

## **MIGRANTS AT SEA: WHAT ROLE FOR INTERNATIONAL LAW?**

This panel was convened at 3:00 p.m., Thursday, March 31, by its moderator Chiara Cardoletti-Carroll of the Office of the United Nations High Commissioner for Refugees, who introduced the panelists: Siobhán Mullally of University College Cork; Melissa Phillips of the Danish Refugee Council; Maria Theodorou of the Greek Embassy; and Ralph Wilde of University College London Faculty of Laws.

### **REFUGEES AND MIGRANTS AT SEA: A VIEW FROM THE MIDDLE EAST AND NORTH AFRICA REGION**

*By Chiara Cardoletti-Carroll\**

More than one million people crossed the Mediterranean in 2015. In the first ten weeks of 2016—during the supposedly quieter winter months—more than 165,000 people had already attempted the dangerous journey across the Mediterranean.

What is happening in the Mediterranean reflects, from a displacement perspective, the state of the world today and the profound protection crisis it is confronted with. Conflicts in Syria and throughout the world are generating profound levels of human suffering. The scale of forced migration and the responses needed dwarf anything we have ever seen before. There are now more than sixty million people displaced worldwide—more than at any time since the end of World War II. As of mid-2015, there were over 20.2 million refugees in the world, and asylum applications jumped 78 percent over the same period in 2014. The number of internally displaced people now stands at an estimated 34 million people.

How did we get here? Over the past five years, at least fifteen conflicts have erupted or reignited throughout the world: eight in Africa; three in the Middle East; one in Europe; and three in Asia. Old crises continue unabated, with protracted displacement becoming a preoccupying feature of the world displacement crisis. When a refugee spends an average of seventeen years in displacement, it is not surprising that secondary movements—like the ones we are seeing today in Europe—are increasingly becoming a coping mechanism for families seeking a dignified future for their children.

The United Nations High Commissioner for Refugees approaches this not as a “migrant problem,” but as a complex forced displacement/refugee situation requiring sustained protection responses and commitment to address the root causes of flight. While border management is a responsibility of all countries, orderly and protection-sensitive procedures that ensure every individual’s claim can be heard are fundamental in ensuring that the principle of *non-refoulement*, or the return of an individual to a country where his life or freedom would be threatened, is respected and properly applied. Border closures and pushbacks, including at sea, exacerbate vulnerabilities and sustain “market opportunities” for smugglers. Furthermore, evidence suggests that they do not work. Such tactics just change, and indeed complicate, the dynamics of irregular movements. At sea, all countries are bound by the imperative of assisting those in distress in keeping with the time-honored tradition of rescue at sea. The prohibition of *non-refoulement* also applies here, resulting in an obligation not to disembark people in territories where their rights would be threatened.

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As we confront what has been referred to as the “worse displacement crisis in history,” the urge is to do so in a spirit of shared responsibility to a common challenge while preserving the institution of asylum as a central, fundamental anchor in the development of effective regional and global responses.

**WHEN MIGRANTS MAKE PERILOUS SEA CROSSINGS:  
THE CAUSAL ROLE OF INTERNATIONAL LAW**

*By Ralph Wilde\**

When the fate of migrants at sea is discussed, it is common for the implementation of international law to be invoked as a remedy. The present paper interrogates some of the assumptions about the value of international law that lie behind this. What is at stake in viewing international law as a solution to current challenges relating to migrants at sea?

First of all, it is important to acknowledge how the law sometimes plays a major role in preventing migrants from obtaining protection from human rights abuses. Most fundamentally, the law does this by allowing other states, where protection might be forthcoming, to control their borders, both at their side of these borders, and outside this, at ports of exit—whether directly, through the extraterritorial posting of immigration officials, or indirectly, via the operation of legal sanctions against carriers. So, one reason why people pay smugglers significant amounts of money to travel on unseaworthy vessels is because they are legally prohibited, via these visa restrictions and carrier sanctions, from taking the safer and, usually, much cheaper options of regular sea vessels and flights.

This is where the term “illegal migrant,” much hated by refugee advocates—no person should be labelled “illegal”—reflects the general international legal proposition that a state has a right to control its borders, and individuals who cross such borders in contravention of this are, by international legal definition, “illegal migrants.” The term is helpful in reminding us that international law is directly involved in determining the dangerous and expensive nature of sea crossings.

It might be said, then, that certain state entitlements in international legal law are very much part of the problem. But there are, of course, other areas of law being invoked as the solution—notably, refugee law and human rights law. Refugee advocates and many international lawyers more generally are calling for states to comply with their obligations here.<sup>1</sup> It is suggested that if compliance happened, things would improve. Indeed, perhaps even the operation of the general legal entitlements of states to control their borders might be somehow modified if these other rules were followed.

The main relevant substantive obligation is that of *non-refoulement*, the requirement not to send someone back to face human rights abuse, which exists expressly in the refugee and torture conventions, and has been read into other, general human rights instruments. Here it is instructive to consider what is not covered by the obligation.

\* University College London, University of London, <http://www.laws.ucl.ac.uk/people/ralph-wilde>. The research for this piece was supported by the European Research Council. Warm thanks to Dr. Karen da Costa for research assistance. This piece discusses legal and political arrangements as things stood in March 2016.

<sup>1</sup> I should declare I was involved, along with Bşak Çali, Cathryn Costello, and Guy Goodwin Gill, in drafting and organizing the signatures for a letter, signed by over nine hundred international lawyers, coming out of the 2015 European Society of International Law conference in Oslo, conveying a message of this type. See Open Letter to the Peoples of Europe, the European Union, EU Member States and Their Representatives on the Justice and Home Affairs Council (Sept. 22, 2015), available at <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2015/09/open-letter1.pdf>.

In the first place, the obligation only applies once individuals have managed to reach or cross the border of the state's territory, or, at least as far as the obligation in human rights law is concerned, if they fall within the control of that state exercised extraterritorially. States can therefore try to prevent this obligation from arising through the operation of the legal arrangements of carrier sanctions and visa restrictions.

In the second place, once individuals are outside the state where they suffered or feared human rights abuse, and are in the territory or under the extraterritorial control of another state, then as far as the *non-refoulement* obligation is concerned, they have no right to move on to another state where the material conditions are better. Thus, people who have escaped Syria and are in camps in Lebanon and Turkey, or have managed to cross over to Greece, have no general right based on this obligation to move further, as many wish. By the same token, there is no requirement here on the part of other states to allow these people to travel to their countries to be given protection there.

