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Asylum seekers and refugees: sharing responsibilities in Europe

Report[1]
Committee on Migration, Refugees and Population
Rapporteur: Sir Christopher CHOPE, United Kingdom, European Democrat Group

Summary

It is recognised under the 1951 United Nations Convention relating to the Status of Refugees that asylum places a heavy burden on certain countries and that solutions cannot be found without international co-operation.

The large-scale arrival of boat people on Europe's shores over the last decade has brought with it new challenges, not only in terms of reception, but also processing of asylum claims, resettlement, relocation and returns. The arrivals brought about by recent conflicts in North Africa have once again put the spotlight on the issue of responsibility sharing, in particular in relation to Malta, Italy and Greece.

Paradoxically, the number of asylum claims in Europe is not insurmountable, even if for small countries, such as Malta, the strain is much more marked. The issue is, however, creating tension across Europe with "frontline" states pleading for responsibility sharing. The so-called "Dublin system", which supposedly regulates responsibility for dealing with asylum claims in the European Union, is in need of reform. Member states of the Council of Europe have to show more solidarity with the "front-line" states, and they must encourage the European Union to provide further support to states under pressure, notably through funding, through the border control agency Frontex and also through the newly established European Asylum Support Office. The European Union should also be ready to share information and give support to European countries, non-member states of the European Union, on issues relevant to managing mixed flows of migrants, asylum seekers and refugees.

1. Rerence to committee: Doc. 12499, Reference 3742 of 28 January 2011.

Contents **Page**

A. Draft resolution 3
B. Draft recommendation 6
C. Explanatory memorandum by Mr Chope, rapporteur 7
1. Introduction 7
2. Legal basis of the principle of solidarity and responsibility sharing 8
3. Collective responsibility in asylum matters: an “international public good” 8
4. Key figures 9
5. Current variety and lack of co-ordination of asylum management tools in Europe 10
6. Europe’s asylum challenges 11
7. Past failures in responsibility-sharing initiatives 13
8. Responsibility sharing tools 13
9. Way forward: fairness both for member states and for asylum seekers 16
10. Long-term solutions do not stop at Europe’s borders 17
11. Conclusions by the rapporteur 18

A. Draft resolution[2]

1. The Parliamentary Assembly believes that further measures are needed to ensure that responsibilities for refugees and asylum seekers are shared fairly in Europe and that those seeking international protection have access to fair and efficient systems for the processing of their claims.

2. The recent conflicts in North Africa have once again put the issue firmly on the agenda. By 10 May 2011, a new wave of arrivals had brought 34 460 to Italy comprising about 23 000 irregular migrants and 11 000 asylum seekers/refugees, and 1 106 to Malta (almost all asylum seekers or refugees). Notwithstanding the relatively high numbers in Europe, they should be put in the context of the experience of Libya's North African neighbouring countries which have received approximately 750 000 refugees.

3. The Assembly notes that the number of asylum seekers in Europe, and in particular those arriving from the southern Mediterranean, should not pose an insurmountable problem for Europe as a whole, although their concentration in certain regions will pose a much greater problem for those countries or regions in the country concerned. Malta in particular, because of its size and population, and the tiny island of Lampedusa, risk the greatest strain.

4. This Assembly believes that it is a paramount responsibility of each member state of the Council of Europe to meet its own international legal and humanitarian obligations under the 1951 United Nations Convention relating to the Status of Refugees.

5. The effective protection of asylum seekers and refugees across the world cannot be achieved without countries sharing responsibilities. One example of this has been the requests from front-line Mediterranean countries for a greater sharing of responsibility in response to large-scale arrivals of asylum seekers and refugees on Europe's southern shores.

6. All member states of the Council of Europe should be participating fully in the programmes of the Office of the United Nations High Commissioner for Refugees (UNHCR) for the resettlement of refugees and should accept that, because of the uneven geographical distribution of refugees, fair sharing of responsibility for resettlement is essential.

7. To encourage such fair sharing of responsibility, more information should be given to national parliamentarians to enable them to put pressure on their governments to meet their moral duties. For example, in 2010 European countries resettled only 5 824 refugees compared with 54 077 resettled by the United States and 6 732 by Canada.

8. It is of the utmost importance that the interests of refugees and asylum seekers are kept distinct from those of economic migrants.

9. Porous external borders facilitate racketeering and international people smuggling. Therefore, more effective measures must be taken by member states to maintain the integrity of their own national borders.

10. In order to deter people smugglers from using the high seas for their heinous trade, member states should consider the use of coastguard vessels. These vessels should be sufficiently equipped to enable them to identify anyone with potential international protection needs, something that has been done effectively by the United States Coast Guard.

11. The Assembly notes that within the 27 member states of the European Union, there is a vigorous debate about what each one should be doing by way of sharing responsibility. The Dublin II Regulation system, which was designed to prevent forum shopping and duplicate applications for asylum, is no longer fully effective because of the inability of a number of countries, notably Greece, to meet their obligations to provide fair and efficient systems for processing asylum applications. It is unacceptable, however, that the situation in Greece continues to be below international standards. The European Union should have made it a condition of the financial help to Greece that it should comply with its international obligations on the protection of refugees and asylum seekers.

12. In the view of the Assembly, the current situation and status quo is not sufficient and action has to be taken, primarily for three reasons. The first is that a number of member states are not coping with the current situation and there exists a real threat of ongoing arrivals creating further pressure and problems. Secondly, the Dublin System has been shown to be unfair and in need of reform. The most recent condemnation by the European Court of Human Rights in its judgment earlier this year (*M.S.S v. Belgium and Greece*) attests to

2. Draft resolution adopted unanimously by the committee on 1 June 2011.

this. The third reason is that the issue of responsibility sharing is beginning to create collateral damage and that further friction within the European Union member states is focused on those countries which are within the Schengen zone. The actions of some countries in allowing irregular migrants to receive documentation entitling them to travel anywhere within the zone has created tensions which have now reached the level of intergovernmental European Union discussion. These issues need to be resolved.

13. From the perspective of the Council of Europe, it is important that countries within the European Union are not regarded as having special status. The same principles should be applicable in all 47 countries. It would therefore be inappropriate for the Assembly to give definitive advice about what the European Union should do in respect of each of its current problems relating to Schengen, the European Agency for the Management of Operational Cooperation at the External Borders of the Member states of the European Union (Frontex), and aspirations to create a common immigration and asylum policy for the European Union, except in the context of human rights.

