

"The EU answer to the humanitarian migratory crisis "
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First of all I like to thank the Professor Phillippe de Bruycker for the invitation to participate in the inaugural session of the Odysseus Summer School.

The issue that I will address is a very complex one and challenging.

I decided to divide my presentation in 3 parts: Firstly, I will make a brief presentation of the migratory situation. Secondly, I will try to assess the measures adopted by the EU to tackle this humanitarian crisis and finally I will try to answer the question: What can and shall the EU and its Members-States do to better manage these migratory flows in the short and medium term.

I. The migratory situation in the Central Mediterranean Sea

As all we know the migratory movements across the Mediterranean Sea is an endemic phenomenon for more than 20 years.

But the rising toll of migrant deaths in the Mediterranean Sea put the migratory crisis to the heart of the political and

media agenda. But this was an announced tragedy. For years, we have been facing similar tragedies!

In May and June 2007, several incidents with migrants in distress at sea and tragic events which took place in the Central Mediterranean, created at that time an intense political discussion in Parliament, at the Council and at the European Council.

Myself participated in a Public Hearing on Tragedies of Migrants at Sea which took place at the European Committee on Civil Liberties, Justice and Home Affairs on 3th July 2007. At that time was estimated that, from 1997 until 2007, at least 10.000 people died trying to cross the Mediterranean and reach Europe. 2009, the influx of immigrants in the Central Mediterranean Sea almost stopped due to the arrangements between Berlusconi and Kaddafi. But the influx was not stopped, only shifted. 2008-2009 the Eastern Mediterranean route becomes a big migratory hot spot, with more than 40.000 migrants per year arriving from Turkey to Greece, Cyprus and Bulgaria.

Since 2011, in the wake of the “Arab Spring”, migratory flows have exponentially increased, as well the tragic events. In fact, an increasing number of people fleeing from Syria, Iraq, Libya, Eritrea, Somalia, Sudan, Nigeria,

Mali, Ghana, Gambia, and Afghanistan, Bangladesh are trying to reach EU through the Mediterranean and Aegean Sea.

The growing numbers of people fleeing insecurity, political instability, human rights violations and poverty in Middle East and in sub-Saharan Africa affects the entire Euro-Mediterranean region, resulting in unprecedented humanitarian crises.

Addressing these flows is very challenging.

First, since 2014 there is an exponential growth of the influx of asylum seekers. 2014, EU Member States, registered more than a half million asylum seekers. 2015, over 1,2 million asylum seekers were registered in the EU. And in the 1st quarter of 2016 the number of asylum seekers increased by more than 50% if compared with the first quarter of 2015.

Secondly, these asylum seekers were registered mainly in few Member States. Only Germany registered more than 60% of all asylum seekers, followed by Italian, France or Sweden.

Lastly, this crisis is also very challenging because there is an inherent tension between the State's sovereign right to control their borders and migration and the right of everyone facing persecution or inhuman treatment to seek asylum.

But to understand the dimension of this crisis we have to take it into perspective.

The Syrian conflict alone triggered the world's largest refugee crisis since the Second World War. According UNHCR, there is almost 5 million refugees in the Region, affecting in particular neighbouring countries, like Turkey (circa 3 million Syrian refugees), Lebanon (1.2 million) and Jordan (628.160).

The whole Europe registered 1 million Syrian refugees (2014 were only 140.000), which compared to the number of Syrian refugees in Lebanon (1.2 million), a little country with 4,5 million inhabitants is a drop in the Ocean.

But inside Europe, the responsibility to protect Syrian refugees is not fair shared. 62% of Syrian refugees are in only to States: Germany and Serbian. Sweden, Austria, the Netherlands or Denmark received 26%. All other European countries 11%.

Many of Syrian refugees, as well Eritreans, Afghans or sub-Saharan refugees and other immigrants are seeking desperately to reach EU through the Central Mediterranean Sea or the Aegean See departing in overcrowded boats. The situation enable smugglers to exploit desperate people trying to flee conflicts, human rights violations and extreme poverty.

The Mediterranean Sea route is the most dangerous and lethal border in the world, in which thousands of people have lost their lives trying to enter the EU. Only since 2014, it is estimated that at least 10.000 people died in the attempt to reach EU by sea.

Although in 2011 there have been several shipwrecks with a high number of deaths, this tragedy gained particular visibility in 3 October 2013, when at least 360 people lost their lives in Lampedusa.

