

Forced population movements as a current ethical dilemma and the possibilities of collective action**C. Akça ATAÇ^[*]****ABSTRACT**

The spirit of our times has been increasingly determined by refugee crisis and asylum institutions. If one could read the ongoing economic, political, environmental and demographic crises correctly, a refugee crisis would not have been treated as unexpected, unfortunate singular coincidence. A comprehensive, non-proscriptive approach with a collective, multilevel engagement must urgently be generated by the international community to create an all-encompassing legal consciousness.

This paper seeks to delve into the question of the current refugee crisis from an historical point of view and recount the progress of the international refugee regime. In doing that it will also discuss the possibility of the launch of a collective action by the international community in the present. Refugee history is not progressive; it has not linearly proceeded towards comprehensive solutions. There are ruptures, retreats, changes of attitude -from positive to negative, from negative to inaction. Despite the growing global governance with the participation of international and non-governmental organizations, states are still the major actors in the refugee regime. The dominant role of the states in managing the refugee crisis creates an ethical dilemma, as is the case in every normative context state is involved. This paper, therefore, will finally assess the ethical dilemma unveiled by the recent EU-Turkey refugee deal.

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Siğınmacı krizi günümüzde zamanın ruhunu belirleyen, uluslararası toplumu zorlayan en önemli ekonomik, siyasal, çevresel ve demografik olgu olarak karşımıza çıkmaktadır. Krizin tarihsel çok boyutlu bir okuması bize 'Arap Baharı' sonrası ortaya çıkan, özellikle Suriye kökenli nüfus hareketinin aslında münferit ve öngörülemez talihsiz bir tesadüf olmadığını göstermektedir. Bu sebeple siğınmacı krizini çözmek için kısıtlayıcı olmayan geniş kapsamlı bir yaklaşımın sınır ötesi ve uluslararası seviyede üretilmesi ve çözüme yönelik bir yasal çerçevenin ivedilikle tartışmaya açılması gerekmektedir.

Bu çalışma, günümüzdeki siğınmacı krizine tarihsel bir bakış açısı ile bakmayı ve uluslararası hukukun siğınmacı rejiminin gelişimini anlatmayı amaçlamaktadır. Bunu yaparken de çağdaş uluslararası toplumun konu ile ilgili olarak kolektif eyleme geçme kapasitesini incelemeyi hedeflemektedir. Siğınmacı tarihi, devletlerin, karşılaştıkları krizler temelinde olumludan olumsuz, olumsuzdan eylemsizliğe sürekli tavır değiştirmeleri nedeniyle, sorun çözücü, kesintisiz ve lineer bir çizgide ilerlememiştir. Süreç içerisinde uluslararası örgütler ve sivil toplum kuruluşlarının katılımıyla büyüyen küresel yönetişime rağmen, devletler hala siğınmacı rejiminin temel belirleyici aktörleridir. Bu nedenle, devletin dahil olduğu her normatif bağlamda olduğu gibi, siğınmacı krizi bağlamında da etik ikilemler ortaya çıkmaktadır. Bu nedenle, bu ça-

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ışma son olarak süregiden sığınmacı krizinin yarattığı en güncel etik ikilem olarak Avrupa Birliği-Türkiye arasındaki sığınmacı anlaşmasına değinecektir.

It belongs to the weakness of our time not to be able to bear the greatness, the immensity of the claims made by the human spirit, to feel crushed before them, and to flee from them faint-hearted. (Hegel's Lectures on the History of Philosophy, v2, p. 10)

Introduction: The Dark Times We Live In

“Except for those happy few whose intellectual frame is closed and resilient to time and tide, anyone trying to understand the contemporary human situation must ultimately confront confusion,”¹ says Keith Tester. We are confused in the face of the magnitude of the current refugee crisis expanding across the Middle East into Europe. Our confusion hinders our capacity of understanding and interpretation. We are not able to accurately pinpoint what the problem really contains, what its reason is and how much bigger it could get. These must be the dark times that Hannah Arendt foresaw. They are dark, because the horror becomes a part of the public discourse, but yet it remains hidden, as people do not act according to the magnitude of the horror. Chaos, hunger, violence, injustice and hatred dominate the spirit of our time, but our confusion has reached to such a level that “all truth” that must have induced ultimate horror into our consciousness becomes “meaningless triviality.”² The refugee tragedy that unfolds live before our eyes has, of course, made its way to the mainstream public discourse. Nevertheless, under the influence of too many divertissements, the real feeling that the refugees must give us is missing.