14. The European Union does, however, have financial resources and material resources which should be made more widely available to Council of Europe member states. For example, Frontex has access to satellite intelligence which should enable it to identify vessels which are leaving North Africa loaded with migrants, so that they can be intercepted in a co-ordinated way. The European Union also has the ability to help facilitate bilateral and multilateral arrangements to help reduce the pressure on particular points of entry such as the border between Turkey and Greece.

15. In order to tackle the issue of responsibility sharing in Europe, taking into account the responsibilities which exist at the moment and foreseeing future developments, the Assembly calls on all member states to:

15.1. encourage reform of the Dublin system to achieve more flexibility, where necessary, on the application of the principle of asylum determinations being carried out in the first arrival country;

15.2. provide direct assistance to countries in need, in particular those currently receiving large-scale mixed migration flows in the southern Mediterranean, including by:

15.2.1. assisting with border controls, interception of boats and rescue of people in need;

15.2.2. facilitating reception, including by providing support for infrastructure and its operation;

15.2.3. providing assistance for screening those with possible international protection needs;

15.2.4. helping with asylum determination and fair and efficient asylum procedures;

15.2.5. facilitating returns (both of irregular migrants and of failed asylum seekers);

15.2.6. accepting, as a priority, relocation within Europe from countries under strain, prior to or after the asylum determination process, and resettlement from countries outside of Europe in full co-operation with the UNHCR;

15.2.7. taking steps to tackle the root causes of flows of asylum seekers, refugees and irregular migrants;

15.3. put greater reliance upon intelligence-led interceptions at sea, so as to co-ordinate their response to people smugglers.

16. The Assembly recognises that further responsibility sharing cannot be effective without a commitment from the countries at the forefront of the current asylum flows to:

16.1. guarantee access to their territory to any person that might be in need of international protection;

16.2. provide the necessary reception conditions in accordance with relevant human rights and humanitarian standards;

16.3. provide a prompt and fair asylum process and ensure the quality and consistency of decisions;

16.4. ensure the integrity of their borders and control the irregular migration flows.

17. Recognising the particular responsibility, resources and mandate of the European Union in this matter, the Assembly calls on the European Union to:

17.1. modify, as necessary and as early as possible, the Dublin system, in particular in the light of the judgment in the case of *M.S.S v. Belgium and Greece*, both to ensure fair treatment and appropriate guarantees for asylum seekers and beneficiaries of international protection and also to assist individual member states to face possible situations of exceptional pressure;

17.2. ensure that its funds are flexible and easy to mobilise, to be able to react quickly in the case of unforeseen events and emergency, and consider the possibility of financing infrastructure in particular to ensure adequate reception facilities;

17.3. ensure that in respect of its members there are accurate and consistent statistics relating to applications for international protection, the granting of refugee status and asylum, detection and return of irregular migrants and realistic estimates of the number of illegal entrants into the European Union;

17.4. rapidly find an agreement on the European Commission's proposal for the establishment of a European Union joint resettlement programme, to be implemented in close co-operation with the UNHCR;

17.5. in revising the Frontex regulations, ensure that full human rights guarantees are included;

17.6. address the alarming increase in the number of forged travel documents circulating in Europe, the forecasts by Frontex of increased irregular migration and the concerns of Europol as to the security threats resulting therefrom.

18. Finally, the Assembly commends the work of the UNHCR, congratulates it on its 60th anniversary and calls on all members of the Council of Europe to mark the anniversary by taking greater responsibility for resettling refugees and addressing the challenge of asylum seekers in Europe.

B. Draft recommendation[3]

1. The Parliamentary Assembly, referring to its Resolution … (2011) "Asylum seekers and refugees: sharing responsibilities in Europe", considers that Europe has to take further measures to ensure that responsibilities for refugees and asylum seekers are shared fairly in Europe and that those seeking international protection have access to fair and efficient systems for the processing of their claims.

2. The Assembly therefore invites the Committee of Ministers to:

2.1. establish a Council of Europe good practice guide in asylum determination practice and procedure, highlighting the relevant Council of Europe human rights standards;

2.2. ensure Council of Europe access and input to any materials developed by the European Union, for example by the European Asylum Support Office, to ensure that the interests of all 47 member states of the Council of Europe (and not just the EU-27) are fully taken into account;

2.3. provide a framework for providing mutual assistance, resettlement and relocation of refugees across the 47 member states of the Council of Europe.

3. Draft recommendation adopted unanimously by the committee on 1 June 2011.

C. Explanatory memorandum by Mr Chope, rapporteur

1. Introduction

1. The report's origins are in the motion for a resolution which the rapporteur, together with others, presented on 26 January 2011.[4] The motion followed the judgment of the European Court of Human Rights ("the Court") in the case of *M.S.S. v. Belgium and Greece* and stated that "The Assembly should consider what measures are needed to ensure that responsibilities in the field of asylum are fairly apportioned in Europe and guarantee refugees and asylum seekers access to an effective asylum procedure and international protection".

2. The motion preceded the "Arab spring" and the consequential surge in the number of refugees, asylum seekers and migrants seeking to enter Europe from North Africa. The gravity of the issues which this report addresses is underlined by the disturbing news on 9 May 2011 that 61 people fleeing from Libya on a boat had tragically died of starvation and thirst off the North African coast after drifting in the Mediterranean for 16 days.

3. When the rapporteur visited Brussels on 3 May and had meetings with representatives from Amnesty International, the Office of the United Nations High Commissioner for Refugees (UNHCR), the European Commission, the European Parliament and the European Council, he was told that one of the difficulties in addressing the problem of illegal smuggling of immigrants from North Africa taking advantage of the political situation was that, after paying for their passage, the refugees, asylum seekers and migrants were put to sea and left to their own devices while the smuggling gangs disembarked. That is exactly what seems to have happened on 9 May.

4. It is the intention of this report to address the issue of sharing responsibilities in Europe in the sense of the 47 member states of the Council of Europe rather than the narrow definition of the 27 member states of the European Union in which the European Parliament, European Commission and European Council have their focus.

5. The fundamental point must be made that the first and foremost responsibility of each member state of the Council of Europe is to meet its own international, legal and humanitarian obligations including under the 1951 United Nations Convention relating to the Status of Refugees ("the Refugee Convention").

6. The second point is that if individual countries find it difficult to cope with the administrative burden of processing applications for international protection arising in their own country, they should not refrain from asking other countries to come to their assistance. They should be encouraged to take responsibility for arranging such bilateral or multilateral arrangements on their own initiative. For example, Turkey has recently been reported as having drawn up arrangements to ensure that a potential mass influx of refugees from Syria can be avoided by providing a temporary safe haven within the Syrian border until stability returns.

