

# **Crisis Framing and the Syrian displacement: the 'threat' to European values**

## **Introduction**

The external displacement of more than six million Syrian nationals since the start of the civil war in 2011 is a humanitarian tragedy. The impact has been most keenly felt in neighbouring countries including Jordan, Iraq, Turkey and Lebanon where Syrian nationals now comprise an estimated one in five of the population. There is a considerable disparity in the global response to Syrian refugees with Europe receiving only 6% of those externally displaced by 2014.<sup>1</sup> Although the number of arrivals in the EU increased significantly in 2015-16, the number of Syrian asylum seekers and refugees in the EU remains less than 0.2% of the European population.<sup>2</sup> Nevertheless this 'crisis' has repeatedly been described as the biggest, most divisive issue facing the European Union today.<sup>3</sup>

This article examines the framing of Europe's response to this humanitarian need and the impact of these frames on durable solutions that can protect those most in need. It is suggested, drawing on the successful re-framing of the gay marriage debate, that the way such an event is conceptualised can have a significant impact on political commitments and the response of host communities.<sup>4</sup> It is argued that the framing of the Syrian displacement, through constant iteration in public discourse, as a migrant 'crisis' to be addressed through burden sharing, containment and compulsory quotas, has hindered durable solutions whilst confirming negative stereotypes that have prejudiced the ability of refugees to receive protection.

---

<sup>1</sup> Nicole Ostrand 'The Syrian Refugee Crisis: A Comparison Of Responses By German, Sweden, UK and US' (2015) 3 *Journal of Migration and Human Security*, 225-279.

<sup>2</sup> According to Eurostat figures, the population of the EU is 508 million and the number of Syrian nationals seeking asylum in the EU since the start of the civil war is estimated by the UNHCR to be in the region of one million (less than 0.2% of the EU population).

<sup>3</sup> Dogachan Dagi 'EU Refugee Crisis: From Supranationalism to intergovernmentalism?' (2018) 3 *Journal of Liberty and International Affairs* 3, 12

<sup>4</sup> Nat Kendall-Taylor 'To Advance More Humane Refugee Policies We Must Reframe The Debate' *Open Democracy* (28.6.16).

The application of a crisis frame could not have come at a worse time for the European institutions as extremist political parties, that have been gaining ground over the last decade, use their own framing narrative to conceptualise the largely Muslim Syrian arrivals as threats to European culture and identity.<sup>5</sup> Neo-conservative writers, such as Douglas Murray have attempted to give an academic rigour to the 'Islamic threat' perspective by constructing a conflict of values. Yet the nature of European culture and values in such narratives is rarely articulated.<sup>6</sup> Rather, in a questionable interpretation of European history, it is constructed as entirely oppositional (non-Muslim, non-immigrant). The European values articulated in the Treaty on the European Union (1992) are conspicuously absent:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail<sup>7</sup>

The oppositional narrative has served the new populist parties well as the European project is openly rejected in preference for national solidarity and minimal intergovernmental cooperation. The authority of the European Union is further challenged as established political actors look inwards in an attempt to dilute the popularity of nationalist rhetoric. The ability of the European institutions to exert pressure on Governments that fail in their commitment to European values has been compromised by recent events. The UK's decision to leave the EU has emboldened populist parties on the

---

<sup>5</sup> Leo Cendrowicz 'Refugee Crisis. Why Hungarian Prime Minister Viktor Orban Sticks To His Anti-Muslim Script' *The Independent* (Sept 4<sup>th</sup> 2016); Dagi supra n3, 13.

<sup>6</sup> Douglas Murray *The Strange Death of Europe. Immigration, identity, Islam* (Bloomsbury 2017)

<sup>7</sup> Article 2, *Consolidated version of the Treaty on European Union* OJ C326, 26.10.2012, 13–390

right and left. Populist MEP Nigel Farage became Hungarian Prime Minister Viktor Orbán's biggest defender before the European Parliament's vote of censure. However, it is notable that British conservative MEPs were the only representatives of a ruling government in support for Orbán, taking the opportunity to reject European interference in domestic politics.<sup>8</sup>

There is an international right to seek and enjoy asylum provided in Article 14 of the Universal Declaration of Human Rights.<sup>9</sup> The right has to be exercised outside of the country of origin, thus movement is the first step to realising protection.<sup>10</sup> Most Syrians arriving in Europe are irregular migrants in the sense that they do not have entry visas and are not beneficiaries of UNHCR resettlement programmes. Many will have credible claims for asylum or humanitarian protection once they access an asylum procedure, contradicting suggestions that most are criminals and terrorists.<sup>11</sup> Indeed, statistics suggest that 80% of Syrian asylum seekers will be granted some form of protection status in Europe<sup>12</sup>. However, their irregular status has meant convoluted and dangerous methods of travel, which has made it easier for them to be grouped together as a collective threat to European culture, security and the economy.

Having identified the framing of Europe's response to the Syrian displacement, it will be argued that constructive, cooperative policy initiatives were stymied by the repeated confirmation of this frame through a public discourse that exploited public anxieties over security and crime.

---

<sup>8</sup> Nigel Farage in the European Parliament 'Thank God for Viktor Orbán' 12<sup>th</sup> Sept 2018. Full speech available on Youtube: <https://www.youtube.com/watch?v=BxJdYNEcMmc> [Last accessed 22<sup>nd</sup> Feb 2019]

<sup>9</sup> UN General Assembly Resolution 217 A, 10<sup>th</sup> December 1948

<sup>10</sup> A refugee is defined by Article 1A of the Refugee Convention 1951 as being, inter alia, outside his country of origin.

<sup>11</sup> B Miltner 'The Mediterranean Migration Crisis: A Clash Of The Titans' Obligations?' (2015) XXII *Brown Journal of World Affairs* 1, 213; Jeff Crisp 'Refugees' The Trojan Horse Of Terrorism' *Open Democracy* (June 5<sup>th</sup> 2017)

<sup>12</sup> Eurostat figures compiled by Phillip Conor 'After record migration, 80% of Syrian asylum applicants approved to stay in Europe' (Pew Research Centre Oct 2<sup>nd</sup> 2017). The comparative figures from Aug 2017 are 68% for Eritrean nationals, 38% for Somali nationals and 36% for Iraqi and Sudanese nationals.

The 'crisis' frame and its associated metaphors resulted in emergency, reactive measures that effectively led to the abdication of human rights and humanitarian obligations.

Furthermore, it is suggested that the crisis frame and its component security narrative, has paradoxically made Europe less secure as many millions of Syrian nationals, who have credible protection claims, are now left in limbo – unable to return home or build a new life in Europe. The EU-Turkey deal has resulted in more than three million Syrians residing in Turkey<sup>13</sup>; some are accommodated in government camps, but the vast majority are living precariously in urban areas. Although they now receive a cash allowance from EU funding that covers accommodation and food, none are able to make a claim for refugee status in Turkey. Thousands more who arrived in Greece prior to the deal in March 2016, remain trapped in squalid camps awaiting family reunion or determination of their asylum case. A much smaller number have succeeded in gaining protection as part of the EU resettlement scheme or national schemes, such as the Vulnerable Persons Relocation Scheme in the UK or private sponsorship in Germany. It will further be argued that despite a significant reduction in new arrivals, the crisis frame continues to dictate European asylum policy and crucially, the repeated affirmation of the frame has normalised policy responses that were previously rejected for their failure to respect human rights and protect the right to seek asylum.

In conclusion it will be argued that there is an urgent need to re-frame the demand for protection to accommodate an empathic focus centred on human rights, tolerance and global cooperation, grounded in international humanitarian obligations that promote peace and security for all.

---

<sup>13</sup> European Council 18<sup>th</sup> March 2016, Available at : <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (last accessed 20<sup>th</sup> February 2019)

## Anatomy of displacement

Since the start of the civil war in 2011 over six million Syrians have sought refuge outside the country. There have been suggestions that external displacement was a deliberate strategy of the Assad government and Iranian allies in an attempt to cleanse the country of critics and non-Sunni Muslims.<sup>14</sup>

The majority of those leaving are accommodated in the region of origin with considerable impact on host communities. The resources needed to support both refugees and host communities are far greater than the donations received. There are now over one million Syrian refugees living in Lebanon, three-quarters of whom are recognised as living in extreme poverty.<sup>15</sup> Whilst the EU's Regional MADAD fund has contributed 550 million euros to various projects in Lebanon, the World Bank has estimated the cost at 1.6 billion euros per year.<sup>16</sup> Jordan has received more than 660,000 Syrian refugees, over half of whom are children.<sup>17</sup> This has doubled the size of the Syrian population in Jordan and the pressure on jobs and resources has caused considerable strain on community relations.<sup>18</sup> Last year the UNHCR

---

<sup>14</sup> Martin Chulov 'Iran Repopulates Syria With Shia Muslims To Help Tighten Regime's Control' *Guardian Online* (14<sup>th</sup> Jan 2017)

<sup>15</sup> The annual vulnerability assessment of Syrian refugees reveals that 58 per cent of all households are now living in extreme poverty – on less than us \$2.87 per person per day. this is some 5 per cent more than a year ago. 76 per cent of refugee households are living below this level. UNHCR 'Vulnerability assessment of Syrian refugees in Lebanon' (UNHCR Dec 2017). Available at:

[https://data2.unhcr.org/en/documents/details/61312#\\_ga=2.195784239.228949351.1537197420-2021353763.1537197420](https://data2.unhcr.org/en/documents/details/61312#_ga=2.195784239.228949351.1537197420-2021353763.1537197420) [last accessed 22<sup>nd</sup> Feb 2019]

<sup>16</sup> World Bank estimate available at: <http://www.worldbank.org/en/news/press-release/2014/09/12/world-bank-run-trust-fund-targets-municipalities-to-offset-spillovers-of-syrian-crisis> [last accessed 22<sup>nd</sup> Feb 2019]; Radka Havlova and Krystna Tamchynova 'The Uncertain role of the EU countries in the Syrian refugee Crisis' (2016)

<sup>18</sup> Insight Turkey 2, 85-106. For current projects operated under the EU Madad Programme see: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/madad\\_fund\\_signed\\_contracts\\_20\\_april\\_2018.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/madad_fund_signed_contracts_20_april_2018.pdf).

<sup>17</sup> UNHCR Factsheet Feb 2018. Available at:

<https://data2.unhcr.org/en/documents/download/62241> [last accessed 22<sup>nd</sup> Feb 2019]

<sup>18</sup> Havlova and Tamchynova supra n16. The Jordanian Minister for the Interior described this as equivalent to the United States absorbing the entire population of Canada in Norimitsu Onishi 'As Syrian Refugees Develop Roots, Jordan Grows Wary' *New York Times* (5<sup>th</sup> Oct 2013)

reported that 94% of required funding to assist the refugee population in Jordan had not been received.<sup>19</sup>

Who should offer protection?

Despite the hospitality of the immediate region, there has been criticism of wealthier Gulf states for failing to offer protection. In reply, the Saudi government argues that they have provided hospitality to some 2.5 million Syrian 'guests' since the start of the war.<sup>20</sup> Other estimates put the figure at closer to 500,000 and it is evident that most will have temporary status either as workers or recipients of sponsorship.<sup>21</sup> Further, the suggestion that hospitality can be a replacement for formal recognition of refugee status is worrying, particularly as Saudi Arabia, Kuwait, Bahrain and the UAE have not ratified the Refugee Convention.

There are of course reasonable arguments for trying to keep refugees in neighbouring countries, particular where those countries share a common language, religion and culture. It will be easier for arrivals to integrate and to establish a life in such circumstances. Yet this can only be argued to the extent that the number of arrivals is manageable and the financial support available from the international community is adequate. Where such support is not available the arrival of large numbers can have a damaging impact on stability as conflicts can quickly escalate to absorb neighbouring countries.

A further argument for greater responsibility outside the region, is the nature of the conflict in Syria and the inability of the UN Security Council to protect civilians from the regime's aggression.<sup>22</sup> Indeed, with the direct involvement of countries outside the immediate region, including the US, France, Russia and the UK, the conflict in Syria has become a global conflict.

---

<sup>19</sup> Onishi Ibid.,

<sup>20</sup> The Saudi Arabia Foreign Ministry:  
<http://www.arab.news.com/featured/news/805236> [last accessed Dec 31st 2019]

<sup>21</sup> Sari Hanafi 'Gulf Response To The Syrian Refugee Crisis. Facts, Debates And Fatwas' [2017] 5 Sociology Of Islam, 112-137

<sup>22</sup> **Nigel White Journal of Rights and Justice**

It is argued that there are both moral and legal obligations arising from the foreseeable consequences of this intervention.

