.

²³ EASO, *Annual Report on the Situation of Asylum in the European Union in 2014*, European Asylum Support Office, 2015.

²⁴ Hagen-Zanker, J. and Mallett, R., "Fortress Europe? There's No Such Thing", ODI Infographic, London 2015.

EU IN CHARGE: LEGAL FRAME

Asylum and migration were not always in EU jurisdiction. Tampere Conclusions in 1999 marked the beginning of EU policies on migration through the creation of Area of Freedom, Security and Justice.²⁵ Unlike other regional bodies, EU has not yet accepted any Convention on refugees or fully integrated asylum and migration policy, although the European law on human rights is applied for protection of all migrants.

Although the EU's sphere of actions comprises of different aspects, including the cooperation with third states of origin and transit of migrants, the main objective was to secure the intern stability of the EU. Following the integration of Schengen Agreements, member-states give up the control of its territory as one of the basic characteristics of state sovereignty. To compensate this new possibility of free movement, external borders were anticipated as a defence against the threat from out-of-area territories. Several justice and home affairs agencies were introduced (Frontex, Eurojust, Europol) and numerous information systems for supporting the functioning of internal security and justice. Aware of the need of securing shelter and protection of third country citizens from prosecution, EU developed a set of legislation regarding refugees and asylum seekers.

A Common European Asylum System was established, comprised of key directives on conditions for granting asylum, procedures of their claims and establishing standards for additional protection for real asylum seekers and those who are not qualified as refugees, but are facing a risk of suffering or abuse if returned to their countries. Along with the Dublin regulation, determining the member-state's responsibility for asylum seekers, EU approached towards harmonization of legislation and practices.²⁶ In theory, it is the state in which the asylum seeker has family connections or mostly it is the state of entrance. This expounds the states in first line, where the majority of potential asylum seekers enter in Europe along with the disproportionate pressure by the refugee flow. As a result, geography matters. Italy and Greece are overloaded with migrants and face difficult efforts because of their capacities in giving assistance and adequate care. For confrontation of these loopholes in the asylum system, some member-states build physical barriers. Greece lined up a spiny fence on the border with Turkey in order to stop the refugee flow, and Bulgaria, Macedonia and Hungary made similar actions. Although physical barriers may secure certain relief and lower the pressure, neither can stop the flow of migrants or to secure sustainable solution. While one border closes, new crossing point emerges. However, the final decision for asylum seekers is upon member-states and the chances for granting asylum differ from one state to another.

The entry in force of the Lisbon Treaty introduced a new era in EU's migration policy. The Lisbon Treaty assigned the EU with new responsibilities and expanded the areas of action. Along with the legally binding Charter on Fundamental Rights, the new role of the European Parliament and broaden jurisdiction of the European Court of Justice in areas previously out of its jurisdiction, legislation processes in areas of asylum, migration and free movement are now adopted through ordinary legislative procedure (co-decision and qualified majority voting). One of the significant novelties of the Treaty is the enforcement of the foreign policy and the establishment of the European External Action Service (EEAS) and the appointment of the High Representative. EU was granted with legal personality and the possibility of concluding international relations.

Based on the abovementioned, the existing EU asylum system attempts to harmonize rules and conditions applied for asylum seekers through all EU members-states. Key issue is national decision-making and there are enormous differences among member-states in regulations and the compliance level with EU asylum legislation. As a result, people seeking asylum tend to apply in states with more favourable policies. Although the European Commission made suggestions for strengthening the common asylum and migration policies at EU level, so far the progress has been slow.

EU AT/IN FAILURE

EU policy creators failed to confront with the growing crisis. The level and speed of response by European institutions and member-states is completely inadequate and divided. European Commission Agenda on Migration adopted in May 2015 indicates that "the immediate imperative is the duty to protect those in need", but continues to estimate the migration crisis through the eyes of security in EU.²⁷ Besides the endorsement of the Agenda, European governments continue to be agglomerate by the scale and speed of flow through the Mediterranean. Following the European Commission's efforts for division of asylum seekers, refugees are automatically divided when the state is confronting with rapid flow of migrants. However, member-states are slow in executing the plan and numbers are still not coordinated.

EU has Common European Asylum System containing the right for refugees and included in many legislation instruments. The problem is, first, that some member-states failed to apply its commitment standards properly;

²⁵ Tampere European Council, Presidency Conclusions 1999.

²⁶ Regulation 604/2013 of the European Parliament and the of the Council of 26 June 2013 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, OJ L 180/31, 29 June 2013.

²⁷ A European Agenda on Migration, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 13 May 2015.

and second, when they do apply them properly, they do not reach to any consistent conclusions. Why is there a crisis in the Mediterranean, especially in Greece and Italy? The problem is two-fold: lack of safe and legal access to the EU and the inconsistent reception and inadequate distribution of asylum seekers. Most important need for one person running from prosecution or civil war is the feeling of safe access and protection.

Besides the existence of directive calling on all member-states to fulfil minimum access standards for asylum seekers, some member-states failed to fulfil their responsibilities. Actually, Greece and Italy failed to secure adequate access for refugees. Access to protection and adequate access conditions are not referred only to arrivals through sea. A significant problem exists in managing the “green borders” preventing the flow of asylum seekers in EU. Clear example is the build wall by Hungary to keep the asylum seekers aside²⁸ or the deadly incidents that occur in Spain.²⁹ Then why the asylum seekers are not able to enter the EU, and if they enter, why are the appropriate access conditions not available for them?