7. 7. The third point is that countries need to work together to ensure that the scale of irregular migration and smuggling by criminal gangs is addressed. The reason for this is that the problem is not the volume of asylum seekers but the volume of economic migrants who swell the numbers needing processing.

8. The fourth point is that all Council of Europe member states should be encouraged to take genuine asylum seekers from those states beyond Europe's boundaries and within Europe where the numbers are too great for the host nation, proportionate to its population and resources. But this will only be politically possible when suspicious electorates believe that there is tighter control over irregular migration. There is also a strong argument for sharing responsibility for those who cannot be returned to their countries of origin because of the rules of *non-refoulement*.

9. It is essential, however, that if we are to ensure that responsibilities in the field of asylum are fairly apportioned as the motion seeks, we must have much better information than currently seems to be available about what is actually happening at Europe's external borders.

4. Doc. 12499, motion for a resolution on "Asylum seekers and refugees: sharing responsibilities in Europe".

2. Legal basis of the principle of solidarity and responsibility sharing

10. At international level, paragraph 4 of the Preamble to the Refugee Convention recognises the need for responsibility sharing when it comes to asylum matters by stating that "Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation".

11. While this provision is merely declarative, and while it is clear from international humanitarian law that the primary responsibility for protecting and assisting refugees rests with the country of asylum, numerous "soft law" instruments clearly enshrine the principle of responsibility sharing.

12. This was done, among others, in the conclusions of the United Nations High Commissioner for Refugee's Executive Committee, in resolutions of the United Nations General Assembly.[5] It has also been clearly reaffirmed by the Parliamentary Assembly, including as recently as April 2011.[6]

13. For the 27 member states of the European Union, Article 80 of the Treaty on the Functioning of the European Union (TFEU) provides a legal basis for the principle of solidarity and fair sharing of responsibility in asylum and migration matters. It reads as follows:

> *"The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. …"*

14. Article 80 of the TFEU applies to EU institutions and to member states when it comes to the policy area of borders, asylum and immigration. Article 78 of the TFEU is also relevant insofar as it refers to provisional measures in case of an emergency situation, when a member state is confronted with a sudden inflow of third-country nationals.

15. The "need for genuine and concrete solidarity towards member states most directly concerned by migratory movements" was clearly reaffirmed by the European Council in its conclusions on the management of migration from the Southern Neighbourhood adopted on 11 and 12 April 2011.[7] But the form which the co-operation/solidarity should take was not defined.

3. Collective responsibility in asylum matters: an "international public good"

16. From an overall perspective, sharing responsibility is beneficial not only to the countries faced with a high number of arrivals because of their geographical situation in Europe, but also for others.[8]

17. Through mutual support, member states that are not currently under great pressure could ensure that they would be eligible for assistance from other member states in the future were their circumstances to change and they found themselves faced with substantial arrivals of refugees and asylum seekers. Responsibility sharing can also eventually close routes for irregular migration into Europe because traffickers and smugglers will find it more difficult to identify and exploit weaknesses in border controls. Responsibility sharing is therefore a way to increase collective stability at Europe's borders.

18. Without responsibility sharing, those countries that are unable to cope with the migratory pressure might, at worst, just give up. Indeed, there have been allegations that some countries do not do everything in their power to prevent onward migration from southern Europe to the North. Furthermore, we know that many of the migrants, asylum seekers and refugees in the North of Europe have come in from the South (see, for example, the recent arrival of Tunisians in France from Italy). There is therefore already a problem which needs to be addressed for the benefit of Europe as a whole.

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5. See, for example, Res 62/124 of 2008, www.undemocracy.com/A-RES-62-124.pdf.
6. See Resolution 1805 (2011) on the large-scale arrival of irregular migrants, asylum seekers and refugees on Europe's southern shores.
7. www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/121479.pdf.
8. See European Parliament study on the implementation of Article 80 of the TFUE on the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States in the field of border checks, asylum and immigration (2011 – PE 453.167), p. 9.

19. Reform of Schengen is now firmly on the EU table with active discussion about closure of some EU internal borders, albeit on a temporary basis. This is the "worst case scenario" as described in a recent European Parliament study. A co-ordinated approach based on mutual co-operation might have avoided the current tensions between France and Italy.

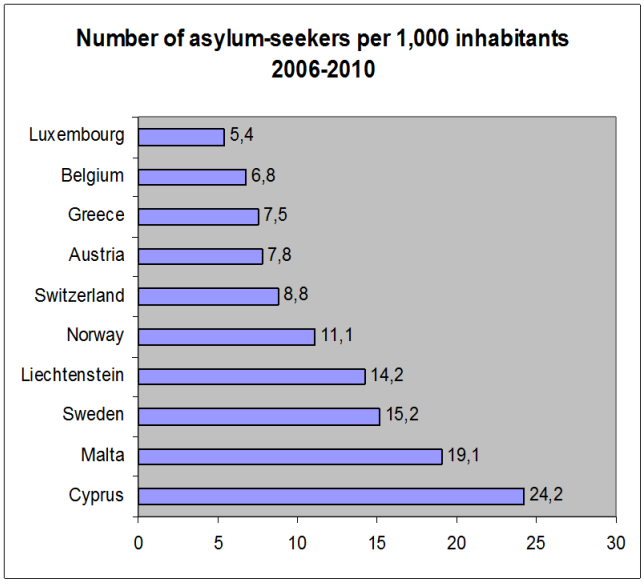
20. The sharing of responsibility for asylum has also been described as an "international public good"[9] leading to a more enduring resolution of crisis situations. Asylum reception should be seen as a collective responsibility, and even as an "international public good".[10]

4. Key figures[11]

Claims for asylum	Europe / European Union	Southern European countries[12]
2010	269 900 / 87% in EU countries	33 600
2009-2010	- 6%	- 33%
2000-2010	- 50%	na

Share of asylum claims worldwide	Europe
2005	60%
2009	45%

Claims for asylum	France	Germany	Sweden	United Kingdom	Belgium	Greece	Italy	Malta
2010	47 800	41 300	31 800	22 100	19 900	10 300	8 200	28
Evolution since 2009	+ 13%	+ 49%	+ 32%	- 28%	- 16%	- 36%	- 53%	-94%



9. See European Parliament Study "What system of burden-sharing between Member States for the reception of asylum seekers?" (2010 – PE 419.620), p. 16.
10. Ibid.
11. Source: UNHCR, Asylum levels and trends in industrialized Countries 2010, statistical overview of asylum applications lodged in Europe and selected non-European countries, 28 March 2011, www.unhcr.org/4d8c5b109.html; Eurostat, http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-10-032/EN/KS-QA-10-032-EN.PDF.
12. Refers to Albania, Cyprus, Greece, Italy, Malta, Portugal, Spain and Turkey.