Due diligence is a principle of customary international law that requires states to engage in reasonable efforts to prevent harm caused by other states or non-state actors.<sup>23</sup> It is certainly arguable that principles applied in the context of transboundary environmental damage could be used to suggest the emergence of a more general rule. The International Court of Justice has ruled that there is a requirement under international law to undertake an environmental impact assessment when there is a risk of a proposed activity having a "significant adverse impact in a transboundary context".<sup>24</sup> This extends the application of an earlier case that applied the same principle to industrial activities, i.e. that where there is a risk of significant adverse impact from a proposed action there is an obligation to undertake a full impact assessment. It could therefore be suggested, applying the surrogacy principle of international refugee law and borrowing from other areas of international law, that all states have a general duty to refrain from actions which will foreseeably cause population displacement.<sup>25</sup>

In the context of state action or inaction in situations of genocide, the ICJ's decision in *Bosnia v Serbia* found that although the Serbia government were not directly responsible for the massacre of Bosnian civilians at Srebrenica, they had responsibility for manifestly failing to take all measures within their power to prevent genocide.<sup>26</sup> Whilst genocide is of course a particular

---

<sup>23</sup> As confirmed by the International Court of Justice in *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Merits) [2010] ICJ Rep 55-56, para 101. Antal Berkes 'The Standard of 'Due Diligence' as a Result of Interchange between the Law of Armed Conflict and General International Law' [2018] 23 Journal of Conflict and Security Law, 3, 433-46

<sup>24</sup> *The Pulp Mills case* [2010] is cited with approval by the ICJ in *Costa Rica v Nicaragua* [2018], para 104. Available at: <https://www.icj-cij.org/files/case-related/150/150-20180202-JUD-01-00-EN.pdf> ([last accessed 22nd Feb 2019])

<sup>25</sup> An example of an international obligation to prevent a violation of international law can be found in Article 100 of the International Convention on the Law of the Sea regarding an obligation to cooperate in the repression of piracy, notwithstanding the absence of a clear jurisdictional link. I am very grateful for the comments made by Dr Mark Chadwick on this point.

<sup>26</sup> *Bosnia and Herzegovina v Serbia and Montenegro* [2007] ICJ 2

heinous crime under international law, it is at least arguable that this position could be extended to population displacement exacerbated through conflict intervention. Davidovic similarly argues that responsibility is greater where foreseeable displacement is caused in part by one's own action.<sup>27</sup>

In *Spheres of Justice*, Michael Walzer argues that although the interests of communal self-determination can limit obligations to refugees, there is a specific moral responsibility where displacement is caused by one's own actions. Such a responsibility should not be delimited by arguments concerning costs or numbers.<sup>28</sup> He gives the example of Russians displaced in the West and forcibly repatriated after World War II.<sup>29</sup>

It is well established that an obligation to admit an asylum seeker for the purpose of examining the merits of the case arises at the border of the host state. This obligation is extended by Singer and Singer who argue that there is no obvious moral distinction between refusing someone at the border and failing to resettle a person from a refugee camp.<sup>30</sup> They argue that the international community should take active steps to offer protection to refugees living in camps rather than waiting for refugees to arrive at their border.

Leaving aside the difficulty in ascribing state responsibility in the latter situation, there is also a legal distinction between these two positions. Where an asylum seeker arrives at the border and seeks protection, international human rights and refugee law combine to require the state, *de minimis*, to admit them with a view to determining any risk of refoulement should they be returned.<sup>31</sup>

---

<sup>27</sup> Jovana Davidovic 'What Do We Owe Refugees: *Jus Ad Bellum*, Duties To Refugees From Armed Conflict Zones And The Right To Asylum' (2016) 12 *Journal Of Global Ethics* 3, 347-364

<sup>28</sup> Michael Walzer *Spheres of Justice* (New York Basic Books 1983), 51

<sup>29</sup> Joseph Carens 'Refugees and the Limit of Obligations' (1992) 6 *Public Affairs Quarterly* 1,31

<sup>30</sup> Peter Singer and Renata Singer 'The Ethics of Refugee Policy' in Mark Gibney (ed.) *Open Borders? Closed Societies* (Greenwood, New York 1988) 111-130

<sup>31</sup> See Article 33 Refugee Convention 1951. Comparable human rights obligations can be found in Article 3 of the ECHR as applied in *Hirsi Jamaa v Italy* and *MSS v Belgium and Greece*, and Article 3 of the International Convention Against Torture.

International refugee law is predicated on the surrogacy principle whereby the failure of one state to protect its citizens should be remedied by the actions of other states in the global community.<sup>32</sup> The Refugee Convention itself does not guarantee a decent standard of living; rather it seeks primarily to protect refugees from refoulement i.e. serious threats to their life or freedom.<sup>33</sup> It is therefore possible that a refugee camp could be compliant with this obligation. Other material rights listed in the Convention, including access to education, housing and employment, depend largely on existing conditions in the host state. Refugees should not receive 'less favourable' treatment, but where the host population is already impoverished this may not provide much comfort.

For those Syrian refugees in neighbouring countries there is a slim chance of benefitting from a UNHCR resettlement programme. Faced with the insecurity and uncertainty of camp life, many have embarked on the long and dangerous journey to the relative peace and security of Europe. Seen in this light, the decision to migrate beyond the region is both understandable and foreseeable. Yet the response of the European institutions, many Member States and much of the media, suggests otherwise.

### **The importance of the policy frame**

Frames impose structure on political issues and policies. Winter argues that there is a symbiotic relationship between elite framing rhetoric and public opinion.<sup>34</sup> Whilst the frame lends structure to issues, helping to develop a coherent narrative; cognitive schemas structure our understanding of social categories by linking together their various attributes to produce a coherent

---

<sup>32</sup> Guy Goodwin-Gill and Jane McAdam *The Refugee in International Law* (OUP 2007, 3<sup>rd</sup> edition) 10

<sup>33</sup> Article 33(2) Refugee Convention 1951, Resolution 2198 (XXI) adopted by the United Nations General Assembly

<sup>34</sup> Nicholas J G Winter *Dangerous Frames: How Ideas About Race And Gender Shape Public Opinion* (University of Chicago Press, 2008)

story. When the frame and the cognitive schema align an analogy is created which drives public opinion.<sup>35</sup>

The role of the media in establishing and maintaining frames in times of uncertainty is significant.<sup>36</sup> Van Dijk goes further in arguing that whilst the mass media can be accused of disseminating potentially prejudiced ideology, it also constructs and reconstructs public attitudes and 'knowledges'.<sup>37</sup>

In matters relating to migration the influence of both quality and tabloid media on public attitudes has been well-documented.<sup>38</sup> The tendency to prefer stories that are accessible to readers results in an emphasis on 'conventional understandings of a situation, on accounts that can be quickly and easily portrayed, and on the most plausible explanations'<sup>39</sup>. As a consequence, there is an editorial preference for stories that are proximate, large and contain an element of conflict.<sup>40</sup> For stories involving refugees this translates as crisis coverage where the immediate narrative centres on security, costs and numbers rather than the positive contribution refugees can make to host societies.<sup>41</sup>

Although the exceptional nature of a crisis offers an opportunity to disrupt journalistic routines, providing a new frame, the coverage of the 'refugee crisis' was dominated by established narratives relating to terrorism, crime and vulnerability.<sup>42</sup> When these frames are confounded by metaphors emphasising

---

<sup>35</sup> Supra n34, at 146

<sup>36</sup> Elizabeth M Perse *Media Effects and Society* (London Routledge, 2001) 81; see also Andrea Lawlor 'Framing Immigration in the Canadian and British News Media' (2015) 48 *Canadian Journal of Political Science* 2, 329–355.

<sup>37</sup> Teun Van Dijk 'The Discourse and Knowledge Interface' in G Weiss and R Wodak (eds.) *Critical Discourse Analysis. Theory and Interdisciplinarity* (Palgrave Macmillan, 2003), 85-109

<sup>38</sup> See for example Teun Van Dijk *Racism and the Press; Critical studies in Racism and Migration* (Routledge 1991); Samantha Cooper, Erin Olejniczak, Caroline Lenette and Charlotte Smedley 'Media Coverage Of Refugees And Asylum Seekers In Regional Australia; A Critical Discourse Analysis' (2017) 162 *Media International Australia* 1, 78-89; Majid Khosravinik 'The Representation Of Refugees, Asylum Seekers And Immigrants In British Newspapers. A Discourse Analysis' (2010) 9 *Journal of Language and Politics* 1

<sup>39</sup> Andrea Lawlor and Erin Tolley 'Deciding Who's Legitimate: News Media Framing of Immigrants and Refugees' (2017) 11 *International Journal of Communication* 969

<sup>40</sup> Ibid.,

<sup>41</sup> Supra n38

<sup>42</sup> Esther Greussing and Hajo Boomgaarden 'Shifting The Refugee Narrative? An Automated Frame Analysis Of Europe's 2015 Refugee Crisis' (2017) 43 *Journal of Ethnic and Migration Studies* 11, 1750

the vast scale and 'elemental forces' at play (waves, tides, swarms),<sup>43</sup> the humanitarian needs of the refugee are subsumed within a discourse of high drama. It is surprising how often these metaphors find their way into scholarly analysis, thus reaffirming their legitimacy. In an otherwise well-informed analysis of national sovereignty, Dagi refers to a 'new immigration wave' and a 'refugee influx' that 'paralyzed' policy makers.<sup>44</sup> Not only will this discourse act to prevent a sustainable, managed solution but it can serve to legitimise actions which would otherwise be regarded as deeply unpleasant. This is an argument advanced in the context of the 'just war' frame in US public discourse by Butler.<sup>45</sup>

Media coverage of migratory movements also adopts a hierarchy of acceptance. With white, Christian, able-bodied immigrants at one end of the spectrum and racial minority, non-Christian, non-Anglophone/Francophone migrants at the other end<sup>46</sup>.

The research on media framing is evidenced in the public discourse on the Syrian displacement. Politicians of the Visegrad<sup>47</sup> countries used the crisis frame very deliberately to make the strengthening of national borders a priority, arguing 'external border protection must remain the top priority if we are to prevent the 2015 scenario ...a crisis that questions the very foundations of the European Union'.<sup>48</sup>

On some occasions however, public opinion appears to shift in response to a particular event, disrupting the normative frame and revealing problematic metaphors. Such an event occurred with the publication of images of Syrian toddler Aylan Kurdi, drowned and washed up on a Turkish beach 5km from

---

<sup>43</sup> Paul Baker and Tony McEnery 'A Corpus-Based Approach To Discourses Of Refugees And Asylum Seekers In UN And Newspaper Texts' (2005) 4 *Journal of Language and Politics* 2, 197-226.

<sup>44</sup> Dagi, supra n3

<sup>45</sup> Michael J Butler *Selling a 'just' war. Framing Legitimacy and US Intervention* (Palgrave Macmillan 2012)

<sup>46</sup> Robert Ford, 'Acceptable And Unacceptable Immigrants. How Opposition To Immigration In Britain Is Affected By Migrants' Regions Of Origin' (2011) 37 *Journal of Ethic and Migration Studies* 7, 1017-1037

<sup>47</sup> Czech Republic, Hungary Poland, Slovakia

<sup>48</sup> Cited in Henry Foy 'Central Europe States Keep Migrant Heat On Athens' *Financial Times* (Feb 15th 2016)

Greece. The images posted on Twitter on the morning of 2<sup>nd</sup> September, quickly went viral having been published on the Guardian webpage that afternoon and reproduced in print media the following day.

The emotional detachment that characterised the crisis/burden frames and the 'pity' response was suddenly shaken as the public put pressure on their Governments to take action to protect rather than prevent refugees. D'Orazio analysed social media immediately after the story broke and observed a clear change in tweeting content, from a focus on migrants towards an interest in the plight of refugees.<sup>49</sup> Opinion polls in France similarly showed a large shift in public opinion towards refugees after the publication of the image.<sup>50</sup> In the UK the public outcry led Prime Minister David Cameron to change his policy on resettlement, significantly increasing the number of places offered to 20,000.<sup>51</sup> In Canada, where the extended Kurdi family were settled, the outcry is considered to have contributed to the defeat of the Conservative government in the October election.<sup>52</sup>

This was undoubtedly a time when the public mood shifted towards compassion and empathy and it provided an opportunity for European cooperation that would prioritise protection and fundamental rights. The opportunity was short-lived. As David Cameron stressed the UK's moral credentials,<sup>53</sup> a more conservative response soon followed which focussed on the economic costs, the behaviour of other European countries and more specifically, the 'irresponsible' behaviour of the boy's father. Ten days after the photograph was published, the tabloid Daily Express tried to reclaim the

---

<sup>49</sup> Francesco D'Orazio 'Journey of an Image: From a Beach in Bodrum to Twenty Million Screens Across the World' in Farida Vis and Olga Goriunova (eds.) 'The Iconic Image on Social Media: A Rapid Research Response to the Death of Aylan Kurdi' Visual Social media Lab 2015. Available at: <https://research.gold.ac.uk/14624/1/KURDI%20REPORT.pdf> [last accessed 22<sup>nd</sup> Feb 2019]

<sup>50</sup> Brian Love 'French Opinion Rapidly Swings In Favor Of Refugees, Poll Shows *Reuters* (10<sup>th</sup> Sept 2015)

<sup>51</sup> Nicholas Watt 'David Cameron Says UK Will Take Thousands More Syrian Refugees' *The Guardian* (4<sup>th</sup> Feb 2015)

<sup>52</sup> Patrick Kingsley and Safak Timur 'Stories Of 2015: How Alan Kurdi's Death Changed The World' *Guardian Online* (31<sup>st</sup> Dec 2015)

<sup>53</sup> BBC News 'Migrant Crisis: PM Sys UK Will Fulfil Moral Responsibilities' *BBC* (3<sup>rd</sup> Sept 2015)

established narrative, publishing an exposé claiming that the boy's father was the 'people smuggler' responsible for the death of five people, including his two sons and wife.<sup>54</sup> This explanation, derived from the defence provided by the men charged with smuggling in Turkey, has never been proven and the case against Aylan's father was dropped.