An exception to this, insofar as it is still being honored and may survive in the future, is within the Schengen area of the European Union, where there is free movement of people between countries. The Schengen arrangement is the reason why, until borders began to be closed, migrants who had taken the so-called 'Balkan route' between Greece and Croatia or Hungary, and wanted to move further north and west, for example to Germany, were potentially able to do so. Even here, though, the law allows for extraordinary suspensions, with the reintroduction of border controls, something which was done by EU states.<sup>2</sup>

Moreover, to take advantage of this arrangement even when it was in operation, refugees who managed to get to Greece by sea had to initially make a further irregular journey without any legal entitlement, either through the non-Schengen EU countries of Bulgaria and Romania, or the non-EU former Yugoslav states.

More generally, outside these arrangements there is no right of movement to and across borders which could be exercised in order to be able to make asylum claims beyond initial destinations of escape. There is no general right to travel, for the purposes of obtaining refugee protection, into the Schengen zone, or indeed the European Union generally, from outside it, for example from Turkey to Greece or from Libya to Italy. Hence the perilous requirement of an irregular sea crossing.

Also worth noting is the EU system of common asylum law, which under the Dublin Regulation, seeks to ensure that individuals entitled to protection are normally given it in the first EU state they enter. Other EU states are generally entitled to send such individuals back to that first state. Thus, even when Schengen free movement is in normal operation, individuals who have managed to move because of it can be sent back to their original state of entry.

The combined effect of the normal operation of these legal provisions, both generally, and within the European Union, is to ensure that the responsibility for hosting individuals fleeing human rights abuses falls disproportionately on a minority of states. Moreover, these states are typically the least able, in material terms, to discharge their legal duty.

<sup>2</sup> *Schengen: Controversial EU Free Movement Deal Explained*, BBC News (Apr. 24, 2016), at <http://www.bbc.co.uk/news/world-europe-13194723>.

Despite what some in Europe imagine in terms of the numbers, even now, of refugees in that continent, most people fleeing across borders to escape human rights abuses move from one developing country to another.<sup>3</sup>

The law provides a means for refugees to be compelled to stay in these developing countries, by enabling more economically advantaged states to prevent regular means of travel to their territories via carrier sanctions and visa restrictions. Moreover, these states are, by virtue of their advantageous position, able to maximize the benefits of the prevention possibilities, by leveraging their economic significance to the airline industry when seeking to impose and implement carrier sanctions.

Necessarily, the only way of challenging this unequal legal system of refugee protection is either through individuals deciding to move illegally—and dangerously—or states choosing to waive their legal privileges, or go beyond their limited legal obligations. In other words, there has to be a departure from law, either through violation, in the case of refugees, or by doing things the law does not require, in the case of states.

The disproportionate regime of refugee protection globally feeds into, and is replicated by, the system in Europe: the law forces refugees from and travelling through Libya, and from Syria, to resort to the irregular and dangerous sea crossings that, even if successful, leave them in the poorer southern European countries of Italy and Greece, and then keeps them there, absent exceptional measures such as further irregular migration into the rest of Europe.

A further important feature of this system is that states exercising their legal entitlement to keep refugees out are not subject to a legal requirement to provide assistance to those other states who, because of these *non-entrée* actions, are faced with a disproportionate responsibility to host refugees.

Developed states may choose to waive their legal privileges and/or to act beyond what is required by international law. Germany initially decided to suspend its Dublin entitlements and accept refugees already present elsewhere in the European Union. Other European states decided to accept the direct transfer of certain refugees from the camps in Lebanon and Turkey, and to provide funding to improve the material conditions in those camps, sometimes explaining these measures as ways of preventing the need for individuals to make the perilous sea crossing.

More broadly, it is instructive to consider how the Office of the UN High Commission for Refugees (UNHCR), which is usually given the task of running refugee camps in developing countries, is funded. In the main, this is not through the general UN budget but, rather, through annual rounds of pledges from, and special appeals to, developed countries. In this context, we might understand the work of the agency running refugee camps as a means of richer countries assisting those developing states in which the camps are located. More broadly, we might view this as an alternative means of securing the welfare of the individuals in the camps, compared to the option of such individuals having a legal right to travel to wealthier countries to secure asylum there.

It might be said, then, that the legally-enabled policy of keeping most refugees out of developed countries can be compatible with the protection of these refugees, if complemented by the provision of material assistance to refugee camps, and mitigated by exceptional arrangements allowing in some refugees.

<sup>3</sup> According to the Office of the UN High Commissioner for Refugees: “Developing regions hosted 86 percent of the world’s refugees under UNHCR’s mandate.” See UN High Commissioner for Refugees, *Global Trends: Forced Displacement in 2015* (2016), at <http://www.unhcr.org/576408cd7.pdf>.

This argument has to reckon with the fact that the complementary protection arrangements are ultimately discretionary. This creates the possibility that they will be modest, arbitrary, and distorted by considerations other than the needs of the individuals concerned.

This possibility has indeed been realized in fact. The German government's decision to be more welcoming than it was legally required to be, already atypical when compared with most other European states, is no longer as popular in the country as it once was. The decision by certain other European states to take some Syrian refugees direct from the camps has involved a relatively limited number of people.

More broadly, the way UNHCR financing is configured, precariously dependent on the annual decisions of donor states, leaves the organization vulnerable to the charge that this has distorted the policies of the organization to suit the wishes of donor states to contain refugees—"warehousing" them outside the developed world.<sup>4</sup>

In this and other refugee assistance, we see Organisation for Economic Co-operation and Development (OECD) states sometimes using existing international development budgets, thereby reducing general aid provision, and thus potentially worsening the material conditions in the developing world which contribute to forced migration in the first place. What is posited as a remedy to a problem in one area comes at the expense of efforts in another area that actually addresses part of the cause of the problem in the first area.

This also enables OECD states to double dip in the discourse of international humanitarianism: they use the same resources to claim to be both meeting their aid targets—including the figure 0.7 percent of GDP that has been invoked for some time in international law—and providing supposedly "extra" assistance to deal with the exceptional current migration situation.

To conclude: when considering the fate of migrants at sea, we have to face up to how international law may be, at best, incapable of making much of a positive difference, and, at worst, partly determinative of the broader structural factors that mediate the decisions people make to take such dangerous actions.

