



# SYRIAN REFUGEES IN EUROPE - Protection in Principle, Chaos in Practice

## *A Summary*

### **Origin and escalation of the Syrian conflict – the war on civilians**

The latest Report of the Independent International Commission of Inquiry of the Syrian Arab Republic, issued by the Human Rights Council and dated 13 August 2015, begins: *“With no end in sight, the Syrian conflict has continued to intensify. Civilians, Syrians of all backgrounds, have been the subject of crimes against humanity and war crimes, as well as other serious violations of international humanitarian law and gross violations of their human rights. (...) Civilians are suffering the unimaginable, as the world stands witness”*<sup>1</sup>.

The conflict that has been devastating Syria for about five years is a tremendous and bloody war that has developed from peaceful demonstrations of protest against an oppressive and dictatorial regime into a tragedy of violence, death, and displacement.

The *“dreadful combination of (...) [the] government’s indiscriminate attacks, including by barrel bombs and suffocating sieges, and atrocities by ISIS and other extremist groups”*<sup>2</sup> has made thousands of desperate people risk their life to reach Europe, seen as a ‘safe heaven’ just a sea journey on teetering boats or a perilous land route through the Balkans away. Leaving their homelands and lives behind, in the desperate hope to be given the chance to reassemble the pieces of their existence, *“most of the refugee population have no idea how their journey will end; their only aim is to reach Europe, depicted as a promised land, a continent of peace and opportunity”*<sup>3</sup>.

Under the framework of international refugee law, when an individual does not enjoy the protection of his or her state of origin, his/her protection falls upon the international community. How is the international community, and in particular the European Union, coping with the situation?

### **States’ obligations under International Refugee Law – the 1951 Convention on the Status of Refugee**

The adoption of the Universal Declaration of Human Rights (UDHR) by the General Assembly of the United Nations in 1948 represented the commencement of a ‘human rights revolution’, of which the Convention relating to the Status of Refugees also became a milestone. This instrument, adopted in 1951 and integrated with a fundamental Protocol in 1967, is the key legal document for the definition of a refugee and the establishment of his or her rights. Moreover, it establishes human rights obligations

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<sup>1</sup> Human Rights Council, 13 August 2015, A/HRC/30/48, p. 1.

<sup>2</sup> Kenneth Roth, “The Refugee Crisis that Isn’t”, Human Rights Watch, 3 September 2015, available at <http://tinyurl.com/nsyac34>.

<sup>3</sup> S. Furstenberg, “The European Union’s Search for Unity as the Refugee Crisis Continues”, Oxford Human Rights Hub, 22 September 2015, available at <http://ohrh.law.ox.ac.uk/the-european-unions-search-for-unity-as-the-refugee-crisis-continues/>.

that “impose a humanitarian exception to the right of States to freely delineate their national communities”<sup>4</sup>.

The Convention protects a refugee against the possibility of forcible return by establishing the state parties’ obligation to respect the principle of non-refoulement in its Article 33: “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”<sup>5</sup>.

The existing regime of protection under refugee law, however, is considered imperfect and incomplete, badly “covering what ought to be a situation of exception. It goes some way to alleviate the plight of those affected by breaches of human rights standards or by the collapse of an existing social order in the wake of revolution, civil strife, or aggression; but it is incomplete so far as refugees and asylum seekers may still be denied even temporary protection, safe return to their homes, or compensation”<sup>6</sup>.

### **The European system and its lack of harmonization**

The Syrians trying to escape the conflict, often by perilous journeys through the Balkans or on unseaworthy boats across the Mediterranean, are entitled to and need protection. The international community, however, is proving unable to grant them protection and this failure is translating into a crisis at the European level. Some of the main challenges arise from the fact that, despite the European Union’s efforts and ambitions to create a harmonized reception system for asylum seekers, the reality is that standards and conditions vary considerably from one EU member state to another. Lack of uniform and harmonized rules, indeed, is the primary reason for the Union’s inadequacy and proven incapability to contain and confront the present humanitarian crisis arising from the mass flow of refugees from Syria.

### **The Dublin rules**

The key element of the common European legislation is the Dublin regulation, introduced in 1997 and reformed in 2003 (Dublin II) and 2013 (Dublin III), and covering issues of asylum, border control and irregular migration. The Dublin Regulation’s provisions are closely linked to the principles and provisions of the Schengen system, consisting of rules that “set out conditions for crossing external borders, in conjunction with no controls on internal borders”<sup>7</sup>. The core objective of the Regulation, therefore, is to ensure a balance between the need to enhance internal security within the area of free movement on one hand, and adhere to the obligations of international law related to the protection of refugees on the other.

