

Dossier: Europe and the Mediterranean

# Has the Mediterranean Refugee Crisis Undermined European Values?

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What is often called ‘the refugee crisis’ is in fact a deep European political crisis which unrolled in 2015/2016, paralyzing decision-making and creating deep, probably irreparable, divisions between EU Member States. It is thus better understood as a European political crisis, a crisis of the EU, or a crisis of European identity. The Mediterranean piece of the overall crisis is longstanding, with a series of localized crises that pre-date the events of 2015-2016 and continue to this day. It involves the migratory routes into Italy, Malta and Spain, and related humanitarian and political problems.

This European political crisis on refugee issues has had a serious detrimental impact on the European values set out in the Treaty of the European Union (TEU), in particular on human dignity and human rights. It is not too late, however, to pursue alternative approaches, which are necessary since the current approach also undermines European interests – and in particular the interests of the Mediterranean region.

## What Are ‘European Values’?

There are multiple interpretations of ‘European values’; the expression is one subject to different uses and misuses, by individuals and institutions. The starting point for the EU and its Member States are the EU Treaties, with the clearest expression of values in Article 2 of the Treaty of the European Union (TEU), which states:

“The EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”

Emphasis is often placed on the rule of law because not only is it among the values, but it is also a prerequisite for the realization of the other values – and much else besides.

It is quickly apparent that most, if not all, of these values have been undermined by the Mediterranean refugee crisis, both directly and indirectly, and with consequences that refugees, Europeans, and other regions will continue to experience for many years to come.

## The Wider Crisis

The proximate short-term cause of the 2015/2016 crisis was a large increase in refugees arriving in Europe along a route from Turkey to Greece across the Western Balkans and then onwards. Overall, from 2014 to 2015, there was a quadrupling of the number of people arriving, with a million crossing into the EU in 2015. By far the largest population were Syrians (more than 50%), followed by significant numbers of people from Afghanistan (around 15%) and Iraq (7-8%), with smaller numbers from a range of other countries. The majority of those who arrived during this crisis were refugees, and this should be understood as the result of the horrific ongoing war in Syria.

Distinctions have to be drawn between those entitled to international protection (refugees within the meaning of the 1951 Refugee Convention and its 1967 Protocol, those granted subsidiary protection, and those granted humanitarian protection) and people migrating for other reasons. Asylum seekers

are those whose status has yet to be determined. Despite the different status and particular rights of those entitled to international protection, European values should be applied in all cases, in law, policy and practice. Moving away from European values and taking a harsher approach to migrants will often also have a negative impact on refugees, because it stimulates the disruption of migratory routes which are also used by refugees; it may lead to a reduction in the rights of all; and it creates a situation of generalized xenophobia, as well as leading to conflicts and suspicions between different groups of people on the move.

### Focus on the Mediterranean

When people were prevented from leaving Turkey by the Turkish authorities acting in accordance with the EU-Turkey Statement of March 2016, attention shifted to the Mediterranean. While many have criticized the deal behind the EU-Turkey Statement as illegal, unethical and impractical, for policy-makers whose measure of success was to prevent the arrival of people in Europe it worked. Political debate began on whether a 'solution' like this could be applied to the Mediterranean, despite the fact that it was supposed to be an exceptional measure.

The overall objective of Europe's strategy became one of prevention of arrivals to Europe, culminating in shadowy agreements reached between Italy and the government of Libya, and then with militias in Libya, in order to disrupt smuggling activity. In parallel, since the end of Mare Nostrum, there has been a reduction in search and rescue activities (SAR) carried out by the EU, replaced with a focus on support to the Libyan coastguard, and, in 2016/2017, attempts to reduce independent SAR NGO efforts. The 'problem,' as it is viewed by some, is that anybody rescued by a European vessel will be brought to Europe, because the well-documented conditions in Libya are so appalling that it would contravene international law to disembark people there. However, as is the case in Turkey, cooperation with local coastguards supports them to effect the rescue and means survivors are then taken to Turkey or Libya. This is a complex area in international law, with some legal scholars arguing that some support does lead to legal liability for

Europeans assisting third country nationals; others dispute this interpretation and claim there is little relevant jurisprudence. Italy's actions have the open support of the EU, with public statements from senior EU policy-makers and funding provided.

At the same time, for years, Italy has felt abandoned or neglected by the EU. The failure to reform the Dublin system combined with a widespread criticism of Italy in northern Europe contributes to the rise of anti-migrant and anti-EU political forces, as much as the arrivals of people. In fact, statistics show little correlation between arrival numbers and anti-immigration views in the country.

### The Values under Attack

All the actions that had been implemented by the end of 2017 to tackle the Mediterranean crises and the wider European political crisis on migration and refugee protection resulted in a serious undermining of Europe's values, both directly and indirectly.