## **REFUGEES AND MIGRANTS AT SEA: A VIEW FROM THE MIDDLE EAST AND NORTH AFRICA REGION**

*By Melissa Phillips\**

Over one million people embarked on irregular sea journeys in Europe, Asia, and the Horn of Africa in the course of 2015 alone, which raises the question as to why refugee protection on land is breaking down and what is forcing people to undertake boat journeys to obtain protection elsewhere. To understand the drivers and motivations for people moving irregularly, one must look at the conditions for displaced persons in what are commonly described as origin and transit countries, thus bringing into focus locations such as Syria, Jordan, Lebanon, Iraq, and Turkey. This might seem contrary to media and government officials who often repeat the message that the "frontline" of Europe's current refugee crisis starts at its southern Mediterranean borders in countries such as Italy and Greece. The largest driver of movement

<sup>4</sup> See, e.g., U.S. Committee for Refugees and Immigrants, *Statement Calling for Solutions to End the Warehousing of Refugees* (June 2005), available at [http://www.anafe.org/IMG/pdf/appel\\_europeen\\_lance\\_par\\_u.s.ve.pdf](http://www.anafe.org/IMG/pdf/appel_europeen_lance_par_u.s.ve.pdf) (I should declare I am a signatory to this statement).

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in the Middle East region is the ongoing war in Syria; the current scale of displacement in Syria, which is the result of conflict that commenced in 2011 after the Syrian uprising, includes 6.6 million internally displaced persons inside Syria, according to the Internal Displacement Monitoring Centre,<sup>1</sup> and 4.8 million refugees from Syria hosted in the neighboring countries of Turkey, Lebanon, Jordan, and Iraq according to the UN High Commissioner for Refugees (UNHCR).<sup>2</sup> Putting these figures into context, the number of people who reached Europe by sea in 2015 was just over one million—mainly Syrians, with a smaller number of Afghans, Iraqis, and other nationalities.<sup>3</sup>

Conditions for asylum seekers and refugees in the hosting region vary considerably. Taking the Syrian example, refugees from Syria in Turkey are subject to temporary protection regulations which affords them rights to education and healthcare but not, until recently, work rights; they remain in a situation of temporary limbo in a country where the main language is Turkish (and not their native Arabic). Turkey, to date, hosts the largest number of refugees from Syria (approximately 2.4 million), while Lebanon has the highest per capita concentration of refugees in the world (approximately 1 million), most of whom do not have a valid legal right to stay in the country after Lebanon imposed strict visa renewal measures and closed its borders in an effort to reduce the number of refugees in its territory. There are approximately seven hundred thousand refugees from Syria in Jordan, some of whom live in camps, whilst others have moved to urban areas in search of employment. This is only possible subject to “bailout” procedures that, if contravened, mean that people are not able to have their UNHCR and Ministry of Interior registration renewed, thus losing associated rights to school registration and subsidized health care. As a recent NGO report noted:

National legislation and policies in some of the countries neighbouring Syria makes it increasingly difficult for Syrians to live in those countries legally and significantly impedes refugees’ access to assistance and public services. It is often impossible to meet basic needs because most refugees have by now depleted their savings and sold their original assets, and there are very few legal ways to earn an income.<sup>4</sup>

This picture of uneven access to basic services and obtaining the valid right to stay, and few legal opportunities to employment is further complicated by the paucity of durable solutions on offer.

Durable solutions for refugees are threefold: resettlement (to a third country); reintegration (in a host country); and return (voluntary). During his tenure, the former United Nations High Commissioner for Refugees, António Guterres, also promoted “migration options” as part an expanded toolbox for protection of displaced persons and temporary humanitarian admission in third countries. With the conflict in Syria now into its sixth year, the likelihood of safe and dignified return to the country is remote, and to date only a small number of people have been recorded spontaneously returning. Anecdotally, the first preference of most Syrian refugees is to return to their country of origin, and in the interim, to find productive outlets that allow them to acquire skills or continue their education, which will be much

<sup>1</sup> Internal Displacement Monitoring Centre, *Syria: Country Information 2015*, at <http://www.internal-displacement.org/middle-east-and-north-africa/syria>.

<sup>2</sup> UN High Commissioner for Refugees, *Syria Regional Refugee Response*, at <http://data.unhcr.org/syrianrefugees/regional.php>. The term “refugees from Syria” is used deliberately instead of “Syrian refugees” as it includes a number of Palestinian refugees from Syria who were already in the country prior to the outbreak of conflict.

<sup>3</sup> UN High Commissioner for Refugees, *Refugees/Migrants Response – Mediterranean*, at <http://data.unhcr.org/mediterranean/regional.php>.

<sup>4</sup> Oxfam, et al., *Right to a Future: Empowering Refugees from Syria and Host Governments to Face a Long-Term Crisis 4* (2015), at <https://www.oxfam.org/en/research/syria-refugees-right-future>.

needed for the reconstruction of Syria. Reintegration in a neighboring host country is extremely unlikely and most governments have been quick to point out that they see the hosting of refugees and asylum seekers as a temporary arrangement. They have demonstrated this principle in action through a number of measures, including restricting access to their territory.

Over the last six months it has become increasingly difficult for refugees from Syria to cross into neighboring countries due to a growing number of border restrictions limiting movement (Jordan and Turkey) and complete closures (Lebanon).<sup>5</sup> As a result emphasis has been placed on resettlement, usually the most meagre durable solution in real terms, with just over two hundred thousand places pledged by third countries, such as Canada, Germany, the United Kingdom, and the United States (as of April 29, 2016). Despite calls for countries to offer resettlement to 10 percent of refugees from Syria, or 481,220 people by the end of 2016, a recent UNHCR pledging conference resulted in only a few thousand additional resettlement places pledged. This has been seen as a disappointing indicator of responsibility-sharing for refugees and has been further complicated by the recent deal between the European Union and Turkey on irregular migration.

The EU-Turkey “deal” refers to an agreement between the European Union and Turkey initiated in 2015 and further refined in 2016 whereby Turkey agreed to accept the rapid return of all persons not in need of international protection crossing from Turkey into Greece, and to take back all irregular migrants intercepted in Turkish waters in return for 3 billion euros for projects, visa liberalization for Turkish nationals, and reenergized EU accession talks. Additionally, for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the European Union, and Turkey will take measures to prevent new sea or land routes opening from Turkey to the European Union.<sup>6</sup> This arrangement was put in place following a surge in numbers across what is known as the “Eastern Mediterranean” route from Turkey into Greece and then onward across the “Western Balkans” into northern Europe.<sup>7</sup> It is just one example of government responses to irregular migration constructed upon assumptions that mobility can be stopped, deterrent-based approaches are preferable, and solutions can be outsourced to neighboring countries. Perhaps the most striking example of this comes from Australia which has a “stop the boats” policy whereby people arriving irregularly are detained on Manus Island in Papua New Guinea and offered resettlement locally in Papua New Guinea or in third countries, such as Cambodia. Shifting responsibility to another country also means that migrants and refugees are “out of sight and out of mind,” which has the pernicious effect of silencing their voices and making it harder to follow the consequences of immigration policies.

