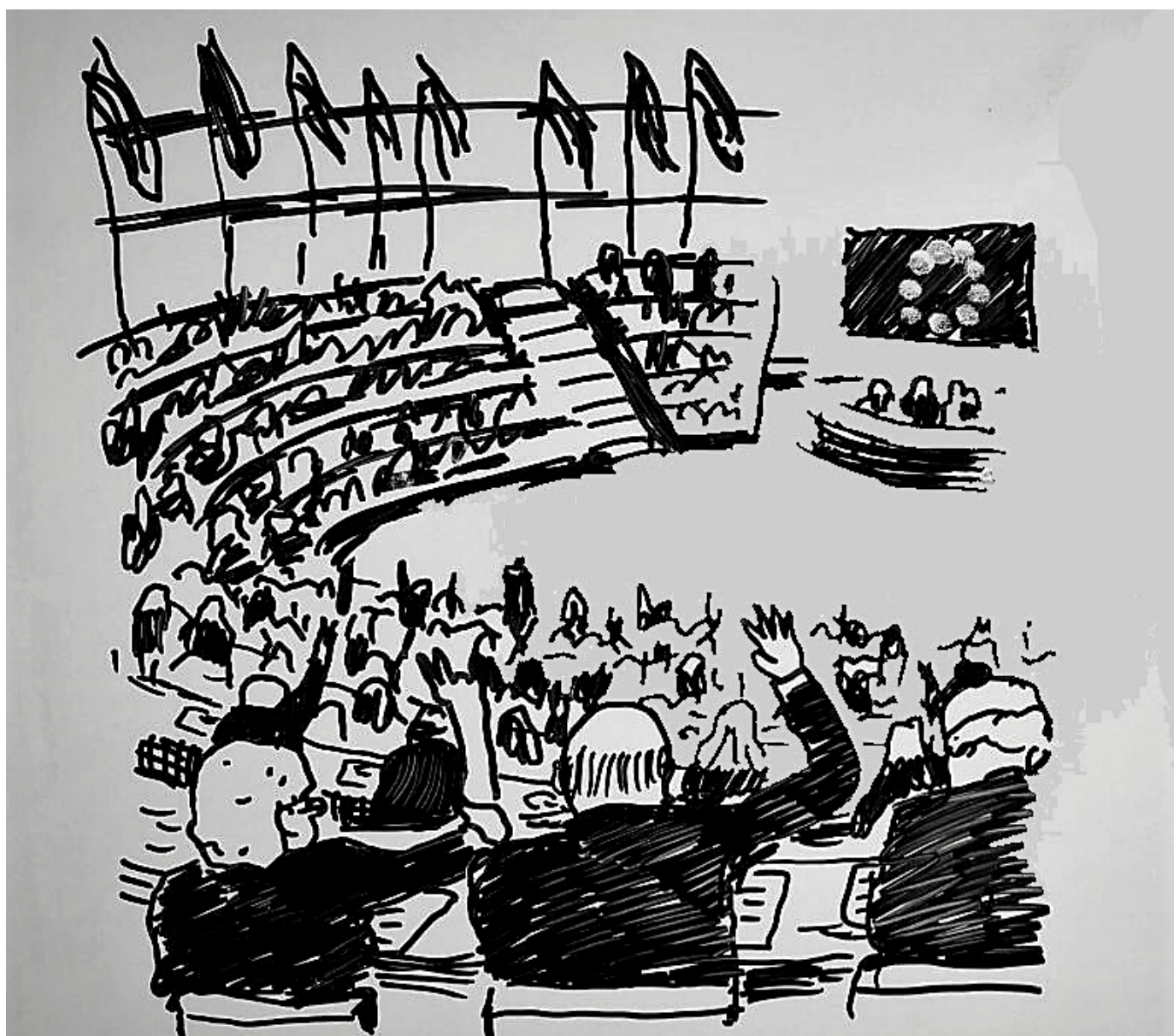


REFORM OF THE COMMON EUROPEAN ASYLUM SYSTEM TOWARDS A DEROGATION OF RIGHTS OR A TURNING POINT FOR BUILDING A FAIRER SYSTEM?



Policy Paper

Reform of the Common European Asylum System - Towards a derogation of rights or a turning point for building a fairer system?

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Introduction

The European Commission proposal for the reform of the Common European Asylum System (hereinafter referred to as CEAS) has been causing dispute for four years among Member States, all of which ends up hurting people who are seeking safety and protection. Two of the seven proposed reform regulations - the Dublin Regulation, the so-called Dublin IV and the Procedures Directive are neuralgic points causing parties to dispute and fail to reach mutual agreement.

Many analyzes, evaluations and judgments have revealed the weaknesses and strengths of CEAS, but the reform proposals seem to prioritize the political desires and interests of Member States. The need to improve protection standards and introduce mechanisms to prevent the violation of numerous refugee rights have thus fallen into disarray. Many stakeholders have already expressed concern about lowering the standards of admissions and procedures in the systems that were built for years with the aim of the protection of the most vulnerable people.

According to Eurostat¹, over 1.2 million people came to the EU in search of international protection in 2015 - double than the number for the previous year. It was the largest CEAS test to date - a test that CEAS has failed dramatically, proving not to be up to the task of responding to the new situation in an adequate and effective manner. The shortcomings of the CEAS then required, and still require, a swift action by the European Union and a reform that would provide access to international protection in an effective manner and with solidarity.

Solidarity and safety are the values upon which the EU was built, and respect for human rights and the provision of international protection are its duty and international obligation. However, instead of seeking a long-term solution and reforming current policies in a way that assumes responsibility and strives to fulfill its obligations, the EU turns to strengthening external borders and raising the internal ones, while not acknowledging the respect and protection of the fundamental human rights of refugees and other migrants as a priority.

According to the information provided by international human rights organizations², among the ten countries that received the largest number of refugees, Germany is the only EU country, with one million refugees, and ahead of Germany are neighboring countries affected by war or

¹ Eurostat newsrelease, Asylum in the EU Member States - Record number of over 1.2 million first time asylum seekers registered in 2015, No. 44/2016, 4 March 2016. Available at: <https://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6>

² UNHCR (2019): Global Trends - Forced Displacement in 2018. Geneva, Switzerland. Available at: <https://www.unhcr.org/5d08d7ee7.pdf>; Amnesty International (2019): The world's refugees in numbers. Available at: <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/global-refugee-crisis-statistics-and-facts/>



other unrest, which received the largest number of refugees, such as Turkey, Jordan, Pakistan, Lebanon and Uganda.



Source: Amnesty International (2019): The World's Refugees in Numbers.

