"Nous ne pouvons pas héberger
toute la misère du monde
mais nous devons en prendre notre part »
Michel Rocard, 3 December 1989

Proposal for an EU Agency for Migration and Resettlement

By Jelena von Helldorff

Introduction

The migration crises dominated headlines in the second half of 2015 with tens of thousands of migrants arriving at European borders. Asthe winter chills set in, the numbers have dropped, but despite falling temperatures and bad weather conditions about 1,000-2,000 migrants cross the Balkans every day on their way to Germany and other EU countries.[1] The influx, the largest since World War II, is seriously testing EU unity, opening a rift between western and eastern European countries, exposing the fragmentation of EU asylum policyandfuelling the narrative of far right parties across Europe. EU policy-makers have been caught off guard by the number of migrants[2], mostly refugees from the war torn parts of the Middle East and Africa. In the absence of a forceful and effective EU response, individual member stateshave taken action,passing the laws and introducing their own measures to manage migration flows and protecttheir national borders.

With the shift of the Middle East's geopolitical tectonic plates involvingnational, regional and world powers,which may be redrawing the map of the late Ottoman Empire, the EU can

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[1]Croatian Ministry of Interior reports
http://www.mup.hr/219671.aspx

[2]According to IOM the total for land and sea has reached 1 mill on 21 December 2015

expect millions more migrants over the next few years. Even if these figures seem small compared to the EU population of 500 million, the integration of people ofdifferent ethnic, cultural and religious backgroundshas already proved to be a serious challenge for many EU countries. Germany, which accepted more than one million asylum seekers in 2915is already testing its resolve after hundreds of men with immigrant backgrounds allegedly sexually assaulted women in Cologne on New Year's Eve. Even Sweden, known for its generous welcome of asylum seekers started tolimit inflows by introducing border checks with Denmark on the Oresund bridge after 60 years of free passage between the two countries. The ongoing migration flow saw governments insouthern Europe on the Balkan route build razor wire fences along their borders with neighboring countries in the attempt to stop thousands of migrants crossing their territory.

Europe seems to be shaking off a postmodern supranational structure set up in the wake of the Second World Warafter centuries of destruction and bloodshed that broughtmisery, suffering and death to millionsof Europeans. Driven by the ideals of collective welfare, security and human rights,Europe wanted to set the example of a better world where each individual regardless of nationality, gender, religious or ethnic background enjoysthe same protection of human rights, guaranteed byacarefully constructed web of democratic rules and institutions. The European Unionwent

further, extending these principles not only to its own citizens but to all those fleeing persecution and repression in their own countries. The resultwas acomplex and ambitious EU asylum system built upon the 1951 Geneva Refugee Convention and its 1967 Protocol which guaranteeinternational protection to all individuals fleeing persecution and war in their home countries.Promoting respect and protection of fundamental human rights enshrined in the EU Treaty and the Charter of Fundamental Rights became a basic tenet ofEurope's motto of unity in diversity.

The events in the aftermath of the Arab spring, the war in Ukraine and above all the emergence of the Islamic state dashed hopes that the EU model can be replicated in what the EU has called "the ring of friends" in itsneighbourhood. With the growing instability and spread of violencegenerating a huge movementsnot only ofrefugeesseeking international protection but migrants fleeing poverty, the system started to crack, raising questions about the sustainability of the European integration model..
The unabated migration influx has put under severe strain the basic EU principle of solidarity –
prompting member states toset up their own defensive mechanisms in an attempt to respond togrowing criticism at home.The simmering tensions have been further exacerbated by the fact that some suspects of the November 2015 Paristerrorist attacks have been

registered at border crossingsamid the surge of asylum seekers.

Dismissing anti-migrant fears as unrealistic or labeling them as racist is counterproductive and can only further widen the gap between citizens and policymakers. The majority of migrants/refugees come from different cultural and religious backgrounds and do not always share the same values as most Europeans. This doesn't mean that Europe should turn a blind eye to the misery and suffering of those seeking international protection. It only means that the current rules and policies are either inadequateorill-adaptedto the present circumstances and should be changed for the better.