In order to overcome our confusion, Tester proposes us to “negotiate a way through all the confusion” and come up with a life strategy. According to him, a life strategy is a *praxis*: the action and ideas through which the material world is transformed into a project of progress that would help human beings know themselves.³ Tester’s idea of developing a life strategy in order to understand what is confusing reminds us of Arendt’s “silent dialogue with oneself.” By the help of such dialogue, one would think and by thinking, one would open herself/himself “the space to judge.”⁴ The rational, dispassionate judgement, which comes out of a silent dialogue, could eventually make us proceed towards the good life in a better world.

In his *44 Letters*, Zygmunt Bauman asks

[w]here can new, universally (and that, for the first time in history, has to mean *globally*) respected and obeyed principles of human cohabitation come from...? Where can one look for likely agents to design them and put them in operation?⁵

¹ Keith Tester, ‘Confusing World, Vulnerable People: On the Condition of Medialization,’ in *Doubt, Time and Violence in Philosophical and Cultural Thought*, ed. Arthur K. Wardega, SJ (Cambridge: Cambridge Scholars Publishing, 2012), 1.

² Hannah Arendt, *Men in Dark Times* (Harmondsworth: Pelican Books, 1973), 8.

³ Tester, ‘Confusing World,’ 4 and 16.

⁴ Roger Berkowitz, ‘Introduction: Thinking in Dark Times,’ in *Thinking in Dark Times: Hannah Arendt on Ethics and Politics* et. al. Roger Berkowitz, (New York: Fordham University Press, 2010), 5 and 8.

⁵ Zygmunt Bauman, *44 Letters from the Liquid Modern World* (Cambridge: Polity Press, 2010), 121-122.

The refugee crisis is an apt moment in history to ask all these questions incessantly. This might indeed be our chance to question the dominant set of ideals and beliefs, which prevent our peaceful co-habitation as peoples of the world. German philosopher G. W. F. Hegel recounts the possibility of change in the spirit of the time as such:

-there is a break in the process, a qualitative change and the child is born. In like manner, the spirit of the times, growing slowly and quietly ripe for the new form it is to assume, disintegrates one fragment after another of the structure of its previous world.

This disintegration and fragmentation that we witness in world politics, no matter how hopeless it looks, could be heralding us “the undefined foreboding of something unknown,” something better.⁶

This paper seeks to delve into the question of the current refugee crisis from an historical point of view and recount the progress of the international refugee regime. In doing that it will also discuss the possibility of the launch of a collective action by the international community in the present. Refugee history is not progressive; it has not linearly proceeded towards comprehensive solutions. There are ruptures, retreats, changes of attitude -from positive to negative, from negative to inaction. Despite the growing global governance with the participation of international and non-governmental organizations, states are still the major actors in the refugee regime. The dominant role of the states in managing the refugee crisis creates an ethical dilemma, as is the case in every normative context state is involved. This paper, therefore, will finally assess the ethical dilemma unveiled by the recent EU-Turkey refugee deal.

Forced Population Movements: Never A Current Phenomenon

The Westphalian system defines the states’ responsibility to protect their populations. Refugees, therefore, are the “detritus” of this system, because they emerge, when their states fail to protect them. Other states, which sustain the Westphalian order, have “parallel duties of protection” towards those who are deprived of their own states’ protection.⁷ Since the Peace of Westphalia, refugees have been treated differently from other migrants; their right to leave the repressive state and find safe shelter somewhere else has been, though in varying degrees, respected. Refugees belong to the “small sect of actors in international society,” who, as a “transterritorial problem,” does not properly “fit into the Westphalian system.”⁸ Never a current phenomenon, refugees exist in in-between territories of the Earth’s Purgatory emerging concurrently with the rising of yet another tyrannical state in history.