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Looking at the list of values set out in the TEU, those most obviously undermined are respect for human dignity and human rights. Human dignity is clearly absent in the conditions in which refugees and migrants find themselves in Europe and in the countries in which they are stuck as a result of European action. Within Europe, irregular situations, undocumented work, and living without legal status often involve a loss of dignity and risk of exploitation, but it may also be absent within the asylum process, in reception and detention centres, and in the manner in which people are treated in interviews and hearings. There is also an undermining of human dignity in the way refugees are presented

by the media and politicians. People are presented either as a threat or as victims, both of which can be dehumanizing if people are reduced to characteristics such as brutality, incivility, bestial aggression, on the one hand, or helplessness on the other. Discussion of migration in military terms (invasion, threat, defence of borders, etc.), along with either openly or insidiously racist or Islamophobic commentary contributes to 'othering' refugees and migrants, which is another way to strip people of their dignity.

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Of course, these phenomena are not confined to migration across the Mediterranean. However there is an aggravating factor: that those arriving in Italy in particular are often classed as 'undeserving' economic migrants and therefore doubly at fault for arriving in Europe. Statistics show that a higher number – the majority – of those arriving from Turkey in 2015/2016 were refugees, and still more were entitled to other forms of international protection. For people arriving in Italy to seek protection, the recognition rates – i.e. the percentage of people eventually granted international protection – are lower. Firstly, at least some of these people are entitled to protection. Secondly, it is very hard to know exactly what the figures are due to the lack of information regarding second-instance decision-making in Italy, at which stage many decisions not to grant protection are overturned. Thirdly, while those entitled to international protection have special status under international law and states have a responsibility towards them, all migrants are bearers of human rights and certain obligations towards them should be respected. The negative discourse damages all people on the move and also ethnic minorities by legitimizing prejudice and xenophobia.

The human rights that are not respected start with the most important rights, including: the right to life, which is undermined by the ceasing and disruption of search and rescue; freedom from torture, which is violated by the containment of people in Libya, where the horrific conditions are well known; the right to asylum, if people cannot reach Europe or are prevented from submitting asylum claims; the right to housing, if reception conditions are inadequate; the right to legal remedies, when asylum systems are not functioning, and so on. Violations are well-documented by human rights organizations and will not be repeated here, but certain damaging aspects merit further exploration.

### Questioning the Universality of Human Rights

Overall respect for human rights is undermined through questioning the universality of human rights. It is often not the idea of human rights per se that extremists and nationalists object to, but the idea that the human rights of certain groups should be protected or that it is Europe's obligation to protect these rights. This is dangerous, as denying the rights of some groups quickly expands to an attack on the rights of others. Although it is convenient to believe that it 'only' affects the people seeking Europe's protection, this is simply not true. Human rights are universal; they are not just for particular groups – for 'us' but not for 'them,' for the 'deserving' but not for the 'undeserving.' A threat to the rights of some is a threat to the rights of all because anyone could one day find themselves in the 'undeserving' group.

The human rights of those beyond the population groups directly affected have also been undermined by the crisis, first because of the framing itself of the crisis, as discussed below, but also because one of its consequences has been to solidify and broaden support for a strategy of 'externalization' of refugee protection. This involves three elements: first, European asylum policies are becoming more restrictive in order to punish and to deter people; second, at borders, people are physically and legally prevented from accessing territory or accessing asylum; and third, European foreign policy is used as a tool to prevent the movement of people.

## Reform of European Asylum Law

One of the EU's responses to the crisis was to propose a reform of the Common European Asylum System (CEAS), despite the need for evidence on the functioning of what was a relatively new legal framework. The overall vision is of limiting the number of refugees in Europe, but the reforms also envisage increasing the responsibility of the countries of first arrival, which has led to opposition in the Mediterranean.

With the underlying objective of preventing access to asylum in Europe, the proposals contain provisions for the use of safe third country concepts. Simply put, under proposals for reforming the Dublin Regulation, an additional assessment will be required: whether or not a person can be sent to a safe third country, in which case they will be transferred there. This replicates one of the elements of the EU-Turkey deal, which includes the provision that Syrians arriving in Greece will be assessed and returned to Turkey using the safe third country concept, as hastily incorporated into Greek law.

For the countries of the Mediterranean, the proposals add an additional responsibility to the countries of first arrival, because they will have to carry out the additional assessment and arrange transfers to third countries. The Dublin system already places a disproportionate responsibility on the countries of the region because the countries of first arrival are largely responsible for asylum claims. The reform proposals from the Commission do not correct this fundamental flaw – although the European Parliament's position on the reform of CEAS does suggest that it be changed. In addition, the question of solidarity has not been resolved with the 'corrective mechanism' to mitigate some of the Dublin Regulation's unfairness, which is still rejected by some Member States.