The pitfalls ofEU migration management policy

As the number of refugees/asylum seekers continues to rise, thecriticism of EU action has grown not only among right wing political parties but also among the mainstream parties, usually supportive of the EU and the process of EU integration.

Torn between its moral and legal obligations to attend to people seeking international protection and the sheer reality of ever growing number of people crossing the EU borders, the EU system is facing a serious challenge of being undermined by the increasingly nationalistic perspectives in the member states.

In the face of the unfolding crisis,the EU has come up with a number of policy and legislative proposals aimed at better managingthe refugee/migration flows and ensuring that each country takes a fair share of asylum seekers. In the aftermath of the tragic loss of life in the Mediterranean in May 2015the European Commission came up with a set of new measures in its so-called Agenda on Migration. It is a comprehensive and ambitious policy document, based on the assumption that the EU is still functioning on the principles of solidarityand mutual support among its member states.

The proposal requires eachmember state to take a fair share ofpeople seeking international protectionby relocating them according to criteria based on the size of the country,its income and reception conditions. The EU has also put forward the suggestion for the resettlement of refugees, which would be an important manifestation of solidarity and responsibility sharing.

To handle the backlog at the external borders of the Union andensure a swift identification and registration of migrants, the Commission's Agenda envisaged the creation ofHot Spots where, in order to deal with the refugee flow, the European Asylum Support Office (EASO), Frontex and Europol should work together on the ground with frontline member states.Yetmore than eight months following the initial idea of setting up 12hot spots only a few have

become operational[3],. Frontex and EASO staff operating on the ground arestretched thin, performing a myriad of tasks for which they were not prepared.Unable to cope with the influx the EU agencies often pass onthe burden of screening, registering, processing and attending to migrants' needsto local authorities, volunteers and NGOs.

With the aim to manage migration better the Commission's document also addresseda number of related issues ranging from the fight against illegal migration, the fight against smugglers, the control of the external border and cooperation with third countries. At the same timethe EU has sought to get help from Turkey tostop the flow of migrants into Europe and has increased the Frontexbudget to secure better border management and control of the EU external borders.

Unfortunately, the Commission's proposals have failed to gain traction.Even the Commission now recognises that the proposal did not deliver expected results and that the European asylum system needs an overhaul. Of more than 20,000persons which the EU agreed to resettle from UN refugee camps only 600 have arrived.[4] The relocation had made little headway with only 331persons relocated out the

planned 160,000. The deal with Turkey to stem the flow of refugees and migrants has clearly not been implemented (between 1,000 and 3,000 refugees daily cross the Greek-Turkish border)

Even though the Commission's Agenda highlighted the structural limitations of existing migration policy it omitted to address the political reality in the EU. In particular it has underestimated the rift between the western and wealthier member states and those in the East with ethnically homogeneous population, no record of migration and, as a consequence,strong opposition tothe EC quota system scheme.It has disregarded growing citizen's criticism over the lack of debate on the migration issue, overlooking the fact that failure to take citizens' concerns seriously could only play into the hands of radical parties, cause societal splits and a shift to the right in many EU countries.

But what the EU is lacking above all is the vision and the outline of a long-term strategy to absorb and integrate hundreds of thousands of migrants in Europe. Finally, instead of being proactive, looking ahead and anticipating the events and their consequences in advance, the EU (like its member states' policy-makers) is still offering improvised solutions aimed at appeasing media rather that devising long-term alternatives, even though the migrant exodus looks likely to continue.

More recently the European Commission hasput forward a proposal for a European

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[3]See the EC document on the state of play of Hotspot capacities dated 25 January 2016 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf

[4] The UNHCR report of December 2015

Border and Coast Guard and effective management of the Europeanexternal borders[5]. The initiative is aimed at securing the EU external borders, empowering the EU agencies mandated to protect borders and enhancing cooperation with third countries. According to the proposal, a new European Border and Costal Guard Agency will be set up to ensure the effective application of strong common border management standards and provide operational support and intervention in cases of emerging crises at the external borders. Whilea gradual introduction of an integrated management system for external borders of the Union is a positive step,it remains to be seen to what extent the European external border management will be properly funded and implemented.