Throughout centuries, the term refugees came to define exclusively the Protestant Huguenots, who tried to flee from France in 1685 because of the religious persecution of the Catholic King Louis XIV (1638-1715). According to the Peace of Westphalia, which had been signed forty years earlier, subjects whose religion was different from their sovereign were allowed to leave that state together with their property. Louis XIV, however, considering the Huguenot flight as country’s drain of knowledge and wealth, forbade

⁶ G.W.F. Hegel, (trn. By J.B. Baille), *The Phenomenology of Mind* (New York, Dover Publications, 2003), 6.

⁷ William Maley, ‘Refugee Diplomacy’ in *The Oxford Handbook of Modern Diplomacy* et.al.. Andrew F. Cooper, (Oxford: Oxford University Press, 2015), 677.

⁸ Phil Orchard, *A Right to Flee: Refugees, States, and the Construction of International Cooperation* (Cambridge: Cambridge University Press, 2014), 4.

them to leave France. This was the first moral dilemma of forced population movement that the signatory parties of the Peace of Westphalia had to face. A resolution was needed to be sought to provide the suppressed Huguenots with the right to exit without giving Louis XIV the impression that there was an external intervention in France's domestic affairs. As 200.000 Huguenots were finally allowed to leave France, they made their mark on the international-law-in-the-making.⁹

Subsequent to the 1848 revolutions, constitutional movements and the rise of the working class, religion was no longer the only source of state persecution; political dissidents too began to ask for protection from states other than their own. Because of the United States' (US) open migration policy in the nineteenth century, accommodating new generation of migrants, with substantial amount of refugees in it, became a relevantly easy task for the Westphalian system. In this way, "the poor and persecuted Europe" found a new home in the New World.¹⁰ The still small number of refugees and the open borders of the US made it easy for states to cooperate and acknowledge the humanitarian aspect of refugee hosting. Nevertheless, by the end of the century, the approaching First World War and the increasingly anarchical character of the international relations rendered this *belle époque* short and the measures taken by the states towards refugees became restrictive. The extraordinary flow of refugees, because of the Russian Revolution, throughout Europe and beyond, caused the demise of the nascent liberal refugee regime. The "issue of statelessness"¹¹ escalated to an alarming degree. Yet, the 1920s heralded the beginning of a new era in which the massive displacement of Russians came to be perceived as a humanitarian responsibility for the rest of the world and the League of Nations, established in 1920, emerged willing to face this challenge within a multilateral framework.

From First World War onwards, responses to the refugee movement would be both on the state and international organization levels. Hardly surprisingly, state attitude tends to be more restrictive, whereas organizational approach adopts humanitarian prescriptive norms.¹² On this account, while the League of Nations was preoccupied with issuing a legitimate travel document for Russian refugees, the US, Canada, Australia and New Zealand, who had received the previous influx of 'anarchists and poor workers,' passed restrictive immigration acts. Because of these acts instituting ethnic quota or superior health conditions, Jews in flight from Nazi Germany in the 1930s had to cross those barriers first. The partition of India, the foundation of Israel, and the Korean War were other major challenges to the international refugee regime, which emerged more visibly after the Second World War ended. States' experience with refugees and the multilateral framework inherited by the United Nations (UN) necessitated a definition of refugee, other than that provided for the Huguenots or Russians. UN's 1951 Convention Relating to the Status of Refugees prescribes that a refugee is

[a]ny person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country

⁹ *Ibid.*, 1.

¹⁰ Claudena M. Skran, 'The International Refugee Regime: The Historical and Contemporary Context of International Responses to Asylum Problems,' in *Refugees and the Asylum Dilemma in the West* ed. Gil Loescher (Pennsylvania: The Pennsylvania State University Press, 1992), 13.

¹¹ Otto Hieronymi, 'The Nansen Passport: A Tool of Freedom of Movement and of Protection,' *Refugee Survey Quarterly* 22 (2003), 42.