Winter accepts that explicit elements of a particular frame may be rejected but he argues, it can be more difficult to reject implicit elements on a cognitive level. This is particularly relevant to the 'refugee crisis' frame which has been accepted and repeated by scholars, commentators and policy-makers as an adequate description of the events of 2015-16. It does not appear immediately offensive or problematic but when combined with pre-existing cognitive schema concerning social categories such as race and religion, as well as public anxieties over security and crime, the impact of the crisis frame on public discourse and policy is far from innocuous.

### **Europe's asylum framework: mutual trust and distrust**

Pursuant to the EU's Common European Asylum System (hereafter CEAS) there has been a number of Directives that aim to establish common standards across the EU 28.<sup>55</sup> Originally intended to establish minimum standards, the latest phase marked an upgrade to uniformity of protection. In theory an asylum applicant will be able to access equivalent asylum procedures and reception conditions whilst having a comparable opportunity to secure refugee status. As all Member States are deemed safe under the Aznar protocol<sup>56</sup>, there is an expectation, grounded in the Dublin Regulation, that the applicant will make their claim in the first state

---

<sup>54</sup> Adrian Lee 'Tragic Aylan Kurdi's Father Was The People Smuggler Driving Doomed Boat, Claimed Survivor' *Daily Express* Sept 15<sup>th</sup> 2015. Whilst two men were subsequently convicted of trafficking offences in Turkey, the case against the boy's father was dropped for lack of evidence.

<sup>55</sup> It should be noted that the UK, Denmark and Ireland are not bound by all instruments under the CEAS having negotiated particular opt-in positions (beyond the scope of this paper). All three are however bound by the Dublin Regulation.

<sup>56</sup> *Consolidated version of the Treaty on the Functioning of the European Union* - Protocol (No 24) on Asylum For Nationals Of Member States Of The European Union OJ C 115, 9<sup>th</sup> May 2008, p. 305-30

of arrival and will not thereafter engage in secondary movement. There are some exceptions to this principle, but it is clear that asylum seekers cannot choose their ultimate destination. The absence of choice is supported by Article 31 of the Refugee Convention which provides that states shall not impose penalties on refugees 'coming directly' who enter unlawfully where they have good cause for so doing.

If the exceptions do not apply, the Dublin Regulation operates by transferring asylum seekers who engage in secondary movement to the first European state of arrival. Geography dictates that this will be a country at the border of Europe. That country is then expected to process the application and comply with the obligations set out in the various Directives, the Charter of Fundamental Rights and the European Convention on Human Rights (hereafter 'ECHR').

#### Human rights obligations in the CEAS

The EU Charter of Fundamental Rights<sup>57</sup> is applicable to all actions of the European institutions and the actions of Member States when implementing European law, including the Dublin Regulation. Unlike the ECHR it includes specific guarantees for asylum seekers, notably Article 18 the right to asylum<sup>58</sup>, and Article 19(2) which prohibits refoulement. In addition, Article 3 of the ECHR (which has its equivalent in Article 4 of the Charter) has been interpreted to include actions including expulsion or deportation, when there is a real risk that the individual will consequently experience treatment that is inhuman or degrading.<sup>59</sup> Thus, the onus is on the sending state to ensure that conditions in the receiving state will not breach that threshold. The obligations under both instruments have been tested in

---

<sup>57</sup> C 364/1 *Official Journal Of The European Communities* 18.12.2000

<sup>58</sup> It is interesting that the Charter has not adopted the 'right to seek and enjoy' asylum, as set out in Article 14 of the Universal Declaration of Human Rights 1948. It could be argued that the right to asylum is broader in that it implies a corollary obligation on receiving states.

<sup>59</sup> See for example *Chahal v UK* (1996) 23 EHRR 413; and *Soering v UK* 161 Eur. Ct. H.R. (ser. A) (1989)

cases concerning the operation of the CEAS with the resulting decisions pointing to flaws in the central assumption of European safety.

In *MSS v Belgium and Greece*<sup>60</sup> both respondent states were responsible for breaches of Article 3 and 13 of the ECHR where an Afghan asylum seeker was returned to Greece under the Dublin II mechanism. The deficiencies in the Greek asylum system were significant and the applicant had already experienced ill-treatment and destitution in Greece before being transferred. The Belgium government's reliance on the presumption of European safety, was not considered by the European Court to be a sufficient justification given the extent of evidence concerning the failures of the Greek asylum system.<sup>61</sup>

The Court of Justice of the EU (hereafter 'CJEU') applied the EU's Charter of Fundamental Rights in the case of *NS v SSHD*<sup>62</sup> to a proposed Dublin transfer of another Afghan national to Greece. Although emphasising the principle of mutual trust and the presumption of compliance, the Court established that where substantial grounds existed for believing that there were 'systemic failings' in the asylum system of the receiving state, the transfer should not proceed.

Whilst a great deal of criticism was focussed on the Greek asylum system, cases such as *Tarakhel v Switzerland* suggest that the problems are not confined to Greece. The ECtHR questioned the Italian government's ability to protect the family life of a family of asylum seekers and ruled that the Swiss government would be in breach of Article 3 if they returned them without obtaining guarantees from the Italian authorities.<sup>63</sup> The requirement to obtain such guarantees appears to conflict with the presumption of mutual trust but as the number of Dublin challenges before

---

<sup>60</sup> App. 30696/09

<sup>61</sup> Maritime interception and automatic return to Greece was the focus in *Sharifi And Others v Italy And Greece* (App 16643/09) where the court again ruled that the Greek system continued to suffer from multiple failings with a significant risk of onwards refoulement to the country of origin, thus it could not be presumed safe for the purposes of Article 3.

<sup>62</sup> C 411/10

<sup>63</sup> App. 29217/12

the Strasbourg court increased it became incumbent on sending states to undertake such checks.

In the British case *EM (Eritrea)* the Court of Appeal attempted to align the different European Court approaches by requiring that the applicants, who had experienced significant ill-treatment in Italy, produce evidence of systemic deficiencies in the Italian system. This approach was rejected by the Supreme Court which ruled that the correct legal test was whether there was a real risk of ill-treatment in Italy reaching the degree of severity required under Article 3.<sup>64</sup>

In *Mohamed v Austria*<sup>65</sup>, the Court found a violation of the right to an effective remedy (Article 13) concerning a proposed return to Hungary where the applicant sought to argue that their treatment in Hungary would violate Article 3. Although *Mohamed* was ultimately unsuccessful in the Article 3 challenge, the last two years have seen a notable deterioration in the conditions experienced by asylum seekers in Hungary. The Austrian Federal Administrative Court has ruled that there is no guarantee that a Dublin returnee to Hungary would not be subjected to chain refoulement. Similarly, the Council of State in the Netherlands has prevented return on the basis that there are severe doubts as to whether transfer to Hungary would breach Article 3 of the ECHR and, thus, whether mutual trust could be upheld.<sup>66</sup> The use of detention in the absence of international requirements of proportionality and good faith has been criticised by NGO's and recognised in the jurisprudence of several national judicial bodies.<sup>67</sup>

---

<sup>64</sup> *EM (Eritrea) v SSHD* [2014] UKSC 12

<sup>65</sup> 6<sup>th</sup> June 2013

<sup>66</sup> Federal Administrative Court, Decision Of 30 December 2015, W185 2110998-1. Council Of State, Judgment Of 26 November 2015, 201507248/1; Council Of State, Judgment Of 26 November 2015, 201507322/1/V3, Available at: <http://bit.ly/22zuhb6>; Statements By The President Of The Administrative Jurisdiction Division Of The Council Of State (Department) On September 22 2015 (201506653/2 / V3) And September 23, 2015 (201507322/2 / V3).

<sup>67</sup> ECRE 'Case Law Fact Sheet: Prevention Of Dublin Transfers To Hungary' 2016 p9 . Available at: <http://statewatch.org/news/2016/jan/eu-ecre-factsheet-dublin-transfers-to-hungary-1-16.pdf> [last accessed 22nd Feb 2019]; Human Rights Watch 'Hungary: New Border Regime Threatens Asylum Seekers', *HRW Press Release* (19th September 2015); Human Rights Watch 'Hungary: Abysmal Conditions In Border Detention,' *Press Release* (11th September 2015); Hungarian Helsinki Committee, Hungarian Government

Given the recent vote of censure in the European Parliament and the unwillingness of the Hungarian government to assist in the EU's resettlement or relocation schemes, it seems unlikely that the fundamental rights of asylum seekers can be guaranteed in Hungary. Of particular concern is the asylum legislation introduced in autumn 2015. It created a legal basis for the construction of a fence on the border between Hungary and Serbia in conjunction with further legislative amendments criminalising irregular entry and damage to the fence.<sup>68</sup> It has resulted in an extremely hostile environment, violating the international right to seek asylum, the right to effective access to procedures and the non-criminalisation of refugees.

Europe's Commissioner for Human Rights has submitted that current asylum law and practice in Hungary does not comply with international or European human rights standards; concluding that, at the moment, 'virtually nobody can access international protection in Hungary.'<sup>69</sup> The designation of Serbia as safe meant that all entries through the Serbian border were considered ill-founded despite objections from the UN Committee Against Torture and the Hungarian Supreme Court which had determined the designation to breach the ECHR.<sup>70</sup> The Hungarian government have stated that the implementation of the safe country designation will have retroactive effect, thereby applying to Dublin transfers.<sup>71</sup> The European Commission has now recognised that this

---

Reveals Plans To Breach Eu Asylum Law And To Subject Asylum- Seekers To Massive Detention And Immediate Deportation (4 March 2015); Amnesty International, *Amnesty International Fenced Out: Hungary's Violations Of The Rights Of Refugees And Migrants Press Release* (October 2015)

<sup>68</sup> Act CXXVII of 2015.

<sup>69</sup> Third Party Intervention by The Council Of Europe Commissioner For Human Rights Under Article 36 Of The European Convention On Human Rights Applications No. 44825/15 And No. 44944/15, December 2015, COMMDH (2016) 3. In April 2017 all transfers of asylum seekers to Hungary from Germany were stopped due to these concerns.

<sup>70</sup> Opinion No. 2/2012 (Xii.10) KMK Of The Supreme Court Of Hungary (Kúria) On certain questions related to the application of the safe third country concept, a policy which was followed by the OIN until august 2015.

<sup>71</sup> The jurisprudence across EU Member States is documented in the Statewatch factsheet Dublin transfers to Hungary 2016. Available At:

constitutes a clear and persistent breach of human rights and refugee law by the Orban government and finally referred Hungary to the CJEU in July 2018.<sup>72</sup> The response of the Hungarian government continues to equate migration with a threat to European values and suggests there will be no easy resolution.<sup>73</sup>

Institutional recognition that the underpinning mutual trust principle was not always appropriate came in the recast Article 3(2) of Dublin Regulation (III):<sup>74</sup>

where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State...the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

The CJEU has subsequently stressed the importance of mutual trust whilst acknowledging that exceptional circumstances, such as comparatively poor health care, (not just systemic deficiencies) could prevent a Dublin transfer.<sup>75</sup> The above judgements give an insight into a system that is far from uniform and a judicial body that is anxious to stress solidarity and mutual trust notwithstanding repeated breaches of CEAS provisions on

---

<http://statewatch.org/news/2016/jan/eu-ecre-factsheet-dublin-transfers-to-hungary-1-16.pdf> [last accessed 22nd Feb 2019]

<sup>72</sup> European Commission, Migration And Asylum: Commission Takes Further Steps In Infringement Procedures Against Hungary, *Press Release Brussels*, (19th July 2018)

<sup>73</sup> EurActiv 'Hungary slams EU legal action over asylum seekers' 25<sup>th</sup> July 2018. Available at: <https://www.euractiv.com/section/future-eu/news/hungary-slams-eu-legal-action-over-asylum-seekers/> [last accessed 22<sup>nd</sup> Feb 2019]

<sup>74</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 *Establishing The Criteria And Mechanisms For Determining The Member State Responsible For Examining An Application For International Protection Lodged In One Of The Member States By A Third-Country National Or A Stateless Person* OJ L 180, 29.6.2013, p. 31–59

<sup>75</sup> *C.K. And Others*, C-578/16. For a commentary see Cecilia Rizcallah 'The Dublin System: The ECJ Squares The Circle Between Mutual Trust And Human Rights Protection' *European Law Analysis* (20<sup>th</sup> Feb 2017).

reception and asylum procedures. The EU's Fundamental Rights Agency has recently raised concerns over restricted interpretations of refugee law where humanitarian protection is replaced with temporary residence orders (Italy), restrictions in accessing legal representation from detention centres (Croatia), welfare restrictions (Austria) and the classification of asylum files as secret, thereby preventing an effective judicial review (Poland).<sup>76</sup> The realisation of the uniform, fair and efficient asylum system promised in the European Council's Tampere summit in 1999, appears further away than ever.

