Simplifying refugee status determination

There is a persuasive case to be made for simplifying refugee status determination in the European Union at this juncture. International law maintains that status determination is declaratory, which means that status determination does not make one a refugee but declares one to be a refugee. It means that many of those now on the move are refugees, in spite of our non-recognition of them. However, recognition of a person as a refugee is vital to their protection and status.

There is precedent elsewhere in the world for dealing with mass influx via prima facie status determination; in fact, the vast majority of refugees in the world attain their status in this way. This is a pragmatic response for when a host state’s refugee status determination infrastructure has been overwhelmed – the situation in which Europe currently finds itself. It allows for a lower standard of proof and could be used, for example, to accept Syrian nationality as evidence of being a refugee. Germany has been reported as implementing such a strategy unilaterally.

The Temporary Protection Directive was designed for just such a purpose, at least as a stop-gap, but has not been implemented. Europe must find a way to fairly and effectively implement status determination procedures appropriate to a situation of mass influx.

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Arrivals on the island of Lesbos, summer 2015

Fotini Rantsiou

Lesbos, population 85,000, received more than 85,000 refugees and migrants in 2015 up to the end of August.

Improvised camps have been set up all over Mytiline, the capital, and outside the three areas designated for them. This created a huge pressure for the local population and authorities, already low on resources due to the economic crisis. But there was an outpouring of volunteers from the villages together with foreign tourists who helped people when they disembarked, disoriented from the trip and traumatised from their experiences.

The people arrive here from the Turkish seaside town of Ayvalik and surrounding remote beaches. Syrians in the great majority, recent refugees most of them. Among them, many Kurds and Palestinians but also Iraqis who have passed through Jordan, and by the time they get to Lesbos some of them register as Syrians hoping for ‘priority’ treatment. From Afghanistan, through Iran, walking and taking buses. A few Africans, from Eritrea and Somalia, through complicated smuggler routes. Pakistanis – and some Syrians – who often were originally smuggled into Greece, worked here for several years, left and are now returning, speaking the language.

You will hardly hear the words Al-Qaeda or ISIS, so popular in European and American analyses of the situation, when Syrians and Iraqis speak about what has driven them to undertake the perilous journey. There are people who have tried legal channels to reach the wealthier countries of Europe and North America, and failed. There are Palestinians from the West Bank, who cannot get visas to anywhere. There are people who can afford to book hotels through the internet to stay after they get their papers and while they wait for the ferry to leave, and there are those who barely have enough money to get to Athens.

They land at the north and east coasts of Lesbos, the closest point to Turkey. They then have to walk the 45-60 kilometres to town where registration takes place. It was