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Countries of transit: meeting new migration and asylum challenges

Addendum to the report¹

Committee on Migration, Refugees and Displaced Persons
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1. Introduction

1. This addendum is intended to expand the scope of the explanatory memorandum to cover in more detail the crisis that has arisen during summer 2015 in the eastern Mediterranean, western Balkans and central Europe, covering primarily Turkey, Greece, “the former Yugoslav Republic of Macedonia”, Serbia, Hungary, Croatia, Slovenia, Austria and Germany. The current crisis has thrown into sharp relief the inadequacy and incoherency of European asylum policy as regards both “primary” and “secondary” movements of refugees; it also underlines that distinctions between countries as “transit” or “destination” are often arbitrary, or at least mutable, and the crucial importance of taking account of individual refugees’ rational actions and the factors that influence their decisions.

2. Situation in specific countries

2. Turkey has registered almost 2 million refugees who fled the conflict in neighbouring Syria. The figure has increased continuously since the conflict began in 2011 and has more than doubled in the last year alone. Turkey now hosts more refugees than any other country in the world and has spent some US\$6 billion on their protection. Less than one in six live in the government-run refugee camps in the south, although basic services are available to the other, so-called “urban” refugees. Despite their often very difficult situation in Turkey and even more so elsewhere, it is only in 2015 that very significant numbers of Syrian (and other) refugees have begun leaving the Turkish coast in an attempt to reach Greece and, ultimately, other European Union countries further north. The International Organization for Migration (IOM) reports that 224 have died in the Aegean Sea so far this year; including, of course, the young Aylan Kurdi, the photograph of whose dead body, washed up on a Turkish beach, had such a huge impact on global public opinion.

3. By mid-September, 2015 had seen over 347 000 arrivals by sea on Greece’s Aegean islands, mainly Lesbos (almost half of the total), Kos, Chios, Samos and Leros, compared to 43 500 for the whole of 2014. August alone saw around 108 000 arrivals, over 90% of whom were either Syrian (around 70%), Afghan or Iraqi, all likely to be entitled to international protection. The number of arrivals has placed extreme strain on the Greek asylum system, already seriously deficient, in a country struggling economically. This led to inadequate provision of reception facilities, inability to register newcomers as fast as they arrived or to transport them in sufficient numbers to mainland Greece, manifestations of hostility and xenophobia by elements of the local population (although others showed sympathy and generosity) and demonstrations of frustration by the refugees. The deployment of special ferry services has alleviated but not resolved the critical situation on the islands. 90% of arrivals in Greece have indicated that they intend applying for asylum in another country. This is reflected in the fact that in July, which saw almost 52 000 arrivals, there were only

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1 200 asylum applications in Greece, and in the numbers travelling north through Greece to “the former Yugoslav Republic of Macedonia”; in early September, it was estimated that some 30 000 people were on the move across Greece.

4. During the initial chaos, “the former Yugoslav Republic of Macedonia” briefly closed its border with Greece, resulting in clashes between refugees and police. The border was, however, soon reopened and around 3 000 people per day are now being admitted, in accordance with the arrival of trains for onward travel. Between 19 June and 1 September alone, over 53 000 people registered their intention to apply for asylum at the reception centre near the border city of Gevgelija. Transport is accessible from there to Tabanovce on the border with Serbia, where aid is available, although the numbers of people present at any one time hugely exceed the facility’s capacity. Despite the number of registrations, over 90% of which are by Syrians, Afghans or Iraqis, “the former Yugoslav Republic of Macedonia” has received only 1 675 actual asylum applications this year. In this respect, it can be noted that the Office of the United Nations High Commissioner for Refugees (UNHCR) has concluded that the country “does not as yet meet international standards for the protection of refugees, and does not qualify as a safe third country”, advising that “other States should refrain from returning or sending asylum seekers” there.

5. The next country along the refugees’ route is Serbia. There are transit centres at the border, at Miratovac and Preševo (slightly further north), both of which operate far beyond intended capacity. International humanitarian aid is also available at Belgrade, and again close to the border with Hungary at Kanjiž and Staro Vašarište aid point, which sees around 1 000 people a day, and the informal gathering place at Subotica. Serbia received 29 000 asylum registrations in July (as opposed to 1 170 in July 2014) and over 37 000 in August (1 547 in 2014), 90% of which were from Syrians, Afghans or Iraqis. The UNHCR currently states that the Serbian asylum system “is not adequately recognizing those in need of international protection”, recommending that “Serbia not be considered a safe third country of asylum, and that countries therefore refrain from sending asylum seekers back to Serbia”.