21. Any discussion about the sharing of responsibility has to be based upon accurate data as to the actual situation. The number of people seeking asylum in one of the 47 member states of the Council of Europe remains significant but the numbers do not appear to be such as to justify shortcomings in processing such as those identified by the European Court of Human Rights in the judgement in the case of *M.S.S. v. Belgium and Greece*. The most authentic figures for the number of asylum seekers coming into the 27 countries of the European Union and the two Schengen associated countries of Norway and Iceland come from Frontex. The term 'Frontex' derives from the French "frontières exterieures". It is the European Union's agency for external border security with a legal remit to be the European agency for the management of operational co-operation at the external borders of the member states of the European Union. It has been operational since 3 October 2005. Frontex collects data from European Union countries from which it produces an annual risk analysis.

22. Its most recent analysis, issued on 11 May 2011, shows that in 2010, 104 049 people were detected crossing the European Union external borders illegally. The number was almost identical to that of 2009. The report highlights, however, that in 2010 there was a 45% increase in detections of illegal border crossings at the Greek borders with Turkey. The Greek authorities reported a total of 47 706 such crossings at the land border with Turkey which represents almost half of all such movements into the European Union. Frontex ascribes the reason for this to a shift in the dominant routes used by migrant smugglers. The focus of illegal activity is on a 12.5 km section of land border in the Evros river region, mainly around the Greek city of Orestiada. On Frontex's evidence alone it is apparent that in 2010 Greece faced a substantially larger problem of irregular migrants than other countries. So far in 2011 it may well be that the focus has again returned to Italy as indeed it was in 2008 when a peak of 31 300 foreign nationals arrived illegally on Lampedusa.

23. The Frontex figures can be criticised for not presenting a complete picture. This is obvious from the fact that the 27 EU member states registered 235 900 claims for asylum in 2010 according to Eurostat. 47 800 of these were in France, 41 300 in Germany, 31 800 in Sweden, 22 100 in the United Kingdom and 19 900 in Belgium. It appears that very large numbers of those who registered claims for asylum must have entered at an EU external border without detection before travelling to the country where they registered their claim. This is corroborated by the fact that the actual number of requests for asylum made in Greece fell by 36% in 2010 despite the number of illegal arrivals detected increasing by 45%.

24. It is also a matter of concern that Frontex's annual risk analysis states that over the coming year irregular passenger flows across the external borders are expected to rise. This is due to "increasing mobility globally as well as the possibility of visa liberalisation procedures for the EU's eastern European partners and new agreements governing local border traffic along the eastern borders". Frontex also cites the possibility of important changes in the external Schengen and EU borders with the possible entry of Romania and Bulgaria into the Schengen area and Croatia's possible accession to the European Union.

5. Current variety and lack of co-ordination of asylum management tools in Europe

5.1. At national level

25. Understandably and in compliance with their sovereign right to exercise control over their borders and to take measures to prevent unlawful entry into their territory, all countries have their own approach to the adoption of measures based on the defence of their own interests.

26. Italy, for instance, had signed a co-operation agreement with Libya. According to this agreement, now suspended for obvious reasons, Italy had been repatriating to Libya all persons rescued in international waters. While this individual solution proved its efficiency in stopping arrivals of irregular migrants to Italy, it raised concerns about the denial of access to international protection and about the treatment of those sent back to Libya. Italy has also reached an agreement with Tunisia in recent weeks, although the precise text has not been seen by the rapporteur.

27. Several other countries have reached bilateral agreements with third states. This is for instance the case between Spain and Mauritania. According to this bilateral agreement Spanish vessels are entitled to patrol the Mauritanian territorial waters.[13] Under the auspices of Frontex joint operations conducted off the Mauritanian coast, Spanish vessels intercept flagless vessels and ensure their return to Mauritania.

13. For more information on the legal framework of such agreements, see Doc. 12628, report on the interception and rescue at sea of asylum seekers, refugees and irregular migrants (Rapporteur: Mr Arcadio Díaz Tejera, Spain, SOC).

28. Malta has a resettlement programme with the United States in the framework of which 500 persons have been relocated so far. A resettlement pilot project has been developed at EU level. Such best practice could be extended.

29. These varied solutions show how different countries respond. But what happened to any genuine refugees who were among those automatically returned to Libya under the agreement with Italy? The UNHCR has expressed its concern that under that agreement people in need of international protection were prevented from coming to Europe. The rapporteur was told by a UNHCR representative that it has recognised 11 000 refugees in Libya, some of whom are now arriving in Malta and Italy.

5.2. European Union scheme of responsibility distribution/allocation

30. Following the 1985 Schengen Agreement on the abolition of internal borders,[14] the European Union has put in place certain rules of responsibility allocation amongst its member states.

31. The rules in question are known as the "Dublin Convention",[15] which later became the Dublin II Regulation.[16] However, while seeking an effective, co-ordinated system, Europe has ended up with a system, the implementation of which has given rise to infringements of the 1951 Refugee Convention.

32. While the intention was to achieve a fairer division of responsibilities among European countries, the Dublin system has placed a disproportionate burden on countries such as Greece, Malta, Italy, Spain and Cyprus at the external borders of the European Union.[17]

33. The European Court of Human Rights, in its *M.S.S. v. Belgium and Greece* judgment,[18] ruled that Belgium (for having sent an asylum seeker back to Greece) and Greece (because of the dreadful living and detention conditions of asylum seekers in Greece) had violated, *inter alia*, the non derogable provisions of Article 3 of the European Convention on Human Rights. Other similar cases are currently pending before the Court.

34. It is clear that a simple mechanism putting the responsibility on the first state of arrival is not a complete solution. It was based on the assumption that all EU countries weresafe and able to cope. They were not. There are also wide variations in a person's chances of being granted asylum in particular countries.

6. Europe's asylum challenges

6.1. Greece – collapse of the asylum system

35. There are differing views as to the extent to which countries such as Italy, Malta and Greece should be able to take responsibility themselves.