It may be suggested that the problems arising from over-stretched asylum systems in individual border states are no longer isolated. European cooperation in the field of asylum, such as it exists, has moved from a focus on protection to one of containment and deterrence. To understand how this shift has occurred it is necessary to consider the events of 2015-16 and the impact of the crisis frame. This has enabled the tacit endorsement of an unchallenged narrative presenting those displaced as threats to European security, values and culture.

### **The application and impact of the Crisis Frame**

The UNHCR labelled 2015 the year of Europe's 'refugee crisis' as an estimated one million irregular migrants, 75% of whom were fleeing conflict or persecution in Syria, Afghanistan or Iraq and therefore had claims for protection, arrived at Europe's borders.<sup>77</sup> They further estimate that 3,550 lives had been lost at sea during this journey.

Some media sources were keen to dilute the humanitarian dimension of the descriptor, preferring to describe events as a 'migrant' rather than 'refugee' crisis.<sup>78</sup> The following year was described in similar terms. Within the first

---

<sup>76</sup> EU Fundamental Rights Agency 'Migration: Key fundamental rights concerns' 2019 Quarterly Bulletin 1.

<sup>77</sup> UNHCR statistics, 2015. Available at: <http://tracks.unhcr.org/2015/12/2015-the-year-of-europes-refugee-crisis/> [last accessed 22<sup>nd</sup> Feb 2019]

<sup>78</sup> Daily Mail Online, Key developments in Europe's migration crisis (n/d) Available at: <https://www.dailymail.co.uk/news/fb-5866029/Key-developments-Europes-migration-crisis.html> [last accessed 22<sup>nd</sup> Feb 2019]; Daily Mail Online, It's time to set up migrant

6 months of 2016, the death toll was approaching that of the previous year as thousands continued to drown in the Mediterranean and Aegean seas. It is impossible to be clear about the numbers who did not succeed in reaching Europe as many will have been intercepted, detained and otherwise prevented from travelling onwards by border guards.<sup>79</sup> The situation was, and continues to remain, dire, despite a reduction in media interest and a relative fall in application numbers.

The application of the crisis frame to describe events which were both foreseeable and manageable is deeply problematic. Frames have been defined as conceptual tools which are relied on by politicians, media and individuals to 'convey, interpret and evaluate information'.<sup>80</sup> Essentially, they assist people to make sense of events which they are unable to personally verify.

When one thinks of a crisis one immediately conceives of a situation both unexpected and impossible to resolve (therefore out of control). Crisis framing in the migration context supports a security narrative through its characterisation of the situation as uncontrollable and intrinsically threatening, resulting in the dehumanisation of those seeking protection.<sup>81</sup> Yet as has been noted, the scale of the internal displacement, the ongoing nature and severity of the conflict, and instability in regional countries, suggests that the onward migration to Europe was predictable and therefore potentially manageable.

Whilst a proportion of the arrivals are from established countries of origin such as Afghanistan, Iraq and Eritrea, a considerable proportion of asylum seekers are now Syrian. The UN contends that well over half the pre-war

---

processing centres in Africa' (15<sup>th</sup> June 2018). Available at: <https://www.dailymail.co.uk/news/article-5847875/Macron-Italys-new-PM-meet-migrant-crisis-threatens-rip-Europes-political-order-apart.html> [last accessed 22nd Feb 2019]; Macer Hall EU migrant crisis is 'colossal' British borders face threats from terrorists and smugglers' *Daily Express* (3<sup>rd</sup> Aug 2016)

<sup>79</sup> Helen O'Nions, 'Migrant containment at all costs: what is left of European humanity?' *The Globe Post* (Feb 14<sup>th</sup> 2019).

<sup>80</sup> W Russell Neuman, Marion R Just and Ann N Crigler *Common Knowledge. News and the Construction of Political Meaning* (Chicago Univ of Chicago Press 1992), 60

<sup>81</sup> UN *Universal Declaration of Human Rights* 1948 GA Resolution 217A, Article 14

population in Syria requires humanitarian assistance.<sup>82</sup> More than 3.5 million Syrians currently reside in Turkey and 1.2 million are in Lebanon. It cannot therefore be credibly argued that the reception and processing of one million Syrian asylum claims between 28 comparatively wealthy European countries is unmanageable. The European 'refugee crisis' if indeed it exists at all, is not a crisis that should be attributed to refugees. Rather, it is a crisis of European governance which has failed to deliver a workable and fair solution that protects those most in need.

Lessons should have been learned from the significant increase in asylum claims resulting from the dissolution of Yugoslavia, when the political dimension of the European project was in its infancy. The lack of planning is even more alarming given the existence of a specific European directive that covers this very situation.

#### Lessons from Yugoslavia

The protracted dissolution of Yugoslavia which began in 1990 generated a comparable number of refugees in Europe. This was the first significant spike in asylum applications and, along with the collapse of the Berlin wall, led several governments in Western Europe to focus their attention on specific asylum policies. In the UK for example, the first appeals system was established in 1993 and was soon followed by a proliferation of asylum legislation that has continued to this day. Refugee movements were a foreign policy concern in Europe but the response to the protection demands of over two million Yugoslav refugees was a matter of national competence. Similar arguments over cooperation and responsibility surfaced as Croatia closed its border to Bosnia due to the lack of support from European neighbours. A threat to repeat this decision was made in 2018.<sup>83</sup>

---

<sup>82</sup> UN statistics are available at: <http://www.unocha.org/syria> [last accessed 22nd Feb 2019]

<sup>83</sup> Zdravko Ljubas, 'Bosnia Is Worried By EU Suggestions To Close Borders To Refugees Crossing The Balkans' *Deutsche Welle DW.Com* (20<sup>th</sup> June 2018)

On the whole the individual state response to the Yugoslav refugees was strikingly similar to that of 2015-16 with Germany taking responsibility for the majority of those displaced, granting protection to over 330,000.<sup>84</sup> Sweden received 50,000 asylum claims whereas the UK, France and Belgium received less than 10,000 applications each.<sup>85</sup> Not only are the responses comparable, the numbers are also broadly comparable, with only Germany taking significantly more Syrian than Yugoslav nationals.<sup>86</sup>

The intervening years have seen significant developments in terms of European competence with the establishment of a CEAS in 1999. Yet, surprisingly little has changed on the ground. The same arguments over integration, security and the allocation of responsibility continue to dominate political discussions, delaying effective and prompt response. The urgent humanitarian need for protection is relegated to a secondary concern. Nowhere is this more apparent than in the EU-Turkey deal and the worrying signs that extra-territorial processing is back on the European agenda.

Justin Huynh argues that a model for a managed resettlement programme existed following the exodus of 1.6 million Vietnamese in the 1970's. The orderly departure programme, which included an open shore policy in neighbouring countries and resettlement in the US, could have served as a workable model and may well have prevented many of the deaths in the Mediterranean.<sup>87</sup> Huynh argues that the willingness to accept Vietnamese nationals for resettlement in the US was motivated largely by guilt. By contrast there has been a 'sense of compassionate distance for the plight of Syrian refugees', notwithstanding the increasing globalisation of the conflict.<sup>88</sup>

---

<sup>84</sup> Michael Barutciski 'EU States And The Refugee Crisis In The Former Yugoslavia' (1994) 14 *Refugee* 3

<sup>85</sup> *Ibid.*

<sup>86</sup> Eurostat statistics cited in Barutciski *ibid.*, compare 1991-1996 and 2011-2016 period.

<sup>87</sup> Justin Huynh 'Tales Of The Boat People: Comparing Refugee Resettlement In The Vietnamese And Syrian Refugee Crises' (2016) 48 *Columb Hr Law Review*, Fall 198. This is also discussed as an example of cooperation by Suhrke *supra* n100, 405-6

<sup>88</sup> *Ibid.*

## The Temporary Protection Directive<sup>89</sup>

The need to respond quickly and effectively in cases of war, widespread violence and human rights violations, prompted the European institutions to enact a Directive in 2001 with the purpose of providing immediate, temporary protection in cases of mass arrival. The Yugoslav displacement directly informs the preamble. In particular the Commission and Member States are reminded to 'learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty'<sup>90</sup>.

The Syrian conflict is an obvious case for the implementation of the temporary protection mechanism. The principles it sets out are those that informed the Commission's failed attempts to implement a mandatory quota system in 2016. Had the Council activated the Directive's provisions as soon as the Syrian conflict began to generate a significant number of refugees, there could have been a managed approach grounded in existing obligations. When the number of arrivals increased significantly in 2015, Syrians could have been dispersed according to the responsibility sharing mechanism in a more orderly fashion. It would certainly have been more difficult for the Visegrad group of states to argue against the Commission's competence when setting mandatory quotas.

Instead the European Council struggled to obtain support for its compulsory quota scheme. The CJEU dismissed a challenge by Slovakia and Hungary (supported by Poland) to the Council's competence in setting mandatory quotas to assist with the relocation of Syrians from Greece and Italy.<sup>91</sup> Both states argued that the use of Article 78(3) TFEU was inappropriate as it constituted a binding exception to a legislative act and further they alleged

---

<sup>89</sup> 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* OJ L 212, 7.8.2001, p. 12–23

<sup>90</sup> *Ibid.*, Para 6

<sup>91</sup> Council Decision (EU) 2015/1601 of 22 September 2015 *Establishing Provisional Measures In The Area Of International Protection For The Benefit Of Italy And Greece* OJ 2015 L 248, p. 80

several procedural irregularities, most notably the absence of a unanimous Council vote.<sup>92</sup> Although the Court dismissed all the arguments, the efficacy of the scheme was seriously undermined. The Czech Republic admitted only 12 of their target of 2691, whereas Slovakia admitted 16 from a quota of 902. Both Hungary and Poland resolutely refused to comply.<sup>93</sup> Infringement action was commenced by the Commission in 2017 but by this time the mandatory scheme had been replaced with voluntary commitments.

The absence of effective European solidarity is deeply regrettable. It is possible, although admittedly not inevitable, that the use of an established provision in the Temporary Protection Directive might have attracted less objection. The provisions of the Directive are time-limited, both in terms of duration and the protection it offers, but it does provide for principles of family reunion and recognises that recipients may make a claim for refugee status at any point.<sup>94</sup>

The lack of preparedness and crisis mentality left the European Commission on the back foot, appearing disorganised and reactive. Governments that had no intention of offering protection were provided with an excuse which could be used to appeal directly to their electorates. These appeals centred on national identity and security concerns with Viktor Orban stating that allowing entry for refugees means 'importing terrorism, criminalism, anti-semitism and homophobia'. The Polish interior minister argued that the relocation of refugees was ineffective as it 'simply attracted more waves of immigration to Europe'.<sup>95</sup>

The Commission's capacity to enforce compliance was further limited by a growing existential threat to the Union itself. Many of the leaders refusing to abide by humanitarian obligations were also espousing nationalist views

---

<sup>92</sup> Joined Cases C-643/15 and C-647/15

<sup>93</sup> Aneta Zachová, Edit Zgut, Karolina Zbytniewska, Michał Strzałkowski and Zuzana Gabrizova 'Visegrad Nations United Against Mandatory Relocation Quotas' *EurActiv News* (23<sup>rd</sup> July 2018)

<sup>94</sup> Temporary Protection Directive, Article 17 And 18

<sup>95</sup> Mariusz Blaszczak, Polish Interior Minister 2017 cited in Patrick Wintour 'EU Takes Action Against Eastern States For Refusing To Take Refugees' *The Guardian* (13<sup>th</sup> Jun 2017)

and questioning the authority and foundations of the Union. The Italian interior Minister Matteo Salvini and Viktor Orban have now formed an anti-refugee alliance that is directly oppositional to European policies:

Hungary has shown that we can stop migrants on land. Salvini has shown migrants can be stopped at sea. We thank him for protecting Europe's borders....We must send migrants back to their countries. Brussels says we cannot do it. They also had said it was impossible to stop migrants on land, but we did it.<sup>96</sup>

If their rhetoric is to be believed, the European Commission's capacity to compel states in such a climate would be like Turkey's voting for Christmas. The crisis frame has been welcomed by populist and extremist politicians and has helped facilitate and secure a path to power in national governments for previously marginalised far-right figures such as Matteo Salvini in Italy, Alice Weidel in Germany and Jimmie Akesson in Sweden. It has served to consolidate the power of Viktor Orban in Hungary and President Erdogan in Turkey. The fast-growing popularity of the far-right in Europe is, one could argue, the real crisis. It was not widely foreseen and its volatile, populist appeal certainly threatens the values of the European project.