¹² Skran, 'International Refugee Regime,' 14.

of his nationality and is unable, or owing to such fear, unwilling to avail himself of the protection of that country.¹³

In this way, the UN assumes the responsibility of refugees by transforming the refugee regime from being “ad hoc and voluntarily”¹⁴ to normative and moral. Although in the 1950s UN’s refugee division was crafted temporarily just to deal with the current problem, in the course of time it has gained a permanent status as the refugee crises have not ceased.¹⁵ The legal obligation (non-refoulement) that it introduced about states’ not returning a refugee back to the territory where her/his life is in danger is definitely a very advanced normativism.¹⁶

A rare moment of collective action in the twentieth-century refugee history was the burden-sharing programme for Vietnamese refugees in 1979. The US as a hegemonic power convinced its allies that supporting refugees from Vietnam would be in their best interest in the ongoing Cold War.¹⁷ Since this was a hegemonic act of one-time event and boycotted by the Soviet Union, it may not partake in the progressive narrative of the refugee rights.¹⁸ Then in 1990 the number of asylum-seekers in the West increased from 95.000 to 548.000 and thus another refugee crisis hit the international community.¹⁹ The dissolution of the Soviet bloc in 1989 brought the barriers between Eastern and Western Europe down to bring East German, Albanian, Romanian and Yugoslav refugees to the door steps of West. After all, the iron curtain was erected to strictly prevent any possibility of flight from the Communist states, especially after the successful exit of 200.000 refugees from Hungary consequent to the Soviet interference with the Hungarian Revolution of October-November 1956.²⁰ Once the curtain was wide open, a great flux of mobility began immediately. Nevertheless, although the end of the Cold War unleashed a significant population movement of 1.2 million people from the Ex-Communist States towards Western Europe and North America, one cannot say that the refugee regime experienced a risky displacement of people until the Yugoslavian Civil War.²¹

The profile of today’s asylum-seekers is much different from that of the ex-communist population of Eastern Europe. Of course, it was painful enough to absorb the 1990s refugee flow especially for the European Union (EU), which had to overtax the refugee policies to be able to bring an order to the procedures. The financial, political and cultural gap between the newcomers and hosts was not dismissible. They were coming from difficulty, but, with the exception of Yugoslavs, they were not running from war zones. The Arab Spring of 2011 has, however, launched one of the harshest episodes in refugee history. Millions of migrants are “caught up in the crosscurrents of ethnic and civil wars, famine and poverty”²² and cannot go back, as they have lost their state, protection, nationality, and identity. In response to the increasingly growing refugee numbers, states –though rhetorically still committed to the refugee norms such

13 Quoted in Orchard, *Right to Flee*, 1-2.

14 *Ibid.*, 8.

15 Hieronymi, ‘Nansen Passport’, 44-45.

16 Orchard, *Right to Flee*, 3.

17 Maley, ‘Refugee Diplomacy’, 683.

18 Skran, ‘International Refugee Regime’, 9

19 Gill Loescher, ‘Refugees and the Asylum Dilemma in the West’, in *Refugees and the Asylum Dilemma* ed. Gill Loescher, 3.

20 Hieronymi, ‘Nansen Passport’, 36.

21 *Ibid.*, p. 2 and Skran, ‘International Refugee Regime’, 9.

22 Loescher, ‘Refugees and the Asylum Dilemma’, 2.

as non-refoulement- pursue preventive policies and block the entry of refugees through deterrence, detention and interdiction at sea. This is another moral dilemma waiting to be resolved outside the current refugee structure.

A Normative Individual vs. The Collective Action

The debate over the force that would create a genuine cooperation and collaboration in the international community is inconclusive in all fields of economics, political science and sociology. Whether it would take a normative global citizen to come forth and take the lead or the collective action depending on the voluntary participation of the interest groups would resolve the problem at hand, still remains a question begging for deep reflections, an Arendtian silent dialogue. The same dilemma is valid here in the context of the current flow of the forced population movements from the Middle East. It is a trans-border, multi-level international problem exceeding the conflict-resolution, relief-management and humanitarian-aid capacity of a single state. Therefore, a cooperatively powerful, influential and assertive force appealing to all states and non-governmental organizations equally and inspiringly is needed to manage this ongoing complicated disaster of great severity. But, who or what would ignite this spark in the international community to take on further challenges to design a more efficient, flexible and goal-oriented refugee regime?