36. During the committee's hearing on the Stockholm programme, Ms Cecilia Wikström, MEP and rapporteur on the Dublin system for the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, stated that in the aftermath of the Balkan wars Sweden dealt with 82 000 asylum applications in one year and that this was not an impossible task. She underlined the readiness of many states, including Sweden, to help out states like Greece facing difficulties to cope with the number of asylum claims. But she also claimed that those states had to request help: "Just pick up the phone" was her plea.

37. However, the past situation in Sweden and the current situation in Greece are different. In the first case, Sweden had to deal with persons with similar profiles with similar protection needs. Indeed, many applicants refuse to provide any information whatsoever. This makes the asylum determination process much more complicated. Furthermore, Greece is in the middle of an economic crisis.

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14. Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders, 14 June 1985. 22 EU member states, plus Iceland, Norway and Switzerland are currently signatories to the agreement.
15. Convention determining the State responsible for examining applications for asylum lodged in one Member State of the European Communities, 15 June 1990.
16. Council Regulation 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member states by a third-country national, 18 February 2003.
17. See, inter alia, Kritzman-Amir T. and Berman Y., Responsibility sharing and the rights of refugees: the case of Israel, JLE, 2009, 41, George Washington International Law Review, 619.
18. M.S.S. v. Belgium and Greece, Application No. 30696/09, 21 March 2011 (Grand Chamber), see especially paragraph 223.

38. As was stated above, the European Court of Human Rights has condemned the long denounced living and detention conditions of refugees and asylum seekers in Greece for being in breach of Article 3 of the European Convention on Human Right. It has furthermore condemned the major structural deficiencies of the asylum procedure in Greece.

39. Greece, which is under particular pressure of arrivals of refugees and asylum seekers (but also of irregular migrants) due to its geographical position, is experiencing huge difficulties in dealing with the asylum claims. In compliance with the Dublin Regulations, other EU member states send back to Greece asylum seekers that first entered the European Union via Greece. Since the M.S.S. judgment, many EU countries have suspended returns of asylum seekers to Greece.

40. This, however, has not been enough to solve the problems. Greece has still to deal with a backlog of over 50 000 asylum claims and urgently needs to reform its asylum procedure to ensure its fairness and effectiveness. While plans for the reform of the Greek asylum system, released in 2010, have been warmly received by the UNHCR, nothing has been implemented despite an avowed political will to do so. There would seem to be strong arguments for the Greek financial bale out being made conditional upon reform of the asylum system.

41. European states could alsoconsider the possibility of sharing among themselves part of the Greek backlog. This would be fair towards the asylum seekers currently waiting for their claims to be dealt with. It would also encourage Greece in its reform efforts. A fresh start would also speed up Greece's capacity to catch up with its European and international obligations.

6.2. Malta – disproportionate pressure on a very small country

42. Due to its geographical position, Malta is one of the main entry points into the European Union for boat arrivals, be they refugees, asylum seekers or irregular migrants. Malta has a huge challenge in dealing with these arrivals. With 400 000 inhabitants, the country is one of the most densely populated (over 1 250 inhabitants per square kilometre) and has little room to accommodate extra people. Furthermore, Malta's territorial waters are extensive, thereby putting additional pressure and responsibility on the country's stretched resources. Because it is an island, there is no easy route for persons once they arrive to make their own way northwards into the rest of Europe. Those who arrive stay until another solution can be found. There is no "official safety valve" such as has been resorted to by Italy whereby those who arrive can be left to disappear elsewhere.

43. There are thus particular issues to be addressed in relation to Malta and the need for solidarity and responsibility sharing. While it is clear that Malta continues to take steps to improve its detention policy and the conditions of detention and reception, the Commissioner for Human Rights says it needs to do more.[19] If the flow of boat people continues at the current pace, this is likely to create grave humanitarian problems as well as substantial problems for the Maltese authorities and the general public. All member states of the Council of Europe need to consider what they can do to help share responsibility with Malta in the event of such a scenario. Indeed, the Committee of Ministers should already be engaged in contingency planning in case the situation deteriorates further.

6.3. Exceptional situation – Europe's southern countries at the forefront of large-scale arrivals of refugees and asylum seekers fleeing conflicts in Libya

44. Given the current turmoil in North Africa, it is clear that the figures mentioned above (see Part 4) will significantly differ in 2011.

45. According to most recent estimates, over 750 000 persons have fled the violence in Libya, finding refuge mainly in Egypt (260 000) and Tunisia (360 000).[20] In addition to migrants not in need of international protection, a number of refugees (for example Somalis, Eritreans, Sudanese) have left Libya. Some of them have managed to reach Malta and Italy. Among them, some had already been granted refugee status a number of years ago but had been unable to move on from Libya.

46. By 10 May 2011, around 34 500 people (23 000 Tunisians and 11 000 non-Tunisians) had arrived by boat in Lampedusa. Arrivals from Libya have also reached both Malta (by early May 2011, over 1 100 persons, mainly of sub-Saharan origin (primarily from Somalia and Eritrea)) and Italy (mainly Lampedusa).[21]

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19. www.coe.int/t/commissioner/News/2011/110328Malta_en.asp.
20. UNHCR Highlights on the situation in Libya and neighbouring countries, UNHCR, 10 May 2011.
21. Ibid.

47. Earlier this year, amongst those who had already arrived on Lampedusa the majority had come from Tunisia and did not intend to claim asylum. Italy has since reached an agreement with Tunisia and the arrivals of Tunisian economic migrants have almost stopped. Now, people fleeing Libya arrive with more compelling international protection needs. More are, however, likely to come to both Malta and Italy. On 7 and 8 May 2011, two boats from Libya arrived in Lampedusa with 1 300 persons on board, mostly originating from Sub-Saharan Africa and South-East Asia.

48. If, as appears likely, these arrivals continue, there will be even greater pressure and necessity for European states to show solidarity with one another.