### **The burden of crisis and its impact on cooperation**

The depiction of the refugee as a burden is common in anti-migrant rhetoric. Yet it also dominates much of the policy pertaining to the CEAS which purports to provide a fair and efficient asylum procedure.<sup>97</sup> Terms such as 'venue-shopping' and 'burden-sharing' frame the refugee as a problem to be managed, de-individualising the refugee experience.

---

<sup>96</sup> Viktor Orban quoted in Lorenzo Tondo 'Matteo Salvini And Viktor Orbán To Form Anti-Migration Front' *The Guardian* (August 28<sup>th</sup> 2018)

<sup>97</sup> Tampere European Council, Presidency Conclusions 15 And 16 October 1999. Available at: [http://www.europarl.europa.eu/summits/tam\\_en.htm#](http://www.europarl.europa.eu/summits/tam_en.htm#) [last accessed 22<sup>nd</sup> Feb 2019]

The dissolution of Yugoslavia brought burden-sharing questions to the fore in discussions over how to manage external displacement. The German Presidency Draft Council Resolution on Burden-sharing in July 1994 attempted to allocate reception responsibility and institute a resettlement mechanism based on three equally weighted factors: population size, size of Member State territory and GDP.<sup>98</sup> Thielemann notes that the proposal was watered down after objection from the British government and French concerns over the rights of refugees.<sup>99</sup> The resulting agreement was based on soft law and non-binding commitments which were found wanting in the subsequent Kosovo crisis.<sup>100</sup>

There are obvious parallels with the Council's decision to introduce a compulsory quota system. Despite continued resistance from the Visegrad group<sup>101</sup>, the Commission sought to create a more durable plan the following year, including a solidarity compensation mechanism where those states taking higher number of asylum seekers were financially compensated.<sup>102</sup> The idea of refugees being traded in this way may seem distasteful but this did not deter the Commission who recognised that an entirely voluntary scheme was not able to offer an effective solution for the numbers requiring protection.

Burden-sharing also informs the transfer system under the Dublin Regulation which has been the subject of so much criticism. Even if one accepts that burden is a legitimate word to describe refugees, in practice the transfer is not a good example of burden sharing. Many states located

---

<sup>98</sup> Council Document 7773/94 Asim 124; Christina Boswell 'Burden sharing in the EU: lessons from the German and UK Experience' (2003) 16 *Journal of Refugee Studies*, 3

<sup>99</sup> Eiko R Thielemann 'Between Interests And Norms: Explaining Burden-Sharing In The European Union (2003) 16 *Journal Of Refugee Studies*' 3, 260

<sup>100</sup> Astrid Suhrke, A 'Burden-Sharing During Refugee Emergencies: The Logic Of Collective Action Versus National Action' (1998) 11 *Journal Of Refugee Studies* 4, 396–415; Thielemann *Ibid*, 261

<sup>101</sup> Hungary, Slovakia, Poland And Czech Republic constitute the Visegrad or V4 Political and Cultural Alliance

<sup>102</sup> European Commission 'Towards A Sustainable And Fair Common European Asylum System' (*Press Release 4<sup>th</sup> May 2016 IP/16/1620*)

away from the borders of Europe, in particular the UK, have been far keener to maintain the Dublin system precisely for this reason. The transfer mechanism has actually constituted a burden in the full definitional sense for countries in South-Eastern Europe. Italy had 42,356 irregular border crossings i

n two months alone in 2016.<sup>103</sup> The figures for Greece and Hungary were even greater with 137,000 and 78,472 respectively for the same period.<sup>104</sup> The European Commission commenced infringement proceedings against Hungary after the introduction of its new asylum laws in December 2015 and mounting evidence that refugee law was not being respected. Nevertheless some European states continued to transfer asylum seekers during this period with 1,338 successful transfers to Hungary between January and Nov 2015 (from 39,299 requests).<sup>105</sup>

Until the decision of Germany in August 2015 to suspend the Dublin transfer mechanism for Syrian nationals, states of first arrival were expected to manage the overwhelming majority of irregular arrivals along with those transferred. This was less about cooperation and sharing responsibility and more about shifting responsibility for refugee management by wealthier northern European states.

---

<sup>103</sup> Jon Simmons 'Contemporary Realities and Dynamics of Migration in Italy', Migration Policy Centre, Florence 2018; European Commission Irregular Migration via the central Mediterranean (2017) European Political Strategy Centre, Strategic Notes 22, (2nd Feb). Available at: [https://ec.europa.eu/commission/sites/beta-political/files/irregular-migration-mediterranean-strategic\\_note\\_issue\\_22\\_0\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/irregular-migration-mediterranean-strategic_note_issue_22_0_en.pdf) [last accessed 22<sup>nd</sup> Feb 2019]

<sup>104</sup> UN International Organisation for Migration 'Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079' Press Release, (1<sup>st</sup> June 2017). Available at: <https://www.iom.int/news/mediterranean-migrant-arrivals-top-363348-2016-deaths-sea-5079> [last accessed 22<sup>nd</sup> Feb 2019]

<sup>105</sup> European Commission, 'Commission Opens Infringement Procedure Against Hungary Concerning Its Asylum Law' (10 December 2015). Available at: <http://bit.ly/1xyj79p>. See above at page 16-17; Third Party Intervention By The Council Of Europe Commissioner For Human Rights Under Article 36 Of The European Convention On Human Rights Applications No. 44825/15 And No. 44944/15, December 2015, COMMDH(2016)3, 9. Available at: <http://bit.ly/1pbwsff> [last accessed 22<sup>nd</sup> Feb 2019].

Carrera argues that the resulting temporary reforms to the Dublin mechanism failed to fully appreciate that the situation was neither an emergency nor particularly exceptional.<sup>106</sup> An opportunity to re-consider the premise and objectives of the Regulation was therefore missed. Even if one accepts the contested premise that people should remain in the first country of asylum, it is improbable that secondary movement will be prevented whilst asylum procedures and reception conditions in European states are not aligned.<sup>107</sup>

It is suggested that framing the refugee as a burden undermines the possibility of their positive contribution to society and contributes to the anti-migrant narrative which focuses exclusively on the threat to national identity, prosperity and safety. The Oxford English dictionary provides three definitions of the noun burden:

- A load, typically a heavy one.
- A duty or misfortune that causes worry, hardship, or distress.
- The main responsibility for achieving a specified aim or task.<sup>108</sup>

Whilst the final definition may be in the minds of policy-makers, it is reasonable for a burden to be interpreted using either of the first two definitions, stressing a negative, unwanted obligation that is unlikely to produce a particularly positive outcome.

Rather than emphasising the negative, it is submitted that 'responsibility sharing' would provide a more constructive platform for negotiations between states and the Commission. Whilst certain states may continue to

---

<sup>106</sup> Sergio Carrera and Karel Lannoo 'Treat The Root Causes Of The Asylum Crisis, Not The Symptoms' (2015) Centre for Policy Studies, CEPS, Commentary Brussels.

<sup>107</sup> Elspeth Guild, Sergio Carrera, Cathryn Costello, Madeline Garlick and Violeta Moreno-Lax 'Enhancing the Common European Asylum System and alternatives to Dublin' (2015) Ceps Paper No 83, Available at: [https://www.ceps.eu/system/files/ceps\\_lse\\_83\\_0.pdf](https://www.ceps.eu/system/files/ceps_lse_83_0.pdf). [last accessed 22<sup>nd</sup> Feb 2019].

<sup>108</sup> Oxford English Dictionary. Available at: <https://en.oxforddictionaries.com/definition/burden> [last accessed 22<sup>nd</sup> Feb 2019]

prove reluctant to comply with their humanitarian obligations, it is arguably harder for them to justify renegeing on shared responsibilities (when compared with shared burdens).

### **The European response to Syrian displacement**

The crisis mentality that overtook the European Commission in 2015 characterised a fragmented and reactive response to the Syrian displacement. Its effects continue to be felt today by Syrians stranded in Turkey and Greece, not to mention those returned at European borders who have been denied an opportunity to exercise their right to seek asylum.

#### Resettlement

For many refugees the ultimate goal is to return home (an understanding typically lost in the anti-refugee narrative found in sections of the European media).<sup>109</sup> The decision to leave is rarely taken lightly (this explains why the number of Syrian refugees remained fairly constant for the first four years of the conflict and why there are still millions of internally displaced Syrians. Yet it is difficult to conceive of return in the foreseeable future as a viable option for Syrians. President Assad has recently legislated to require owners of private property to register their interest within thirty days.<sup>110</sup> Those unable or unwilling to do so, which will include millions of internally and externally displaced Syrians, will risk confiscation of their property. Such measures will prevent the return and reintegration of those in exile; suggesting continuing instability for decades to come.

Given the impossibility of return in the short-medium term and the significant costs falling on comparatively poor neighbouring states, the

---

<sup>109</sup> UN News Interview with UNHCR spokesperson Melissa Fleming 'All Refugees Want To Go Home Someday' *UN News* (26<sup>th</sup> May 2017); Giles Duley 'Syrian Refugees: 'We Want To Go Home, That Is Our Dream' *The Guardian* (5<sup>th</sup> Oct 2014). Available at: <https://www.theguardian.com/world/2014/oct/05/syrian-refugees-we-want-peace-want-to-go-home> [last accessed 22nd Feb 2019]

<sup>110</sup> Arwa Ibrahim 'Syria 'Absentees Law' Could See Millions Of Refugees Lose Lands' *AlJazeera.com* (7<sup>th</sup> April 2018)

best, durable solution will be resettlement. The scale of the resettlement required is considerable and cannot be achieved absent a global response. The EU has operated a voluntary resettlement scheme since 2011 and several Member States operate their own schemes which are typically managed by the UNHCR in the region. The UNHCR has urged the EU to increase commitments to receive refugees through sustainable resettlement programmes, endorsing the 2012 campaign led by the International Organisation for Migration (IOM) and five non-governmental organisations active in the field of refugee protection, to resettle 20,000 people every year by 2020.

The need for European coordination in meeting this target seems obvious as recognised by the Commission's Agenda for Migration in 2015.<sup>111</sup> Many Member States were not offering any resettlement places and surveys of voluntary programmes showed that few states fulfilled their own self-imposed resettlement quotas.<sup>112</sup> There are a variety of reasons for this, including failures by the UNHCR to identify appropriate persons, unwillingness of municipalities to partake in resettlement initiatives and the imposition of suitability criteria, such as integration potential, which are potentially discriminatory and difficult for the UNHCR to assess.<sup>113</sup> Additionally, one of the concerns surfacing in resettlement research is the emergence of a two tier asylum system in some European countries which distinguishes between asylum seekers arriving at the border and those resettled from the region of origin. This can prevent a holistic integration strategy which is essential to the sustainability of resettlement.<sup>114</sup>

After three years of the conflict, the UK had resettled only 143 Syrians under its Vulnerable Persons Relocation Scheme.<sup>115</sup> Whilst David Cameron increased the commitment to resettle 20,000 within five years from 2015

---

<sup>111</sup> Supra n120

<sup>112</sup> Elena Boshki 'Building Knowledge for a concerted and sustainable approach to refugee resettlement in the EU and its Member States' 2013/004 Know RESET Research Report

<sup>113</sup> Ibid.,

<sup>114</sup> Ibid.,

<sup>115</sup> Ostrand supra n1

there have been accusations that the scheme principally benefits the most vocal rather than the most vulnerable. There are also concerns that the significant resources devoted to Syrians under the scheme could be more equitably shared across the refugee community in the UK. Other resettlement programmes such as the Gateway Protection Programme and the Mandate Refugee Scheme assist those formally identified as Convention refugees but the number of beneficiaries is comparatively small.

The US operates a temporary protected status to allow nationals of specific countries, including Syria, to remain and work for a fixed, renewable period. But the recent removal of several countries from the list and the anti-immigrant rhetoric of President Trump leaves the future of the policy in doubt.

Compared to the UK and the US, Germany has been more active in resettlement with a private sponsorship programme introduced in 2013; a national humanitarian program which focussed on Syrians living in Lebanon and a scheme introduced in January 2017 to resettle 500 persons each month from Turkey.<sup>116</sup> Germany also contributes to the European Union resettlement scheme and has committed to 10,200 places over the next two years.