But to avoid the label of "fortress" Europe because of its reinforced border security, the EU should also open legal migration channels, giving the opportunity to highly-qualified as well as less-skilled migrants to legally enter the EU labour market. To remain an attractive destination for talents and to offset the negative demographic trends the EU must develop strategies for the impending labour shortages in key economic sectors. This must include an overhaul of the Blue Card initiative for highly-qualified migrants as well as the promotion of legal entry and stay for students, researchers and other categories of labour in demand.

A proper immigration policy, which the EU lacks should therefore combine measures that would provide international protection for genuine refugees, stem the flow of illegal migration and encourage the arrival of those whose expertise would be beneficial for European economic development.

The inconvenient truths about the EU Common Asylum System

The main flaw of the Common European Asylum system is that it requires individuals seeking international protection to lodge their asylum claim once they reach EU territory. However, to get there legally an individual would have to be in a possession of visa, a virtually impossible task for thousands of refugees fleeing conflict zones with only a few personal belongings. That means that before being an asylum seeker each refugee is an illegal migrant. [6]

This is why the smuggling business continues to thrive onthe ever-growing demand for a passage to EU territory. Forced to turn to criminal networks for help, refugees and migrants not only put their lives at risk but become vulnerable

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[5] A European Border and Costal Guard and effective management of Europe's external borders COM(2015) 673

[6]The EC Communication on European Border and Costal Guard COM(2015) from December 2015 qualifies « almost 1,5 million border crossings between January and November 2015 » as illegal

to exploitation and human trafficking, if unable to pay the amount of moneyrequired by the smugglers. In this regard, the fight against smugglers, one of the EU'sdeclared goals, is useless as long as there are no legal options for reaching EU territory. If Europe is to end its association with images of drowned people and capsized boats in what has already been labeled theMediterraneancemetery, it has to put in place the new structures that would contribute to a better planned and legally organised reception system forrefugees and asylum seekers.

The Treaty of Lisbon made asylum policy an area of EU responsibility; by bringing competences for visa, asylum and immigration under a new Title V of the Treaty on the Functioning of the European Union.

Based on the principles of the 1951 Geneva Convention on the status of refugees the European asylum system is a modern and advanced system of legislation composed of four main Directives:

- the revised Asylum Procedure directive,
- the revised ReceptionConditions directive,
- the revised Qualification directive
- therevised Dublin Regulation, which establishes the state responsible for examining the asylum application.

In addition the revised Eurodac regulation allows law enforcement services access to the EU database of the fingerprints of asylum seekers in order to prevent, detect or investigate the most serious crimes such as murder or terrorism.[7]To be properly implemented this system takes time, sometimes months, even years, as it requires evidence "beyond reasonable doubt" that the alleged persecution has taken place.

When faced with a massive wave ofrefugee arrivals no country is able to abide by these rules; many lack the infrastructure, human resources and interpreters who are able to communicate with people from linguistically diverse backgrounds. What makes the task even more complicated is the fact that migration flows are very often a mix between genuine asylum seekers who are entitled to international protection and economic migrants seekinga better life in Europe. Because these two categories often overlap there is a need to establish profiling and referral mechanisms, including access to fair and efficient asylum procedures for those in need of international protection[8]

When properly conducted, the asylum process results inthe asylum seeker being granted asylum andacquiring rights similar to EU citizens, or being refused asylum status in which case he or she must leave EU territory.

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[7]See EC Home Affairs , A Common European Asylum System, Publications Office of the EU, 2014
[8] This proposal is included in the UNHCR 10 Point Plan of Action on Refugees and Mixed Migration issued in 2006
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In the attempt to accelerate procedures, the EU member states have developed a concept of "safe countries" to which an asylum seeker can be send back within a few days, if the country of origin is considered safe; in other words if there is no founded fear of persecution or a real risk of serious harm. Nevertheless, the concept is rather controversial, as it can serve to accelerate the asylum application, let alone the criteria according to which one country is judged as safe.