“Many wealthier states continue to prioritize policies that will deter people from seeking asylum, and finding ways to stop people coming altogether. At the same time, they are putting the focus on nearby countries to protect people fleeing for their lives. Such restrictive and short-sighted policies are forcing women, men and children to take dangerous land and sea journeys, putting their lives at risk and fuelling human rights abuses.”³

The EU Member States, as well as the UN Member States, have undertaken international obligations that are drastically reduced through these proposed reforms, most notably the New York Convention relating to the Status of Refugees and the Convention on the Rights of the Child. Also, one of the UN's Sustainable Development Goals is to "reduce inequalities between

³ Amnesty International (2019): The world's refugees in numbers. Available at: <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/global-refugee-crisis-statistics-and-facts/>



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and within countries" and its subgoal, which Member States should achieve by 2030, is to "facilitate orderly, safe, regular and responsible migration and mobility of people, including the implementation of planned and well-managed migration policies".⁴

Although the official version is that "the EU and its Member States are stepping up efforts to put in place an effective, humanitarian and safe European migration policy"⁵, there is considerable discrepancy with what is regulated, and the practice that shows the opposite - that neither migration policy is effective nor it is humanitarian, and least of all safe.

CEAS's lack of effectiveness has made international protection inaccessible to people seeking safety within the European Union, leading to the beginning of the humanitarian crisis in 2015. By avoiding responsibility and lacking the will to find effective, legal and long-term solutions, the EU and its Member States have exposed this crisis not only as a humanitarian, but also a political one.

Finally, the prolongation of this humanitarian-political crisis and the absence of CEAS reform based on solidarity with refugees, but also solidarity and the sharing of responsibilities between EU Member States have led to a crisis of the EU's proclaimed values - primarily a crisis of solidarity. That is why the crisis we have been facing since 2015, in large part because of inadequate CEAS - is precisely a crisis of solidarity.

Owing to the lack of solidarity and the reluctance of Member States to accept asylum seekers and thereby fulfill their obligations, solutions are often found in the so-called externalization of the asylum system, that is essentially the transfer of responsibility to countries at the external border and third countries.

The Dublin Regulation, which is the most critical point of the CEAS, is important here, as it lays down the criteria for determining the Member State responsible for examining an application for international protection based on the "first country of entry" principle. Thus, the Regulation stipulates that international protection should be requested in the first country of entry, and then the overload in the states at the external borders is quite logical, and then the reform proposes that the same regulation addresses this deficiency by introducing a new institute - relocation. Apart from the fact that the proposed solution is quite illogical, since it does not solve the cause of the problem, but just wants to serve as a remedy for the consequences, it has already proven inadequate and dysfunctional in practice.

Considering the need for safety in people wanting international protection, inadequate and undignified living conditions, dysfunctional protection systems, and often inappropriate legal regulations in these countries, have led to an increase of the number of persons with irregular

⁴ United Nations, Sustainable Development Goals. Available at: <https://sustainabledevelopment.un.org/sdg10>

⁵ Council of the European Union, EU Migration Policy. Available at: <https://www.consilium.europa.eu/en/policies/migratory-pressure/>



status but also increased involvement of smugglers, in attempts to reach better regulated and wealthier Member States. .

Due to the aforementioned reasons and the increasing restrictiveness in access to the international protection system and in general access to the EU territory, the possibilities of entry into the system are very limited. To exercise their right to seek protection, refugees are forced to use very dangerous routes that put their lives into risk.

The death toll at the borders of the EU⁶ indicates that it is necessary to establish safe and legal routes for those seeking safety and protection, otherwise the EU will have no problem with the distribution of asylum seekers, since there will be none. Although this is a scenario desired by some Member States, if the EU wants to preserve its mission and its citizens' confidence in the meaning of its existence, it still needs to choose a different policy and different measures. This document is in favor of establishing an effective, equitable and human rights-based Common European Asylum System.

The deleterious effect of the externalization of the asylum system for the EU

Numerous experts in the field of migration say that externalization has become the center of EU migration policy. The policy of externalization is based on delocalizing Europe's external borders and shifting responsibility and control to third countries to block migrants and keep them as far away as possible from EU borders.⁷

This approach is detrimental to the safety and the rights of refugees and other migrants, and undermines the security of the EU itself and the legitimacy of its foreign policies, creating an image that is reactive and inconsistent. Therefore, at the heart of the CEAS reform should be an effort to effectively provide international protection and fulfill EU's own obligations as well as Member States' obligations, as this is the only way the EU can pursue its political endeavors.

Externalization of migration policies as a threat to EU security

Although the trend of externalization of migration was visible much earlier, since 2016 and the agreement with Turkey - the EU is becoming increasingly focused on externalizing migration, tacitly abandoning the CEAS reform, which would find a solution based on human rights, solidarity and EU responsibility in its internal policies.

A stronger external approach to migration at all costs - including violations of the rule of law, human rights and international protection rights - has opened up to certain third countries (such

⁶ UNITED for Intercultural Action, About the 'List of Deaths'. Available at: <http://unitedagainstrefugeedeaths.eu/about-the-campaign/about-the-united-list-of-deaths/>

⁷ CIRÉ (2019). Externalisation of European policies regarding migration - Exchange of views between civil society, decision-makers and academia



as Libya, Turkey and Sudan) the possibility of taking a blackmail position towards the EU, thus creating dangerous deficiencies in security and EU foreign policy. How much the reluctance of EU Member States to agree on the establishment of a comprehensive asylum system has made the EU dependent on the policies of neighboring third countries is demonstrated by the relations with Turkey, which escalated in March 2020. The crisis in Greece and relations with Turkey make it clear how serious CEAS reform, based on the division of responsibilities and solidarity laid down in Articles 78 and 80 TFEU⁸, is necessary for their effective resolution and prevention of further harmful consequences.

Harmful agreements with third countries

The externalization approach to migration in EU policies is evident in measures such as harmful contracts with third countries and the creation of the so-called 'Hotspots'.

EU Member States' cooperation with Turkey and Libya, as well as other agreements with third countries that contain similar clauses related to refugee reception, are a perfect example of the externalization of migration policy at the expense of human rights and international obligations. These harmful agreements or the financing of dictatorships and anti-human rights countries have devastating consequences for both people in search of safety and EU's foreign policy-makers - which should prioritize a position of a global peacemaker and protector of human rights. The devastating consequences of such co-operation and externalization policies result in thousands of dead at EU borders. Also, such arrangements give the blackmail position to unscrupulous leaders, and that is where the EU shows the weakness of its own policies.