The current refugee regime owes immensely to one extraordinary human being who deserves the name 'normative individual' more than anyone else in the history of refugee movements. Fridtjof Nansen (1861-1930), the Norwegian explorer and diplomat, for the first time established a legal framework to safeguard the internally displaced people who had been dispersed throughout Europe in the course of the Russian refugee crisis broken subsequent to the Bolshevik Revolution. Nansen became "the prototypical norm entrepreneur"²³ in the real sense of the phrase, as he conducted and maintained the trans-border passage of more than 1 million Russians between 1921 and 1930 as the 'High Commissioner on behalf of the League in Connection with the Problem of Russian Refugees in Europe.'²⁴ While serving under this post, he introduced the norms that had not existed before in the states' dealings with refugees and broadened them to the degree to achieve an unprecedented international cooperation. His first but historic accomplishment was to convince the members of the League of Nations to recognize the validity of passports provided by the League to the refugees who were suddenly reduced to the status of *sans papiers*. These identity papers come to be known as the 'Nansen Passports' both "granted the refugees a legal identity" and "marked the beginnings of international refugee law."²⁵

The 'Nansen Passports,' "the predecessor of the contemporary *titre de voyage*,"²⁶ made groundbreaking history, because they were issued to provide "material welfare," "human dignity" and "legal status" at once.²⁷ Yet, they demonstrated the possibility of granting protection and legitimate identity to the stateless people by an international organization, hence cracking the concrete-solid authority of the sovereign states.

²³ Orchard, *Right to Flee*, 111.

²⁴ *Ibid.*, 106.

²⁵ *Ibid.*, 111.

²⁶ Maley, 'Refugee Diplomacy', 678.

²⁷ Hieronymi, 'The Nansen Passport', 42.

In this way, Nansen scratched out a new definition for refugees that transcended the jurisdiction of the country of origin and the host country and replaced them in the care and responsibility of the entire international system.²⁸ The legacy he left to the successor High Commissioners was the awareness of the capacity of individual human beings “to use the power of their expertise, ideas, strategies and legitimacy to alter the information and value contexts in which states make policy.”²⁹ Through the maximization of such capacity Nansen had emerged as an exemplary global citizen who helped the humanity excel in a wide spectrum of services ranging from exploring the Arctic regions to providing safe passage to the Russian refugees fleeing from the Soviet Union. His efforts to create a normative framework for refugees bore the tangible outcome of the League of Nations High Commissioner for Refugees, which would later be inherited by the United Nations with its head office in Geneva. How the refugee experts proposed in 1945 the renewal of Nansen travel documents of the 1920s and incorporated them to the 1951 Convention on the Status of Refugees, were in fact, the ways of paying tribute to Nansen.³⁰

Following Nansen’s death in 1930, however, the institutional structures that he had uniquely built through his individual power were shaken and brought to the end of losing their influence. Having seen as a temporary agent “dealing with a problem that was finite”³¹ Nansen’s post was not immediately considered as a mission to be pursued permanently, neither by states nor by the League of Nations, once the Russian refugee crisis had been settled. Nevertheless, World War II proved that refugee and migration crises were not temporary phenomena to be handled by case-by-case, piecemeal solutions as they came. Although the office of High Commissioner continued to act as “a ‘teacher’ of refugee norms” who held “states accountable to their previously stated policies or principles” through “persuasion” and “socialization,”³² the need for a more assertive, collective, sustainable and implementable framework appeared necessary. In the post-1945 era, the states’ tendency to restrict immigration once again collided with the international and non-governmental organizations’ principle of non-refoulement.³³ As a result, at least seven international organizations were launched, abolished and relaunched before the final decision on the creation of United Nations High Commissioner for Refugees (UNHCR) in 1950.³⁴ The framework to manage the welfare of the displaced people of the world was subsequently configured under the UN’s 1951 Convention Relating to the Status of Refugees. Today, the ‘Statute of Office of the United Nations High Commissioner for Refugees’ guarantees the High Commissioner to be elected by the General Assembly after s/he has been nominated by the UN Secretary-General.³⁵

Sir John Hope Simpson, who conducted a refugee survey on behalf of the Royal Institute for International Affairs in the second half of the 1930s, wrote in his report that “[t]he cause of every refugee movement is tyranny of one kind or another but the forms of tyranny differ.”³⁶ As long as tyrannies and failed states exist, refugee movements would not cease. A new exodus of suffering people could break