Refugees that have not been granted asylum have to leave the territory of the EU country in which their asylum claim has been lodged. According to the provisions of the EU Return Directive irregular migrants and rejected asylum seekersare givenbetween seven and 30 days to leave EU territory voluntary or risk forced deportation. Conditioned by the readmission agreement with third countries of origin of migrants the return is often fraught with difficulties[9]. On average only a small percentage of return decisions are effectively enforced. Of particular concern are those referred to as "stranded migrants" – those who cannot be returned to their country of origin – either because this country refuses to admit them or because of crisis or armed conflict in their country of origin.

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[9] In France, out of 60 000 asylum seekers each year, two thirds are rejected. Fewer than 10% of those rejected are actually returned to their country of origin – see EP, Parliamentary questions, Return of illegal migrants in the EU of 10.11. 2015

Set up to provide evidence of the first member state where a person entered or applied for international protection, the Eurodac database contains individual fingerprints for the purpose of law enforcement for determining the member states of first entry to facilitate the implementation of the Dublin regulation. However, EU law does not stipulate the obligation for an EU member state to obtain fingerprints, nor does it oblige an asylum seeker to give his or her fingerprint. As a result, the member states are not provided withreliable information on the identity of persons who have entered the EU. This inherent shortcoming of the EU asylum system is having a direct impact on the Schengen principle of free movement and isnow causing the member states to temporarily reintroduceinternal border controls in a bid to control the entry of persons to their national territory. Even if these measures are meant to be temporary,the free movement will not be re-establishedunless the EU comes up with a coherent and effective policy to manage migration flows. One of the greatest achievements of European integration – the free movement of people within EU borders – has been put in jeopardy.

To face a massive refugee crises the EU hadin the past set up the mechanism of so-called temporary protection. The Temporary Protection Directive adopted in 2001 was an attempt to respond to the situation of a large refugee influx, allowing for a lower standard of proof of eligibility conditions usually required. It

was designed to be applied to a recognised protected group, removing the need for individual status determination. Curiously, the Temporary Protection Directive has never been implemented, despite several global crises, including the Kosovo crisis in the 1990's or the current massive influx of refugees from Syria.

In face of the present massive refugee arrivals this instrument should be overhauled and applied when the standard asylumsystem is unable to cope with processing of a large number of asylum claims.

The externalisation of the EU Migration and Asylum policy – CEIPA proposal for the establishment of a an extra territorial approach to refugee protection and orderly resettlement

The idea of an external asylum procedure has been already discussed in the EU at policy level. This includes refugee resettlement and the implementation of regional protection programmes. A study supported by the European Commission in 2002 explored the possibilities of "a concept for arrangements allowing non-state nationals to approach the potential host state outside its territory with a claim for asylum or other form of international protection, and tobe granted an entry permit in case of a positive

response to that claim, be it preliminary or final"[10]

The EU Stockholm programmealso hinted at the possibility of developing the external dimension of asylum. It stipulates that"The Union should act in partnership and cooperate with third countries hosting large refugee populations. A common Union approach can be more strategic and thereby contribute more efficiently to solving protracted refugee situations. Any development in this area needs to be pursued in close cooperation with the United Nations High Commissioner for Refugees (UNHCR) and, if appropriate, other relevant actors. The EASO should be fully involved in the external dimension of the CEAS. In its dealings with third countries, the Union has the responsibility to actively convey the importance of acceding to, and implementing, the 1951 Geneva Convention and its Protocol"[11]

Similarideas have already been broached in the past by Germany and the UK.[12] (Germany made a similar proposal for refugee receptions centres in 2004 but the idea never got off the ground)

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[10]G. Noll, J. Fagerlund and F.Liebaut Study for the European Asylum System and the Goal of a Common Asylum Procedure, Danish Centre for Human Rights EC, 2002

[11] The Stockholm Programme- an Open and Secure Europe Serving and Protecting Citizens 2010/C 115/01, 6.2.3