The above was illustrated by Erdogan in March 2020 - when he used his dominant blackmail position and decided to stop fulfilling his part of the EU-Turkey agreement. Erdogan's move also revealed a number of other shortcomings: a) the absence of an adequate international protection system in the EU; b) EU non-solidarity with refugees and among its Member States; c) the ease of unilaterally suspending human rights for international protection by Member States without any sanctions; and d) the EU's unwillingness to respond to the situation without violating international law, impeding access to international protection. In doing so, refugees and other migrants are trapped in the cruel limb of the EU's and Turkey's lousy policies - something one's human rights should certainly not depend on. Nonetheless, when this situation arose, European Commission President Ursula von der Leyen and European Council President Charles Michel, failed to recognize these needs and agreed to focus on strengthening the

⁸ Treaty on European Union and Treaty on the Functioning of the European Union (consolidated version), OJ C 202, 7.6.2016, pp. 1-388



protection of the EU's external borders, supporting Greece and respecting the agreement with Turkey.⁹

It was precisely the **agreement with Turkey**¹⁰ that was the crucial moment in which the EU shifted its responsibility for international protection and admission to Turkey. Turkey has, inter alia, committed itself to controlling and preventing the crossing of EU borders and to accepting the refugees and other migrants returned from the EU through its territory, and to take care of the registration, identification and access to the rights of these persons. Initially, this agreement was presented as a temporary measure in extraordinary circumstances, but soon the leaders of the Member States began to consider this agreement as a new way of managing migration.

By the very conclusion and further adherence to this agreement, international norms, EU law and the human rights system have been circumvented. **The detriment of this agreement also stems from the wrong and unlawful assessment that Turkey is a 'safe third country' and that perfidy is manifested in the same deliberately missed assessment.** Namely, Turkey is not a safe third country by EU standards of law itself¹¹. In this context, it is important to emphasize that for such an assessment, the EU should be sure that the country respects the principle of *non-refoulement*, and that a person there may seek and obtain international protection as provided for by the Geneva Convention.

The apparent lack of fulfillment of these conditions stems from the fact that Turkey has ratified the Geneva Convention with the geographical exception¹² in recognizing refugee status - recognizing this status with full rights derived only from asylum seekers coming from

⁹ See: Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel, March 3, 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380 and Remarks by President Charles Michel following his visit to the Greek Turkish border, 3 March 2020, Brussels. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/03/03/remarks-by-president-charles-michel-following-his-visit-to-orestiada-greece/>

¹⁰ European Council (2016), EU-Turkey Statement, 18 March 2016, 18 March; see also 9 European Commission (2016), Communication from the Commission to the European Parliament, the European Council and the Council, Next Operational Steps in EU-Turkey Cooperation in the Field of Migration, COM(2016a) 166 Final, Brussels, 16 March.

¹¹ In particular, the law and practices in force in Turkey are in conflict with Art. 38 of Directive 2013/32 / EU on common procedures for granting and withdrawing international protection, which obliges the concept of a safe third country to be granted only if the competent authorities are certain that the person seeking international protection is respected in a third country: a) life and liberty are not endangered because of racial, religious or national affiliation, membership in a particular social group or political opinion; (b) there is no risk of serious injury if defined in Directive 2011/95 / EU; (c) compliance with the principle of non-refoulement in accordance with the Geneva Convention; (d) Respect for the prohibition of deportation, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment, as established by international law; (e) It is possible to claim refugee status and, if the person is found to be a refugee, to obtain protection in accordance with the Geneva Convention.

¹² UNHCR, United Nations High Commissioner for Refugees, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, April 2015, p. 5. Available at: <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>



European countries. Due to this reservation, except for persons from Europe, who are very few in the overall refugee structure, others are denied or restricted access to asylum in a way that is provided by the Geneva Convention.

In addition to the lack of protection of refugee rights, this country has repeatedly violated human rights - which is why many Turkish citizens seek and obtain international protection within the EU itself, which clearly demonstrates the contradiction in Turkey's assessment as a 'safe country'¹³. Furthermore, given the country's situation, Turkey cannot fulfill a number of other conditions, including the obligation to provide basic material conditions for applicants for international protection.¹⁴ On the contrary, a large number of applicants for international protection live outside the shelter, in very difficult conditions, with few resources and very difficult access to basic services, such as health care and education.

Bypassing their own institutions and 'arbitrariness of rights' is also evident in the fact that this Agreement is legally and formally signed between EU Member States (not the EU as an Entity) and Turkey - thus excluding the ECJ's oversight of this Agreement. For the reasons stated, the Court itself declared that it did not have jurisdiction to declare this Agreement illegal.¹⁵ However, even if the monitoring of the Agreement itself could be excluded from jurisdiction, it is necessary to recall that the right to an effective remedy must be guaranteed in the event of a breach of EU law, under Article 47 of the EU Charter of Fundamental Rights¹⁶ and the EU is obliged to protect those rights with its policies.

An even more devastating potential for the EU comes with the **agreement concluded between Italy and Libya**¹⁷, with the support of the European Union. It was agreed to fund and support the Libyan coastguard, while numerous non-governmental organizations, including the UN Security Council¹⁸, report on the torture and violence that refugees and other migrants have

¹³ Members of oppressed minorities, such as Kurds, political dissidents, journalists, find refuge and security in the EU, see: Mulalić, L., EU's dirty deal with Turkey, 8 April 2016. Available at: http://www.x-pressed.org/?xpd_article=eus-dirty-deal-with-turkey

¹⁴ Which includes, for example, the right to accommodation and residence, access to caregivers, access to work, etc.

¹⁵ See: Cases T-192/16, T-193/16 and T-257/16 NF, NG and NM in the European Council, 28 February 2017. Available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=188483&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1163007>

¹⁶ Charter of Fundamental Rights of the European Union, 2016 / C 202/02. Available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:12016P/TXT&from=EN>

¹⁷ Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2 February 2017. Available at: http://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf

¹⁸ UN Security Council, United Nations Support Mission in Libya, Report of the Secretary-General, S / 2020/41, 15.01.2020. Available at: <https://www.asgi.it/wp-content/uploads/2020/01/Secretary-General-UN-Report-Libya.pdf>



been subjected to after being captured and taken to Libya by the same coastguard. In particular, reports¹⁹ bring light to the brutal and systematic violations of the human rights of refugees and other migrants, including rape, slavery, inhumane treatment, murder - for which the EU and Italy could bear not only moral but also a legal responsibility for tacit support in such crimes, if they do not change their policies.

Other agreements with third countries seeking to externalize migration, many of which contain migration-related clauses, more specifically readmission agreements, make access to European development funds or visa facilitation dependent on 'cooperation' in migration issues, with similar detrimental effects. Additionally, various technical cooperation agreements with third country institutions, such as the police or the military, are carried out with the same intention.