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<sup>4</sup> Violeta Moreno Lax, “Must EU Borders have Doors for Refugees? On the Compatibility of Schengen Visas and Carriers’ Sanctions with EU Member States’ Obligations to Provide International Protection to Refugees”, *European Journal of Migration and Law*, vol. 10, no. 3, 2008, , at p. 350.

<sup>5</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, pp. 137ff., available at <http://www.refworld.org/docid/3be01b964.html>.

<sup>6</sup> Moreno Lax, p. 350.

<sup>7</sup> Steve Peers, “The Refugee Crisis: What Should the EU Do Next?”, *EU Law Analysis*, 8 September 2014, available at <http://tinyurl.com/jco4jz5>.

The Dublin Regulation, in particular, *“is formulated to ensure that only one country shall be responsible for processing an asylum seeker’s application”*<sup>8</sup> and thus establishes a mechanism that assigns the responsibility for receiving and considering asylum applications in the European Union to the ‘country of first entry’. The aim, therefore, is to regulate secondary movements of asylum seekers, hinder them from asylum shopping and prevent them from *“orbiting throughout Europe with no single country taking responsibility for their cases”*<sup>9</sup>. In cases of asylum-seeker migration, in fact, the consequence is the return of the person to the European country where they first filed an asylum application.

The limits and problems of this Regulation were clear from its origin, but became disastrously manifest due to the mass influx of refugees that is currently occurring in Europe and that the Union and all its member states are struggling to handle. The Dublin rules and the principle of the ‘country of first arrival’, indeed, lay a disproportionate burden on the countries on the Southern border, particularly on Italy and Greece, which, even before the Syrian diaspora, were already *“struggling with the twin pressures of the financial crisis and a large increase in north-African migrants from (...) [the Arab Spring] uprisings”*<sup>10</sup>. This principle, however, is not only unequal among the member states, but also unfair towards the refugees, who often aim to join their families or try their luck in countries different from the ones on which they entered European territory. Countries such as Norway, Sweden and Germany are usually better equipped to offer them more valuable opportunities in economic and social terms.

### **The vicious cycle of welfare and integration**

There are many challenges, therefore, that the Dublin system is now facing. The most striking is the lack of harmonization, and the absence of a consistent European asylum system. The gaps across Europe in reception policies and living standards are manifest, and *“significant national differences prevail as to liberality in granting asylum status, access to welfare goods and the labour market”*<sup>11</sup>. These challenges have been accentuated by the current economic crisis, which heightens the differences and creates tension between countries. The differences in the conditions across the region, which European regulations were meant to render comparable, are not only caused by *“persistent institutional differences in reception conditions and integration efforts”*<sup>12</sup> among the member states, but also by national differences in areas beyond migration policies (such as general welfare provisions and labour market conditions).

Moreover, the way in which the Dublin system is built provides states *“with an incentive to use restrictive policies to limit the number of asylum seekers that arrive in their territories and to indirectly encourage them to seek protection in another country or region”*<sup>13</sup>.

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<sup>8</sup> Jan-Paul Brekke and Grete Brochmann, “Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation”, *Journal of Refugee Studies*, 2015, vol. 28, no. 2, at p. 147.

<sup>9</sup> Brekke and Brochman, p. 147.

<sup>10</sup> Harriet Grant and John Domokos, “Dublin regulation leaves asylum seekers with their fingers burnt”, *The Guardian*, 7 October 2011, available at <http://tinyurl.com/qy4t3be>.

<sup>11</sup> Brekke and Brochmann, p. 146.

<sup>12</sup> *Ibid*, p.159.

<sup>13</sup> Eiko Thielemann and Carolyn Armstrong, “Understanding European asylum cooperation under the Schengen/Dublin system: a public goods framework”, *European Security*, 2013, vol. 22, no. 2, at p. 151.

This creates a tension that has a very profound impact and consequences on the lives of individual refugees. Too many of them, indeed, remain stuck in the first country of arrival, where they often receive poor assistance and inadequate treatment due mainly to unsatisfactory reception and processing policies but also to the high number of applications and human lives that the border countries have to handle and protect these days. Many of them try to bypass the law by avoiding authorities and fingerprint registration, and keep on taking huge risks by placing their lives in the hands of ruthless smugglers who offer to help them reach the Nordic countries (such as Norway or Sweden, where most of them aim to end up) in exchange for exorbitant sums of money.