What has driven people to take to the seas in search of protection or a better life? As has been outlined earlier, the deteriorating quality of asylum in the region and protracted nature of the Syrian conflict are key factors, especially as the conflict enters its sixth year with no apparent solution in sight.<sup>8</sup> With few legal routes available in third countries—including resettlement, family reunification, or other migration pathways—what was once a much less significant route, than for example the Central Mediterranean path between Libya and Italy,

<sup>5</sup> For more on this, see Tania Karas, *Refugees Unwelcome: Border Closures and Freezing Temperatures*, IRIN NEWS (Jan. 25, 2016), at <http://newirin.irinnews.org/border-closures-and-freezing-temperatures>.

<sup>6</sup> European Council Press Release, EU-Turkey Statement (Mar. 18, 2016), at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement>.

<sup>7</sup> For more detailed trend analysis on a monthly basis, see Danish Refugee Council, *Where We Work: Middle East and North Africa*, at <https://drc.ngo/where-we-work/middle-east-and-north-africa>.

<sup>8</sup> Danish Refugee Council, *Middle East and North Africa Regional Report* (2016), at <https://drc.ngo/media/2126540/drc-going-to-europe-report-pdf.pdf>.

has become the main mode by which people are reaching Europe. It is also the less dangerous Mediterranean route with 806 deaths recorded at sea in 2015, as compared to 2,892 along the Central Mediterranean route, indicating a strong likelihood that an investment in irregular migration will “pay off.” Contrary to reports that refugees are leaving due to cuts in humanitarian assistance such as food aid,<sup>9</sup> a recent profiling of Syrians recently arrived in Greece found that the majority of refugees were single men, who had been internally displaced inside Syria (85 percent) before moving directly from Syria to Greece (45 percent) or staying less than six months in transit in Turkey. Their main motivations to reach Europe were cited as family reunification (43 percent) and education (22 percent).<sup>10</sup> Access to documentation, such as passports, is also a huge challenge for Syrians, both living inside the country in opposition held areas, and for refugees whose documents have expired. Faced with the option of dwindling funds in exile, for example 70 percent of Syrians in Lebanon are living below the poverty line and 90 percent are reportedly in debt. People are taking desperate measures to find a longer-term solution for themselves and their families. There are also indicators that sex trafficking and more aggravated forms of smuggling are on the rise as demand for irregular migration increases.<sup>11</sup> Finally, social media has influenced migration decisions and routes to a degree not seen before, highlighting how journeys are networked and information is shared at a rapid pace.<sup>12</sup>

There are lessons to be learned from this region, as there are lessons from other regions that can be applied here: firstly, a focus on short-term humanitarian needs cannot be at the expense of longer-term durable solutions and maintaining a commitment to achieving peace, which is the only sustainable way to mitigate further displacement; secondly, that mobility (both internal and external displacement) is very often a lifesaving strategy at individual and family levels; and thirdly, that protection at sea is interconnected to protection on land. On this final point, a subsequent policy misstep is to pay disproportionate attention to conditions in destination countries without acknowledging asylum issues in countries of origin and transit.<sup>13</sup> For example, while many European policymakers remain preoccupied with internal relocation quotas inside Europe, few have questioned why Turkey and Jordan are limiting access to territory for refugees from Syria or what the likelihood is of Syrians obtaining work permits under new legislation in Turkey. Thus, policy decisions are misaligned with the needs of refugees who remain—improved access to asylum, legal rights in host countries to education, healthcare, and basic services, and durable solutions, including family reunification.

To end on a brighter note, there are creative solutions to be realized if we can put our collective effort towards them. For instance, an initiative called Talent Beyond Boundaries is working with the private sector to find employment for refugees and match their skills

<sup>9</sup> UN High Commissioner for Refugees, *Seven Factors Behind Movement of Syrian Refugees to Europe* (Sept. 22, 2015), at <http://www.unhcr.org/news/briefing/2015/9/560523f26/seven-factors-behind-movement-syrian-refugees-europe.html>.

<sup>10</sup> UN High Commissioner for Refugees, *UNHCR Survey Finds Afghan and Syrian Refugees Arriving to Greece Are Fleeing Conflict and Violence* (Feb. 23, 2016), at <http://www.unhcr.org/news/briefing/2016/2/56cc4b876/unhcr-survey-finds-afghan-syrian-refugees-arriving-greece-fleeing-conflict.html>.

<sup>11</sup> Uzay Bulut, *Turkey: The Business of Refugee Smuggling, Sex Trafficking*, GATESTONE INST., at <http://www.gatestoneinstitute.org/7756/turkey-refugees-sex-trafficking>.

<sup>12</sup> See Bram Frouws, Melissa Phillips, Ashraf Hassan & Mirjam Twigt, *Getting to Europe the “Whatsapp” Way: The Use of ICT in Contemporary Mixed Migration Flows to Europe* (Danish Refugee Council, RMMS Briefing Paper 2, June 2016).

<sup>13</sup> Melissa Phillips & Antje Missbach, *Protecting Refugees in Transit*, ASIA & PAC. POL’Y SOC’Y, at <http://www.policyforum.net/protecting-refugees-in-transit>.



with businesses so that they can find sustainable employment.<sup>14</sup> Canada is to be commended for resettling 25,000 Syrian refugees in a relatively short period of time while Brazil is offering 8,474 humanitarian visas for refugees from Syria and, in the region, the Kurdistan Region of Iraq issues residency permits to registered refugees that grants them access to basic services, shelter, and work rights. It is clear that people only take to the high seas in search of protection if they feel they have run out of options in the face of ongoing conflict and persecution. Rather than reverting to predictable tropes about being tough on border control and increasing deterrent-based measures, which are not humane and not proven by the evidence to work, a set of measures across origin, transit, and destination countries, including regional approaches, are needed that respond to the current global realities of forced displacement and mobility.

