

Refugees, Migrants and Asylum Seekers: where to from here?

The implications of the EU Deal with Turkey

Key Concerns:

- **The EU-Turkey plan is not designed in the best interests of refugees and asylum seekers, including Syrian civilians, but is instead focuses on containing the flow of displaced people trying to reach European countries.**
- **The plan has the potential to seriously erode the crucial protection for refugees afforded them under international law by designating Turkey a safe third country– leading to potential violation of the principle of non-refoulement.**
- **With its focus on Syria, the deal risks creating a hierarchy of refugees which violates the fundamental principle that all asylum applications should be considered on their own merit, regardless of where the applicant is from.**
- **The EU and Turkey’s assurance that asylum seekers will not have their rights violated, that they will have their asylum claims reviewed on an individual basis and that no one will be victims of collective expulsions, is not convincing given the scale of the numbers involved and the time line proposed – both of which raises serious concerns about the ability of the EU and Turkey to deliver on these commitments.**
- **The EU-Turkey plan damages the credibility of the EU, undermines the European Consensus on Humanitarian Aid and sets a dangerous precedent of principled humanitarian donors motivated by political agendas.**

Background

Since the outbreak of civil war in Syria in 2011, an estimated 470,000 people have been killed, 13.5 million are in need of aid, **4.6 million refugees are now living outside Syria (in five countries - Turkey, Lebanon, Jordan, Iraq and Egypt)** and 6.6 million people are displaced within Syria.

Turkey is the world’s biggest host country with approximately 2.7 million refugees, while Lebanon hosts 1.3 million Syrian refugees (one in five people in

the country¹ which is the highest ratio of refugees in any country in the world).

The war has resulted in the largest humanitarian catastrophe of the 21st Century, in a world where, 60 million people (1 in every 122) are displaced.² **Syria’s war remains the single biggest generator of both new refugees and continuing mass internal displacement.**

Since June 2015, more than 1 million people,³ most of them refugees, have embarked on dangerous journeys in search of safety in Europe. Over 4,000 people have died in the attempt. One-in-every-two of those crossing the Mediterranean in 2015– half a million people – were Syrians escaping the conflict in their country. More than 135,000 people arrived in Greece and Italy⁴, in the first two months of 2016. Figures from the International Organisation for Migration (IOM)⁵ show that while Syrians, Afghans

and Iraqis make up the majority of arrivals in Greece, most of those currently landing in Italy are from African nations including Nigeria, Gambia, Senegal and Mali.

The European Union, with a combined population of 503 million people has not put the appropriate mechanisms in place to deal with the situation, which has resulted in what is now a very serious crisis, not for the European Union but for 52,000 people trapped on the borders of and inside Greece.

EU Deal with Turkey

On March 17-18th last, EU leaders voted to support a plan that has been described as **a disturbing disregard for international law covering the rights of refugees, asylum seekers, and migrants**⁶ and a historic blow to human rights⁷. The plan under discussion was designed to (a) Stem migration and refugee flows from Turkey to Greece by instituting large-scale, fast-track returns of all “irregular migrants” crossing into the Greek islands from Turkey. (b) Send irregularly arriving Syrians back to Turkey with the promise that for each Syrian readmitted by Turkey, an EU member state would agree to resettle another Syrian refugee from Turkey and (c) A commitment for the EU to cooperate with Turkey in endeavours to establish so-called “safe areas” inside Syria.

Why are Human rights organisations concerned?

The UN Human Rights Council echoed the fears of human rights organisations across Europe in response to the deal, highlighting **the spread of exclusionary and xenophobic political rhetoric around the world, fuelling intolerance and resentment of migrants, often leading to acts of violence, hate crimes and hate speech**⁸. The United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, said that the EU's deal with Turkey raises a number of serious concerns, including the risk of collective expulsions⁹.

The deal states that “all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey,” and asserts that these will not be collective expulsions.

