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A Threat to Human Rights in Europe – The Refugee Crisis

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Upholding and protecting human rights is the mark of a modern liberal democratic society. Yet, the recent flow to Europe of a significant number of refugees fleeing armed conflict or looking for a better life has tested this long-held view. Questions can be raised about the moral, economic and political issues regarding the treatment of refugees, the sacrifices that domestic nationals are prepared to make, the rule of law and international cooperation. More modestly, the present essay inquires how far the refugee crisis strains the application of human rights protection both in respects of the refugees, EU and third country nationals (TCN).

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Refugees

According to the United Nations Refugee Agency's report (UNHCR) a record of 65.3 million people were displaced at the end of 2015, of whom 16.1 million were estimated to be refugees under the UNHCR's mandate.² Syria, Afghanistan and Somalia account for more than half of these refugees worldwide. Long-lasting conflicts in Somalia and Afghanistan; armed conflict in the Middle East; new conflicts in countries, such as Central African Republic and Yemen; and the decline in the rate of solutions being sought for refugees, all contribute to the worsening refugee crisis.³ Indeed, "we are facing the biggest refugee and displacement crisis of our time. Above all, this

² <<http://www.unhcr.org/576408cd7>> accessed 23 January 2017

³ <<http://www.unhcr.org/uk/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>> accessed 23 January 2017

is not just a crisis of numbers; it is also a crisis of solidarity.”⁴

Since 2011 there has been an increasing number of migrants and refugees from the Middle East, South East Asia and Africa arriving into Europe.⁵ The peak was reached in 2015 when over one million migrants reached Europe.⁶ Migrants fleeing war, poverty, and human rights abuses have attempted to get to their destination by land or sailing across the Mediterranean. The voyage is treacherous: the International Organisation for Migration estimates that in 2015, 3770 migrants died or went missing attempting the journey, whereas in 2016 the number increased to over

⁴ Ban Ki Moon, the United Nations Secretary General cited in (no 1)

⁵ <<http://doe.iom.int/docs/Flows%20Compilation%202015%20Overview.pdf>> accessed 23 January 2017

⁶ *Ibid.*

5000.⁷ A single incident in April 2015, where a crammed fishing boat sank, killed 772 migrants.⁸ Europe's sense of empathy was awakened overnight, although only for a short time, when the picture of a dead little Syrian boy washed on the shore of Turkish coast was published in September 2015, an image which became the symbol of the refugee crisis.⁹

Arguably, in Europe the biggest threat to the human rights protection of refugees is apathy and lack of political will to uphold the rights of the most vulnerable. This is due to the European leaders bowing down to the anti-immigration sentiments at the expense of human rights protection. While changing political views,

⁷ *Ibid.*

⁸ *Ibid.*

⁹ <<http://www.telegraph.co.uk/news/2016/09/01/photo-of-my-dead-son-has-changed-nothing-says-father-of-drowned/>> accessed 23 January 2017

economic volatility, and threat of terrorism among other challenges remain a reality, the vulnerable still need protection.

Legal instruments

When migrants reach Europe, the United Nations Refugee Convention 1951¹⁰, the European Convention of Human Rights (ECHR), and EU law may all be relevant. Under the UN Refugee Convention, States have legal obligations to protect refugees who are forced to flee their countries due to a threat of persecution which they are not protected from by their own States.¹¹ The 1951 Convention grants refugees rights, such as not to be punished for illegally entering the contracting State

¹⁰ <<http://www.unhcr.org/uk/1951-refugee-convention.html>> accessed 23 January 2017

¹¹ <<http://www.unhcr.org/uk/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>> accessed 23 January 2017

(Article 31) and right to housing (Article 21).¹² Migrants who leave their country for employment, study or family reunification purposes and who continue to be protected by their own government are not covered by the Refugee Convention.¹³ Article 1 of the ECHR imposes an obligation on the parties to the Convention to respect human rights of everyone within their jurisdiction¹⁴, including migrants and refugees. Yet, there is tension between immigration control and respect for human rights in Europe, demonstrated by cases coming to the European Court of Human Rights dealing with deportation of migrants and refugees (*Hirsi Jamaa and Others v Italy*¹⁵; *L.M. and Others v Russia*¹⁶).

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ 47 European Countries are signatories to the ECHR

¹⁵ [2012] ECHR 1845, 55 EHRR 21, (2012) 55 EHRR 21, 33 BHRC 244

¹⁶ [2015] ECHR 908

Furthermore, EU law regarding asylum applications has blurred the line of responsibility between the States of arrival and final destination. The Dublin III Regulation (Regulation 604/2013) is used to determine which State is responsible for the processing of an asylum application.¹⁷ Costello regards the Dublin System as a “significant barrier” to human rights due to its prolonged procedures and its requirement of asylum seekers to stay put in States “where their claims are likely to be rejected for want of proper examination”.¹⁸ Indeed, the Regulation allocates responsibility to the State where the asylum seeker has irregularly entered the European Union (Article 13, §1)¹⁹, thus placing immense pressure on the entry States, such as Italy