7. Past failures in responsibility-sharing initiatives

49. In the past, some attempts to better share responsibility for refugees in Europe have been aborted.[22]

50. The Council Directive on Temporary Protection in the case of Mass Influx,[23] while indeed being a proper solidarity and responsibility-sharing tool, has not been invoked once since its adoption in 2001. However, in the event of a massive inflow of persons in need of international protection in the aftermath of the events in North Africa, the European Commission has recently expressed its readiness to consider proposing the use of the mechanism foreseen under this Directive if the required conditions are met.[24]

51. Article 9 of the Dublin Convention provides that "Any Member State, even when it is not responsible under the criteria laid out in this Convention, may, for humanitarian reasons, based in particular on family or cultural grounds, examine an application for asylum at the request of another Member State, provided that the applicant so desires". Article 3, paragraph 2, also entitles member states to examine an application for asylum even if such examination is not its responsibility under the criteria laid down in the Dublin Convention. These existing "humanitarian clause" and "sovereignty clause" provisions which allow a member state to proceed with an asylum claim even though it was not the first state of entry of the asylum seeker show that the Convention has more flexibility than some of its critics admit. The problem is that the flexibility has not been exercised as it could have been, even, for example, in the M.S.S case.

8. Responsibility sharing tools

52. In a Joint Communiqué, published on 19 April 2011, Cyprus, Greece, Italy, Malta and Spain once again called on Europe for more solidarity and responsibility sharing, emphasising that the "possible prolongation of … influxes of illegal migrants and asylum seekers to the Mediterranean Member States cannot be managed without the concrete and substantial support and solidarity from the rest of the EU's Member States".[25]

53. To answer such calls, the European Union has a range of both financial and operational tools that could be used in a more generalised, efficient, but also long-term manner.

8.1. Resettlement and relocation

54. Refugee resettlement consists in the relocation of refugees from one state in which they have sought asylum to another state which has agreed to admit them as refugees and to grant them settlement on its territory. As stated by the UNCHR: "Resettlement is the concrete expression of a commitment to refugee protection and to the promotion of human rights. It is also a practical manifestation of international responsibility sharing". [26]

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22. See "What system of burden-sharing between member states for the reception of asylum seekers?" 22 January 2010 Study, European Parliament, Directorate General for internal policies, PE 419.620. In 2004, Finland made a proposal for EU responsibility-sharing mechanism, which the Germans had already tried in the early 90s. In both instances, EU member states could not reach an agreement.

23. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof. If the relevant conditions are met, the Directive enables to provide immediate and temporary protection to displaced persons from third countries who are unable to return to their country of origin, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:HTML.

24. European Commission's MEMO/11/226; http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/226&format=HTML&aged=0&language=EN&guiLanguage=en; see also Communication on Migration from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM(2011) 248 final, 4 May 2011.

25. Joint Communiqué II, Nicosia, 19 April 2011, www.doi.gov.mt/EN/press_releases/2011/04/DOI%20-%20pr0785A.asp.

55. With roughly 1 900 places in 2010, Sweden has the largest single resettlement programme in Europe, followed by Norway (1 100), for a total of roughly 6 000 in Europe for 2010.[27] Compared with the 50 000 in the United States, 7 000 in Canada and 6 000 in Australia, it is difficult to argue that Europe has exhausted its capacity.

56. With the prospect of an increase in the flows of refugees in need of international protection coming from Libya, the European Commission has offered financial support to facilitate resettlement. The European Commission has also encouraged EU member states to offer resettlement places "in a spirit of responsibility-sharing". Finally, the European Commission has underlined the need for the European Parliament and the European Council to rapidly find an agreement on the adoption of the Commission's proposal for the establishment of an EU joint resettlement programme.[28]

57. Relocation, a solidarity mechanism between European states, is also a possible way for European states to support other member states under specific and disproportionate pressure.[29]

58. In 2008, pilot projects on the relocation of refugees located in Malta were introduced with the aim of helping to ease the disproportionate and exceptional situation in Malta.[30] This EU pilot project aims to provide relocation possibilities in other countries for people who have been granted asylum in Malta. France, Germany, Luxembourg, Hungary, Poland, Portugal, Slovenia, Slovakia, Romania and the United Kingdom participate in this project. This is considered a form of good practice in terms of European responsibility sharing, and has been praised by the UNHCR.[31] In its conclusions on the management of migration from the Southern Neighbourhood adopted on 11 and 12 April 2011, the European Council welcomed the European Commission's intention to extend this existing pilot project.[32]

59. On 12 May 2011, after the Pledging Conference on Relocation and Resettlement which was organised by Commissioner Malmström in the margins of the Justice and Home Affairs Council meeting, it was announced that at least ten EU member states as well several non-EU member states had agreed to relocate 323 asylum seekers who are currently in Malta.[33]

8.2. Frontex operations

60. Responding to an official request by the Italian authorities, Frontex has deployed the Joint Operation EPN Hermes Extension 2011 to assist them in managing the influx of arrivals by boat on the island of Lampedusa. Frontex reports that "In addition to one aircraft and two vessels already financed and co-ordinated by Frontex, one Dutch and one Portuguese plane have now arrived in Pantelleria and Sardinia respectively to assist the Italian authorities in strengthening their border control activities".[34] The European Commission considers this as being a "clear signal of solidarity" between member states.[35] On 26 March 2011, the operational area of Joint Operation Poseidon Sea,[36] which covers the Greek islands in the Aegean Sea, has also been widened to include Crete.

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26. See UNHCR's Handbook on resettlement, www.unhcr.org/4a2cfe336.html.
27. UNHCR Resettlement departures to Europe in 2010: Belgium 2, Czech Republic 48, Denmark 386, Finland 543, France 217, Germany 457, Iceland 6, Ireland 20, Italy 58, Netherlands 430, Norway 1088, Portugal 24, Romania 38, Sweden 1789, Switzerland 23, United Kingdom 695 [source: UNHCR].
28. European Commission's MEMO/11/226, op. cit.; The programme proposed by the Commission provides for closer political and practical co-operation among the member states, so as to increase the effectiveness and cost-efficiency of their resettlement activities, and the humanitarian and strategic impact of resettlement. A second objective is to promote the participation in resettlement by more member states within the European Union. The establishment of a joint EU resettlement programme will make it easier and more cost-effective for other member states to take part in resettlement. These countries can benefit from the experiences and know-how acquired in other member states and will participate in decision-making on resettlement priorities. For more details: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/370&format=HTML&aged=0?uage= EN&guiLanguage=en.
29. For detailed information about the financial, political and legal implications of relocation of refugees, subsidiary protection beneficiaries and/or asylum seekers, see the very comprehensive study JLS/2009/ERFX/PR/1005 – 70092056, Study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection.
30. Ibid., p. 13.
31. Times of Malta, "Migrants seek new life in Germany", 22 October 2010.
32. www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/121479.pdf.
33. Extraordinary JHA Council Meeting, 12 May 2011.
34. www.frontex.europa.eu/newsroom/news_releases/art103.html.
35. European Commission's MEMO/11/226, op. cit.