The schemes are to be welcomed but the lack of an effective European strategy has meant that there is a considerable mismatch between demand and response. Amnesty International has reported that many of the most vulnerable remain in neighbouring countries, unable to access essential medical treatment for life-limiting conditions.<sup>117</sup> Bokshi recommends EU coordination, the twinning of new and experienced resettlement countries, the development of a media strategy to promote resettlement locally and a clearer focus on integration challenges:

---

<sup>116</sup>The schemes are discussed on the German resettlement website:  
<https://resettlement.de/en/current-admissions/> [last accessed 22<sup>nd</sup> Feb 2019]

<sup>117</sup> Amnesty International 'Hardship, Hope And Resettlement; Refugees From Syria Tell Their Stories' *Amnesty International* (Feb 2015)

For resettlement to fulfil its functions as a meaningful demonstration of solidarity with countries of 1<sup>st</sup> asylum and as a useful component of a comprehensive durable solution strategy, resettlement numbers need to be significant and proportional to Europe's prosperity relative to countries of 1st asylum.<sup>118</sup>

When the number of irregular arrivals started to increase in 2015 the European Commission finally opted for concerted European action and the next two years saw the resettlement of over 25,000 Syrians from neighbouring countries.<sup>119</sup> Given the small number and the Commission's view that managed resettlement would help to reduce the number of people engaging in onward irregular migration, one might be forgiven for thinking that cooperation would be easy to secure. The proposed resettlement scheme covered all Member States and used distribution criteria that included GDP, size of population, unemployment rate and past numbers of asylum seekers/ resettled refugees.<sup>120</sup> It also took account of any voluntary resettlement initiatives applied by Member States. An extra EUR 50 million in 2015/2016 was made available to support the scheme.<sup>121</sup> An EU Regulation was proposed establishing a permanent resettlement framework with a unified procedure and common criteria in July 2016.<sup>122</sup>

---

<sup>118</sup> Bokshi supra n112, 44

<sup>119</sup> UNHCR Deputy Director, Progress Report on Resettlement, Meeting of the Standing Committee of the Executive Committee of the High Commissioner's Programme, Geneva, 26-28 2012; European Commission 'Resettlement: Ensuring safe and legal access to protection for refugees', European Commission Nov 2017. Available at : [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171114\\_resettlement\\_ensuring\\_safe\\_and\\_legal\\_access\\_to\\_protection\\_for\\_refugees\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171114_resettlement_ensuring_safe_and_legal_access_to_protection_for_refugees_en.pdf) [last accessed 22nd Feb 2019]

<sup>120</sup> For the precise numbers see *Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions 'A European Agenda On Migration'* (Brussels 13.5.2015) COM(2015) 240 final, annex.

<sup>121</sup> Ibid., 5

<sup>122</sup> European Commission *Proposal For A Regulation Of The European Parliament And Of The Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council* (Brussels, 13.7.2016) COM(2016), 468 Final 2016/0225 (COD)

Although the voluntary resettlement scheme has been extended to other nationalities with a target of 50,000 places by October 2019, it is notable that several states have failed to provide any resettlement places and many continue to fall far short of achieving the resettlement target.<sup>123</sup>

### *Relocation*

In addition to resettlement from the region of origin, the Commission proposed an emergency relocation mechanism for those already present on EU soil to alleviate the pressure on Southern border states.<sup>124</sup> The proposed relocation mechanism activated the 'emergency situation' provision contained in Article 78(3) of the TFEU and constituted a derogation from the Dublin Regulation.<sup>125</sup>

The plan foresaw 160,000 relocation places to be implemented over a two-year period. 66,400 places were for people to be relocated from Greece and 39,000 from Italy to other EU countries. The remaining 54,000 were to be relocated from Hungary but due to their continued rejection of the plan, they were to be allocated at a later stage.<sup>126</sup> Those eligible needed to come from countries of origin from which there was a 75% asylum success rate.<sup>127</sup> Whilst pragmatic, the collective assessment of an asylum claimants legitimacy based on nationality is very crude and inevitably leads to a two tier system as many nationalities are excluded from the benefits of relocation despite having credible claims (including Afghans, Iraqis and Eritreans ).

---

<sup>123</sup> Bulgaria, Croatia, Cyprus, Greece, Poland, Slovakia, Slovenia and Hungary had not provided any resettlement places as of Nov 2017.

<sup>124</sup> Communication COM(2015)240 final

<sup>125</sup> Bruno Nascimbene 'Refugees, The EU And The 'Dublin System'. The Reasons For A Crisis' (2016) 1 European Papers 1, 101-113, 104

<sup>126</sup> The 2nd Council Decision on relocation on 29 September 2016 made 54,000 places not yet allocated available for the purpose of legally admitting Syrians from Turkey to the EU.

<sup>127</sup> Those eligible therefore depend on asylum statistics. Success rates for nationals of Afghanistan and Iraq fell below the 75% figure and therefore were ineligible for relocation. Nationals of Eritrea were originally eligible for relocation but this ended when the success rate fell slightly below the threshold.

Member States would receive 6,600 euros per person to assist with the transfer and could only reject the relocated person after undertaking an assessment, on national security or public order grounds. This was subsequently amended to allow states to notify the Commission and the council of temporary incapacity to participate in the relocation for up to 30% of the assigned applicants, for duly justified reasons.<sup>128</sup>

Whilst devised as an emergency response, there was some consideration given to integration prospects in the subsequent Commission communication. Language factors and family networks should be considered when deciding on the most appropriate state for relocation and where there is additional need for support or specialist health care this factor should be taken into account. However, NGO's and the European Asylum Support Office report that such factors are not regularly considered.<sup>129</sup> Whilst the durability of the mechanism depends on such factors, it must be recognised that refugees are far more likely to struggle to build a new life in certain states. Interviews with relocated asylum seekers in Romania found that language barriers and low wages made it almost impossible to obtain meaningful employment. Language courses are not readily accessible and refugees are expected to support themselves after 6-12 months of basic state support.<sup>130</sup> This might help to explain why Romania had only settled 463 from a total of 6,205 during the first year of relocation.

The lamentable resettlement rate and the considerable difficulties experienced by arrivals in some countries, demonstrate the weakness of

---

<sup>128</sup> Council Decision (EU) 2015/1601 of 22 September 2015 *Establishing Provisional Measures In The Area Of International Protection For The Benefit Of Italy And Greece*, Art 4(5) OJ L 248, 24.9.2015, p. 80–94. Both Sweden and Austria have sought to rely on this provision, see Nascimbene supra n125, 107

<sup>129</sup> Action Aid 'Separated. The Challenges of Relocation and Family Reunification for Refugees Arriving in Greece' (Action Aid, Johannesburg 2017)

<sup>130</sup> Frederik Johannisson 'Refugees Relocated by EU Struggle to Get by in Romania' *News Deeply* (1<sup>st</sup> Dec 2006). Available at: <https://www.newsdeeply.com/refugees/articles/2016/12/01/refugees-relocated-by-e-u-struggle-to-get-by-in-romania> [last accessed 22nd Feb 2019]

leadership in the lack of planning and structured support resulting from the 'crisis' mentality that overtook the Commission in 2015. For any relocation mechanism to be sustainable it needs to better match the preferences of refugees with those of Member States. Whilst states can indicate their preferences, they are accused of doing so with the intention of reducing rather than enhancing their reception obligations.<sup>131</sup> If refugees are going to be relocated to countries where they will struggle to integrate there needs to be much more financial support and training (perhaps mentoring by states with more successful schemes) for the receiving state to build reception and integration capacity.

A more immediate issue faces an estimated 50,000 migrants stranded in Greece. Some arrived before the EU-Turkey in March 2016 deal and are awaiting relocation under voluntary programmes, others arrived after the EU-Turkey deal took effect and their only way of leaving Greece is family reunion. Family reunion is provided for under the Dublin Regulation.<sup>132</sup> The transfer should take place before the asylum claim has been assessed so that family life is facilitated with the best interests of the child being a primary consideration.<sup>133</sup> Many have credible family reunion claims as family members, including young children separated at borders, are themselves stranded in other EU states. The administrative process for assessing relocation and family reunion has been lengthy and convoluted. Those interviewed by Action Aid were not properly informed about their legal position or given information about the reunion process.<sup>134</sup> Family reunion figures from 2015 suggested that around three quarters of applications resulted in transfer, but this figure had dropped markedly to 10% a year later.<sup>135</sup>

---

<sup>131</sup> Nascimbene supra n125, 109

<sup>132</sup> Dublin Regulation supra n74, Articles 9 and 10.

<sup>133</sup> Article 24 EU Charter of Fundamental Rights C 364/1, OJ 18.12.2000; Article 3 UN Convention on the Rights of the Child 1989, Resolution 44/25 20th November 1989

<sup>134</sup> Action Aid supra n129

<sup>135</sup> Ibid., 8

The reactive starting position of discussions on the Commission's 2015 Agenda for Migration did not bode well. Not only were the Visegrad states vociferous in their opposition to compulsory resettlement, the Agenda itself lacked definitive priorities. This is evidenced by the attention paid to the prevention of smuggling over the need to explore legitimate options for regular migration.<sup>136</sup> Apetroe argues that a focus on legal migration pathways would have enabled the EU to take some initiative, thus regaining leadership of the debate.<sup>137</sup> Instead the Commission expended its energy and resources on promoting greater securitisation and interception of smuggling networks; essentially confirming a securitisation narrative that has shaped migration discourse whilst increasing public anxieties over security and terrorism.<sup>138</sup> Not only are such programmes unlikely to yield significant impact whilst the root causes remain unaddressed, there is also ample evidence from Operation Sophia and Triton that they endanger lives by prioritising security over rescue.<sup>139</sup>

The compulsory relocation mechanism ended in September 2017 falling well short of its target. A move to voluntary relocation resulted in slightly more than half the target being met as of October 2018. This was partly down to problems with registering those eligible, but it was also very apparent that some countries were either unwilling or incapable of properly engaging with the mechanism. The relocation mechanism itself did little to deter irregular migrants. Over 3,000 drowned in the first six months of 2016 with three-quarters of the deaths occurring on the route between Libya and Italy. Conditions for all migrants in Libya are known to be dire. There is no established UNHCR presence and many migrants are detained

---

<sup>136</sup> Sergio Carrera 'Whose European Agenda on Migration?' (2015) Centre for European Policy Studies 16, Brussels

<sup>137</sup> Alexandru Apetroe 'The European Migration Crisis. Which Consequences Affecting the Stability of the EU?' (2016) *Studia Europaea* Sept 3<sup>rd</sup>, 121-143

<sup>138</sup> Jeff Huysmans 'The European Union and the Securitisation of Migration' (2000) 38 *Journal of Common Market Studies* 5, 751-777; Havlova and Tamchynova supra n16, 106

<sup>139</sup> Miltner supra n11

in overcrowded, insanitary conditions.<sup>140</sup> One of the most harrowing reports related to a CNN investigation which uncovered migrants being sold in slave markets around Tripoli.<sup>141</sup> Notwithstanding accusations from NGO's and the UNHCR that the Libyan government are complicit in crimes against humanity, the EU has recently attempted to persuade the Libyan authorities to build EU funded, migrant processing centres. So far, the Libyan government have rejected the proposal.<sup>142</sup> Meanwhile the EU has assisted in supporting the Libyan coastguard as it continues to intercept and return migrants attempting to cross to Europe whilst actively preventing NGO vessels from engaging in rescue operations.<sup>143</sup>

### The Turkish solution

As has been demonstrated, the emergency relocation mechanism had little effect in securing relocation or reducing the number of irregular arrivals in Greece and Italy. Of particular concern was the increasing number of arrivals coming from Turkey to the Greek islands. This led the Commission to devise its controversial 'Plan B', the EU-Turkey deal.<sup>144</sup>

The deal saw the outsourcing of refugee protection from Europe to Turkey and constitutes the clearest example to date of the commodification of asylum. The success of the deal depends entirely on perspective. It certainly reduced the number of daily arrivals in Greece from thousands to tens. After only four months, Christine Nikolaidou, from the International

---

<sup>140</sup> O'Nions supra n79

<sup>141</sup> CNN footage of Libyan migrant slave auctions, People for Sale <https://edition.cnn.com/specials/africa/libya-slave-auctions> [last accessed 23rd Feb 2019]; Human Rights Watch 'No Escape From Hell. EU Policies Contribute To Abuse Of Migrants In Libya' (HRW 2019). Available at: <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya#> [last accessed 22<sup>nd</sup> Feb 2019]

<sup>142</sup> Patrick Wintour 'Libya Rejects EU Plan For Refugee And Migrant Centres' *The Guardian* (20<sup>th</sup> July 2018)

<sup>143</sup> Human Rights Watch supra n141; O'Nions supra n79.