¹⁷ Council Regulation (EU) 604/2013 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 (recast)

¹⁸ Cathryn Costello, 2015:322

¹⁹ Dublin Regulation 604/2013 (no 16)

and Greece. Yet, according to Costello, the role of the European Court of Human Rights (ECtHR) has been pivotal in exposing and limiting human rights breaches resulting from the Dublin System.²⁰ In *M.S.S v Belgium and Greece*, the ECtHR found that Belgium, despite the Dublin II Regulation (as it was then), violated Article 3 of the ECHR by sending the applicant back to Greece which exposed him to the defects in the asylum procedure in Greece, where the detention and living conditions were in breach of the ECHR.²¹ Under the UN Refugee Convention those who meet the definition are regarded as refugees. However, within the EU, the asylum process appears to be driven by immigration control even at the expense of human rights protection. Costello argues that the European migration control as a whole violates human rights of the refugees, because safe and legal access to

²⁰ Costello, 2015:322

²¹ App No 30696/09 (ECtHR, 21 January 2011)

Europe does not exist, and when reaching Europe, often the asylum claims are not recognised, resulting in detention.²²

Immigration Control-Driven Solutions

There have been some efforts to ease the pressure caused by the flow of migrants and the use of Article 13 of the Dublin Regulation on the entry countries. Germany, under the leadership of the Chancellor Angela Merkel, suspended the use of the Dublin protocol in August 2015 in respect of Syrian asylum seekers.²³ Furthermore, in September 2015 EU ministers voted to relocate

²² Costello, 2015:326
²³

<<http://www.independent.co.uk/news/world/europe/germany-opens-its-gates-berlin-says-all-syrian-asylum-seekers-are-welcome-to-remain-as-britain-is-10470062.html>> accessed 23 January 2017

120,000 refugees EU-wide.²⁴ Yet, by December of 2016 the EU had only relocated 5% of its target.²⁵

However, borders were shut for migrants trying to reach Northern and Western Europe: Balkan countries²⁶ and Austria closed their borders in March 2016.²⁷ In the same month the EU struck a deal with Turkey, prescribing: the return of all new irregular migrants back to Turkey; Turkey to prevent migrants crossing to Greece, in exchange for relaxing visa restrictions for Turkish nationals; financial aid for the refugees in Turkey; and a

²⁴ <<http://www.bbc.co.uk/news/world-europe-34324096>> accessed 23 January 2017

²⁵ <<https://www.theguardian.com/world/2016/dec/08/eu-met-only-5-of-target-for-relocating-refugees-from-greece-and-italy>> accessed 23 January 2017

²⁶ <<https://www.theguardian.com/world/2016/mar/09/balkans-refugee-route-closed-say-european-leaders>> accessed 23 January 2017

²⁷ <<http://www.telegraph.co.uk/news/2016/03/31/austria-closes-its-borders-to-almost-all-asylum-seekers/>> accessed 23 January 2017

‘Syrian refugee swap’, that is, for each Syrian returned to Turkey, another Syrian from Turkey will be resettled in the EU.²⁸ All returns are to be done in accordance with EU and international law. However, if this is to be taken seriously, Elizabeth Collett, a Director of the Migration Policy Institute Europe, doubts whether reception conditions and protection in Turkey satisfy the required human rights standard.²⁹ Furthermore, the majority of arrivals are likely to be awarded protection under Dublin Regulations if fleeing war. Moreover, the current volatile situation in Turkey begs the question of whether the human rights of migrants and refugees will be protected. Collett argues that EU leaders have sent a message “that providing protection to large populations is a fungible task:

²⁸ <<http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>> accessed 23 January 2017

²⁹ <<http://www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal>> accessed 23 January 2017

should governments face the prospect of domestic unpopularity, the obligation to protect becomes secondary.”³⁰ Indeed, “the problem has once again been squeezed elsewhere rather than resolved.”³¹ Worryingly, there has been talk of the EU also partnering with Libya to reduce the number of migrants and refugees arriving in Italy, raising further legal concerns.³²

The flow of migrants has decreased since its peak in 2015. The number of asylum seekers in Germany decreased by 600,000 in 2016.³³ There were less than 400,000 arrivals into Europe in

³⁰ *Ibid.*

³¹ *Ibid.*

³² <<https://www.ft.com/content/ded133e4-97d1-39de-b286-eab6bd527eee>> accessed 23 January 2017

³³ <http://www.bbc.co.uk/news/world-europe-38584705?intlink_from_url=http://www.bbc.co.uk/news/topics/23672ac3-fcad-42c7-a557-23a954eb0e7b/europe-migrant-crisis&link_location=live-reporting-story> accessed 23 January 2017