The current refugee crisis, therefore, has very well proven the inadequacy of the Dublin system, arising from its nature as an *“administrative instrument that links border control with responsibility for examining an asylum application, rather than (...) [a] mechanism for sharing burdens and for protecting asylum seekers and refugees”*<sup>14</sup>. The next, necessary step to take would be a real attempt to harmonize integration policies, which need to be coordinated by the EU.

### **Suspension of the Dublin rules by Germany and violations in Hungary**

In the absence of harmonized policies of reception and integration, the individual Member States have instead acted on their own to overcome these challenges. In some cases, their actions were driven and characterized by aims of solidarity and compassion, while in others, fear and insensitivity prevailed.

An example of the first kind of behaviour is Germany, which on 24 August 2015, officially announced that it was suspending the Dublin rules for the Syrian refugees arriving in Germany. From that date onwards, the refugees of Syrian nationality making it to German land would not be sent back to the ‘country of first entry’ (most commonly Hungary, Greece or Italy), even if registered and fingerprinted there under the EURODAC regulation and system, and their application for asylum would be considered and processed in Germany. The implementation of the suspension rule by Germany resulted from the rising consciousness that the rules established under the Dublin system are inadequate and ineffective, and that the ‘countries of first entry’ would not have been able to cope with the massive influx of refugees from Syria, had those rules continued to be implemented.

Before that, however, another country had suspended the EU rules of asylum, but for profoundly different reasons. In the context of growing anti-immigration rhetoric, the government of Hungary announced on 23 June 2015 that it had *“exhausted the resources at its disposal’ to accept further asylum seekers”*<sup>15</sup>, and that they would not take back the asylum seekers who *“had first entered Hungary and then continued their journey to other neighbouring member states”*<sup>16</sup>. This decision was

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<sup>14</sup> Silvia Morgades-Gil, “The Discretion of States in the Dublin III System for Determining Responsibility for Examining Applications for Asylum: What Remains of the Sovereignty and Humanitarian Clauses After the Interpretations of the ECtHR and the CJEU?”, *International Journal of Refugee Law*, 2015, vol. 27, no. 3, at p. 436.

<sup>15</sup> Agence-France Press, *“‘The boat is full’: Hungary suspends EU asylum rule, blaming influx of migrants”*, *The Guardian*, 24 June 2015, available at <http://tinyurl.com/oe34t9b>.

<sup>16</sup> Solon Ardittis, *“On the future of EU asylum and free movement rules”*, *EU Observer*, 15 September 2015, available at <https://euobserver.com/opinion/130266>.

followed by the construction of a border barrier (a four-metre high double security fence) along the borders with Serbia and Croatia.

Even if driven by substantially different reasons and objectives, both these countries' decision to suspend the implementation of the EU rules of asylum demonstrate that the Dublin system was flawed from the start. In particular since, *"by imposing the same obligations on all member states, it was assuming that all of them were experiencing similar pressure at their borders, and enjoying similar resources and infrastructure, and similar asylum procedures and standards, in line with existing international conventions"*<sup>17</sup>. It has now become clear that this was never the case, especially given the fact that the majority of the EU's external borders are in those member states – such as Greece and Italy – which have been hit the hardest by the 2008 financial crisis and possess *"the least optimal resources and capacity to deal with significant migration and refugee inflows"*<sup>18</sup>.

### **The Temporary Protection Directive**

In 2001, in response to the massive influx of people from the Balkan area seeking refuge in Europe in consequence of the tremendous conflicts afflicting Yugoslavia and then Kosovo in the 1990s, the Council of the European Union adopted the so-called 'Temporary Protection Directive'. The purpose of the Directive was to establish minimum standards and promote balance of efforts among the Member States to *"deal with a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin"*<sup>19</sup> by offering them protection for a limited period.

The framework introduced by the Directive, based on formalised and harmonised protection standards, is *"practical and efficient"*<sup>20</sup>, and it would seem like the most appropriate and useful instrument to activate with regard to the current crisis of Syrian refugees in Europe. The Directive, which envisages a *"status that confers temporary residence permits, emergency health care, shelter, social benefits, education for minors as well as limited access to the labour market and a limited right to family reunification"*<sup>21</sup>, calls for a burden sharing mechanism. Even though the asylum capacities of the countries at the external borders, in particular Greece and Italy, have been challenged and overwhelmed by the arrivals of refugees from Syria, the Directive has not been activated yet.