Following this tragic shipwreck, Italy launched the Mare Nostrum search and rescue operation, which allowed rescuing more than 150.000 migrants. Under the leadership of the European Commission, the Task Force Mediterranean was set up, to take action to prevent irregular migration across the Mediterranean Sea and the loss of lives at sea, which full implementation was considered by the European Council of 26/27 June 2014 a priority. On 10th October, the JHA Council adopted Conclusions on “taking action to better manage migratory flows” to tackle the increasing migratory flows in the Mediterranean and defined three priorities: cooperation with third countries in Western Africa, Eastern Africa, Northern Africa and in the region neighbouring Syria (Jordan, Lebanon, Egypt and Iraq), reinforcement of the surveillance of EU external border and fingerprinting and

identification of migrants to avoid secondary movements within the EU.

Notwithstanding all EU measures, the migration influx and the tragic accidents at sea have dramatically increased 2015. On the 19th April 2015, the drowning of 800 migrants was only one tragic incident that gave to this humanitarian crisis a regained political visibility.

Despite the recent huge rise in deaths and people trying to cross illegally the Mediterranean sea, this is neither a new phenomenon nor an exclusively European one, as is showed by the situation registered in 2015 of thousands of Rohingya “boat people” fleeing Burma and Bangladesh by crossing the Indian Ocean in search of protection in Malaysia and Indonesia.

Over the time, people have risked their lives to cross the sea in search of better living conditions (economic migrants) or international protection against persecution and other threats to their life, liberty and basic human rights. Often they have no alternative as to place their lives in the hands of criminal smugglers. But the question is: are EU’s measures efficient to tackle this humanitarian crisis? What should the EU do to meet the migration challenges faced by Europe?

II. EU measures to tackle the current migratory humanitarian crisis.

The 19th April 2015 tragic shipwreck 60 miles off the Libyan coast, in which more than 800 migrants feared dead, placed the need to prevent irregular immigration in the Mediterranean Sea at the top of the EU political agenda and triggered several measures.

The current migratory crisis was discussed at the 23 April 2015 special meeting of European Council which focuses in four set of measures in line with the “old” EU strategy in the field of migration and asylum policy: Besides the priority given to search and rescue operations by reinforcing the, the European Council decided measures to fight the traffickers, to prevent illegal migration and to reinforce the internal solidarity and responsibility, through relocation and resettlement.

In the wake of the April European Council, the European Commission presented on 13th May 2015 its Communication on a European Agenda on Migration outlining short-term measures to respond to the Mediterranean crisis situation as well long term priorities to better manage migration.

Following the European Agenda for Migration several measures were adopted, like the following

- 1- The EU Borders and Coast Guard Agency, that reinforces FRONTEX competencies and the obligations of Member States regarding the control of the external Border.
- 2- EUNAVFOR MED – Sophia Operation. This is military crisis management operation to disrupt smuggling and trafficking networks in the Southern Central Mediterranean, including rendering smuggler vessels inoperable.
- 3- The EU-Turkey agreement to stop the influx of refugees coming from Turkey to Greece through the Aegean Sea.
- 4- In the field of solidarity 2 measures were adopted:
 - (1) An EU-wide resettlement scheme to transfer 20.000 refugees on request of the UNHCR, from a third country to a member State. This is a very symbolic measure if we bear in mind that alone a little country like Libanon take in charge more than 1 million of Syrian refugees.
 - (2) The temporary relocation scheme to relocate 160.000 asylum applicants until the end of 2017. 106.000 from Italy and Greece. 54.000 originally to be relocated from Hungary will be relocated from other Member State or resettled from Turkey or

another third country. According to this mechanism asylum applicants shall be distributed among the other Member States according to their capacity to absorb and integrate refugees. The distribution key is based on the following criteria: Size of population (40%), total GDP (40%), average number of asylum applications and resettled refugees (10%) and unemployment rate (10%).

Until 27 June 2016, 2647 refugees were relocated, 789 from Italy and 1858 from Greece, mostly to France, Portugal and Finland. Portugal is the second Member State which has the highest number of relocated persons. As the numbers show, the relocation mechanism is not functioning. This is due to many reasons: First, the procedure is very heavy and implies the setting up of facilities (the hotspots) and human resources. Secondly, many refugees, above all in Greece, opted to continue their journey to other Member States, like Germany or Sweden. Only when the Balkan Route was closed many refugees were able to be relocated in other Member States. Lastly, some Member States, like Poland, Slovakia, Austria or Hungary refused to relocate and others make few places available.

Taking into account all these measures, one can conclude that the EU response to migratory humanitarian crisis is disappointing and, apart from some new measures with doubtful effects – like the Atalanta like one to disrupt smugglers networks, doesn't represent any substantial change in its approach to migration.

It followed the “old strategy” and is mainly based on reinforcing borders controls, measures to tackle illegal migration and restricting migration.

The increase of search and rescue operation is positive, but it will not address the main causes of migratory influx and will not prevent smugglers to continue their business.