The insistence on the first country of arrival principle is one of the key dysfunctions of European asylum policy, one of the reasons that a manageable situation turned into a crisis, and one of the reasons for the violations of the rights of asylum seekers and refugees in Europe. Due to their location, certain countries receive far higher numbers of asylum seeker arrivals than others – currently those at Europe's southern borders. In some cases, they are simply not able to cope with the numbers, a situation which may

be exacerbated by institutional weaknesses; this leads to delays and flaws in the process and people being kept in unfit conditions while cases are processed. Second, the country of first arrival principle is widely perceived as unfair and in some cases people have been allowed to move on to other countries. In general, countries have a perverse incentive to keep reception conditions low (so that it becomes illegal for courts to order that people are returned from other countries) and to discourage people from settling, which is also a reason why investment in integration is limited across the region. The consequence of all of these factors is a situation where human rights are not respected and where asylum seekers want to move on.

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Rather than provoking a sensible, evidence-based and rights-based reform of the legal framework to reduce the responsibility of the countries of first arrival, the crisis has led to legal proposals that reinforce the principle and introduce a punitive approach to secondary movement (onward movement to other Member States) by refugees and asylum seekers.

## External Affairs and Human Rights

The third aspect of externalization, migration control as an objective of external affairs, also undermines human rights – those of people in other regions of

the world. External affairs are now carried out through dubious agreements with third countries whereby they either agree to prevent people leaving, such as the EU-Turkey deal, or whereby they agree to accept the return of their own citizens or third country nationals, such as in the Joint Way Forward agreed with Afghanistan. In exchange, they may receive funding or other benefits, including impunity for criticism, tacit acceptance of their own actions to close the border and power over the EU. First, the transactional approach whereby another country hosts refugees or prevents migration in exchange for some benefit, creates a dependency on those countries which makes it difficult for the EU to support reform there. Again, the emblematic case is Turkey, where limited action is taken against the increasing domestic repression, in part due to the power that Turkey wields through its prevention of departures of refugees. At the same time, the number of people from Turkey claiming asylum in Europe is increasing due to this country's retreat from democracy and towards repression. Another case would be Sudan, where European and bilateral cooperation on migration has provided the regime with legitimacy and protection.

### A threat to the rights of some is a threat to the rights of all because anyone could one day find themselves in the 'undeserving' group

Second, human rights, globally, – and the idea of an international order based on rules – are further undermined by their de-prioritization in European (EU and bilateral) external affairs. The EU's 2016 Partnership Framework presents an image of migration control as the objective of all aspects of external affairs. If funding, political attention and leverage is diverted to migration control and away from other activities, then human rights, development, diplomacy and security are undermined. The weight and credibility of EU external affairs will be reduced – just at a time when it was developing. Even from the perspective of migration management, there is a risk that a focus on short-term mi-

gration-related objectives will be counter-productive because it exacerbates the causes of forced displacement, which include a lack of security, repression and poor governance, all of which are obstacles to economic development. In the long term, concerns over large-scale migration could be better assuaged by a return to development and security building activities to improve people's prospects where they are. In addition, Europe's best contribution to reducing forcible displacement would be to stop exacerbating its causes, such as conflict and repression, through hosting stolen assets, in complicity with abusive governments, arms sales, interventions, and so on.

For the European Mediterranean countries, there is a risk that the EU's new approach will damage the carefully built relationships with their counterparts in the southern Mediterranean. While Spanish-Moroccan cooperation on migration is often cited as an example of good practice in Brussels, it is a complex and multi-faceted relationship, and one based on longstanding, close diplomatic ties. It is not something that can be replicated by the EU as a whole in its engagement with particular countries – even if that were desirable.

The situation in Libya is far more problematic, with bilateral actions taken by Italy and France to deal with separate militia and authority forces in order to control migration. A return to ambitious collective European action, as was envisaged in 2011/2012, with a focus on political settlement, disarmament, demobilization and reintegration (DDR) – especially the demobilization of militias – institutional support, and civil society, would be both more effective at creating a functioning state and – ultimately – at tackling the multiple migration-related problems, where the abuse and exploitation of migrants, including refugees, should be the top priority.

For some in the Mediterranean region, they have been too quick to embrace the idea that the upside of the broader European crisis on migration is that now all EU Member States understand the importance of the 'southern neighbourhood' and of EU action in Africa. Previously, there was constant competition between the Member States that wanted EU foreign policy to focus on threats to the east and those that wanted investment in the south, who believed that MENA and Africa should be prioritized. Examples such as the large number of Mem-

ber States present at the 2017 EU-Africa Summit, Germany's extensive new engagement, and an emerging Franco-German alliance in Africa are cited. While the interest of a wider group of Member States in building a serious EU foreign policy in Africa is positive, the fact that an anti-migration agenda has united Europe is both sad and potentially damaging to Europe's presence and role in MENA and wider Africa.