28 Orchard, *A Right to Flee*, 110.

29 Gill Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001), 5.

30 Hieronymi, ‘Nansen Passport’, 41.

31 Maley, ‘Refugee Diplomacy’, 679.

32 Loescher, *UNHCR and World Politics*, 5.

33 Skran, ‘International Refugee Regime’, 12.

34 Orchard, *Right to Flee*, 105.

35 Maley, ‘Refugee Diplomacy’, 679.

36 Quoted in Skran, ‘International Refugee Regime’, 10.

out anywhere in the world, any unexpected time in the unfolding of the history of mankind. On this account, the international system could not afford to wait for each time a new crisis to emerge in order to come up with the most perfect rescue and relief plan and then help the displaced masses. State agencies and international as well as non-governmental organizations should remain in uninterrupted cooperation to mould a template to the needs of refugees and the requirements of a refugee regime. The current system definitely stands on the shoulders of the extraordinary individuals such as Nansen and the precedents that they established will live as long as humanity lives. Nevertheless, although individual efforts make the difference in the times of crisis, sustainable collective action among the states and between the states and international structures comes fore as a more effective and lasting way in the pursuit of a common good.

Mancur Olson's *The Logic of Collective Action* was one of the first coherent academic attempt at understanding and explaining the collective action problem, which had been equally troubling for economics, sociology, and political science.³⁷ Olson, despite being an economist, suggests that the dilemma hidden in the collective actions with economic motives must be valid for the political actors as well.³⁸ According to his theory, which was against "the group theory based on the idea that groups will act when necessary to further their common or group goals," this pre-supposition of collaboration among the groups with common interests is, in fact, "unjustified."³⁹ Groups, especially the large ones, do not necessarily act in sync for a common good or interest on their own. In small groups, there may be a harmony and willingness to share "the costs of efforts" of collective actions that would further the common good or interest, because to them, the common interest is attractive on its own merits.⁴⁰ In a wider context, however, "rational, self-interested" individuals, companies or states, as Olson argues, "will not act to achieve their common or group interests," because [t]he larger a group is, the farther it will fall short of obtaining an optimal supply of any collective good."⁴¹ Therefore, the assumption that groups with common interest collaborate; larger groups with common interest collaborate even further would be misleading in the search for collective action in the international affairs.

Having built on the Aristotelian understanding of organization, Olson aptly argues that in the organization of interests a free rider problem always emerges. It is inevitable in a large group with common interests that some members would choose free-riding on the contributions of other members and enjoy taking without giving. Unlike small groups, the incentive to free-ride inhabits in large groups without being easily recognized and jeopardizes the common good, which is mostly in the form of a public good. According to Olson, to initiate a progress from common interest to collective action, the organizations, if they cannot remain small, then must be able to exert a coercive force of some sort or instead to provide additional individual benefits to its members in return of the participation in the collective action. "Efficacy," as he calls it, is one of the concepts through which such benefits could be provided. When there is an increase in the efficacy of one group's action, members' contribution and participation in the action would increase. More contribution and participation would in the end decrease the cost and reveal

³⁷ Mancur Olson, *The Logic of Collective Action: Public Goods and Theory of Groups*. Cambridge, MA: Harvard University Press, 1965.

³⁸ *Ibid.*, p. 3.

³⁹ *Ibid.*, 1 and 2.

⁴⁰ *Ibid.*, 3.

⁴¹ *Ibid.*, 2 and 36.

a new kind of benefit to the members. This collective action model, on this account, lays much importance on the probability of effectiveness, which is the capacity to make a difference at the end of the action towards the common good.⁴²

States' efficacy in their collective dealings with an international, trans-border problem is determined by their responsiveness and capability to act as well as by their perceptions of the problem. A perfect collective solution with a global outreach depends on the normative individuals, 'altruistic' states' and international and non-governmental organizations' capacity to influence other states' responsiveness, capability and perceptions. Such grand cooperation, of course, could not be achieved unless the international community prioritizes the development of trust and norms of reciprocity.⁴³ Otherwise, the free-riding actors of collective actions would continue to curtail the efficacy of these actions, refrain from pitching in their share, and in return diminish the benefits expected to be heaped. In the case of the current refugee problem too, this moral dilemma incessantly folds and unfolds before our eyes everyday and becomes more intense, as the refugees' call for help continues to fall on deaf ears. The attempts of collective action remain ineffective because of the free-riders' non-contribution and, in return, the lack of efficacy discourages the free-riders even further to participate in the solution.

