

It need not be like this

Cathryn Costello

Creating space for smugglers and failing to provide humanitarian assistance are European failures. Opening legal routes to Europe could deal with both.

That war creates refugees is nothing new. The Bosnian war of 1992-95 forced 2.2 million people to flee. What is new since then is European Union (EU) enlargement and the development of the Common European Asylum System (CEAS). This imposes legally binding standards on procedures, status and living conditions while refugee status is being determined. The CEAS requires individuals to be on the territory, not of the EU, but of the state in question, in order to claim asylum. However, EU law makes it virtually impossible to get to that country safely and legally.

For decades, this deep contradiction at the heart of European refugee protection has been evident. Without visas, passage on regular flights and ferries is blocked. Some land borders are safe to cross irregularly but others are fortified and the site of shootings by European border guards. But in spite of these barriers, 2015 saw over 900,000 irregular arrivals by boat alone. Measures to keep people out clearly do not work but their financial, human and political costs are huge.

Irregular journeys

Unsurprisingly, in the face of great demand come those willing to facilitate the irregular journey. Irregular journeys do not have to be deadly but an illicit market for a one-way trip has few safeguards against callous exploitation or profiteers. Instead of a normally short and cheap flight or ferry journey that might bring refugees to the EU, there is much further suffering and clandestinity, after which asylum in Western Europe may await. The legal measures to stop smuggling are part of the problem – in many instances, they would also suppress those who would wish to offer safe passage for good reasons.

By handing the keys to the EU to smugglers, the EU and its Member States lose

all control over who comes. The alternative – issuing humanitarian or other short-term visas to allow refugees to travel normally – is the most obvious way to disrupt the smugglers' business model, by taking out some of the demand. And, self-evidently, travelling with a visa through an airport is much safer and more secure. That no moves have been made to open up some regular travel routes is shocking, not only for the journey from Turkey to Greece but also for that from Greece across the Balkans. Instead, the United Nations High Commissioner for Refugees (UNHCR) repeatedly issues alarm calls about the dangers of that route, including the danger of extreme exploitation. When the money runs out, those travelling, including the many unaccompanied children and young people, have little to sell but themselves.

A crude estimate would put smugglers' revenues in Turkey at as much as 800 million Euros this year. To put that figure in context, the EU-Turkey deal of 29 November 2015 involves an initial EU aid budget of 3 billion Euros, whilst noting that Turkey has already spent US\$8 billion hosting 2.2 million Syrians under its temporary protection system; the entire EU Asylum, Migration and Integration Fund is 3.137 billion Euros for seven years. As for the refugees – many of whom will end up staying in Europe – they often deplete their life savings, sell all their assets, or leave behind family members in deep and dangerous debt to smugglers, not to mention the countless injuries and traumas suffered on the way.

The EU response has focused on the Libya-Italy route, where different drivers have created a smuggling bonanza. The instability in Libya has left brutal smugglers to offer passage in mainly unseaworthy craft. It appears most would not make it across without the intensive search and

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rescue operations, which are now militarised under a UN Security Council Resolution.¹

On arrival in Italy and Greece, there is little prospect of asylum in decent living conditions for most. So people move on, irregularly. People are relocating themselves, and the human rights violations suffered on the remaining journey are another catalogue of horrors.

The EU-Turkey deal seems, thus far, to be about containment. Responsibility sharing by offering resettlement is alluded to but no new commitments are made. The prize for the EU is not just stopping refugees from leaving Turkey but also being able to return the unwanted back there. The EU-Turkey readmission agreement (agreed but not yet in force) promises to facilitate returns to Turkey if the conditions are suitable. Of course, there would also be significant legal barriers to any returns but the signals are clear.

Safe passage

One part of an appropriate response to the crisis is not to ask refugees to wait patiently in camps for the rare chance of resettlement (the UK approach) but to open up visa channels and make clear strong commitments to allocating large numbers of humanitarian visas to allow those who are in great need to travel legally. Safe passage would mean issuing humanitarian visas so that asylum seekers can travel to a country to claim asylum. These are provided for in

the Schengen Borders Code, and some states already issue them (Brazil, for instance).

Resettlement often depends on refugees' willingness to wait for years in a neighbouring country for their status to be determined. It offers a new life but only for a tiny minority deemed deserving or 'vulnerable'. But resettlement could become a tool to offer protection quickly and to many. We have seen newly elected Canadian Prime Minister Trudeau use resettlement to offer swift safe passage to thousands of Syrian refugees. (Restoring Canada's justly proud tradition of refugee protection was an issue in his election.) However, resettlement alone can serve as a containment strategy, at its worst offering false hope and inducing refugees to stay in camps. We have already seen that newly displaced Syrians cannot find protection in Lebanon and Jordan, and their fate in Turkey is less certain than it was for those who fled at the start of the war. For them, the 'wait patiently for resettlement' option is pure fantasy.

The failures of the international humanitarian safety net need careful examination too. Even in a struggling state like Greece, the government has primary responsibility for those on its territory. In its support, the EU's humanitarian and civil defence mechanisms have not been triggered, and UNHCR has limited presence. When the EU opened a 'hot-spot' reception process to enhance registration on the Greek island of Lesbos, the opening was portrayed by the EU as a success. Yet within days thousands of people were sleeping outside it in the rain. Did no one ask, "Where will people sleep?" when the decision was taken about the location of the new registration system? In the complex multi-level system of the EU, the buck is passed and refugees suffer. The sheer disregard for basic human needs continues to shock. Daily calls for basic shelter, medical care and food supplies through volunteer networks are testament to many institutional and political failures, but also to much local effort and dynamism.

Levels of xenophobia and Islamophobia seem sure to rise unless a larger international effort is harnessed to link the groundswell of



Refugees from Iraq and Syria arriving on Lesbos having crossed by boat from Turkey.

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support for refugee protection with leadership and institutional efforts. Who knows how different things would have been had refugee departures been by regular means of travel, tapping into the public support that is obviously also part of this crisis? The extraordinary volunteer efforts across Europe – offering the bulk of the humanitarian support – suggest a new European civil society is being forged in those efforts.

Nurturing new transnational civil society could include a role for private sponsorship for refugee admissions and matching newly arrived refugees with locals for integration support. It could also involve issuing large numbers of humanitarian visas to refugees whose protection needs cannot be met in the

region of origin. Both of these moves would be win-win approaches for refugees and host communities. Thirdly, resettlement, at the appropriate scale, demands an international effort. An international conference on refugees from Syria and other countries caught up in the regional conflict is long overdue. Current deficits in leadership and cooperation undermine all three moves.

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Author of *The Human Rights of Migrants and Refugees in European Law*, OUP, Dec 2015.

1. UNSC Resolution 2240 of 9 October 2015
<http://unscr.com/en/resolutions/doc/2240>