An Oxfam report²⁰ analyzing the EU Trust Fund for Africa 2020 states that EU development assistance is increasingly being spent on closing the borders, reducing migration and returning migrants to their countries of origin. The report shows that development funds are increasingly linked to the EU Member States' domestic political priorities and their efforts to reduce migration - so, for example, nearly one billion euros from the funds is designated for such purposes, with only 56 million allocated for regular migration schemes, thus accounting for less than 1.5% of the total value of the fund.²¹

Hotspots - an approach that violates European and international law

The introduction of hotspots was initially represented as a method of unburdening Member States located at the EU's external borders, which are 'access countries' for large numbers of refugees and other migrants. But in practice, this approach did the exact opposite. In combination with the existing Dublin system, this "hotspot approach" was shown to actually disproportionately, if not completely, delegate all international protection and CEAS obligations to those Member States located at the external borders - thus excluding the responsibility of other Member States. The inefficiency of this system has become particularly

¹⁹ See for example: Human Rights Watch, Italy: Halt Abusive Migration Cooperation with Libya, 12/02/2020, available at: <https://www.hrw.org/news/2020/02/12/italy-halt-abusive-migration-cooperation-libya>; Amnesty International, Lybia 2019. Available at: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>; Medecins sans frontieres, Trading in suffering: detention, exploitation and abuse in Libya, 23.12.2019. Available at: <https://www.msf.org/libya%E2%80%99s-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>

²⁰ Oxfam, (2020). The EU Trust Fund for Africa: Trapped between aid policy and migration policy. Available at: <https://policy-practice.oxfam.org.uk/publications/the-eu-trust-fund-for-africa-trapped-between-aid-policy-and-migration-politics-620936>

²¹ Oxfam press release: EU aid increasingly taken hostage by migration politics, 29.01. 2020. Available at: <https://www.oxfam.org/en/press-releases/eu-aid-increasingly-taken-hostage-migration-politics>



apparent in Italy and Greece and it has led to an intensification of border control externalization to third countries.

Furthermore, the very establishment of such camps where persons are restricted from moving is contrary to the principle of human rights protection, since it represents the arbitrary detention of a whole group of people who only have one thing in common, and that is to seek international protection. Also, in practice, these fenced centres violate a number of other human rights - such as the right to drink water, food, safety, thus depriving the seekers of international protection of human dignity because they are forced to live in miserable living conditions.

An example of such a camp is Moria in Greece - at the same time illustrating the inefficiency and cruelty of the hotspot approach, as well as the consequences of externalizing migration and international protection systems, and illustrating the normalization of the humanitarian crisis and the crisis of solidarity. Designed to shelter 3,000 people, it is estimated that between 16,000 and 19,000 people live in inhumane conditions: no electricity, no drinking water and, for many, no shelter. Finally, without access to an adequate and effective international protection system and without access to basic human rights.²²

Therefore, the 'hotspot approach' must be put to an end, because in reality these points are the points of violation of human rights guaranteed by international and EU law. With an inefficient Common European Asylum System accompanied by harmful agreements with third countries, the hotspot approach demonstrates the need to reject the policy of externalizing the asylum system and find an effective, long-term and value-based solutions.

Dublin and the division of responsibilities - the Dublin Regulation's 'one chance of asylum' rule²³

The Dublin Regulation (Dublin III Regulation) is one of the cornerstones of the Common European Asylum System and also the most controversial one. According to ECRE²⁴, this Regulation is the most litigated issue in national and European courts. While adopting this regulation, States have committed themselves to applying an equal approach to all asylum

²² See for example: Godin, M., UN Calls For 'Emergency Measures' to Improve Conditions in Greek Refugee Camps, Amid Overcrowding and Risk of Disease Outbreaks, 11.02.2020., Time. Available at: <https://time.com/5781936/lesbos-greece-refugee-camps-dangerous/>

²³ El-Enany, N. (2017). The Perils of Differentiated Integration in The Field of Asylum in A. Ott and B. De Witte (eds.) Between Flexibility and Disintegration, The Trajectory of Differentiation in EU Law. Available at: <https://eprints.bbk.ac.uk/20655/1/20655.pdf>

²⁴ ECRE Comments on the Commission Proposal for a Dublin IV Regulation COM (2016) 270. (2016). P.5. Available at: <https://www.ecre.org/wp-content/uploads/2016/10/ECRE-Comments-Dublin-IV.pdf?ncid=txtlnkusaolp00000618>



seekers, including admission, procedures and clear criteria for granting protection, but inequality in application and a wide margin of discretion and flexibility, now raises many practical issues.

On the one hand, many analyzes and data²⁵ have shown that the Regulation does not fulfill the purpose for which it was enacted, and on the other hand, the human destinies it engulfed have shown that it is neither humane nor responsive to real needs.

The Dublin Regulation does not need to be reformed, nor will we analyze potential improvements in this paper, as the grounds on which it is laid down are not fair, and further development of a system based on these settings cannot be "corrected". It is important to highlight some of the key shortcomings and paradoxes of this Regulation and the system it seeks to establish, and to offer principles and guidelines as an alternative to the existing approach.

The primary objective of the Regulation is to ensure that any third-country national seeking international protection within the area of application is granted access to international recognition procedures, preventing him or her from submitting multiple applications in several Member States, all with the intention of speeding up and rationalization of international protection application procedures.

Although the Regulation constitutes a hierarchy of criteria for determining which state is responsible for implementing the asylum procedure, the principle of the first country of entry has been and remains absolutely dominant. This has led to countries at the southern and eastern borders of the EU facing disproportionately more demands than other countries due to their geographical location and migration routes. Due to the (perceived) overload, these countries were unable to comply with some of the provisions laid down in the Regulation - such as taking fingerprints and entering data in the EURODAC system or preventing further movement of asylum seekers.

All these shortcomings and illogicalities of the system were further brought to light during the 2015/2016 humanitarian crisis years. What followed was that some Member States suspended the Schengen system to reduce the number of applicants for international protection. And some states have additionally taken unilateral measures such as building fences and changing national asylum laws to discourage people from seeking safety in those countries.

It is precisely the collapse of the Dublin Regulation, which occurred during the crisis, that served as a turning point for the new alleged substantial reform of the system, but the proposed

²⁵ ECRE papers; Schmidt Z. Deficiencies of the Dublin Regulation and the Solidarity Remedy Exemplified by Analysing Cases M.S.S. v. Belgium and Greece And Tarakhel v. Switzerland;



changes take form of a permanent and automatic relocation mechanisms, defining appropriate procedures in the country of first entry, and clear financial contribution rules from The EU budget is, in principle, a pale and cosmetic attempt to correct the shortcomings that have arisen precisely due to the mentioned Regulation.

One of the desired aims of the Dublin Regulation is to stop the so-called secondary movements, that is, the movement of asylum seekers and refugees from the Member State to which they first arrived to another Member State, and the prevention of asylum applications in more than one Member State. It is these phenomena that are used as a pretext for taking even more restrictive measures and for shifting responsibility and condemning those seeking international protection. However, analyzes and data have shown that these are the consequences of political decisions and the lack of a unified vision within the EU and the uneven practices of the so-called Common Asylum System. While the statistical differences between countries on the number of accepted and rejected seekers in certain countries are diametrically opposite, while integration and acceptance systems are uneven, and in some countries xenophobic sentiment prevails while in others asylum seekers have decent living conditions and even a roof over their heads, putting responsibility on asylum seekers for changing the location of seeking international protection is hypocritical and unacceptable.