## **A CRISIS OF PROTECTION IN EUROPE: MIGRANTS AT SEA**

*By Siobhán Mullally\**

The crisis in Europe is more properly understood as a crisis of protection and of policy. Core protections provided to refugees and migrants by European and international law, including the right to seek and to enjoy asylum from persecution and protection against refoulement, have come under threat. Faced with forced displacement of almost five million Syrian refugees, the focus of responses has continued to be on deterrence, deflection, and return. As Wendy Brown has noted, “at a time when neoliberals, cosmopolitans[, and] humanitarians . . . fantasize a world without borders, . . . nation-states, rich and poor, exhibit a passion for wall building.”<sup>1</sup> In the European Union, the “stark physicalism” of walls and fences have been supplemented by the launching of a military operation, EUNAVFOR MED, which includes among its stated aims, the prevention of loss of life at sea, the prevention of “illegal migration flows,” and disruption of the “business model of smugglers.”<sup>2</sup>

The business model of smugglers, however, is closely linked to the limited accessibility of pathways to regular migration, and the absence of a comprehensive resettlement response to the humanitarian crisis triggered by millions of people forcibly displaced by conflict. The reluctance to issue humanitarian visas, or to expand the scope of family reunification, combined with continued use of carrier sanctions underpins the very business model that the EUNAVFOR MED operation seeks to disrupt. Within the context of the European Union’s Common European Asylum System, the uneven sharing of responsibility for protection among member states, and divergence in the protection afforded to refugees and asylum seekers, remain to be addressed. Against this background, core principles underpinning the European Union’s foundational treaties—fair sharing of responsibility and solidarity—are not being met.

This short paper examines Europe’s current crisis of protection. This crisis raises questions as to the limits and potential of human rights norms, when invoked by migrants and refugees. As such, it also raises questions as to the current state of play of both the theory and practice of international law, and the conflicting interests that underpin its shifting frontiers. These conflicts include legal reforms that reflect, as Brown notes, simultaneous opening and

<sup>14</sup> Talent Beyond Borders, at <http://www.talentbeyondboundaries.org>.

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<sup>1</sup> WENDY BROWN, *WALLED STATES, WANING SOVEREIGNTY* 20 (2010).

<sup>2</sup> Council Decision (CFSP) 2015/778 2015 O.J. (L 122/31).

blocking—“universalization combined with exclusion and stratification,”<sup>3</sup> an apt description of the politics of the 2016 EU-Turkey Agreement.<sup>4</sup>

### THE RIGHT TO ASYLUM

The EU-Turkey Agreement is premised on the recognition of Turkey as a first country of asylum, and as a safe third country. If recognized as such, forced returns to Turkey come within the limits of EU and international law, overcoming the obstacles to removal posed by obligations of *non-refoulement*. The commitment to individual assessment of protection claims is designed to ensure that the political agreement cannot be challenged as an authorization or facilitation of collective expulsions.

Recent judgments of the European Court of Human Rights (ECtHR) have highlighted the positive procedural obligations on states arising from Article 4, Protocol No. 4 of the European Convention on Human Rights (ECHR). In *Khlaifia and Others v. Italy*, a case now pending before the ECtHR Grand Chamber, the Court held, by five votes to two, that the applicants had been subjected to a collective expulsion.<sup>5</sup> The “mere introduction of an identification procedure” was not considered sufficient in itself to rule out the existence of a collective expulsion. A number of factors led the Court to the conclusion that the impugned expulsion was collective in nature: there was no reference to the personal situation of applicants in the refusal-of-entry orders; there was no evidence that individual interviews concerning the specific situation of each applicant had taken place prior to the issuance of the orders; and perhaps, most tellingly, a large number of Tunisian nationals—the same nationality as the applicants—received the refusal-of-entry orders around the same time. *Khlaifia* followed from earlier judgments by the Court on collective expulsions, *Hirsi Jamaa and Others v. Italy*,<sup>6</sup> and *Sharifi and Others v. Italy and Greece*,<sup>7</sup> in which the absence of “sufficient guarantees” demonstrating that the personal circumstances of each of the migrants concerned had been “genuinely and individually taken into account” was critical.<sup>8</sup>

These judgments of the Court weigh heavily on the legal issues arising under the implementation of the EU-Turkey Agreement. The judgment of the Court in *Khlaifia* is particularly instructive, given its references to “exceptional waves of immigration,” and its acknowledgment of the many duties assumed by the Italian authorities, including rescue at sea, and provision for the health and accommodation of migrants on arrival on the island of Lampedusa. In a particularly important statement, the Court noted, however, that those factors cannot exempt the state from its obligation to guarantee conditions that are “compatible with respect for human dignity to all individuals.”<sup>9</sup> The Court also emphasized the absolute nature of the protections afforded by Article 3 of the ECHR—a point reinforced in the Concurring Opinion of Judge Keller.

The collective expulsion cases reveal a willingness on the part of states to test the limits of legality, including of the safe third country concept. In *Khlaifia*, Judge Keller noted that

<sup>3</sup> BROWN, *supra* note 1.

<sup>4</sup> Although referred to as an “Agreement,” its precise legal status is disputed. See European Council Press Release, EU-Turkey Statement (Mar. 18, 2016), at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement>.

<sup>5</sup> Case of *Khlaifia and Others v. Italy*, App. No. 16483/12, para. 156 (Eur. Ct. H.R. Sept. 1 2015).

<sup>6</sup> *Hirsi Jamaa v. Italy*, App. No. 27765/09 (Eur. Ct. H.R. Feb. 23, 2012).

<sup>7</sup> *Sharifi and Others v. Italy and Greece*, App. No. 16643/09 (Eur. Ct. H.R. Oct. 21, 2014).

<sup>8</sup> *Khlaifia*, *supra* note 5, para.157; see, *mutatis mutandis*, *Èonka v. Belgium*, App. No. 51564/99, paras. 61–63 (Eur. Ct. H.R. Feb. 4, 2002).

<sup>9</sup> *Khlaifia*, *supra* note 5, paras. 127–28.

the preliminary investigations judge of Palermo had invoked the state of necessity (*stato di necessità*) to justify the “immediate transfers” of migrants. This argument, and related arguments concerning international law and state responsibility in times of “distress,” were rejected by Judge Keller. However, it remains the case that a statist assumption underpins much of European human rights law, reflected in the oft-repeated statement of the European Court of Human Rights: “[A] State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there.”<sup>10</sup> Those treaty obligations are most often triggered at the point of removal, imposing restrictions that reflect the wider positive obligations of protection and the necessity of procedural safeguards.

It is unclear whether the procedural safeguards required by international human rights treaty obligations, and by the EU asylum *acquis*, can in fact be guaranteed in the context of the EU-Turkey Agreement. Legislative reforms introduced in Greece provide for transposition of the recast Asylum Procedures Directive.<sup>11</sup> However, questions have arisen as to the compatibility of these reforms with the Directive’s limited procedural protections including, in particular, with regard to the suspensive effect of appeals.