2016.³⁴ Some could hail this as a small victory of efficient co-operation and immigration policy. Yet, it is anything but. While Europe looks the other way, there are over 75,000 migrants and refugees stranded in Greece, former Yugoslav Republic of Macedonia, Serbia, Slovenia, Croatia, Hungary and Bulgaria, whose lives are on hold. They have no access to housing or schooling, fear for their physical safety and deportation, are susceptible to human traffickers³⁵, and faced the prospect of freezing to death.³⁶ Human rights law protection seems to have failed the refugees because the solutions adopted by European States have been driven by concerns for immigration control, which also motivated the deal with Turkey, instead of

³⁴ <<http://migration.iom.int/europe/>> accessed 23 January 2017

³⁵ <<https://www.theguardian.com/world/2016/may/19/human-traffickers-using-migration-crisis-to-force-more-people-into-slavery>> accessed 23 January 2017

³⁶ <<http://www.independent.co.uk/news/world/europe/europe-refugees-freeze-to-death-hypothermia-bulgaria-athens-cold-weather-serbia-sleeping-rough-a7520106.html>> accessed 23 January 2017

application of international human rights law instruments.

EU Nationals and TNCs: Terrorism and Surveillance

There is also a threat to the human rights of EU nationals and third country nationals (TCN). Since Europeans awakened to the plight of the refugees, their compassion has been tested. Some of the terrorist attacks in France and Germany in 2015 and 2016 were committed by asylum seekers³⁷ and radicalised EU nationals who boasted that they using migrant routes to access Europe.³⁸ Indeed, according to a survey by the Pew Research Centre, conducted in Germany, Sweden, the

³⁷ <<http://www.bbc.co.uk/news/world-europe-36882445>> accessed 23 January 2017

³⁸ <<http://www.independent.co.uk/news/world/europe/refugee-crisis-terrorism-link-migration-un-expert-report-no-evidence-isis-uses-route-human-rights-a7377961.html>> accessed 23 January 2017

Netherlands, Britain, France, Spain, Italy, Greece, Hungary and Poland in April/May 2016, a median of 59% of the respondents feared that the presence of refugees will increase the likelihood of terrorism in their nations.³⁹

Yet, a UN report found little evidence that asylum seekers are inclined to be radicalised, or that terrorist groups systematically use migration flows for their purposes.⁴⁰ The latter was also supported by the Europol's 2016 European Union Terrorism Situation and Trend Report.⁴¹ However, anti-migration policies may actually increase that risk. Ben Emmerson, the Special Rapporteur on

³⁹ <<http://www.independent.co.uk/news/world/europe/refugee-crisis-asylum-seekers-europe-terrorism-terror-threat-brexit-immigration-migrants-a7132256.html>> accessed 23 January 2017

⁴⁰ <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20734&LangID=E>> accessed 23 January 2017

⁴¹ <<https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-te-sat-2016>> accessed 23 January 2017

counter-terrorism and human rights for the UN emphasised: “What is clear is that policies that respect human rights, justice, and accountability, and that manifest the values on which democracy is founded, are an essential element of effective counterterrorism policies.”⁴² Measures by States to keep migrants out, such as fences, push-back operations and criminalising irregular migration, play a part in creating chaos and covert movements of people, including trafficking, which may facilitate terrorism.⁴³

Worryingly, the response by the governments in safeguarding their citizens may actually endanger the human rights of those being protected. Although, surveillance by the governments is essential in acquiring intelligence

⁴² Ben Emmerson cited in (no 40)

⁴³ < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/285/61/PDF/N1628561.pdf?OpenElement> > accessed 3 February 2017

and tackling terrorism, there has been an increased worry that measures taken by governments have been excessive. For example, the Investigatory Powers Act 2016 passed by the UK Parliament has been criticized for allowing the intrusion into the private life of citizens. According to Jim Killock, the executive director of Open Rights Group, “the UK now has a surveillance law that is more suited to a dictatorship than a democracy. The State has unprecedented powers to monitor and analyse UK citizens’ communications regardless of whether we are suspected of any criminal activity.”⁴⁴ Indeed, it is questionable whether accessing ordinary citizens’ information is necessary for the interests of national security and public safety, as per Article 8(2) of the ECHR.

⁴⁴<https://www.theguardian.com/world/2016/nov/19/extreme-surveillance-becomes-uk-law-with-barely-a-whimper>
accessed 23 January 2017

Conclusion

Undoubtedly, Europe is dealing with complex issues in relation to the refugee crisis, such as distinguishing refugees from economic migrants, the effect on local economies, the perceived and real threat of terrorism, the rise of the far right, and searching for solutions in the origin countries of the refugees. Yet, there are urgent matters that call for immediate action, such as refugees freezing to death in sub-zero temperatures, and refugees, including unaccompanied children going missing and being forced into slavery by predatory human traffickers. However, the political will to take responsibility in finding solutions that uphold human rights seems to be lacking. Europe is responding to those who shout the loudest and not to those who most need protection. Instead, Europe should be a leader in defending the human rights of

the vulnerable, and uphold the legacy and resolve of the European statesmen after the Second World War, which saw the creation of the ECHR.

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