Among the most important court decisions in regard to Dublin Regulation are the judgment of the EU Court of Justice in the case of *A.S. v. Slovenia*²⁶ and *Khadija Jafari and Zainab Jafari*²⁷ and the European Court of Human Rights *MSS v. Greece and Belgium*²⁸. Both judgments have shown inconsistencies between Member States and a great deal of legal uncertainty in the application of EU regulations. In the latter judgment, the Court very accurately ruled on the obligation of Member States to restrain from the return of asylum seekers to another Member State where human rights protection is inadequate, the conditions to which asylum seekers are exposed are undignified, the asylum system is deficient and offers no effective safeguards against the prohibition of forcible removal. In its precedent, the Court has shown that the declared purpose of the Regulation and the consequences of its implementation are at great discrepancy, and the persons seeking safety and protection are the ones paying the price for that.

The judgment was delivered in 2011, but the EU has continued to reform and improve Dublin seamlessly, ignoring the fact that they can no longer return people to one of the most common "first entry countries" and therefore are not able to apply one of the basic criteria of the Regulation. The 2017 ruling of the Court of Justice came with an interesting interpretation for

²⁶ CJEU - C490 / 16, *A.S. v. Republic of Slovenia*, 26 July 2017.

²⁷ CJEU- C-646/16 *Khadija Jafari and Zainab Jafari*.

²⁸ ECtHR- *M.S.S. v Belgium and Greece* (GC), Application No. 30696/09



the Republic of Croatia, which was a "responsible state", although not the "first country of entry".

In the case of the State responsible for evaluating the request for protection during the humanitarian crisis 2015/16, the Court of Justice found that "a Member State cannot be exempted from such liability since it has decided to allow, on humanitarian grounds, the entry of a third-country national into its national territory. an area which is neither visa-free or exempted from visa requirements"²⁹ and, as a potential solution, stated "that the reception of these third-country nationals can be facilitated if other Member states use the 'sovereignty clause', unilaterally or together in a spirit of solidarity, which enables them to consider applications for international protection submitted to them, even if, on the basis of the criteria laid down in the Dublin III Regulation, they are not responsible for such "consideration"³⁰.

But in the context of the functioning of Dublin regulation, the opinion of the independent Advocate General Sharpston³¹ is equally interesting since she finds that Dublin III does not preempt such exceptional circumstances of a massive influx of people in need of international protection, at the borders of the European Union, and therefore the "illegal crossing of the border" cannot be interpreted as such under the circumstances set out in these cases. In addition to that, her conclusion is that border Member States such as Croatia cannot be held responsible for accepting and processing a large number of international protection seekers; which puts them in a position in which they cannot comply with their obligations under European Union and international law.

Another one of the documented consequences of Dublin and the inadequate development and uneven implementation of CEAS is the so-called asylum lottery or asylum at a luck of the draw. It is precisely the differences in access, standards of acceptance, and protection itself that has led to the emergence of persons in need of protection choosing the Member State where they think they have the most "chance" of exercising their human right, as well as avoiding potential *refoulement*. Responsibility for this situation rests solely on asylum seekers and is referred to as an abuse of the asylum system, but only when it comes to the behavior of asylum seekers, not states. It is further used as an argument for more restrictive rather than just measures and leads to a completely contradictory situation in which persons seeking security and protection choose to remain in illegal status, thus increasing the chances of potential approval of international protection in one of the Member States. Instead of monitoring the situation and

²⁹ Court of Justice of the European Union (2017). Croatia is responsible for reviewing applications for international protection of persons who crossed its border en masse during the migration crisis 2015-2016, PRESS RELEASE no. 86/17. Available at: <http://hr.n1info.com/Binary/118/Odluka-Suda-Europske-unije.pdf>

³⁰ Ibid.

³¹ Opinion of Advocate General Sharpston (2017), Case C490/16 A.S. v. Republic of Slovenia and Case C646/16 Jafari. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CC0490>



applying a transparent legal framework, the EU encourages irregular migration and a large number of people in insecure and irregular positions.

Ever since ECRE's 2005 policy paper³², there is mention of a scenario in which states at the external borders will restrict access to both the territory and the international protection system due to their inability to cope with large numbers of people. In addition to the fact that unlawful expulsions (pushbacks) occur systematically and regularly at almost all external borders, Greece also recently suspended the right to international protection.

All of the above mentioned points to the fact that the widely accepted narrative is that the humanitarian crisis has led to the near collapse of Dublin and revealed the weak points. The problems have been well documented before, and the reason for the emergency situation in which the EU finds itself can be traced back, among other things, to Dublin. Thus, Dublin is one of the causes, not the consequences, of this crisis and therefore, if a fair, accessible and needs-based common asylum system is to be established, it is necessary to abandon the system introduced by the Dublin Regulation. The way in which redistribution of responsibilities is established should equally take into account the needs of persons seeking protection and the situation in individual Member States.

The current proposals for redistribution of responsibilities have been based on quotas, i.e. the number of asylum seekers that each Member State is obliged to accept, or accepts voluntarily / on its own initiative. In September of 2015, the European Commission submitted a proposal to the EU Council containing the introduction of an emergency and urgent relocation mechanism as well as the launching of a permanent relocation mechanism in cases where a Member State would be in crisis with a dramatic increase and a disproportionate influx of third-country nationals. A few months later, the European Commission added a proposal to introduce the so-called fairness mechanism which states that those Member States which themselves are in a situation of disproportionate pressure from migrants are exempted from the obligation to receive a certain number of asylum seekers. If a state refuses to receive applicants on this principle, they should pay €250,000 per person. Many states have provided active or passive resistance to these proposals, and all efforts to relocate have not been successfully implemented so far. It is precisely because of this experience that the proposal to reform the Dublin Regulation by incorporating a redistribution mechanism based on the criteria of size, wealth and absorption capacity of each Member State does not seem to be a potential solution.

The concrete principles on which an alternative approach to Dublin should be built are described later in the text, but we also consider it important to emphasize here the importance of preferences, that is, the existing links of international protection seekers with a particular

³² ECRE, (2005). The Way Forward Towards Fair and Efficient Asylum Systems in Europe, p. 13.



Member State. Analyses, research and numerous interviews³³ have shown that factors such as former colonial ties, language skills, proximity to country of origin, and especially the existence of identifiable communities and social networks in the community are extremely important for destination selection. Also, the conditions of integration, measures, as well as the rights that belong to persons, both during the process of seeking protection and upon obtaining status, greatly influence the perception of the claimant about the potential state in which they wish to seek protection and then live.³⁴

Although there are minimum standards of reception and refugee rights within CEAS and other relevant international instruments, in practice the situation differs greatly between Member States. The EU, through its financial mechanisms and instruments, should find a way to balance the situation and provide decent living conditions for refugees. However, until such a situation is actually put into practice, we cannot insist on documents and mechanisms that ignore these differences and put the responsibility on those seeking protection. The atmosphere of unwelcoming, the high level of manifested xenophobia and racism, as well as the agendas of governments that are very clearly against refugee immigration are not and cannot be ignored and cannot and are not and cannot be the responsibility of seekers of international protection.

