

The road more travelled? Onward movement of asylum seekers and refugees

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The phenomenon of onward movement creates formidable challenges for states, asylum seekers and refugees, and the international protection system as a whole.

Most asylum seekers arriving in the European Union (EU) in 2015 have come by irregular means via land or sea, transiting several other countries along the way. In at least some of these transit countries they might have had the opportunity to stay in relative safety. Such onward movement throws into sharp relief the question of where responsibility should lie among states for assessing a claim and providing protection where needed. But this does not, and should not, necessarily mean the first country to which refugees flee.

Only a limited proportion of refugees move onward from states near their countries of origin. Where they do so, it is often because of the unavailability or low standards of protection in the states to which they flee initially, limited access to assistance or other means of survival, separation from family members, or a lack of long-term solutions. In some cases, the

risk they perceive in undertaking further irregular travel may be less than the risk in remaining in a previous state.

The 1951 Refugee Convention and other international refugee law instruments do not stipulate precisely how responsibilities for protection should be divided or shared between states. Despite efforts over many years, multilateral processes have not succeeded to date in developing a global legal framework which defines a generally accepted means of allocating responsibility clearly and fairly, and which could obviate the need for people to move on in search of protection and solutions.¹

In Europe, the Dublin system was developed in the 1990s in order to clarify which European Member State would be responsible for examining the claim of an asylum seeker. It thereby sought to prevent secondary movement and what is

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referred to by some as ‘asylum shopping’ by people who had already claimed protection in another European State.

The hierarchy of criteria in the Dublin system should, in theory, operate firstly to bring families together. If it did so, this would address one of the most powerful reasons why they move onwards within Europe.

In practice, however, responsibility is attributed most frequently to the Member State through which the person first irregularly entered the EU. Failure to apply Dublin in a way that ensures adequate treatment and fair and effective asylum determinations has led courts to suspend transfers to other would-be responsible States in several cases, including in the leading cases of *MSS v Belgium and Greece*² from the European Court of Human Rights, and *NS & ME*³ before the Court of Justice of the EU. Amendments in 2013 to the Dublin Regulation have not sufficed to prevent continuing onward movement in the EU nor to safeguard the rights of asylum seekers.

Recent proposals from the European Commission to relocate asylum seekers within the EU seek to redistribute responsibilities among the Member States for asylum seekers through an ‘emergency relocation’ measure,

as well as establishing a permanent relocation scheme for use in future ‘crisis’ situations. In addition to supporting affected Member States, these proposals aim to reduce the compulsion for asylum seekers to move on irregularly. The proposed legislation does not require the process to take account of the intentions or preferences of asylum seekers as regards the Member States in which they wish to seek protection, based on close connections to the country, integration prospects or otherwise. As such, it fails to have sufficient regard to the rights, agency and legitimate interests of individuals, thereby increasing the risk that people will subvert the system and move onwards regardless.

Safe third country

EU law also establishes the concept of the ‘safe third country’, which permits Member States to refuse to admit claims from applicants who have come through a country which satisfies specified legal criteria for their safety. These include ratification and observance of international refugee law instruments and a functioning asylum system, legislation and institutions. However, the EU Asylum Procedures Directive acknowledges that the presumption of



Syrian Kurdish refugees cross into Turkey from Syria, near the town of Kobani.

safety can be tenuous, and asylum seekers must be given an opportunity to show that they might be at risk in an otherwise safe third country. The fact that most Member States do not apply this concept in practice today indicates their tacit acceptance that the Union's neighbours do not have sufficiently well-functioning asylum systems to meet the benchmarks for a 'safe third country' to which asylum seekers could be returned without a substantive examination of their claims.

Recent EU discussions have focused on how to strengthen cooperation with Western Balkan countries and Turkey, among others, around asylum and migration. Yet the examples of Turkey and Serbia demonstrate the difficulty of expanding the application of the 'safe third country' rule even to the EU's near neighbours. Since 2011 Turkey has become one of the foremost refugee-hosting countries in the world and is in the process of developing a fully-fledged asylum system. However, implementation of new Turkish laws – and assumption of full responsibility for refugee protection in the country – remains incomplete. Moreover, Turkey maintains a geographic limitation on its ratification of the 1951 Convention, meaning that as a matter of international law it continues to refrain from accepting full responsibility for non-European refugees. Meanwhile, Hungary has adopted legislation naming the countries of the Western Balkans, including notably Serbia, as safe third countries. This is an even more questionable designation, given the limited capacity of and significant gaps in the Serbian asylum system, acknowledged even by the Hungarian Supreme Court.

Conclusion

Reducing the incentives for or drivers of onward movement can only occur if significantly greater efforts are made at the international level to improve asylum standards and secure the cooperation of all countries along main routes for asylum seekers and refugees in ensuring access to protection. The EU often emphasises its strong interest in cooperation with third countries on asylum and migration. But a greater share of the resources and political

capital invested in that cooperation could and should be devoted to strengthening protection capacity, in order to counterbalance the high priority currently accorded to management of borders and migration.

Three areas of potential activity warrant particular attention. Firstly, there needs to be an enhanced focus among states on working in genuine partnership, including between countries in regions of 'destination' and those of origin and transit, to establish and reinforce protection capacity, and to encourage all states to take full ownership of responsibility for ensuring their asylum laws and institutions are effective.

Secondly, a stronger commitment is needed at the international level to ensuring access to durable solutions. Refugees languishing in protracted displacement are likely to resort to increasing numbers to irregular onward movement.

Finally, additional legal channels must be developed and expanded for those people who cannot find protection and solutions where they are. If the compulsion to move on is not addressed in more proactive and positive ways, Europe will continue to see desperate people prepared to take any risk to move onwards irregularly. Far-sighted collective approaches to onward movement and the protection needs of those who move are urgently needed in order to reinforce the effective operation and ongoing viability of the international protection system as a whole.

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This article is based on the views of the author, and does not represent the position of UNHCR or the United Nations.

1. See, for example, UNHCR (2005) *Convention Plus Core Group on Addressing Irregular Secondary Movements of Refugees and Asylum-Seekers: Joint Statement by the Co-Chairs FORUM/2005/7* www.refworld.org/docid/46b6ee6a2.html.
2. Application no. 30696/09; judgment of 21 January 2011 www.refworld.org/docid/4d39bc7f2.html
3. Joined cases C-411/10 and C-439/10, 21 December 2011 www.refworld.org/docid/4ef1ed702.html