The deal reduces Syrian asylum seekers and refugees to numbers or commodities for shipping, rather than desperate and exhausted human beings, **under a “one-in, a different one-out” plan that fails in practice to take appropriate account of individual circumstances or the fundamental right to seek asylum.**

In addition, the deal ignores the systems and structures required to assess claims in a fair and legal way, the time required to investigate claims, and the right to appeal a rejected claim. As part of the deal, the EU has pledged €3 Billion to Turkey to help deal with the increased numbers of refugees. The EU has also pledged to provide Greece with 4,000 staff members it estimates the country will need to be able to implement the agreement. However, the recent decision by UNHCHR and a number of NGOs to withdraw its staff from facilities in Greece used to detain refugees over concerns that the EU-Turkey deal is being implemented before crucial safeguards are in place¹⁰ raises serious concerns over the ability of the EU to deliver on the promises all asylum seekers will be afforded the protection they are entitled to under international law

The plan was conceived and endorsed in the shadow of **Europe's failure to realise commitments made in September 2015 to relocate 160,000 refugees.** As of December 2015, only 600 refugees have been resettled to EU Member States and only 184 people have been relocated¹¹. Resettlement schemes (for refugees outside EU countries, namely Jordan and Lebanon in the case of Ireland) are slightly faster, accepting refugees who have been processed by UNHCR.

Turkey as a 'safe' third country

The safe third country concept, using the word *safe*, was defined under EU law by the Council Directive 2005/85/EC, which in short designates **a country as being safe if it complies with the 1951 Geneva Convention**, including the refugee definition and the principle of non-refoulement, with the Convention against Torture and with other relevant human rights instruments.

Under a **2013 EU Directive**¹² countries can only be considered safe third countries when the following criteria are met:

- a) Life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- b) there is no risk of serious harm as defined in Directive 2011/95/EU;
- c) the principle of *non-refoulement* in accordance with the Geneva Convention is respected;
- d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
- e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

The problem with safe third countries and safe countries of origin is that they are presumed as safe, *in theory*, but they may not truly be safe *in practice*. Consequently, there is a credible risk that asylum seekers are sent to "safe" third countries where they may suffer persecution, such as threats to their life and that of their families, risk of torture, unlawful detention and enforced disappearances. For this reason, EU countries could, by using these practices, be violating the fundamental principle of non-refoulement.

The safe third country rule has been a method used by European States to reduce the number of asylum

seekers receiving asylum status in the European Union by sending them back to countries where they have spent time before arriving in the EU.

In the specific case of Turkey there are **significant concerns around its designation as a safe third country**, mainly:

- Turkey has a worrying human rights record, as illustrated by the recent media crackdown – including raids on newspapers critical of the ruling party and jailing and deportation of foreign journalists – and in particular members of the Kurdish minority have suffered numerous violations to life, liberty and other fundamental rights. In February 2016, the UN High Commissioner for Human Rights expressed serious concerns about the lack of respect for human rights and the actions of Turkish security forces¹³. Furthermore, there have been consistent reports of harsh detention conditions for asylum seekers with very little in the form of judicial safeguards or reviews.¹⁴
- Turkey has a history of refoulement of non-European asylum seekers. According to research from Amnesty International, Turkey has deported more than 100 Syrians and Iraqis in the last months back to their home country despite the clear risk of persecution upon return¹⁵.
- Turkey ratified the Refugee Convention and its 1967 Protocol, but maintains a geographical limitation for non-European asylum seekers, thus recognizing refugees originating only from Europe (i.e. from countries which are members of the Council of Europe).
- The temporary protection regime affords Syrians no right to apply for refugee status. The idea of the temporary protection regime is to hold Syrians until the conflict in Syria is over and then return them. As a result, they do not have access to refugee protection in its full sense, as enshrined in the Refugee Convention. Thus the procedural rules and protection standards are

different for Syrians or other third-country nationals, introducing inequalities in access to protection and content of protection. This is coupled with evidence that suggests limited access to procedural rights, including lack of information about rights and procedures, for asylum seekers.