6. Hungary has seen more than 150 000 arrivals from Serbia this year (Hungarian police have estimated over 190 000 arrivals in total). The Hungarian border represented the most frequented entry point from the western Balkans to the contiguous core territory of the “border-free” Schengen area. After briefly threatening to stop accepting returns under the Dublin system, Hungary began erecting a fence along its border with Serbia, patrolled by armed forces, and revised its legislation so as to criminalise irregular entry and climbing the fence. In early September, as the fence neared completion and the new laws were about to enter into force, there was a surge in new arrivals from an average of around 2 000 per day in August to a final peak of over 9 000. Once the fence was completed and the border closed, Hungary declared a “state of crisis” in its southern provinces, and began transporting refugees directly to Austria without registration. Water cannon and tear gas have been used in violent clashes with refugees at the crossing point, and refugees, including children, and police have been injured. Refugees now entering and prepared to apply for asylum in Hungary are rejected within minutes, with no apparent consideration of personal circumstances, on the basis that Serbia is a safe third country, something with which the UNHCR strongly disagrees (see above). Those arrested for “illegal entry” are prosecuted under highly accelerated procedures, reportedly without access to legal representation or interpretation. Following the prime minister’s statement that refugees were “laying siege” to the country, the Hungarian Parliament voted to deploy the army at the borders, with authorisation to use rubber bullets, tear gas grenades and other forms of “non-lethal force” against refugees. The Hungarian response had also involved closure of Budapest train station to refugees, forcible detention in inadequate conditions of refugees for registration purposes, and posters telling foreigners “not to take Hungarians’ jobs” and “to keep our laws”.

7. As a result of Hungary closing its border with Serbia, the refugees’ route shifted east to Croatia, in the hope of reaching the European Union via Slovenia and the Schengen area via Austria. More than 30 000 entered Croatia in less than a week, overwhelming reception and registration facilities. Croatian Government statements vacillated wildly; in practice, it allowed refugees into the country, but soon abandoned efforts to register them and instead transported them directly to the Hungarian border. Hungary responded by erected another razor-wire fence along its border with Croatia – a fellow EU member State – and transporting those who had entered from Croatia directly to its border with Austria, where some 21000 arrived in a single weekend. Croatia then closed its border with Serbia, calling on it to send more refugees to Hungary and Romania, which resulted in reprisals by the Serbian authorities. As a result of these events, mutual recriminations flowed between Hungary, Serbia and Croatia, badly straining their relations. For its part, Slovenia increased border controls with Hungary and Croatia and suspended train services from the latter, allowing only limited numbers to enter, which resulted in clashes with refugees at the border. Having initially stated that it would not open “safe corridors” northwards through the country, Slovenia later announced that it would consider doing so.

8. Unco-ordinated, even chaotic reactions have also been seen in countries further north. In late August, Germany announced that it would suspend Dublin transfers of Syrian asylum seekers, although it was initially unclear whether it still expected EU transit countries to register them, which may have contributed to the confusion in Hungary and elsewhere. Germany also announced that it would be able to cope with the up to 800 000 asylum applications it expected to receive in 2015. Despite mobilising extensive resources nationwide, by mid-September, the strain on reception facilities in its southern cities led Germany to reintroduce border controls, in effect suspending application of the Schengen agreement. Austria has also introduced controls at its borders with Hungary and Slovenia. Numerous other EU countries have increased their border checks or controls, including the Slovak Republic, the Czech Republic, Poland, Finland (at its border with Sweden) and the Netherlands; Denmark and Austria have suspended certain rail links with Germany. Bulgaria and Greece had previously erected fences along their borders with Turkey; Turkey has suspended bus routes between Istanbul and the Greek border and closed the border to refugees arriving on foot.

9. Some have blamed this summer's unprecedented arrival of refugees through Turkey on "over-generous" policies in Germany and Sweden. The crisis in the Greek islands had, however, already begun long before, for example, Germany suspended its application of the Dublin Regulation or announced its capacity to receive 800 000 asylum applications this year. Blaming some countries' more humane policies in fact reflects the profound lack of harmonisation across the European Union of reception conditions, asylum procedures and welfare and integration policies. It also ignores some countries' "race to the bottom": in addition to the long-unresolved inadequacies of certain national asylum systems, we have also seen deliberate measures to divert refugees elsewhere, such as the Hungarian posters and Denmark's decision to cut refugees' benefits and advertise the fact in countries of first asylum.

10. Overall, the most significant reason why refugees – especially, but not only, Syrians – have been driven to seek protection in Europe is because, firstly, the conflicts that forced them to leave their homes continue with no end in sight; and secondly, conditions in countries of first asylum have become intolerable. Whatever one's views on the causes of the current crisis, however, it cannot be denied that the term "transit country" now clearly applies to a chain of European States including Greece, "the former Yugoslav Republic of Macedonia", Serbia, Hungary, Croatia, Slovenia, Austria and Denmark, and to a lesser extent also others.