Socioeconomic opportunities differ from one Member State to another, but it is the responsibility of the EU to find a solution and to use its financial resources to improve the system of reception, integration and, in general, the quality of life of refugees.

Respecting the needs of asylum seekers, for both clear and transparent procedures and desired destinations, prevents behaviors such as the use of smuggling chains and risking safety and life. If a Member State finds itself in a situation where its capacity cannot accommodate an extremely large number of persons seeking protection, then Member States should find a mechanism to jointly take over a part of the procedures. Even then, it must be ensured that the

³³ Eric Neumayer, Asylum destination choice. What makes some West European countries more attractive than others ?, LSE Research Online. Available at: <http://eprints.lse.ac.uk/archive/00000610/> ('Neumayer'); Anita Böcker & Tetty Havinga, Asylum Applications in the European Union, Journal of Refugee Studies, Vol.11 No.3, 1998; Roger Zetter et al., An assessment of the impact of asylum policies in Europe 1990- 2000, Home Office Research Study 259, June 2003. Available at: <http://www.homeoffice.gov.uk/rds/pdfs2/hors259.pdf>; Khalid Koser & Charles Pinkerton, The social networks of asylum seekers and the dissemination of information about countries of asylum (2002). Available at: <http://www.homeoffice.gov.uk/rds/pdfs2/socialnetwork.pdf>; Robinson & Segrott.

³⁴ Thielemann 2006, pp. 12-13. Welfare systems, national wealth, politics and recognition rates may also be of minor significance. See Michael Collyer, The Dublin Regulation, Influences on Asylum Destinations and the Exception of Algerians in the UK, Journal of Refugee Studies, Vol.17 No.4, 2004, and Vaughan Robinson & Jeremy Segrott, Understanding the decision-making of asylum seekers , Home Office Research Study 243 (2002). Available at: <http://www.homeoffice.gov.uk/rds/pdfs2/hors243.pdf> ('Robinson & Segrott'); Papadopoulou, A. Exploring the asylum-migration nexus: a case study of transit migrants in Europe, Global Migration Perspectives No. 23, January 2005, p.12 ("the choice of destination is influenced mainly by the type of asylum policies offered and less by social networks").



situation is not misused and that responsibility for the lack of solidarity between Member States is not transferred to applicants for international protection.

Models of refugee protection through safe and legal routes

As can be seen from the previous chapters, persons seeking international protection in the territory of the European Union, despite the numerous conventions, directives and legal frameworks, face a series of injustices, illogicalities and irregularities established at the core of CEAS.

This is the case with safe third countries, which EU Member States, through their legislation, can predetermine based on various sources of information of, “other Member States, EASO, UNHCR, the Council of Europe and other relevant international organizations”.³⁵ EU has a List of safe countries of origin³⁶, and the Republic of Croatia has also adopted a Decision on the list of safe countries of origin in the procedure for granting international protection.³⁷

Political games and manipulations which in various ways seek to circumvent the rights set out in the Geneva Convention ignore the fact that any request for international protection is an individual one and should therefore be considered as such when examining the request. Deciding on the predefined safety circumstances of individual countries is in fact the result of restrictive policies that seek to restrict access to the territory by enforcing such practices. Although the vast majority of refugees reside in neighboring countries, the rights granted to them are minimal and insufficient.

A good example of such practice is Turkey, which has received a large number of refugees from Syria since 2011, but has been granted limited refugee status and limited rights. “There are serious obstacles, additional disadvantages and problems in access to work and basic services, such as health and social care, education and, in general, integration into society. Although Turkey has recognized the Syrians' right to work since January 2016, in practice very

³⁵ Article 37, paragraph 3 of the EU Directive on common procedures for granting and withdrawing of international protection (2013/32 / EU). Available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32013L0032&from=EN>

³⁶ European Commission: Joint EU list of safe countries of origin. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf

³⁷ Croatia, Decision on the list of safe countries of origin in the procedure of granting international protection (2016), Official Gazette, OG 45/16, available at: <http://www.propisi.hr/print.php?id=14241>. These are: Algeria, BiH, Montenegro, Morocco, Albania, Kosovo, Macedonia, Serbia, Turkey, Tunisia.



few Syrians have been granted a work permit and most have consequently been employed employed illegally”.³⁸

For many people, these were the triggers for deciding to leave Turkey³⁹ and referrals to EU countries, using smugglers and remaining in irregular status because they had no other options. Instead of securing legal routes and thus allowing refugees to spend on their integration instead of smugglers, the EU left them to organized crime.

The illogicality, hypocrisy and restrictiveness of the European asylum system is at the root of the change that must be made when thinking about alternatives. **The alternative we choose must include leaving the Dublin Regulation, and its core must be based on solidarity, safety, respect for human rights, a fair and realistic redistribution of responsibility, taking into account the needs of refugees and other factors affecting the processes of inclusion in society.**

Substantive links between international protection seekers and individual EU Member States should be a fundamental principle for the allocation of responsibilities. **Prior knowledge of the Member State's culture and language** can make it significantly easier for a person seeking protection to access education, employment and other vital options that are equally of interest to the future country of residence. By enabling the seeker to be located in the Member State in which he or she intends to remain and potentially gain international protection and citizenship, from the very early days of his / her arrival in the EU, he / she greatly contributes and accelerates the integration into a new society. A successfully integrated person is economically independent and productive, employed, regularly attends educational courses and maintains social relations, thereby reducing the risk of irregularities and other undesirable behaviors, as well as secondary migration. The quality of integration, that is – the quality of life of newly arrived persons depends on the rights they have and the measures that Member States allow, so the speed and quality of the procedure for deciding on an application for international protection is of immense importance. Equally, the Member State receiving the refugees will benefit from the resettlement of persons who wish to live in that country, continue to build their lives and contribute to the community as a whole.

Models of safe and legal roads that currently exist and are worth considering are a *de facto* alternative approach to the Dublin Regulation. Although neither model is sufficient and ideal in itself, their combinations with respect to the specifics of the situation in which individual asylum seekers can be found provide better solutions than the Dublin Regulation. We highlight

³⁸ European Economic and Social Committee (2018): Opinion of the European Economic and Social Committee on “Turkey's role in the refugee crisis” (own-initiative opinion), Brussels; paragraphs 4.3 and 4.4. Available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:52016IE6237&from=EN>

³⁹ EESC (2016): Mission Report - Turkey. Available at: https://www.eesc.europa.eu/resources/docs/eesc-fact-finding-missions-refugees_turkey_en.pdf



some of them, emphasizing the advantages and the disadvantages of each model, because none are ideal and their application should be conditioned to the situation of an individual or group seeking international protection. It is for this reason that one should always look at all the circumstances and create policies and practices that safeguard and protect human lives.