Individual assessment of asylum seekers

In an EU Commission press release of 17 March,¹⁶ the Commission set out six principles for EU-Turkey cooperation on the migration crisis. According to the principles it is crucial that:

“Every asylum application is treated individually, respecting the clear legal and procedural parameters set out in the EU Asylum Procedures Directive. There is no question of applying a 'blanket' return policy, which would be contrary to the legal requirements and the fundamental rights of asylum seekers.”

While this should be welcomed, **the scale of the numbers involved and the time line proposed raises serious concerns around the ability to provide all asylum seekers with their right, under international legal, to have the merits of their case reviewed on an individual basis with proper judicial safeguards and the possibility for appeal.** The recent reports from UNHCR that 13 of the first 202 asylum seekers to be sent back to Turkey under the EU-Turkey deal, did not have their claim assessed¹⁷ only serves to highlight the lack of safeguards in place.

Given the lack of full protection under the Refugee Convention for non-Europeans it is questionable whether this principle will be more than simply pro forma – and the push for fast-tracked returns on a large scale seems to present a serious obstacle to a thorough, individual analysis of individual asylum applications. **It is also as yet unclear how the EU and Turkey will be able to meet the significant logistical challenges while guaranteeing respect for international law.** The decision by Greece to suspend

the expulsion of people to Turkey as they struggle to deal with the number of claims for asylum¹⁸ is a strong indication that the logistics are not in place to push for fast-tracked returns while ensuring all required legal safeguards remain in place for asylum seekers.

Hierarchy of refugees

The EU-Turkey deal focuses greatly on Syrian refugees, yet a large number of asylum seekers arrive from other countries, such as Iraq, Eritrea, Pakistan, Somalia, Libya and Afghanistan. Every asylum seeker should be treated equally and it is important that **any approach taken to dealing with large number of asylum seekers does not, even if done inadvertently, violate the fundamental principle that all asylum applications should be considered on their own merit,** regardless of the applicant’s country of origin

Ireland’s responsibilities as an EU Member State

Ireland must take an active role within the EU to ensure that any measure agreed by the EU be in accordance with international law and provide asylum seekers with the protection afforded them under refugee and human rights law.

In the context of the EU-Turkey deal, this means taking the following concerns into account before continuing to support the deal in its current form:

- The move towards increasing the designation of “safe third countries” is highly problematic as it presumes safety in theory, not in practice. There is a great possibility that asylum seekers could be returned to "safe" third countries where they may suffer persecution.
- Blanket refusal of entry to a large number of potential refugees is a potential violation of the principle of *non-refoulement*. **A decision on the merits of a claim to refugee status is the only way to ensure that the State’s legal obligations are observed.** Adequate systems, trained staff

and clear information are basic requirements to ensure the rights and entitlements of those seeking refugee status are respected.

Within the context of the implementation of the EU-Turkey deal, Ireland must:

- **Call for the establishment of an independent monitoring group, to ensure the deal is implemented to the letter of law.** *Implementation of the EU-Turkey deal without violating international law legally will require high levels of oversight and monitoring capacity by independent legal observers and international human rights organisations.*
- **Given the legal implications and heightened risk of human rights abuses, demand a full transparent plan on how the EU and Turkey will be able to meet the significant logistical challenges while guaranteeing respect for international law.**

In the wider context of the issue of migration, Ireland should:

- **Engage proactively with civil society** ahead of the September 19th High-Level Meeting of UN General Assembly Plenary on Addressing Large Movements of Refugees and Migrants¹⁹ to ensure the concerns of civilians affected by amendments to legal mechanisms are incorporated and represented at the Summit.
- **Naval rescue missions must continue at scale in 2016.** The Irish Navy search & rescue mission has saved 8,500 refugees since inception in 2015. This is an important aspect of Ireland's humanitarian response to the migration and refugee crisis, which should not be withdrawn.

At home, Ireland must:

- **Enhance legal channels for migration,** including reducing the barriers for family reunification with a particular focus on vulnerability

- **Expedite the selection and arrival of those identified under the Relocation and Resettlement schemes** in 2016.