<sup>144</sup> <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf> [Last accessed 22<sup>nd</sup> Feb 2019] The statement of 18<sup>th</sup> March 2016 formalised an earlier recommendation for a Voluntary Humanitarian Admission Scheme with Turkey to create solidarity and responsibility sharing with Turkey for the protection of persons displaced by the conflict in Syria to Turkey, 11097/15. 5 C (2015) 3560 final

Organisation for Migration in Greece, explained that the threat of deportation and detention was working, 'Flows have decreased not just because of the agreement but because of the closure of the borders – refugees and migrants have received the message that the borders are shut.'<sup>145</sup>

This is a disturbing observation as it suggests that the obligation of non-refoulement is being routinely ignored. It is difficult to see any significant difference between closing borders and interdicting vessels at sea. In the *Hirsi Jamaa* judgement, the ECtHR ruled that the interception and return of a boat to Libya which contained irregular migrants, including asylum seekers, was a breach of the prohibition on inhuman treatment contrary to Article 3, and collective expulsion contrary to Protocol 4, Article 4 along with the right to an effective remedy in the European Convention<sup>146</sup>.

From a human rights perspective the Turkey deal is a truly bad deal. The closures of borders will never solve a humanitarian emergency. Whilst it may have an impact on the numbers of people migrating out of choice, the majority of irregular migrants come from countries where there are serious human rights abuses. It has been well established that absent a viable alternative of return, migrants will search for other, more dangerous routes.<sup>147</sup> In this respect EU policy directly contributes to the unprecedented growth in smuggling and trafficking.<sup>148</sup> A recent analysis of Operation Sophia which operated off the coast of Libya found that irregular migration increased by 19% in the first half of 2017 compared to the same

---

<sup>145</sup> Lizzie Dearden 'Refugee Crisis: 2016 On Course To Be Deadliest Year On Record As Thousands Of Asylum Seekers Drown In Mediterranean' *The Independent* (30<sup>th</sup> July 2016)

<sup>146</sup> *Hirsi Jamaa and Others v Italy* 2012, App 27765/09

<sup>147</sup> Peter Andreas and Timothy Snyder *The Wall around the West. State Borders and Immigration Controls in North America and Europe* (Rowman and Littlefield, Lanham 2000)

<sup>148</sup> This has been seen in Niger which was a smuggling hub for routes to North Africa. Since the EU pushed the Niger government to enact legislation to criminalise smuggling, many people's livelihoods have been adversely affected leading to increased migratory pressure resulting in other networks opening up. European Council on Foreign relations 'Migration Through the Mediterranean: Mapping the EU Response', 2017. Available at: [https://www.ecfr.eu/specials/mapping\\_migration](https://www.ecfr.eu/specials/mapping_migration) [last accessed 22nd Feb 2019]

period in 2016. The number of arrivals from Libya and the number of deaths in the central Mediterranean has increased considerably since 2015.<sup>149</sup> Although many migrants taking the Libyan route will be from Sub-Saharan Africa, the UNHCR states that around 11% of arrivals from Libya in 2018 are Syrian nationals.<sup>150</sup> From a geographical perspective this makes little sense. It therefore seems reasonable to conclude that the movement restrictions imposed by the EU-Turkey deal are at least contributory factors.

Put simply the deal states that those whose claims are deemed *inadmissible* in Greece should be returned to Turkey. At the outset, as reported in several press releases, the deal stated that *all* irregular migrants will be returned, which would clearly breach the procedural requirements pursuant to the principle of non-refoulement, as well as the EU Charter and ECHR's prohibition on collective expulsion. The subsequent clarification and the use of the word *inadmissible* rather than *unfounded* is still significant as it suggests that the application has not be assessed on its merits. A claim could be considered inadmissible for example if the applicant had arrived via a safe 3<sup>rd</sup> country or if Turkey is considered to be a first country of asylum. Following the transfer, the Turkish government commits to relocate one Syrian refugee from Turkey to the EU according to the relocation quota.

The deal was funded at a cost of 6 billion euros paid in instalments to various organisations delivering education and other services on the ground. In return for Turkey's cooperation, the EU promised to relax visa requirements for Turkish nationals and to reopen negotiations towards EU membership. The latter seems unlikely to progress anytime soon as only

---

<sup>149</sup> Italian Ministry of the Interior, Statistical dashboard of 30 June 2017. Available at: [http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscot\\_to\\_statistico\\_giornaliero\\_del\\_30\\_giugno\\_2017.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscot_to_statistico_giornaliero_del_30_giugno_2017.pdf) [last accessed 22<sup>nd</sup> Feb 2019]; IOM, 'Recorded deaths in the Mediterranean Sea by route, January 1–July 2, 2017' Available at: <https://missingmigrants.iom.int/Mediterranean> [last accessed 22<sup>nd</sup> Feb 2019].

<sup>150</sup> UNHCR data. Available at: <https://data2.unhcr.org/en/situations/mediterranean>, July 2018 [last accessed 22<sup>nd</sup> Feb 2019].

one of the 35 chapters required under the accession procedure has been successfully closed in a decade of negotiation.

The programme commenced on 20<sup>th</sup> March 2016 and resulted in a significant reduction in the number of arrivals in Greece. However, return procedures to Turkey have been slow and only 12,489 of an estimated 3.5 million Syrians in Turkey have been resettled in EU countries.<sup>151</sup>

There are considerable concerns over the legality and morality of the deal. The question of whether Turkey can be deemed a first country of asylum or a safe country under the Asylum Procedures Directives is crucial when assessing its legitimacy.

The EU Asylum Procedures Directive defines a 'safe third country' as a country where: the people concerned do not have their life or liberty threatened on ground of 'race, religion, nationality, membership of a particular social group or political opinion'; there is 'no risk of serious harm' in the sense of the EU definition of subsidiary protection (death penalty, torture et al, civilian risk in wartime); the people concerned won't be sent to *another* country which is unsafe (the *non-refoulement* rule); and 'the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention'.<sup>152</sup> Turkey could also be considered a first country of asylum if the applicant had received refugee status in Turkey or would otherwise be guaranteed sufficient protection.

Whichever descriptor is preferred, the Commission have unequivocally stated that 'Only asylum seekers that will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement will be returned to Turkey'.<sup>153</sup> The UNHCR has emphasised the

---

<sup>151</sup> As of 2018, Germany took in 4,313, the Netherlands 2,608, France 1,401 and Finland 1,002 Syrian refugees. The EU member states Hungary, Poland, the Czech Republic, Bulgaria and Denmark did not accept any refugees at all. <https://www.dw.com/en/the-eu-turkey-refugee-agreement-a-review/a-43028295> [last accessed 22nd Feb 2019].

<sup>152</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 *On Common Procedures For Granting And Withdrawing International Protection*, Art 27 OJ L 180, 29.6.2013, p. 60–95

<sup>153</sup> European Commission 'Fact Sheet EU-Turkey statement: Questions and Answers' (Brussels, 19 March 2016)

importance of effective protection and the need to examine the practice of states and compliance with the relevant instruments.<sup>154</sup>

Herein lies the problem. Turkey does not apply the Refugee Convention to non-European refugees, having not ratified the 1967 optional protocol, and there is little prospect of Syrian refugees in Turkey being able to formalise their temporary status and settle permanently. President Erdoğan recently clarified his position, 'We want our refugee brothers and sisters to return to their land, to their homes. We are not in the position to hide 3.5 million here forever.'<sup>155</sup> Thus the fourth requirement for a country to be deemed 'safe' does not appear satisfied.

There is also a considerable risk of onward refoulement which has been overlooked by the Commission. Recent reports from NGO's on the ground suggest that nine provinces have stopped registering Syrian nationals with the result that they are unable to access healthcare and other basic services.<sup>156</sup> In a letter to the Interior Ministry in February, Human Rights Watch alleged that Turkish border guards have been shooting at Syrians to prevent them crossing the border.<sup>157</sup>

As Peers has argued, although the general human rights situation in Turkey is not directly relevant to an assessment of effective protection when

---

<sup>154</sup> UN High Commissioner for Refugees *Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status* (Council Document 14203/04, Asile 64, of 9 November 2004), 10 February 2005; UN High Commissioner for Refugees, Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002), February 2003. Available at: <http://www.unhcr.org/refworld/docid/3fe9981e4.html> [last accessed 22nd Feb 2019].

<sup>155</sup> Fevzi Kızılkoyun 'Turkish Government Stops Relocating Syrians To Istanbul' *Hurriyet Daily News* (9<sup>th</sup> Feb 2018). Available at: <http://www.hurriyetaidailynews.com/turkish-government-stops-relocating-syrians-to-istanbul-127084> [last accessed 22nd Feb 2019]

<sup>156</sup> *Ibid.*,

<sup>157</sup> Human Rights Watch News 'Turkey/Syria: Border Guards Shoot, Block Fleeing Syrians' *Human Rights Watch* (Feb 3<sup>rd</sup> 2018). Other similar incidents have been reported by the Syrian Observatory for Human Rights and European news outlets, see BBC News Syrian refugee: 'Five of my family were shot' at Turkish border *BBC* (19<sup>th</sup> June 2016); Josie Ensor, 'Turkish Border Guards Kill 11 After 'Firing Indiscriminately' At Syrian Refugees' *The Telegraph* (19<sup>th</sup> June 2016)

returning refugees, it is absolutely crucial to an assessment of whether Turkey can be described as a 'safe country of origin' for Turkish nationals; something that Peers describes as 'utterly preposterous'.<sup>158</sup>

The European Commission proposes to include Turkey on a common list of safe countries and plans to replace the Asylum Procedures Directive with a directly applicable European Regulation. This is notwithstanding Eurostat figures indicating that 23% of asylum applications from Turkish nationals are well-founded and the fact that Turkey currently appears on only one national safe country list (that of Bulgaria).<sup>159</sup>

The safe country designation allows an accelerated procedure, including border and transit zones, with no minimum time limit under Article 31(8)(b) of the Asylum Procedures Directive. The Commission has emphasised that the fast-track approach should not compromise the obligation to examine individual applications, but this appears more an act of faith than an enforceable commitment. Article 31(9) of the Asylum Procedures Directive requires Member States to set 'reasonable' time limits for the first instance decision to be reached, and Article 39(2) leaves Member States discretion to set time limits for applicants to exercise their right to an effective remedy. As expected, the degree of discretion has meant that time frames for accelerated first and second instance asylum procedures vary significantly<sup>160</sup>.

The move from a Directive, affording Member States some autonomy in implementation, to a directly applicable Regulation and the controversy

---

<sup>158</sup> Steve Peers 'The Final EU/Turkey Refugee Deal: A Legal Assessment' *EU Law Analysis* (18<sup>th</sup> March 2016)

<sup>159</sup> This compares to 7.8% from Albania, 6.3% from Kosovo and 1.8% from Serbia. *Proposal For A Regulation Of The European Parliament And Of The Council Establishing An EU Common List Of Safe Countries Of Origin For The Purposes Of Directive 2013/32/EU Of The European Parliament And Of The Council On Common Procedures For Granting And Withdrawing International Protection, And Amending Directive 2013/32/EU Com/2015/0452 Final.*

<sup>160</sup> Marcelle Reneman 'Speedy Asylum Procedures In The EU: Striking A Fair Balance Between The Need To Process Asylum Cases Efficiently And The Asylum Applicant's EU Right To An Effective Remedy' (2014) 25 *International Journal Of Refugee Law* 4, 717-748

concerning the inclusion of Turkey led the Council to suspend negotiations on the common safe country list in April 2017.

For the EU-Turkey deal to stand up to its critics, Turkey must be considered a safe third country. It is not impossible, as Peers notes, for this to be satisfied even if it is not deemed a safe country of origin. However, there are significant arguments that Turkey is not safe in either sense. This illustrates how human rights are being side-lined in European politics.<sup>161</sup> To blame this on the 'refugee crisis' is myopic and misguided. The marginalisation of human rights by European institutions was visible in the selective application of the political dimension of the Copenhagen criteria during the accession process.<sup>162</sup> It is at least arguable that greater accountability on the political criteria would have required the Visegrad countries to improve their anti-discrimination and human rights legislation, better preparing them to fulfil their resettlement obligations.