The rush to conclude the Agreement is likely to come under continuing scrutiny, particularly given the trust placed in the Greek asylum determination procedures and capacity for reception. At the time of its conclusion, the Committee of Ministers of the Council of Europe had not yet closed its supervision of execution of the judgment in *M.S.S. v. Belgium and Greece*.<sup>12</sup> In the landmark judgment of *M.S.S.*, the Grand Chamber revisited its earlier *KRS* ruling, attaching “critical importance” to the UNHCR’s request to Belgium to suspend transfers to Greece in light of deteriorating conditions, and the additional availability of “numerous reports and materials” documenting the practical difficulties in the Greek asylum procedure.<sup>13</sup>

The judgment of the Court in *M.S.S.* attaches considerable importance to asylum seekers as a “particularly underprivileged and vulnerable” group, in need of “special protection.”<sup>14</sup> The vulnerability of asylum seekers arriving from Turkey to Greece is heightened, however, by the pushback policy deployed by the European Union—a policy that does little to speak to the “special protection” obligations invoked by the Strasbourg Court.

Of particular note in the Court’s judgment in *M.S.S.*, is the Concurring Opinion of Judge Rozakis, in which he took the opportunity to highlight the deficiencies of EU immigration policy, including the Dublin II Regulation (as it then was). The Regulation, he noted, did not reflect the present realities, or “do justice to the disproportionate burden that falls to the Greek immigration authorities.”<sup>15</sup> His comments were prescient, and have only increased

<sup>10</sup> *Omoregie and Others v. Norway*, App. No. 265/07, para. 54 (Eur. Ct. H.R. July 31, 2008).

<sup>11</sup> Council Directive 2013/32/EU, 2013 O.J. (L 180/60). Greek Law 4375/2016 was adopted under urgent procedure on April 1, 2016.

<sup>12</sup> *M.S.S. v. Belgium & Greece*, App. No. 30696/09 (Eur. Ct. H.R. Jan. 21, 2011). See UN High Commissioner for Human Rights, Greece as a Country of Asylum – UNHCR’s Recommendations (Apr. 6, 2015); Fifth Joint Submission of the International Commission of Jurists and the European Council on Refugees and Exile to the Committee of Ministers of the Council of Europe in the Case of *M.S.S. v. Belgium & Greece* and Related Cases (Mar. 2016), available at <http://www.statewatch.org/news/2016/apr/ecre-icj-submission-coe-Greece-Committee-Ministers-5th-submission-legal-submission-2016.pdf>.

<sup>13</sup> *M.S.S. v. Belgium & Greece*, *supra* note 12. See, CATHRYN COSTELLO, THE HUMAN RIGHTS OF MIGRANTS AND ASYLUM SEEKERS IN EUROPE 262 (2015).

<sup>14</sup> *M.S.S. v. Belgium & Greece*, *supra* note 12, para. 251.

<sup>15</sup> *Id.* at 91.

in relevance subsequently. There was, he said, “an urgent need for a comprehensive reconsideration of the existing European legal regime.”<sup>16</sup> Despite this urgency, however, this comprehensive reconsideration has yet to be realized. Proposals for a fairer process of allocation of responsibility continue to be contested. Against the background of a “crisis situation in the Mediterranean,” even the limited “temporary and exceptional” relocation decision adopted by the European Council in 2015 is facing legal challenges by EU member states Hungary and Slovakia.<sup>17</sup>

#### PUSHBACK, DEFLECTION, AND SAFE THIRD COUNTRIES

In a carefully worded assessment of the legal considerations of returning asylum seekers and refugees from Greece to Turkey, UNHCR cautions that “sufficient protection” must be ensured before the safe third country and first country of asylum concepts can be applied.<sup>18</sup> The requirement of “sufficient protection” is stated in Article 35 of the Recast Asylum Procedures Directive, and is considered by UNHCR to require more than a guarantee against *refoulement*.<sup>19</sup> This raises questions then not only about the effectiveness of access to protection in Turkey, but also about the rights afforded to those returned beyond the persecution risk, extending instead to the everyday of socioeconomic rights on return. Recognizing the lack of clarity surrounding the concept of “sufficient protection” in the Directive, and the perhaps “constructive ambiguity” underpinning this provision, UNHCR has recommended that a question be referred to the Court of Justice of the European Union (CJEU) to clarify its scope.

Greece, as it has been noted, has long struggled with a “defective asylum system.” To implement the EU-Turkey Agreement—in particular, arrangements for accelerated asylum procedures for detained applicants and returns to Turkey—the Greek parliament adopted Law 4375/2016 under an urgent procedure. The legislative reforms and the legal underpinning of the Agreement itself, however, were challenged by the decision of a Greek appeals tribunal sitting in Lesbos refusing to recognize Turkey as a safe third country. The tribunal decision found that the temporary protection afforded by Turkey to the appellant, as a Syrian citizen, “does not offer him rights equivalent to those required by the Geneva convention.”<sup>20</sup> The decision echoes concerns expressed with regard to the level of protection afforded in Turkey, and brings into question the European Union’s presumptions regarding the legality of its return and resettlement tradeoff.

#### CHILDREN ON THE MOVE:

##### ARENDT’S CHILDREN AND RECURRING GAPS IN PROTECTION

The position of children and, in particular, unaccompanied minors on the move in Europe has attracted particular concern.<sup>21</sup> In March 2016, the Council of Europe Secretary General

<sup>16</sup> *Id.*

<sup>17</sup> See, Council Decision 2015/1601, 2015 O.J. (L 248/80); Case C-643/15, Slovakia v. Council (E.C.R.); Case C-647/15, Hungary v. Council (E.C.R.).

<sup>18</sup> UN High Commissioner for Refugees, Legal Considerations on the Return of Asylum-Seekers and Refugees from Greece to Turkey as Part of the EU-Turkey Cooperation in Tackling the Migration Crisis Under the Safe Third Country and First Country of Asylum Concept (Mar. 23, 2016), available at <http://www.refworld.org/docid/56f3ee3f4.html>.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> Apostolis Fotiadis, Helena Smith & Patrick Kingsley, *Syrian Refugee Wins Appeal Against Forced Return to Turkey*, GUARDIAN (May 20, 2016).

wrote to all forty-seven member states of the Council of Europe setting out a list of proposals for immediate action to ensure better protection of migrant and asylum seeking children.<sup>22</sup> The letter cites the findings of the Council of Europe Group of Experts on Action against Trafficking (GRETA) that significant gaps in the protection of unaccompanied minors persist in most Council of Europe member states, with often tragic consequences.<sup>23</sup>

At the time of writing, the execution of the judgment of the European Court of Human Rights in *Rahimi v. Greece*,<sup>24</sup> in which a violation of Article 3 of the ECHR was found, continues to be supervised by the Committee of Ministers, reflecting continuing gaps in protections afforded to unaccompanied minors. In that case, the Court was particularly concerned at the detention of *Rahimi*, (then a fifteen-year-old Afghan boy), albeit for a short period, and the failure by the Greek authorities to appoint a guardian on his release from detention. Since the Court's judgment in *Rahimi*, the reception conditions for asylum seekers and migrants arriving in Greece has significantly worsened.<sup>25</sup> The Strasbourg Court has, in a series of judgments relating to the treatment of asylum seekers, found Greece to be in violation of Article 3—conclusions at which the Court does not easily arrive.