The first problem is that the dangerous refugee journeys towards EU are result of visa policies and sanctions for carriers. While the citizens of states that produces refugees need visa to enter in the EU, the criteria for issuing visa include a proof of readiness and capability to return to their state of origin. On the other side, refugees are legally defined according the international law as persons in need of protection and therefore cannot be returned in the same states. At the same time, commercial air and shipping companies are obligated to transport only those migrants to EU with valid documents. As a result, with no legal access means, refugees are pushed into illegal, forced to use the services of smugglers and reach EU through unsafe routes. Dozens of people a day, especially in summer periods, cross between Greece and Turkey, Morocco and Spain, Tunisia and Italy. EU legislation on smuggling people does not simplify or solve the problem. This legislation is in effect for more than 10 years, but the criminalization of illegal movement of people through the Mediterranean seems that only increases the risks and expenses for refugees.

There are no physical borders which can deter someone who is ready to risk its life. Only complete despair and lack of alternative may push someone to insecure, highly risky adventure with unforeseeable end. Neither it is likely that the partial, separate solutions, recklessly invented by policy-makers, along with unaccepted scenes of migrants trying to reach Europe, may cause a long-term effect. With its potential to disturb the political stability and create deeper division among EU member-states, along with the wider social polarization between those driven by human tragedy and other that point out on its overloaded capacities and the impossibility to integrate the migrants already living in EU, the crisis will more and more polarize the society and may put a long-term stamp on the entire history of Europe.

MAIN CHALLENGES

EU member-states are facing numerous challenges that require more effective response. First, no one should underestimate the challenge caused by the scale of the crisis. The movement of people, differences in their profiles, states of origin, vulnerability and the dynamic nature of their entry routes and means they use represents complex situation that requires particular effort. For Greece, Italy, Croatia and Hungary – as EU member-states in first line – the size and speed of flow simply overloaded their asylum centres in period when their economies have also been weak.

Second, to identify those in need of international help is very complex. While the refugee status of those fleeing from conflict areas is more than clear, others in need of international protection may not enter the frame of the legal definition of refugee. To adequately confront with large number of people arriving through illegal channels and whose individual claims for asylum are additionally rejected is source-intensive. States of access are in big challenge in the re-admission process of those not granted with asylum, including the insecure conditions in states of origin or rejection by their governments to accept them back.

Third, there is a significant financial burden for states with large flow of refugees and others with granted international protection regarding integration support. Having in mind the slow economic growth in most of the EU member-states, this is not the burden they are willing to take. Also there are concerns regarding how long the refugees will stay in Europe and how long they will need such support.

Fourth, further movement of refugees and migrants in EU is key concern for most of the governments. Many refugees and asylum seekers suffered multiple resettlements even before the journeys to Europe and with adequate integration support they would probably invested in building its own life in states where they are formally relocated. Inevitably there are individuals travelling in other states where they have relatives or where they believe that their economic possibilities are better, whether through employment or welfare support.

Fifth, public opinion on migration in Europe is deeply divided, influencing both on government policies and integration prospects for refugees and migrants. Media images transmitting the horrible risks refugees from Syria are facing in order to arrive in Europe to a large extent changed the public speech, but the anti-migration policy remains key issue in right-wing policies in Europe.

²⁸ “Hungary begins work on border fence to keep out migrants”, *The Guardian*, 13 July 2015.

²⁹ “Spanish police summoned over Ceuta migrant deaths, camp raided near Melilla”, *Deutsche Welle*, 11 February 2015.

Finally, maintaining the coherent approach of 28 member-states shows to be very difficult. Although there is acknowledgement in need of wider EU response, the crisis also united political and economic divisions in Europe. Some Central and Eastern European states denied what was seen as a leading attitude from Germany; arguments regarding migration movements again heat up the tensions between Serbia and Croatia, Greece and Macedonia; Great Britain refused to participate in the EU relocation plan as agreed in September 2015.

CONCLUSION AND RECOMMENDATIONS

EU must establish coherent and comprehensive migration policy based on human rights, making the mobility central instrument in order to enable Europe to return its borders. All member-states should be responsible actors and supporters for comprehensive approach and collective legal actions for protection of rights, whether a refugee or asylum seeker. Building walls and setting fences, using tear-gas and other forms of violence against migrants and asylum seekers, detentions, poor access to basic means would not stop the migrants of coming or trying to reach Europe and may only shift the pressure from one point to another. EU member-states must rely on humanity and therefore several recommendations are of great significance:

Entire EU, not some member-states, should accept that the Dublin system no longer functions and new approach is needed. Dublin should be replaced with unforced, voluntarily based and responsible system adjusted with fundamental rights for distribution of asylum claims.

EU leaders are facing with huge refugee crisis and must face with it as common European challenge, consistent with their collective and individual responsibilities. Never before was Europe in an urgent need of common response towards the flow of refugees. Still, even the need of such actions, some leaders are determined on insisting towards isolation policies. It is clear that there is no single solution, neither single approach.

In line with their commitments, EU member-states must secure that the protection of all migrants, especially women, children and other vulnerable groups, regardless of their migration status, is the basis for decision-making and action.

Member-states must adopt coherent, long-term and comprehensive strategy dedicated on reasons and consequences of the current flow.

Alternative means for the refugees are needed in order to arrive safely in EU without risking their lives.

To secure that member-state responsibilities are fulfilled and refugees are not forced to travel to other member-states and may live in dignity while their asylum application is being processed.

Make use of voluntary mechanisms and expulsion of forced mechanisms for transfer of asylum seekers to member-states.

Agreement regarding distribution of refugees and determination of asylum claims in fair manner both for the refugees and member-states.

Share of responsibilities and fair division is necessary and should be compulsory for all EU member-states, having in mind the different parameters, such as the size of the country, population, GDP, unemployment and political situation.

In long-term, to establish EU Agency for Migration, Asylum and Protection with responsibilities for securing coherent and consistent determination of asylum claims.

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