The reason for this, once again, lies in the lack of solidarity between Member States, which makes it hard to reach a political agreement and, more technically, to secure *"a qualified majority vote in the Council in the face of an influx situation which only seriously affects a limited number of Member States"*<sup>22</sup>. It would be time for the EU to consider whether the implementation of this Directive could be the most effective step towards a practical solution, in addition to representing a constructive way to *"help Member States to more effectively cope with the 'mixed flows' and provide better protection for*

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Council of the EU, Directive 2001/55/EC, 20 July 2001, preamble, para 13.

<sup>20</sup> Meltem Ineli-Ciger, "The Missing Piece in the European Agenda on Migration: the Temporary Protection Directive", 8 July 2015, available at <http://tinyurl.com/ohoyrbt>.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

*persons in need*<sup>23</sup>. It probably would not resolve the crisis completely, but it would certainly constitute an important step forward in alleviating its symptoms and the connected human suffering.

## Conclusions and recommendations

The Hungarian border fence has come to be the sad symbol of the current division between Eastern and Western states within the European Union. It symbolizes the disharmony at the heart of European policies, which is the main obstacle with regard to the efforts Europe is making to solve the deepening crisis. Overwhelmed by the weight of numbers, with just about one million refugees and migrants having arrived on European shores this year, Europe seems to be going adrift while still struggling to maintain unity and preserve its values of cooperation and solidarity.

These struggles have been heightened after a series of terrorist attacks took place in Paris on the evening of 13 November 2015. After the terrorist organization known as 'Islamic State' claimed responsibility for the attacks and it was alleged that two of the attackers had entered Europe through Greece from Turkey, there has been a proliferation of voices demanding the EU to stop accepting refugees looking for safety. These events have shaken and disturbed even the most unprejudiced, compassionate souls, and the alarm that followed is understandable. However, the acts of a single man, *"however evil and misguided, should not damn an entire nation"*<sup>24</sup>, nor should they stop Europe from welcoming families fleeing slaughter and devastation.

Europe, instead, should keep in mind that the reason why loving parents risk the lives of their children, and their own, on unreliable boats or hazardous land journeys, is that events such as the terrible attacks in Paris happen in Syria on a daily basis.

So far, the attempts to move towards a solution have mainly included a relocation scheme for the refugees who are already inside European borders. The plan, however, has been strongly opposed by many member states, predominantly in Eastern Europe, demonstrating Europe's lack of solidarity not only towards refugees, but also between its own member states.

What has not been addressed yet is the way in which refugees arrive on European borders and land. Creating legal entry channels is crucial to regain control over migrant flows and *"strike a mortal blow in the heart of the criminal smuggling networks"*<sup>25</sup> to whom we no longer want to delegate Europe's border policy. Such entry channels could consist of a system of humanitarian visas, allowing asylum seekers *"to come legally to Europe for a limited period while their asylum request is processed"*<sup>26</sup>, or asylum processing centres outside the EU borders. If these were established, refugees would be able to apply without having to place their lives in the hands of smugglers and risking them in deadly journeys.

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<sup>23</sup> *Ibid.*

<sup>24</sup> Ian Birrel, "To turn on refugees because of Paris is weak and absurd", The Guardian, 18 November 2015, available at <http://tinyurl.com/ooz29eu>.

<sup>25</sup> Bruno Maçães, "Europe has turned its refugee crisis into a morally disastrous Hunger Games", The Guardian, 7 December 2015, available at <http://tinyurl.com/o4pmf29>.

<sup>26</sup> *Ibid.*



As outlined throughout this report, the present refugee crisis represents a major test for the European Union. Whether Europe will come out of it stronger or defeated depends on its ability to stick to its values of oneness and solidarity, and avoid falling into the easy trap of fear and ignorance, which lead to racism and Islamophobia.

In the meanwhile, Europe cannot allow these homeless refugees to be reduced to the subject of a legal and diplomatic battle. The EU needs to remember that improving reception conditions at the border, establishing legal entry possibilities and implementing a harmonized system with quotas for distribution and relocation are only the first (necessary, but insufficient) steps towards a solution. All of this, indeed, needs to be accompanied by a real political effort to ensure the integration of these new citizens in Europe, and to guarantee them a chance to rebuild their lives.