61. In its conclusions on the management of migration from the Southern Neighbourhood adopted on 11 and 12 April 2011, the European Council has invited Frontex to speed up negotiations with the EU's Southern neighbouring countries – and in particular Tunisia – with a view to concluding working arrangements and organising joint patrolling operations.[37] In order to strengthen the competences of this Agency, it also decided to accelerate negotiations on amending the Frontex agreement with a view to reaching agreement by June 2011.

62. The way in which Frontex operates is subject to criticism by several observers, notably as regards the lack of appropriate guarantees with respect to human rights.[38] These issues are dealt with in a report prepared Mr Arcadio Díaz Tejera on behalf of the Committee on Migration, Refugees and Population.[39] The European Commission proposed changes to the legal framework of the agency in February 2010.[40] This proposal is currently being discussed by the European Parliament with a view to its approval by the European Council as a matter of urgency. While some argue that reform is needed to render Frontex operation more legal and to reinforce its human rights obligations, EU member states also see the reform as an opportunity to strengthen Frontex's actual powers.

63. The rapporteur would like to highlight that no matter which direction the reform takes, part of the reform should be to strengthen and clarify Frontex's legal obligation to identify asylum seekers during its operations and then to refer them to the relevant authorities.

8.3. The European Asylum Support Office

64. The newly created European Asylum Support Office (EASO) – still in the process of recruiting its staff – is faced with a challenging task from the outset**.**

65. Indeed, EASO aims at supporting member states in their efforts to implement a more consistent and fairer asylum policy, for example by helping to identify good practices, organising training at European level and improving access to accurate information on countries of origin. It will also provide technical and operational support to member states facing "particular pressures" (namely member states receiving large numbers of asylum claims), via the deployment of asylum expert teams, thus contributing to alleviate some of the pressure on their systems.

66. On 1 April 2011, the European Commissioner for Home Affairs, Ms Cecilia Malmström, announced the signing of the Operating Plan for the deployment to Greece by EASO of an EU Asylum support team. This team is constituted of experts of several member states. EASO's action in Greece aims at supporting Greece in developing a fully functioning asylum system by 2012.

67. EASO is also likely to have an important role to play in any enhanced intra-EU relocation programme. EASO could administratively manage the process by carrying an annual assessment of the needs for relocation across the EU and gathering applications for relocation.

8.4. Funding

68. The European Commission has set up four migration-related funds: the External Borders Fund (€1 820 million for the period 2007-2013), the Return Fund (€676 million for the period 2008-2013), the Refugee Fund (€628 million for the period 2008-2013) and the Integration Fund (€825 million for the period 2007-2013).[41] In addition to the regular funding, €25 million of emergency funding are available and can be quickly mobilised under the External Borders Fund and Refugee Fund.

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36. Since its inception in 2006 as a purely sea-based operation patrolling the coastal waters between Greece and Turkey, Joint Operation Poseidon has grown to become the focus of Frontex's operational deployment in the Mediterranean region. Joint Operation Poseidon, since the beginning of 2010, has also had a land-based component covering the Greek and Bulgarian land borders with Turkey.

37. www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/121479.pdf.

38. On 31 March 2011, Frontex's Management Board endorsed the Agency's Fundamental Rights' Strategy. See www.frontex.europa.eu/newsroom/news_releases/art105.html.

39. See footnote 13.

40. In this context, see Amnesty International and the European Council on Refugees and Exiles (ECRE) briefing on the Commission proposal for a regulation amending Council Regulation (EC) 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), September 2010.

41. Italy, being one of the major beneficiaries of these funds, has for instance been allocated €55 million for 2010 and €75 million for 2011.

69. The European Refugee Fund could be a major source of financing of relocation within the European Union. The Fund would need to be increased accordingly to cover the processing of the claim of a relocated asylum seeker.

70. One of the weaknesses of the different EU funds is that they do not allow for the financing of infrastructure, thus excluding funding for construction of adequate reception facilities. This is a gap that needs to be addressed by the European Union. This lack of funding has a particular impact on small countries such as Malta.

71. It should be recalled in this context that the Council of Europe Development Bank could provide funding for infrastructure, but on the basis of loans; this possibility should be explored further in the future.

9. Way forward: fairness both for member states and for asylum seekers

9.1. Practical means of enhancing solidarity and responsibility sharing in Europe

72. Relocation of beneficiaries of international protection or asylum seekers, policy harmonisation, and technical and financial assistance could help better balance what is currently unevenly distributed amongst European states.

73. Co-operation, as a means of greater solidarity, can take many forms. States can assist one another by:

– assisting with borders controls, interception of boats and rescue of people in need:

– facilitating reception;

– providing assistance for screening those with possible international protection needs;

– helping with asylum determination and fair and efficient asylum procedure;

– facilitating returns (both of irregular migrants and of failed asylum seekers);

– accepting resettlement and relocation (prior to or after asylum determination);

– tackling the root causes.

74. A variety of assistance is required. In the context of Frontex operations, equipment such as boats, planes and helicopters are needed and personnel are also required. For reception, funding is required not just for emergency reception but also for contingent planning. For screening, expert assistance, including legal assistance and interpretation, could be made available. The same is also required for asylum determination, but more structural assistance may also be needed for dealing with asylum claims in general (as is the case in Greece). Assistance may also be needed in the returns process (negotiating returns and the physical act of returning persons). Assistance may also be needed in re-settling persons.

75. The Dublin system has to be modified. The European Commission tabled a proposal to that effect in 2008[42] which, *inter alia*, "is aimed at addressing situations of particular pressure on Member states' reception capacities and asylum systems, as well as situations where there is an inadequate level of protection for applicants for international protection". One of the most contentious issues is a proposal to include a suspension mechanism that would allow member states to suspend transfers in case of a country being under specific pressure.[43] While the European Parliament is largely in favour of this proposal, the European Council seems to be very sceptical. It is urgent that the European Parliament and the European Council come rapidly to an agreement.

76. The ability to suspend transfers under exceptional circumstances when the system is overburdened would indeed enhance the credibility of the Dublin system as a whole. In view of the M.S.S. judgment, this proposal could prevent other member states being condemned by the Court for having applied the Dublin system automatically. Otherwise, the most exposed countries on Europe's southern borders will continue to feel that Dublin does not offer a fair deal.

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42. COM(2008) 820 final, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF.