In addition, the Irish Government should give additional consideration to the following recommendations:

- Establish a **Special Rapporteur on Refugees, Asylum Seekers and Statelessness** for Ireland
- Ireland must **refrain from exploring and supporting stabilisation proposals and the creation of 'safe areas' inside Syria for refugees.** Safe zones can only be deemed safe by those who will freely live in them. There can be no question of civilians being forced to return to Syria.
- **Greater resources should be allocated to meet the short-term and also the medium and longer-term needs** of displaced people and host communities through support to livelihoods and educational opportunities in Jordan, Turkey and Lebanon.
- The European Union and Member States **cannot choose whether to respond or not, to the needs of those using their legal right to seek asylum in Europe. Humanitarian funding is not an alternative to fulfilling domestic asylum obligations** and providing adequate support to relocation plans in Europe. **Humanitarian assistance should not be diverted to cover the costs of refugee supports in European countries.**

[Trócaire's work with displaced people in Syria and Syrian refugees²⁰](#)

In Syria, Jordan and Lebanon, Trócaire has been providing food and shelter to Syrian refugees, as well as people who have remained in Syria since 2013. We are also providing psycho-social support, a vital lifeline to refugees who are struggling to cope with the impacts of displacement and war. Trócaire also supports Caritas programmes in Greece, Macedonia,

Croatia and Serbia aimed at supporting refugees both through the distribution of food and other essential items as well as through social support, including providing translators for refugees.

¹ <https://www.amnesty.org/en/latest/news/2016/02/syrias-refugee-crisis-in-numbers/>

² <http://www.un.org/apps/news/story.asp?NewsID=52859#.VvLfoeKLS1t>

³ Although not all of those arriving in Europe choose to claim asylum, many do. Germany received the highest number of new asylum applications in 2015, with **more than 476,000**. But far more people have arrived in the country - German officials said **more than a million** had been counted in Germany's "EASY" system for counting and distributing people before they make asylum claims. <http://www.bbc.com/news/world-europe-34131911>

⁴ The Italian interior ministry has documented 16,075 migrants crossing to its shores so far this year, compared to just over 10,000 during the same period in 2015

⁵ <http://germany.iom.int/en/aggregator/categories/3>
<http://www.independent.co.uk/news/world/europe/refugee-crisis-arrivals-rocket-in-italy-amid-warnings-turkey-deal-could-force-migrants-on-more-a6959491.html>

⁶ <https://www.hrw.org/news/2016/03/15/eu-turkey-mass-return-deal-threatens-rights>

⁷ <http://www.amnestyusa.org/news/press-releases/eu-turkey-refugee-deal-a-historic-blow-to-rights>

⁸ <https://www.hrw.org/news/2016/03/22/un-human-rights-council-panel-technical-cooperation-promote-and-protect-human-rights>

⁹ <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18531&LangID=E>

¹⁰ <http://www.aljazeera.com/news/2016/03/aid-groups-withdraw-greece-refugee-hotspots-160322202842234.html>

¹¹ Presidency Report from the President of the European Council: Managing Migration flows – 16 December 2015

¹² 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, available [here](#)

¹³ <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17002&LangID=E>

¹⁴ http://www.amnesty.eu/content/assets/Doc2015/2015_Documents/Turkey_detention_deportation_briefing_14Dec2015.pdf

¹⁵ http://www.amnesty.eu/content/assets/Doc2015/2015_Documents/Turkey_detention_deportation_briefing_14Dec2015.pdf, page 10.

¹⁶ http://europa.eu/rapid/press-release_IP-16-830_en.htm

¹⁷ <http://www.theguardian.com/world/2016/apr/05/greece-deport-migrants-turkey-united-nations-european-union>

¹⁸ <http://www.telegraph.co.uk/news/2016/04/05/pic-n-pub-greece-suspends-expulsion-of-migrants-to-turkey/>

¹⁹ <http://sd.iisd.org/events/high-level-meeting-of-unga-plenary-on-addressing-large-movements-of-refugees-and-migrants/>

²⁰ <http://www.trocaire.org/whatwedo/wherewework/refugee-crisis>