3. Developments at European level

11. On 14 September, the European Union's Justice and Home Affairs Council met to discuss responses to the current crisis and longer-term measures for the future. The European Commission's wide-ranging and constructive proposals are not prominently reflected in the Presidency Conclusions of the meeting. Instead, these reveal a preponderant emphasis on border control, forcing those in need of protection to remain in either countries of first asylum or countries at the European Union's external borders, without any certainty that conditions there will improve. Those asylum seekers that do penetrate the European Union's external borders would be concentrated at "hotspots" located in "front-line" countries. This would seem to risk perpetuating the inequities of the Dublin system, even whilst it is noted that the Commission will evaluate and possibly propose revision of the Dublin Regulation. Far more detail was devoted to returns than to resettlement or safe and legal avenues. Whilst there was, at last, agreement to relocate 40 000 asylum seekers from Greece and Italy, the Commission's more adequate proposal to relocate a further 120 000 from Greece, Italy and Hungary was not approved at ministerial level until 22 September, and only then by a qualified majority vote, with the Czech Republic, the Slovak Republic, Romania and Hungary voting against and Finland abstaining. The EU Summit on 23 September, whilst promising welcome and much-needed increases in support to countries of first asylum and transit and humanitarian agencies, focuses on keeping refugees out or at the periphery of the European Union. Beyond that, however, it reveals a reluctance to accept protection responsibilities, with no mention of resettlement, and a lack of solidarity in burden-sharing between States.

4. Conclusions and recommendations

12. The current crisis underlines the significance of certain general policy principles:

- Most fundamentally, all European States are legally obliged to provide effective protection to people in need and are prohibited from sending such people to countries where that protection is not guaranteed. Asylum-seekers cannot be returned to Lebanon, Jordan or Turkey; nor may they at present be returned to Greece (following the case law of the European Court of Human Rights), "the former Yugoslav Republic of Macedonia" or Serbia (according to UNHCR advice), or Hungary (according to German and Austrian courts).

- Either European States attempt, regardless of the consequences for refugees or neighbouring countries, individually to isolate themselves behind fences and strict border controls, which, even if ineffective, would be the end of European integration and co-operation; or they accept that the current challenges are a matter of common concern and formulate effective and sufficient common responses.
 - The present Common European Asylum System does not amount to an effective, sufficient response. Furthermore, a response that reflected only the narrow, exclusionary focus of the Presidency Conclusions of the 14 September meeting of the Justice and Home Affairs Council and the statement following the 23 September EU summit would be inadequate, ineffective, myopic and damaging, falling short of Europe's moral duties and legal obligations.
 - Attempting to address root causes in countries of origin does not in the meantime exempt EU States from the responsibility to provide protection to sufficient numbers of refugees, including through sufficient, targeted, non-discriminatory resettlement and safe and legal channels.
 - Under the "Fortress Europe" logic, if Hungary builds a militarised fence along its borders with Romania, Serbia and Croatia, then Slovenia, the Slovak Republic and Poland should take similar steps (Bulgaria already has). Experience shows that fortification of the European Union's external borders will only lead to new routes opening up and further stimulate recourse to opportunistic migrant smugglers. As well as being a rejection of basic humanitarian responsibilities, such barriers would have serious geopolitical consequences for wider European integration and solidarity and are thus a matter not just of national policy but of common concern for all Council of Europe member States.
 - The current incoherent EU response is having disastrous effects for refugees in transit and for Greece and other transit countries in the western Balkans. Hungary's closure of its borders has trapped tens of thousands of refugees within these countries, none of which is able to assure adequate reception, accommodation and processing facilities. Any proposal to make these countries responsible for yet more refugees, returned from (other) EU countries, is blatantly unfair and impractical; indeed, absurdly reminiscent of the worst aspects of the Dublin system. Given how long deficiencies in the Greek system have remained unresolved, it is unrealistic to think that other countries will make rapid progress – especially if, having done so, they would then be required to receive potentially large numbers of asylum-seekers from EU countries. Support to transit countries, which already bear far greater burdens but with far fewer resources than EU member States, should not be conditional on accepting an even more unfair share of Europe's collective responsibility.
 - Any proposal to establish EU reception, accommodation, processing and/or detention centres (e.g. "hotspots") in, for example, Greece and Italy would have to ensure that all relevant international standards, including those of the European Convention on Human Rights (ETS No. 5) and other Council of Europe instruments, are fully respected – which is not the case under the Greek national asylum system and not always the case under the Italian – and subject to independent, external monitoring.
 - The development of reception capacities in countries of first asylum cannot form a basis for removing refugees from Europe unless it is guaranteed that such removal would not violate the prohibition of *refoulement*, on account notably of inadequate living conditions or seriously flawed status determination procedures; it should be accompanied by sufficient, targeted, non-discriminatory resettlement programmes with the involvement of all EU member States.
13. On the basis of the foregoing principles, the rapporteur will propose certain amendments to the draft resolution adopted and tabled by the Committee on Migration, Refugees and Displaced Persons, with a view to their being presented to the plenary Assembly when the report is debated.