### Other Values at Risk

Beyond human dignity and human rights, the treatment of asylum seekers in Europe is also undermining freedom, as the widespread use of detention demonstrates. In addition, the freedom to support asylum seekers and to carry out humanitarian acts is also undermined with the criminalization of acts of solidarity, such as at the border between France and Italy, and in rescue cases in Greece, as well as in Hungary's proposed laws restricting the operation of NGOs working on migrants' rights. These laws will make it financially impossible for many organizations to operate, but they also include provisions allowing for individuals who work on migration to be classed as a national security risk, with restrictions on their freedom of movement being imposed. Thus, freedom of association and freedom of expression are undermined. The growing prevalence of racist narratives, either through the prominence given to extremists or through the absorption of their views by mainstream parties, means that the rights of minorities are also threatened. In some countries, fuelling the fear of the 'other' is also targeted at recent or longstanding minority communities.

One of the greatest challenges facing policy-makers in Europe concerns another of the listed European values: rule of law. As has been well-documented, rule of law has been deteriorating in certain European countries over the last 10 years, with Hungary the most acute case and Poland, since the election of 2015, provoking the strongest reaction from the EU. The crisis on migration and refugee issues did not cause this problem, but it has exacerbated it. In both countries – and in others – we see a total disregard for EU asylum law. Second, Viktor Orban, like many demagogues before him, exploits the fear of refugees and migrants to generate sup-

port and mask other problems. Third, in both countries, existing anti-EU sentiment – resulting in part from the perceived strictures of the accession process – is exploited to resist EU legal measures, such as relocation. In other countries, and for parts of the European Commission, the framing of the crisis, including the belief that the EU itself was threatened, justified measures that departed from the rule of law, such as the use of emergency powers.

### *The Principle of Solidarity*

Article 2 of the TEU also refers to the principle of solidarity, which was widely discussed during the crisis and is particularly important to the Mediterranean region. It was largely absent, as demonstrated, for example, by the under 35,000 people relocated from Greece and Italy out of the 98,000 target (already reduced from 160,000). In the negotiations on reform of the asylum system, there is continued refusal to accept mandatory relocation schemes as part of the reform of Dublin by the four Visegrad countries. More generally, there is a refusal to carry out a deeper reform of Dublin to amend or remove the first country of arrival principle (although it is supported by the European Parliament). The bitter conflicts between Member States continue and the suggestion that countries should not benefit from EU funds if they refuse to show solidarity on the issue of migration is also part of the debate. In addition, rule of law conditionality for EU funding is being developed by the European Commission.

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It is clear that the EU will be unable to function without some level of solidarity among its Member States, like any collective, rules-based entity. The absence of solidarity creates anti-EU sentiment,

particularly in the Mediterranean, including in countries where politicians and the public have traditionally been strongly pro-EU. The 2018 Italian election results have to be understood in this light. The absence of solidarity is also one of the reasons why the situation became a crisis in the first place – even though the numbers of refugees arriving increased significantly in 2015, collectively Europe could have managed the situation, and would indeed have benefitted, given the demographic changes. Similarly, a collective approach to migration on other routes and to asylum in Europe would also lead to better results. Instead, for many Member States the approach has been to compete in creating the most hostile environment and prevent access to their territory.

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Overall, the idea of the EU as a normative power is being undermined. The idea of normative power is either that the EU is a model which others follow through choice rather than through the use of force, or that it is a promoter of its values in the world, gaining credibility through the implementation of those values in its own territory. In either sense, the crisis on the migration and refugee issue has damaged normative power.

#### Alternatives?

Despite this overall bleak picture when it comes to European values, there are also many positive de-

velopments. Civil society across Europe has stepped up to support new arrivals, as have local authorities, cities, towns and villages. NGOs, volunteers and other collectives remain active in all countries, however hostile the government.

There are alternatives to the current approach, which would preserve European values and be more effective.

First, a deeper reform of the Common European Asylum System, including a complete overhaul of the dysfunctional Dublin system. Second, opening more safe and legal channels for people to reach protection so they do not have to use smugglers and face traumatic journeys, which also drastically reduce their integration prospects should they make it. In addition, legal migration could be expanded to those seeking work and the status of those in Europe with jobs but who are undocumented could be regularized. Third, there needs to be a shared global responsibility for forced displacement, including a return to a sensible, evidence-driven external affairs policy for Europe, based on addressing the causes of displacement and migration – not on counter-productively prioritizing migration control. Finally, we need to invest in inclusion in Europe, through a focus on the rights of refugees and others.

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