Resettlement Model - is the process of selecting and resettling from a country in which a person has sought international protection to a country that has chosen to receive that person as a refugee (which gives the person and his or her family the right to be banned from deportation and given (almost) all the rights that the citizens of the country they arrive to already enjoy.⁴⁰ It is a process of seeking protection in which the application procedure is conducted in one country and the person who has applied for protection resides in another country. When and if the asylum country approves the asylum - the person (potentially even his or her immediate family) moves out of the country where he / she resided during the asylum procedure. Resettlement as a refugee protection mechanism developed during the two world wars.

"The largest and most dramatic example of resettlement occurred after the Indo-China conflict, when the massive exodus of 'shipwrecked people' caused a major crisis in the protection providing in the region. In the face of this political and humanitarian crisis, the international community has accepted that 'people from ships - Vietnamese' coming to the first asylum country in Southeast Asia are entitled to enter the territory but will subsequently be relocated to other countries."⁴¹ Contemporary context is very similar to this. The tragic event of 2013 when a ship of more than 500 refugees and other migrants sank off the Mediterranean Sea in Lampedusa was a prelude to what has been called a humanitarian-political crisis since summer 2015, and similar casualties have continued to this day. The resettlement program is not the only solution, but a practice that should complement, and not replace or degrade, other legal routes of international protection (humanitarian visas, humanitarian programs, etc.).

The relocation model – is an EU model created in 2015 in response to the high number of casualties in the Mediterranean and aimed at relieving pressure Greece and Italy faced as the first asylum countries due to the large number of refugees and other migrants arriving in those countries. The relocation model involves the relocation of an international protection seeker from one Member State to another EU Member State, thereby making another Member State responsible for the protection claim process. Member States' participation in this model was not obligatory, but voluntary. "Member States shall be responsible for examining the request in accordance with the rules and guarantees laid down. The key to redistribution (...) is based

⁴⁰ UNHCR (2011): Resettlement Handbook, Geneva, Switzerland; p. 3 (free translation from English into Croatian). Available at: <https://www.unhcr.org/46f7c0ee2.pdf>

⁴¹ Ibid.



on criteria such as GDP, population, unemployment rate, hitherto asylum seekers and hitherto displaced refugees.”⁴²

Family reunification model - encompasses the right of immediate family members of persons with approved international protection to connect with that person in a country which has granted that person international protection and to continue to live legally in that country, exercising legal rights. The right to family reunification is defined in Council Directive 2003/86 / EC of 22 September 2003 on the right to family reunification.⁴³ Some Member States have degraded the application of this right during the 2015 crisis. Syrians granted protection in 2015 or later abolished family reunification. Italy in 2017 introduced stricter rules for applying for family reunification, where the application could only be submitted after the asylum seeker had resided in Italy for two years.

Humanitarian Visa Model - indicates the right of a person to apply for a humanitarian visa at consulates and embassies in their country of origin / residence or a neighboring country, with which a person can safely and legally travel to an EU Member State where he / she can then request international protection. An example of the application of this model outside the EU is Brazil⁴⁴, which in 2013 issued humanitarian visas to the Syrians at consulates and embassies, with which they entered the country legally and joined the asylum system. Later on, the system was upgraded⁴⁵ so that refugees from Syria were automatically granted temporary residence for a period of two years within which they could apply for international protection.

Visa Waiver Model - A model that involves the abolition of the concept of visas for persons from the area a large number of people were forced to leave because of the need for international protection. That way, people in need of international protection spend their money on legal trips and are not forced to continue putting themselves at risk by paying smugglers. Persons are left with the means to fulfill their basic needs in the country of asylum. This model allows refugees to choose for themselves the country in which they wish to continue their lives. The possibility of this choice affects the psychophysical status and mental health of the refugees and contributes to empowerment and independence - because, in most cases, the selection will be based on the substantive links that refugees have with the receiving countries

⁴² European Commission (2015): European Migration Program, p. 4. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

⁴³ Council Directive 2003/86 / EC of 22 September 2003 on the right to family reunification. Available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32003L0086&from=EN>

⁴⁴ UNHCR (2013). UN refugee agency welcomes Brazil announcement of humanitarian visas for Syrians. Available at: <https://www.unhcr.org/news/latest/2013/9/524555689/un-refugee-agency-welcomes-brazil-announcement-humanitarian-visas-syrians.html>

⁴⁵ ANBA (2019). Brazil simplifies humanitarian visa application for Syrians. Available at: <https://anba.com.br/en/brazil-simplifies-humanitarian-visa-application-for-syrians/>



(choosing countries where their integration process will be facilitated). In case of a large influx of people: the temporary protection mechanism is activated.

Private sponsorship model (so-called humanitarian corridors) - includes legal and social guarantee for people in need of international protection. Guarantors can be family members, churches, civil society organizations or other groups of people. The guarantor assumes the role that the welfare system would normally play: thus caring for the person or family while their application for international protection is being considered. Consideration of the international protection procedure remains in the domain of the state, as well as the decision itself. In applying this model, it is crucial that the guarantors have an open cooperation with government bodies and that it is transparent and fair. This model is implemented in Italy with the cooperation of the community of Sant'Egidio⁴⁶ and the Federation of Evangelical Churches. Likewise, the Valdese Church⁴⁷ directly vouched for the persons rescued by ships from organizations such as Sea Watch in the Mediterranean Sea.

Model of mutual recognition of asylum in the Schengen and EU countries - a model that makes the status of international protection universal in the EU and Schengen countries, regardless of which country has approved it. A person granted international protection enjoys all status rights in all Schengen and EU countries, with the obligation to register a residence.

The model of diplomatic (extraterritorial) asylum is a model that includes the practice of seeking protection at the embassy or consulate of the country where the person in need of international protection is located. The Embassy / Consulate Area is considered to be an extraterritory where the rules of the country in which the person is located do not apply, but rather the rights of the Embassy / Consulate country. This model is not universally accepted as an institute of international law, but exists as an institute of particular international law of Latin American countries, where it was legally regulated first by the 1928 Havana Convention and then by the 1954 Caracas Convention. The most famous example of the application of the diplomatic asylum model is the one of Julian Assange, the founder of Wikileaks. That case is at the same time a good example of the instability and disadvantages of this model as the President of the country decides on the granting and termination of asylum. That is why this model should be upgraded with the introduction of emergency diplomatic flights, which would transport persons with approved diplomatic asylum to the countries of asylum.