The phenomenon of “missing migrant children” is not new. However, the conceptual and practical challenges posed by increasing numbers of migrant children in Europe has brought the limits of state responses into sharp focus. As Jacqueline Bhabha notes, migrant children often drift into abusive contexts, as a consequence of the protection lacunae they face. State interventions in response to such risks of abuse are often punitive or infantilizing. As a consequence, even trafficked children may seek to escape from state institutions where they are placed after “rescue,” and return to abusive or risky situations.<sup>26</sup> In state responses, perceptions of vulnerability and otherness coalesce, resulting at policy level in a certain ambivalence to the rights claims of migrant children. Their access to state entities willing and able to protect them is tenuous at best; they are, Bhabha argues, *de facto* or “functionally stateless.” Against this background, the question of how child and adolescent migrants can “translate the principles of international law into meaningful human rights protections”<sup>27</sup> remains open.

## CONCLUSION

“Law’s migration,”—a term used by Judith Resnik to describe a diffusion of norms,<sup>28</sup> specifically the interactions of human rights and fundamental rights norms at international, regional, and local levels—has resulted in a rapid expansion of rights claims by migrants

<sup>21</sup> In 2015, 85,482 unaccompanied minors applied for asylum in the European Union, the majority of whom were Afghan nationals.

<sup>22</sup> Letter from Thorbjørn Jagland, Secretary General, Council of Europe, to the Heads of Government of the Forty-Seven Member States of the Council of Europe (Mar. 2, 2016); Council of Europe, *Protecting Children Affected by the Refugee Crisis: A Shared Responsibility, Secretary General’s Proposals for Priority Actions*, SGI/Inf (2016) 9 Final (Mar. 4, 2016).

<sup>23</sup> Council of Europe Group of Experts on Action Against Trafficking in Human Beings, *Fifth General Report on GRETA’s Activities* (2016).

<sup>24</sup> *Rahimi v. Greece*, App. No. 8687/08 (Eur. Ct. H.R. Apr. 5 2011).

<sup>25</sup> More recently, a Report of the PACE Committee on Migration noted that “hundreds of children have been detained in the hotspots in inappropriate, poor conditions, at risk of abuse.” Parliamentary Assembly Council of Europe Committee on Migration, Refugees and Displaced Persons, *Refugees at Risk in Greece* 7, para. 13 (Apr. 22, 2016).

<sup>26</sup> JACQUELINE BHABHA, *CHILD MIGRATION AND HUMAN RIGHTS IN A GLOBAL AGE* 7 (2014).

<sup>27</sup> *Id.* at 11.

<sup>28</sup> Judith Resnik, *Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry*, 115 *YALE L.J.* 1564, 1565 (2006).

and asylum seekers in the European context. Despite this expansion, however, the deportability of the “alien” continues to limit the protections afforded by rights. Even in a time of armed conflict, forced displacement, and manifestly well-founded protection claims, the right to asylum remains contested in practice.

Core norms of the Law of the Sea—obligations of search and rescue, of assisting persons in distress at sea, and delivering survivors to a place of safety—have gained prominence in Europe’s crisis of protection. There have been significant failures of the maritime legal framework, including disputes as to the proper demarcation of Search and Rescue zones, and significant loss of life—tragically captured in the “left-to-die” boat incident.<sup>29</sup> While the technical norms of the Law of the Sea have sometimes provided a comforting tool to allay fears of further dereliction of duty, moving beyond rescue has proven more difficult.

The EU-Turkey Agreement marks a process of de-juridification, an enactment of limits. Drawing on Michel de Certeau, we might argue that rights claimants can make of the “rituals, representations and laws imposed on them something quite different from what their . . . (originators) had in mind.”<sup>30</sup> Such a claim, of course, presumes capacity (both *de jure* and *de facto*) to organize and to resist. It is precisely these capacities that are limited by the precarious status of migrants and asylum seekers. While legal challenges and the claiming of rights will persist, the fundamental reforms required to ensure safe passage to those seeking protection, and the expansion of pathways to lawful migration, remain elusive.

### **MIGRATION/REFUGEE CRISIS: A CHALLENGE OF HISTORIC PROPORTIONS FOR EUROPE**

*By Maria Theodorou\**

#### **The migration crisis in numbers:**

The ongoing conflict in Syria and the broader destabilization of the Middle East region has triggered a massive influx of migrants and refugees fleeing from their countries. Most of them arrive to the European Union (Greece) through Turkey, having as their final destination countries of western and northern Europe.

- In 2015, over 911,000 refugees/migrants passed through Greece, 96 percent of which arrived from Turkey on boats. Comparing to 2014 (77,000), this has been an increase of 1.081 percent.
- In the first two months of 2016 alone, the number amounts to 130,000 people.
- Migrants/refugees were mostly nationals of Syria (500,000), Afghanistan (213,000), and Iraq (91,000).
- In 2015, the Hellenic Coast Guard rescued more than 150,000 people in the Aegean Sea and arrested 1,501 smugglers. In January–February 2016, more than 30,000 people were rescued.
- More than 50,000 refugees/migrants are currently stranded in Greece. Nine thousand are located on islands, mainly in Lesbos, Chios, and Samos. Almost 12,000 in the

<sup>29</sup> Parliamentary Assembly Council of Europe Committee on Migration, *Refugees and Displaced Persons, Lives Lost in the Mediterranean Sea: Who Is Responsible?* (Mar. 29, 2012).

<sup>30</sup> MICHEL DE CERTEAU, *THE PRACTICE OF EVERYDAY LIFE* xiii (Steven Rendall trans., 1984), cited in *LAW IN EVERYDAY LIFE* 8 (Austin Sarat & Thomas R. Kearns eds., 1994).

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Athens region, and approximately 14,000 in Idomeni, close to the borders with the FYROM.