Targeting smugglers by destroying their boats will not be effective, because it will not detain people fleeing wars, conflicts and poverty and as long there is an increasing demand for their services they will adapt themselves, using smaller boats or change their routes and continue the business.

As António Guterres (2015) points out “we can't deter people fleeing for their lives. They will come. The choice we have is how well we manage their arrival, and how humanely”.

The reinforcement of return operations faces currently operational and legal constraints. The vast majority of the people arriving by Sea, like Syrians, Eritreans, Yemenis, Nigerians or Somalis, are fleeing conflicts, lack of rule of law, human rights violations and therefore are in need of international protection. According to the principle of *non refoulement* they cannot be lawfully returned and have a human right to get asylum.

The principle of *non refoulement* enshrined in international refugee law (art 33 of the 1951 Refugee Convention) and in the international human rights law (art. 3.º ECHR) is the cornerstone of the protection of refugees. According to article 19 of the EU Charter on Fundamental Rights “*No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or inhuman or degrading treatment or punishment*”. This principle means that at least every asylum seeker has to have the opportunity to present her or his claim for protection before she or he can be returned.

Addressing the root causes of irregular migration flows is essential, but once again the cooperation with third countries of origin and transit is focused on giving assistance to strengthen their migration and border

management capacity and to enforce readmission agreements.

And this is a very “old” EU strategy in the field of its external migration and asylum policy: shift the burden of migration control and refugee protection to countries of transit and origin, through helping them to better protect refugees, to better control their borders and imposing them readmission agreements that allows returning irregular migrants. Until now this kind of measures were unable to stop de flow.

As regard solidarity within the EU and with the third countries most affected by mass influxes of refugees and migrants, the EU answer was shy.

Comparing the GPD of the EU and the capacity of its 28 Member States to protect and absorb refugees with the huge protection efforts made by a country like Lebanon, with 1.2 million Syrian refugees, or Turkey, with 3 million Syrian refugees, the resettlement of 20.000 refugees from third countries is a drop in the Ocean.

Europe has to recall its history and remember that in both world wars Europeans were the ones fleeing from persecution, war and human rights violations.

Thus, beyond the very special legal commitment that the EU has to the right to asylum (article 18 Charter of Fundamental Rights of the EU), Europe has a special historical and moral duty to protect people fleeing war and persecution, because asylum is in the heart its values.

But what should and can the EU do to meet the migration challenges faced by Europe?

The answer to this question is not easy. I will focus on five measures.

First, strengthening save and rescue operations to save lives of migrants and refugees in distress at sea has to be a priority. This is not only a legal obligation enshrined in international Law, but also a moral duty. Insofar the commitment of Save and Rescue operations is a positive measure, but may be too short to address effectively the crisis. First, the efficiency of FRONTEX Operations depends on the assets made available by the Member States. Secondly, the main purpose of the FRONTEX joint operations is not saving and rescue, but borders surveillance.

Secondly, the fight against smuggling and trafficking of human beings is a priority, a legal obligation and an urgent measure not only for the EU, but for the entire

international community. EU has to cooperate with third countries to tackle this type of crimes. But alone the criminal persecution, borders controls or even disrupting smugglers networks by destroying their vessels and assets are not enough to fight against illegal migration.

As long as there are very limited legal pathways to migrate to Europe, as long migrants can get a job in the underground labour market in Europe, as long Europe is a safe harbour, they will try to enter with the help of smugglers. The lack of legal pathways to Europe are making smuggling more profitable and therefore are one of the causes of this humanitarian crisis.

Measures to regulate migratory flows and fight against irregular migration are justified, but they cannot take precedence over the right to seek asylum, that is at the core of the European civilization and values.

It makes no sense to force those fleeing Syria, Eritrea or Nigeria to risk their lives in dangerous routes.

Thus the EU needs a wide resettlement program to organise orderly the arrival of those persons and allow them to fully exercise their right to seek asylum.

The right to seek asylum is a universal human right enshrined in the Universal Declaration of Human Rights and in the EU Charta of Fundamental Rights. But is more than a legal right! It is also, as Guterres (2015) pointed out

“ a political principle that has guided nations for thousands of years and is at the very foundation of the values upon which modern Europe was built”.

Thus, EU should explore other type of measures to prevent irregular migration and reduce the number of migrants and refugees attempting to cross illegally the Mediterranean and thereby save lives, by creating more legal alternatives for refugees to find protection and immigrants to enter legally Europe

Thirdly, the EU needs a real common asylum policy based on solidarity and fair sharing of responsibility within the EU.