### **Re-framing the Syrian displacement**

Strategic framing analysis has been applied in a variety of social policy contexts. Magner and Gerstein Pineau consider how to build support for progressive immigration reform in the United States, arguing that advocates must turn away from 'us versus them' framing, towards language that emphasises shared humanity, collective prosperity, and the country's distinct identity as a 'nation of immigrants'.<sup>163</sup> This approach requires a departure from the vulnerable refugee trope which suggests dependency and a lack of agency. Hanafi laments the dominance of a politics of pity over compassion, empathy and justice<sup>164</sup>. Whilst vulnerability is used by the UNHCR to push for greater responsibility, many writers argue that it leads to a particular 'hopeless'

---

<sup>161</sup>Ibid., European Commission, *Communication Towards A Reform Of The Common European Asylum System And Enhancing Legal Avenues To Europe*, COM (2016)0197

<sup>162</sup> Helen O'Nions 'Some Europeans Are More Equal Than Others' (2014) 8 *People, Place and Policy* 1, 4-18

<sup>163</sup> Highlighting Shared Humanity and Prosperity To Advance Immigration Solutions *Stanford Social Innovation Review* May 2018. Available At: [https://ssir.org/articles/entry/highlighting\\_shared\\_humanity\\_and\\_prosperity\\_to\\_advance\\_immigration\\_solution](https://ssir.org/articles/entry/highlighting_shared_humanity_and_prosperity_to_advance_immigration_solution) [last accessed 22nd Feb 2019]

<sup>164</sup> Hanafi supra n21, 113

conception of the refugee. It then becomes more difficult for those not fitting this conception to acquire protection as they are dismissed as not deserving or credible.<sup>165</sup>

Angela Merkel adopts a benefit perspective which goes beyond national borders, viewing refugee protection as intrinsic to the dignity of mankind, 'The German constitution and European values require the protection of people's dignity. This means not only the dignity of the people in Germany but it also means the global understanding of the dignity of people'.<sup>166</sup>

The emphasis on shared experience and common humanity is an attempt to shape public perceptions. Whilst Merkel's compassionate response is still applauded by refugee advocates, she was of course punished by sections of her electorate. This demonstrates both that changing the prevailing narrative is far from straightforward and that the message needs to come from different respected sources to have sustained impact. Merkel's lone voice of compassion became increasingly untenable as other countries closed their borders and sought to avoid any suggestion of moral responsibility.

The domestic consequences of Merkel's lone-voice compassion may be a consequence of the failings of intergovernmental cooperation on refugee protection. Shurke notes that when compared to defence and environmental cooperation, the benefits of refugee cooperation are not immediately obvious to states who may avoid costs by unilateral action.<sup>167</sup>

Shurke applies a cost-benefit analysis to international cooperation and burden-sharing.<sup>168</sup> She argues that refugee reception should be considered an international public good which benefits all states, irrespective of which country receives the protection seekers. A full analysis of the benefits are beyond the scope of this paper but she challenges the 'threat' rhetoric of Orban and Salvini, arguing that security is the principal benefit of refugee

---

<sup>165</sup> Ruth Judge 'Refugee Advocacy And The Biopolitics Of Asylum In Britain. The Precarious Position Of Young Male Asylum Seekers And Refugees' (2010) Working Paper No 60, Refugee Studies Centre University of Oxford.

<sup>166</sup> Stefan Wagstyl 'Angela Merkel's Warm Migrant Rhetoric Belies A Colder Welcome' *Financial Times* (May 12<sup>th</sup> 2016)

<sup>167</sup> *Supra* n100, 399

<sup>168</sup> *Ibid.*,

cooperation, as measures to accommodate and protect will reduce the risk of refugees fuelling and spreading the conflict they are fleeing.<sup>169</sup> There is of course an inherent risk in emphasising the security benefit of cooperation as it may unintentionally reinforce an imperialist, anti-muslim narrative. Walzer's recent essay 'The European Crisis' argues that Europe must take more refugees to avoid waking up to a 'grim day' where liberalism is effectively over.<sup>170</sup>

Shurke's analysis further suggests that the security gain is not itself sufficient to encourage cooperation as any security threat to individual states could easily be managed. But cooperation offers other benefits resulting from greater predictability, such as a reduction in costs for both states and refugees. The enormous sums of money spent on securitising Europe's borders has not had any lasting impact on reducing migratory flows.<sup>171</sup> The reactive nature of crisis decision-making, such as the decision to end the Mare Nostrum search and rescue mission in the Mediterranean, has wasted money and cost many lives.<sup>172</sup>

## **Conclusion**

The marginalisation of European values

The events of summer 2015 should never have been framed as a crisis. They were a foreseeable response to an unsustainable situation in the region of origin. It should not have been beyond the capability of the European institutions to provide an effective, durable solution.<sup>173</sup> The legal mechanism to start this process already existed. The failure to apply the

---

<sup>169</sup> Suhrke supra n100

<sup>170</sup> Michael Walzer 'The European Crisis' (*Dissent* Sept 11<sup>th</sup> 2015). Available at: <https://www.dissentmagazine.org/blog/michael-walzer-european-refugee-crisis>. [last accessed 22<sup>nd</sup> Feb 2019]

<sup>171</sup> El Hassan bin Talal 'Europe And The Future Of International Refugee Policy' (2016), *Forced Migration Review* 51

<sup>172</sup> Helen O'Nions 'Hundreds Of Refugees Dead In The Mediterranean And Still Europe Won't Act' *The Conversation* (Feb 13<sup>th</sup> 2015)

<sup>173</sup> William Lacey Swing, Dir General of International Organisation of Migration 'The Mediterranean Challenge Within A World Of Humanitarian Crises' (19<sup>th</sup> Dec 2015) Podcast.

emergency measures of the Temporary Protection Directive is just one example of legal measures being side-lined. One could point to the failure of several states to comply with their reception obligations under the CEAS (deficiencies identified by the European courts going back eight years) and the refusal of some Member States to comply with the compulsory relocation quota. The underpinning values espoused in Article 2 of the Treaty of the EU – freedom, democracy, rule of law and respect for human rights (including those of minorities), are simply not taken seriously in the context of refugee protection. They are, in effect, values reserved for the European citizen.

There is now an urgent need to reclaim these values and re-frame the refugee debate. It necessitates a departure from the 'toxic narrative' that has dictated much of European refugee policy.<sup>174</sup> Cooperation centred on a frame of compassion and empathy would help to reinvigorate a European politics that has lost sight of the values underpinning European harmonisation. 'Orbanisation' is not confined to European asylum law and it needs to be contained before it dictates the next chapter of European history.<sup>175</sup>

After mounting infringement proceedings in 2015 the Commission recently referred Hungary to the CJEU. Members of the European Parliament also voted to trigger Article 7 of the TEU on the basis that the policies and rhetoric of the Hungarian Government are threatening European values. The report prepared by MEP Judith Sargentini detailed many actions by Orban's government with nine paragraphs devoted to the treatment of refugees and asylum seekers. In addition to the refusal to apply the mandatory quota and new laws on illegal migration and processing of asylum seekers in transit centres, the report refers to the case of Ahmed H, a Syrian national residing in Cyprus, who had tried to bring his family across the Serbia-Hungarian border and was sentenced to 7 years

---

<sup>174</sup> Ibid.,

<sup>175</sup> Steve Peers has described proposed reforms to the Common Asylum System as the Orbanisation of EU asylum law. 'The Orbanisation Of EU Asylum Law: The Latest EU Asylum Proposals' *EU Law Analysis*, (6<sup>th</sup> May 2016)

imprisonment for terrorism offences in March this year.<sup>176</sup> Orban defended his record, arguing that the Parliament should have sent a fact-finding mission to Hungary, conveniently omitting to mention that his Fidesz party had previously voted against a proposed mission. This is the first time the Parliament has voted to trigger Article 7, although the Commission has now initiated a censure action against Poland.

The European Parliament's censure is an important step towards reclaiming the narrative over European values but it remains to be seen whether the censure will have the desired effect. Fidesz MEP, Jozsef Szajer, a close advisor to Orban, has argued that Hungary is being punished by pro-immigration politicians; 'Hungary and the Hungarian people are being condemned because they proved that migration can be stopped and there is no need for migration'.<sup>177</sup> So far the other Visegrad governments have supported Hungary and it seems unlikely that Orban's government will respond positively to any decision by the CJEU.

This is a watershed moment for European values. If the Council under the Austrian presidency fails to act following the motion, there will be no effective sanction when a state openly refuses to accept the core values of the Union. Other states are already following Orban's lead with right wing populists such as Nigel Farage and Matteo Salvini, praising his leadership.

#### Reclaiming the narrative for refugee protection

It has been argued that framing the Syrian displacement as a crisis has enabled ill-conceived, reactive policies that present refugees as criminals and terrorists; undermining the protection that is their entitlement under

---

<sup>176</sup> European Parliament On *A Proposal Calling On The Council To Determine, Pursuant To Article 7(1) Of The Treaty On European Union, The Existence Of A Clear Risk Of A Serious Breach By Hungary Of The Values On Which The Union Is Founded* (2017/2131(INL)). The full report is available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2018-0250+0+DOC+XML+V0//EN&language=en> [last accessed 22<sup>nd</sup> Feb 2019]

<sup>177</sup> Eszter Zalan, 'EP Triggers Sanctions Procedure, Hungary Calls 'Fraud' *EU Observer* (12<sup>th</sup> Sept 2018). Available at: <https://euobserver.com/political/142818> [last accessed 22<sup>nd</sup> Feb 2019]

international law. The consequences of this frame have reached beyond the refugee context and fed into an unprecedented rise in nationalist politics which threatens to unravel the Union. When democratic values are ringfenced for certain peoples to the exclusion of others, their universality is challenged and they cease to become core values in anything but name. Walzer argues that community cohesion depends, to a large extent, on the demarcation of strangers from members.<sup>178</sup> Soysal also acknowledges that a cohesive national identity can be more difficult to achieve when there is religious, ethnic and cultural plurality.<sup>179</sup> Nevertheless, freedom of movement for European citizens and their family members has already increased the diversity of most European populations.<sup>180</sup> The arrival of Syrian refugees, when managed with appropriate resources directed towards integration, should not significantly impact national identity in already diverse communities.<sup>181</sup> This is not the case for all European countries and allocation of European funds should reflect these additional challenges. A study of resettlement of Syrians in seven countries by the Rand corporation found that notwithstanding barriers, such as qualification alignment and language; integration was effective in countries where political commitment, community engagement and public support for refugees was strongest.<sup>182</sup> This makes the framing of the debate about refugee protection crucial.

---

<sup>178</sup> Walzer supra n28

<sup>179</sup> Y N Soysal *The Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press 1994)

<sup>180</sup> For example, the last census in the UK (2011) found that Polish is now the second most widely spoken language and further that 140,000 people did not speak English at all. Available at: <https://www.independent.co.uk/news/uk/home-news/polish-is-second-most-spoken-language-in-england-as-census-reveals-140000-residents-cannot-speak-8472447.html> [last accessed 22nd Feb 2019]

<sup>181</sup> It is worth noting that many educated Syrians speak English and French at a basic level as they are taught routinely at schools.

<sup>182</sup> Ernesto F. L. Amaral, Mahlet Atakilt Woldtsadick and Gabriela Armenta, 'Europe's greatest challenge. Integrating Syrian Refugees' (2018) *Georgetown Journal of International Affairs*, 4, 20. Available at: <https://www.georgetownjournalofinternationalaffairs.org/online-edition/2018/4/20/europes-great-challenge-integrating-syrian-refugees> [last accessed 22nd Feb 2019].

The European project has challenged demarcation within its borders through a conception of citizenship that allow freedom of movement for its citizens and their families. But the values that inform this project are now under threat, in part from the actions of some populist European governments, but also from the inability of the European institutions to coordinate an effective protection response to the Syrian displacement.

Whilst the European Commission has expended considerable energy and resources trying to belatedly contain and deflect those refugees that manage to reach Europe, they have been blind to a much bigger threat of their own making. The lives of millions of Syrian refugees are effectively suspended as Europe reinforces its borders and looks inward.

The application of an alternative frame, based on European values, empathy and international humanitarian obligations may have enabled a very different approach that might have exposed and embarrassed, rather than emboldened nationalist politicians. But such an approach necessitates cooperation of Member States under the decisive leadership of the European institutions.

Regrettably, the window for deployment of a humanitarian frame may have long since passed. Once the dust settled on the EU-Turkey deal, proposals concerning extra-territorial processing, effectively buried in 2003, resurfaced. Originally proposed by Tony Blair<sup>183</sup>, plans to process asylum claims in camps outside the EU were widely criticised by refugee scholars, human rights organisations and many European governments. Fekete summed up the criticisms:

Britain is proposing a new network of refugee camps - designated areas where those inside have different rights from those outside. To envisage such a plan is to imagine ghettos created by the world's

---

<sup>183</sup> The proposal is contained in a letter from Tony Blair to Costas Simitis. Available at: <http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf> [last accessed 20th February 2019]

most peaceful and richest countries in some of the world's poorest and most unstable regions.<sup>184</sup>

In the last five years, the creation of 'ghettoes in the world's poorest and most unstable regions' has become a reality by stealth. A concerted effort is needed by European institutions, civil society and moderate political parties, to align refugee protection to the values proclaimed in the TEU; reframing the narrative. To paraphrase Vaclav Havel, when considering his country's treatment of the Roma minority, the response to Syrian refugees is a litmus test for civil society.<sup>185</sup>

---

<sup>184</sup> Statewatch has compiled many Of The Responses 'UK asylum plan for "safe havens": full-text of proposal and reactions' (Statewatch, 2003). Available at: <http://www.statewatch.org/news/2003/apr/10safe.htm>. [Last accessed 22<sup>nd</sup> Feb 2019].

<sup>185</sup> Henry Kamm 'Havel Calls The Gypsies 'Litmus Test' *New York Times* (10<sup>th</sup> Dec 1993)