⁴⁶ Sant'Egidio. Humanitarian Corridors for Refugee. Available at:
<https://www.santegidio.org/pageID/30112/langID/en/Humanitarian-Corridors.html>

⁴⁷ The Local (2019). Italian church to host Sea Watch migrants. Available at:
<https://www.thelocal.it/20190110/italian-church-chiesa-valdese-sea-watch-migrants>



Table scheme view of the models

RESETTLEMENT MODEL	
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • An alternative to unsafe travel • By moving to an asylum country, rights are immediately acquired • Less exposure to potential trauma • Easier and faster access to the process of social inclusion (integration) 	<ul style="list-style-type: none"> • A lengthy process • Non-transparent informing of applicants for international protection about the rights and opportunities in the receiving countries • Inadequate accommodation during the procedure • Preference is given to vulnerable groups, which puts all persons who do not fall into this category in a situation of staying in refugee camps for years
RELOCATION MODEL	
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • An alternative to unsafe travel • Less exposure to potential trauma • Easier and faster access to the process of social inclusion (integration) 	<ul style="list-style-type: none"> • A lengthy process • Uncertainty even after relocation (as the process of seeking protection is just beginning) • Non-transparent informing of applicants for international protection about the rights and opportunities in the receiving countries • Inadequate accommodation during the procedure • Preference is given to vulnerable groups, which puts all persons who do not fall into this category in a situation of staying in refugee camps for years
FAMILY REUNIFICATION MODEL	
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • An alternative to unsafe travel • Family is kept together • Less exposure to potential trauma • Easier and faster access to the process of social inclusion (integration) 	<ul style="list-style-type: none"> • Model abuse by smugglers • Covering the costs is the responsibility of the refugee and his or her family • Degradation of rights by institutions • The lengthiness of the procedure
HUMANITARIAN VISA MODEL	
ADVANTAGES	DISADVANTAGES



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<ul style="list-style-type: none"> • An alternative to unsafe travel • Easy access to the country of asylum • Less exposure to potential trauma • Easier and faster access to the process of social inclusion (integration) • The person independently chooses the country in which he/she wants to seek protection and continue his life 	<ul style="list-style-type: none"> • Access to embassies and consulates issuing visas is often difficult
VISA WAIVER MODEL	
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • An alternative to unsafe travel • Easy access to the country of asylum • Less exposure to potential trauma • Easier and faster access to the process of social inclusion (integration) • The person independently chooses the country in which he/she wants to seek protection and continue his life 	<ul style="list-style-type: none"> • Abuse of model enforcement by the border police
PRIVATE SPONSORSHIP MODEL	
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • An alternative to unsafe travel • Easy access to the country of asylum • Less exposure to potential trauma 	<ul style="list-style-type: none"> • Management is in the hands of the sponsor, who can change the rules and endanger the refugee position at any time • Outsourcing of refugee social protection within the international protection system
MODEL OF MUTUAL RECOGNITION OF ASYLUM IN THE SCHENGEN AND EU COUNTRIES	
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Upgrading the international protection system • Reducing the irregularity of refugees within the EU • Opening up natural settlement within the EU, which improves the integration process • The person independently chooses the country in which he or she wants to seek protection and continue his life 	<ul style="list-style-type: none"> • Potential risk of infringement by Member States



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DIPLOMATIC ASYLUM MODEL	
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • An alternative to unsafe travel • Easy access to the country of asylum • Less exposure to potential trauma • Easier and faster access to the process of social inclusion (integration) 	<ul style="list-style-type: none"> • Unavailability of embassies and consulates • Isolation in a specific space (a kind of detention): seaferty in uncertainty • A lengthy process to secure relocation to a country granting diplomatic asylum

Conclusion

The situation refugees and other migrants at the EU's borders find themselves in requires structural solutions, and efforts to address it by shifting responsibilities and externalization are frivolous and will not result in a long-term and satisfactory system, but will continue to put the EU at a disadvantage. With its current approach, the EU is jeopardizing its proclaimed core values (such as solidarity, protection and respect for human rights) and the lives, safety and dignity of refugees.

The proposed models are current existing examples and ideas built within the professional and political community that follows the system of international protection. Each one of them has its advantages and disadvantages when applied, and the ideal we strive to achieve is to apply them in combination - by which they complement and upgrade each other. The protection of human rights and refugee rights must be the basis of that application.

The European Union, as the umbrella body that brings together the Member States, needs to lay the foundations for the application of new refugee protection models that will oblige and motivate the Member States. History has shown that the political will to protect refugees was the driving force behind the action, but now is the time to urgently tie the political will with a political commitment.



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Recommendations for establishing a more fair system of international protection in the EU:

- Any reform of the Common European Asylum System (CEAS) must be based on human rights, have clear objectives and remove the dysfunctions of the existing system. The reform must necessarily be based on the division of responsibilities and solidarity in the manner prescribed by Articles 78 and 80 of the Treaty on European Union and the Treaty on the Functioning of the European Union.
- The EU needs to continuously find solutions for the reception and protection of persons through an approach based on humanity and dignity. A better application of a fairer system of international protection requires the establishment of cooperation and the exchange of experience and knowledge between the Schengen Member States and the EU, in order to truly establish equal conditions for acceptance, protection and integration in the Member States.
- The EU should establish binding models of safe and legal opportunities for the arrival of refugees, placing the primary focus on these models and providing financial resources for their realization. Providing safe and legal routes is a key contribution that the EU can make to the global response to migratory movements and would greatly reduce the risks and uncertainties to which people forced to leave their homes are exposed to. Proposals that lead to the instrumentalization of resettlement, ie that support migration control or introduce grounds for the exclusion of certain persons on the basis of the “integration perspective” of the individual, undermine the essence of resettlement and must be rejected.
- When designing and implementing a model of a more just system of international protection and safe and legal opportunities for arrival, it is important to take into account the needs of refugees in consultation with refugee collectives / groups. It is also important to involve the local communities of the Member States that will apply these models directly.
- The EU should terminate harmful agreements and other arrangements with third countries that endanger lives and safety and result in human rights violations, and insist on the consistent qualification of a ‘safe third country’ individually and in a manner established by EU law. The EU can support other countries and regions in building asylum systems and reception capacities, but that also means that the EU is expected to develop and improve the system on its own territory, rather than exporting it to countries outside its borders.
- The EU needs to strengthen its role in addressing the real causes of forced displacement, including conflicts, insecurity, social violence and repression, supporting lasting solutions to prevent displacement and shorten the duration of it.
- The Dublin system for the distribution of asylum applications should be abandoned and a secure and legal access to EU territory should be established, as well as an asylum system based on respect for human rights that adequately responds to the real needs of people seeking safety.
- Funding is needed at European, national and local level to make the presumption of an equal level of international protection within the EU real and to use measures to sanction those Member States that violate human rights and do not want to participate in the distribution of



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responsibilities. The EU should ensure a sufficient level of funding for dignified living conditions for immigrants as well as direct funds for the reception, integration and measures to include and ensure equal opportunities, and reduce investment in equipping borders and returning migrants to the so-called third countries.



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