43. "In order to avoid that, in cases of particular pressure on certain Member States with limited reception and absorption capacities, Dublin transfers add to the burden on those Member States, a new procedure is inserted in the regulation allowing for the suspension of Dublin transfers towards the responsible Member State. Such a procedure can also be used in cases where there are concerns that Dublin transfers could result in applicants not benefiting from adequate standards of protection in the responsible Member State, in particular in terms of reception conditions and access to the asylum procedure." Ibid, p. 10.

9.2. Resolute efforts needed to guarantee protection of human rights of refugees and asylum seekers in countries of arrival and of stay

77. As was rightly stated by the Commissioner for Human Rights, solidarity in itself is not enough, "European solidarity needs to be matched by strong efforts at national level".[44]

78. First and foremost, the countries where problems have been clearly identified must do their part to improve the situation at national level. Severe deficiencies have been found in detention conditions in Europe, most recently in Greece, both in the M.S.S. judgment and in a public declaration on Greece by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).[45] The Commissioner for Human Rights has also recently published a critical report in this regard, in relation to Malta.[46]

79. Excessive recourse to detention still exists in a number of member states, and conditions in detention in general, remain problematic. Steps are required to improve this situation and further improvements are necessary to improve procedures and remedies designed to safeguard the rights of refugees and asylum seekers in Europe.[47]

80. If the problems are not solved at the national level, efforts to have greater solidarity in Europe will be in vain. All European countries should support the reforms in the countries at the forefront of the arrivals.

10. Long-term solutions do not stop at Europe's borders

81. Solidarity should not stop at the borders of Europe. While roughly 12 000 refugees and asylum seekers have reached Europe following the events in North Africa, 750 000 persons have leftLibya, with most having a destination in Egypt or Tunisia. Most are migrant workers, a significant number have already returned to their home countries, but among them there are thousands of people in need of international protection, from countries such as Eritrea and Somalia, who cannot return home.The figures speak for themselves and it is clear that the responsibility borne by the African neighbouring countries is far heavier than the one carried by Europe. According to the UNHCR, Egypt and Tunisia are doing their utmost to receive these people.

82. Europe should be doing more to share responsibilities with countries beyond its borders. While it is understandable that European states feel that they have enough spontaneous arrivals, showing solidarity with Africa by considering resettlement, at least of a small number of refugees, would send a political signal of Europe's willingness to co-operate with its neighbours of the southern Mediterranean for the benefit of their mutual interests. European countries should in priority consider resettling the refugees with specific medical needs, for instance those who have survived torture or trauma and those who need specific care that cannot be provided in the country in which they have found refuge. On 1 March 2011, UNHCR published a "proposal for an emergency resettlement effort in the context of the Libya emergency". By so doing, UNHCR expressed its hope that countries would be able to offer resettlement places additional to their agreed quota for 2011.

83. In the long term, Europe will need to show increasing solidarity with the political and economic transitions in the southern Mediterranean and also in other African countries.

84. The European Council has recently broadly endorsed "A partnership for democracy and shared prosperity for democracy and shared prosperity with the Southern Mediterranean", the aim of which is to propose a new approach for a long-term partnership for migration, mobility and security. By so doing, Europe should enable African countries to develop their asylum systems as well as their border surveillance capability**.**

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44. CommHR, Press Release, 28 March 2011, Malta: European solidarity needs to be matched by strong efforts at national level to protect the human rights of migrants, www.coe.int/t/commissioner/news/2011/110328malta_EN.asp; see also Fundamental Rights Agency report, "Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner" (2011) http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011_EN.pdf.
45. www.cpt.coe.int/documents/grc/2011-10-inf-eng.pdf; 15 March 2011.
46. www.coe.int/t/commissioner/News/2011/110328Malta_en.asp.
47. See, inter alia, Doc. 11688 on Europe's boat people: Mixed migration flows by sea into southern Europe (rapporteur: Mr Morten Østergaard, Denmark, ALDE) and Doc. 11990 on improving the quality and consistency of asylum decisions in the Council of Europe member states (rapporteur: Mr Boriss Cilevičs, Latvia, SOC). See also Resolution 1707 (2010) and Recommendation 1900 (2010) on detention of asylum seekers and irregular migrants in Europe, Doc. 12105.

11. Conclusions by the rapporteur

85. The first responsibility of each country in Europe must be to maintain its own border security. It appears that some countries are failing to do this and thereby transferring the burden of illegal immigration to other countries. This is particularly so within the Schengen area and it is doubtless the realisation of what has been happening that has led to recent moves by France and other countries in Schengen to call for the reintroduction of their own border police.

86. The second responsibility of each country should be to set up an administrative system which facilitates the processing of claims for asylum fairly and effectively so that those with genuine claims are identified at an early stage and those with bogus claims removed so as not to clog up the system for those in genuine need of humanitarian assistance. Greece has admitted to having problems in achieving this objective and it is, therefore, welcome that other countries have shown themselves willing to offer assistance to the Greek authorities.

87. The third responsibility of each country is to ensure that those engaged in the smuggling of migrants are deterred by effective mechanisms for detection, apprehension and punishment. This seems to be an area where countries are failing and it has been highlighted by Europol in its most recent report as being a significant cause for concern about security within Europe.

88. The M.S.S. case concerned the application of the Dublin II Regulation. That regulation was drawn up and agreed to by signatory countries in order to prevent forum shopping by asylum seekers of the very kind which now seems to be happening as a result of the inability of countries to be able to return asylum seekers first registered in Greece to Greece.

89. Forum shopping is to be expected where there is a variety of legal jurisdictions and legal systems. The Dublin II Regulation has been supported because it is common sense that, as all asylum claims are dealt with under the 1951 Refugee Convention, forum shopping should not be justified. Some of the criticisms of Dublin II are, therefore, unreasonable. What is important to ensure is that those who are returned to another country under the terms of the regulation are properly treated. As long as all applicants have access to proper advice and representation and process of law, there should be no need to try to harmonise outcomes. Indeed, to try and harmonise outcomes would require a significant intervention by the European Union into the sovereign right of each country to interpret international law in its own courts. Statistics such as those of the UNHCR showing, for example, that Germany recognised 63% of Iraqi asylum seekers in 2009 while the Netherlands only granted protection to 27% cannot be relied upon to tell the whole story. For example, it may be that Germany attracts a higher proportion of genuine asylum seekers. For this reason, the rapporteur does not believe that the introduction of a fixed quota for acceptances of asylum seekers of particular categories would be an acceptable way forward.