[12]In November 2014 the German interior minister Thomas de Mazière has proposed outsourcing the asylum applications to "transit centres" in North Africa to limit a number of would be refugees flooding to Europe

Even though the reception and processing of asylum seekers outside EU territory raises a wide range of legal, practical and political questions, the idea is worth considering. This is the background to the CEIPA proposal for an extraterritorial European Resettlement and Migration Mechanism for preventive action and orderly resettlement.Thismodel would have to be developed in cooperation with a few key EU neighbourhood countries which host a large number of refugees and should be set up according to the same standards of fundamental rights applied within the EU, and in close cooperation with UNHCR, building on the principles of Global Approach to Migration and Mobility.

The procedures for identifying persons entitled to international protection and resettlement to an EU country would be governed by theprinciples of the Geneva Conventions and rules laiddown by the EU asylum acquis. Following the examination of asylum claims those who comply with the criteria set by the Geneva Convention would be resettledacross the EU according to the same rules governing relocation of refugeesand with the help of the IOM that has acquired a great experience in the field. The US experience and good practices in resettlement operations could serve as a model.

However, solidarity and responsibility are the essential conditions on which such an approach will have to be based. In times of crises solidarity is scarce in the EU but the lack of solidarity in dealing with the present massive refugee arrivals risks unraveling the European project.

To set up the mechanism the European Commission in cooperation with EEAS should put forward the list of countries, who are candidates for the extraterritorial EU resettlement programme. Assistance to the selected countries would include the necessary funding andcapacity-building to enable them to meet obligations defined by the EU/EASO and international treaties. Because the extraterritorial migration management and resettlement cannot exist in a vacuum, it should be placed in a wider political context of EU relations with neighbourhoodand EU applicantcountries. In addition to substantial financial assistance to countries hosting a large number of refugees, the EU would provide technical and legal assistance to improve the living conditions in camps and shelters. Setting up the Migration and Resettlement Mechanism would become apart of theoverall EUstrategytowards selected countriesincluding the negotiation of trade, commerce, investment development and humanitarian aid agreements.In addition, because of the rise of international terrorism and organised crime account will be taken of the EU external security interests and strategy.

Application, screening and case processingwould be carried out by specially trained EU designated non-governmental organisationsunder the

auspices of the EU delegations and UNHCR.Building on the existent structures and experience EASO and Frontexwill be empowered with new competences in order toengage inscreening, processing and the orderly management of refugees and migrants flows. Human rights and international principles in the field of asylum and refugees will be observed at all stages of the process, in line with EU principles and in full respect of international obligations.

This would not only be a viable alternative to dangerous journeys for people in need of international protection but would alleviate the pressure of arrivals at EU borders and ensure orderly resettlement across the EU. It would greatly reduce the demand for smugglers' services and help fight illegal migration and the proliferation of organised crime.

In addition to processing asylum claims and organisingresettlement theMechanism would help facilitate the process of legal migration of highly qualified migrants whose skills and expertise could help offset the consequences of the negative demographic trends in Europe. This would require a revision of the Blue Card directive on the admission of highly-qualified migrants in close cooperation and thorough dialogue with the EU business community and employers and unions, in addition to the exchange of information between EU member states on labour market needs.

Optimising the benefits of legal migration and offering protection to those fleeing conflict and persecution would have a positive impact on external border control and efficiency in fighting illegal migration.

If established the CEIPAmechanism would ensure safe and lawful access to the EU, facilitating planned and orderly arrivals in the EU while easing pressure on the frontline EU member states bearing thegreatest brunt of the current migration and refugee crisis. A positive asylum decision taken in this way would be recognised across the EU (which is not the caseat the moment), promoting the common status for asylum seekers in the EU, and setting the basis for a uniform European asylum system.

A new, well defined EU structure operating outside the EU focusing on screening, processing, profiling and pre-selection of migrants and helping the EU member states with resettlement and relocation of refugees and labour migrants could yield fast, long-term benefits and provide solutions to the current explosive and polarising situation in Europe.