Despite the existing Common European Asylum System, the EU failed to implement a fair responsibility sharing within Europe. Discrepancies in Member-States protection systems and reception conditions, individual preferences of asylum seekers and diverging recognition rates have led to wide secondary movements between Member-States and to an unsustainable system in which few Member-States (Germany, Sweden, Italy, France, UK) take the majority of all refugees (Guterres).

Solidarity among Member States is mostly expressed through operational support by EASO and financial support through the Asylum, Migration and Integration Fund, rather by intra-EU transfer of asylum seekers and refugees (De Bruycker p-4-5).

But it is recognized that there is a need to distribute responsibility among Member States.

To the backdrop of the Syrian crisis there is a legal tool that could allow a better sharing of responsibilities among Member States, while offering immediate protection to increasing numbers of asylum seekers: The Temporary Protection Directive.

Through the triggering of the Temporary Protection Directive, the EU could provide immediate protection to third country nationals who have fled areas of armed conflict or endemic violence and persons at serious risk of, or who have been victims of systematic or generalized violations of their human rights (article 2 (c) of the Directive), and are unable to return to their countries of origin.

At the moment there is no doubt that Europe is facing a mass influx of persons from Syria, Eritrea, Yemen and other countries, who fled conflicts or are at risk of systematic violation of their human rights. But instead of proposing the triggering of this existing legal EU instrument, which could immediately guarantee a better

protection status to those arriving to EU and a fair burden sharing among Member States, the EU adopted a temporary relocation scheme to relocate 160.000 asylum applicants from Italy and Greece to the territory of other Member States.

It is a fact that the EU cannot receive everyone that needs protection, but we have to put this migratory crisis into perspective. Only a small part of refugees and migrants will arrive in Europe. Those countries in the Middle East and Africa closer to the countries of origin of these migrants have received much higher influxes of refugees. Alone Lebanon, with 4.5 million population, received 1.2 million Syrian refugees. The whole Europe, with more than 500 million people received 1 million.

Objectively, Member States have the capacity to make more and offer protection to a greater number of refugees, through resettlement schemes.

Regional Development and Protection Programme for refugees and host communities, like the one in Lebanon, Jordan and Iraq, are gut initiatives.

Nevertheless, many refugees in neighbouring countries with exhausted reception capacities have no perspective of a dignifying future and will try to reach Europe, legally or illegally.

Thus, reinforcing resettlement of refugees must be an

integral part of EU efforts to support countries facing massive influxes of refugees, because as Guterres (2015) stated, “we can no longer meet our obligations simply by financing programs in other countries”.

But Europe needs also to organize better legal migration instead of trying to control or fighting it. And this is the fourth point.

In the globalised world, Europe will continue to receive immigrants and due to its demographic decline, immigration will play an important role in its strategy for growth and employment and for the sustainability of its welfare system.

According the European Commission (COM (2015) 240) without migration the EU’s working age population will decline by 17.5 million in the next decade. In Germany, a recent study estimates that alone Germany needs 533.000 immigrants per year to guarantee the sustainability of its economic and social system (Fuchs &Kurbis&Schneider, 2015).

It is time for Europe to recognize the positive contribution of migrants to boost its economic growth and sustainability of its social systems and ensure legal channels for regular and safe migration to EU, for both highly and low-skilled workers.

Despite current economic crises and high unemployment rates, there is evidence that immigration must be part of the response to the challenges posed by the demographic decline (population ageing and shrinkage) that Europe is facing, which will affect its capacity to economic growth (Fargues 2015).

To avoid social conflicts and preserve social cohesion, all those measures regarding migration and asylum should be accompanied by the strengthening of integration policies. The EU and its Member States have to be ready to invest much more in integration of migrants and refugees into our societies.

Lastly, **as** it is not feasible for Europe to receive everyone that needs protection or has a legitimate hope to have a better life, the EU has to address more seriously the root causes of migration (forced or voluntary), like conflicts, lack of rule of law, human rights violations, extreme poverty.

This requires changes in its external policy and a genuine commitment to solving and preventing conflicts (Guterres 2015), more engagement in development policies, including a positive nexus between development and mobility, exchanges in its own internal policies, like the common agriculture policy or its trade policy, to allow

other countries to have a chance to develop themselves and guarantee better live conditions to their populations.

To conclude, and this are my last words, the migratory humanitarian crisis is a complex phenomenon and poses huge challenges. Only a global approach, that addresses root causes of migration and is able to manage lawfully migration flows, can provide a long-term solution.

Strengthening border controls and measures to fight illegal immigration are needed, but alone will not be effective to stop immigration, as long there are development gaps in the world, as long migrants have a reasonable prospect to have a better live in Europe, as long refugees and people seeking international protection haven't legal pathways to enter in Europe.