**Greece and the migration/refugee crisis:**

- Greece, situated at the European Union's external border and being disproportionately burdened, did, and continues to do, its utmost to rescue refugees fleeing from war, while they struggle on a perilous journey in the Aegean Sea.
- The extended Greek-Turkish maritime borders and the geographical proximity of Greek islands to Turkish shores have resulted in Greece being the main entry point of migrants/refugees in the European Union. The unprecedented flows of refugees and illegal migrants have dramatically deteriorated the situation, especially in the Greek islands in the Aegean.
- On the northern borders of Greece with FYROM and along the "Western Balkan route," unilateral measures by a number of countries, including the restriction of the accepted number of asylum seekers per day and the closing of borders, has had a direct impact on Greece, resulting in the concentration of significant numbers of migrants on Greek territory.
- As a part of an agreement with its EU partners, Greece has undertaken (November 2015) the commitment to increase its reception capacity to 50,000 persons, and is working toward this end. Unfortunately, the relocation program of migrants to other EU member states, as well as returns to countries of origin or transit, are not progressing adequately or efficiently.
- In its seventh year of recession and in a dire financial situation, Greece has long been struggling to cope with the overwhelming numbers of arrivals, putting tremendous efforts and resources to rescue those people in need and receive them in a humane way. With the assistance of the recently mobilized units of the Hellenic Army, remarkable progress has been made in setting up reception facilities and identification procedures to facilitate relocation. Hot spots in the islands of Lesbos, Chios, Samos, Leros, and, shortly, in Kos, are fully operational. However, despite the best efforts of all Greek authorities, the strain upon their means and capabilities is reaching a breaking point.
- The people of Greece have also shown their solidarity on a daily basis, by providing food and shelter to the refugees.
- Nonetheless, it is impossible for Greece to properly host such large numbers of people, all of whom are determined to use every means and device to continue their movement further north. It is telling that of all the refugees who have arrived, only 3 percent have requested asylum in Greece, as this would oblige them to stay there.

**What needs to be done:**

- The migrant/refugee crisis surpasses the capacities of individual countries and has to be dealt with collectively and in a coordinated way. No viable solution can be reached by one single country alone.
- Dealing with this crisis is not only a European challenge, it is a global one; it requires, therefore, a global response. To this end, all actors must commit themselves to a collective and multifaceted approach, that should focus on:
  - Addressing the root causes of the crisis: Without restoring peace and stability in Syria, Iraq, and Afghanistan, there is no prospect for refugees to return to their homelands and local population will continue fleeing for safer places and a better future.
  - Reducing flow from Turkey: Turkey is under a great deal of pressure, hosting over 2.5 million refugees. Nonetheless, it is a key country which could stem the flows

to the European Union's southeastern borders. The reality is that only on Turkish soil can migratory flows be checked and managed. Once the refugees and migrants are allowed to embark from Turkish soil, it is already too late since the borders in Aegean are maritime and, under international law, any attempt to push back migrants is turned into a rescue operation.

- Dismantling smugglers and migrant trafficking networks: Combatting trafficking networks and disrupting their "business model" must be a top priority. A process that ensures identification and relocation of persons qualified as refugees straight from the refugee camps in Turkish territory, in a legal and organized manner, could considerably disrupt traffickers that take migrants to Greece through the Aegean Sea.
- Controlling borders effectively: Maritime borders are completely different to those on land. Fences cannot be raised, while, according to international law, *refoulement* (pushback) is prohibited. On the contrary, there is an obligation to provide assistance to persons in distress at sea and every attempt to intercept small boats and dinghies immediately becomes a rescue operation. The only way to effectively overcome these complications is to prevent migrants from leaving Turkish shores, and conducting surveillance operations within the Turkish territorial waters, so that migrants are returned back to Turkey. Substantive enhancement of Frontex's capabilities and NATO's contributions have vital roles in this regard.
- Relocation and burden sharing: Despite concrete commitments in 2015 to relocate 66,400 refugees from Greece to other EU member-states, only 325 persons have been relocated to date. More work should be done to rejuvenate the process and establish a permanent mechanism, not only within the European Union, but also globally.
- Readmission: Equally important is the effective implementation of readmission agreements with the countries of origin (Afghanistan, Pakistan, Iraq) and transit (Turkey) of migrants, which very often procrastinate or bluntly refuse to readmit their own nationals. Turkey should be included in the list of safe countries of origin. This is consistent to its status as an EU candidate country. In addition to that, both the European Union and Greece have concluded readmission agreements with Turkey.
- Cooperating with and assisting third countries: Not only Turkey, but also Jordan, Lebanon, and Egypt, should be assisted in stemming migration flows.

#### **Latest developments:**

- Latest developments, such as NATO engagement in the Aegean, the EU-Turkey Agreement on managing migrant/refugee flows, direct cooperation between Greece and Turkey, and the establishment of an EU Emergency Support Mechanism, are positive steps in the right direction.
- While efforts to tackle migration/refugee crisis are gradually being invigorated, implementation of the agreements remains crucial. To a large extent, Turkey is involved in all aspects of the initiatives taken so far, and its cooperation is pivotal in order to successfully manage the situation.
- NATO: Starting from March 7, 2016, NATO forces became operational in the Aegean. NATO's mission includes monitoring and surveillance, as well as cooperation with Frontex and national coastguards, in order to dismantle traffickers' networks in the Aegean. It is now important that Turkey does not pose any obstacles for NATO to operate within the Turkish territorial waters, in order that illegal migrants arrested in the area of NATO's operations can be brought back to Turkey. It is also important to expand NATO's operation to the southern part of the Aegean Sea, at the Dodecanese



complex, in order to cover alternative routes of smugglers, such as through the islands of Kos and Kastelorizo.

- EU-Turkey Agreement (March 18, 2016): The EU-Turkey Agreement of March 18, 2016 is a significant step toward ending irregular migration from Turkey to the European Union. It mainly targets the smugglers' business model, while removing incentives to seek irregular routes to the European Union.
- Emergency Support Mechanism: On March 9, 2016, the Council of the European Union agreed on an emergency support mechanism in response to the difficult humanitarian situation caused by the refugee crisis, notably in Greece. This enables the European Union to help Greece and other affected member states to address the humanitarian needs of the large numbers of arrivals of men, women, and children. The European Union's humanitarian assistance is aimed at meeting the basic needs of refugees by providing food, shelter, water, medicine, and other necessities.
- Greece-Turkey: On March 8, 2016, during the Greece-Turkey High Level Cooperation Council in Izmir, the two competent ministers signed a protocol of cooperation that will facilitate return of migrants coming from Turkey.

Greece will continue to do its utmost to rescue refugees fleeing from war, while they struggle on a perilous journey in the Aegean Sea. We have put tremendous efforts and financial resources to rescue those people in need and receive them in a humane way in our frontline islands, with the aid and mobilization of the local population.