The refugee regime in international law is exceptional in legal history, as it had first started with the personal efforts of a normative global person; the collective action of states and international organizations then followed. It has proceeded, each time a new refugee crisis emerged, by piecemeal solutions rather than comprehensive approaches. The legal framework that supports the UNHCR today is the output of invaluable individual and collective efforts of humanity and the current refugee regime owes considerably to this framework. In the year 2015, the number of refugees alarmingly increased by 10 million and became 60 million. The migration flow, especially from Syria, Iraq and Libya remains unstoppable, because the instability and violence in the region persist. It is the UNHCR's responsibility to promote awareness, support and protection for the refugees as well as to convince the states' to increase their capacities to become host countries. Nevertheless, although capacity-building and strengthening are important tasks to be fulfilled by states, the unwillingness of all parties involved in the refugee regime to share the burden equally prevent some states to assume this task and construct well-established asylum systems. A refugee flow increasing 10 million a year requires from states to be constantly involved in legislative revisions, institutional enhancements, financial resource allocations and change of practices.⁴⁴ While the question "[w]here is the new Nansen who will invent a new tool that will liberate these millions"⁴⁵ still requires an answer, the international community, without losing precious time on piecemeal solutions, must urgently decide on a collective, comprehensive action plan that ensures equal burden-sharing among states and provide protection to refugees.

⁴² Olson, *The Logic of Collective Action*, 9-16.

⁴³ Robert Axelrod, *The Evolution of Cooperation*. New York: Basic Books, 1984.

⁴⁴ For further information on the UNHCR, <http://www.unhcr.org/3b95d78e4.pdf>.

⁴⁵ Hieronymi, 'Nansen Passport', 46.

The Current Flow of the Displaced People: Our Moral Test of Collective Action

We live in the days of rapid and flowing migration of millions. It is not a phenomenon likely to go away, if we ignore it and wait long enough. On the contrary, particularly in the absence of normative individual leadership, the international structure must be collectively enhanced by all parties involved in the refugee regime and “the burden of assisting refugees” must be distributed fairly among the participating states.⁴⁶ As a recent report on refugees highlights,

[i]f all the people who live outside the contrary of their birth united to form their own –a republic of the rootless- it would be the fifth-largest country in the world, with a population of more than 240 million people.⁴⁷

A failure to take collective action to solve the problems of people of such high numbers would definitely take its toll on global stability, justice, welfare, and peace. Refugee history has never been a progressive context and refugee norms have not always been positive.⁴⁸ Restriction on movement and limited civil rights were and still are the norms of managing the refugee movements especially those from the Middle East and Africa. However, in the first place, there is a need for a new collective action, which keeps a good balance of the deterrent and protective measures. The refugee flow in the aftermath of the collapse of the Soviet Union in the 1990s must have taught the European states that “building new barriers” will not “solve the problem,” but will “pass it on to some other country to resolve” and in this way serve “to interstate tensions, protectionism and a breakdown in the international refugee system.”⁴⁹

Despite the involvement of the international and non-governmental organizations in the global refugee regime, states are still the main actors, because “they act both as grantors of asylum and as donors for international efforts.” Furthermore, they alone control the entry and exit through their borders. It is up to them whether the refugee policy they would implement is restrictive or humanitarian.⁵⁰ Their verbal commitment to the Convention Relating to the Status of Refugees is their moral side and their domestic laws restricting the entry, passage and right to asylum are their discriminatory abilities. What swings the legal pendulum of a state from moral to discriminatory in this context is Olson’s concept of free-riders and efficacy. Accordingly, in order to change one state’s refugee action from negative to positive, that state needs to be assured of the non-existence of free-riders in the system and of the capacity of its actions to make an actual change in the situation. A collective action among states and between states and international organizations, therefore, must guarantee equal burden-sharing and effectiveness. The most current and relevant example in which such dilemma is displayed, bearing the entire world witness, must be the ongoing discussions of a refugee deal between Turkey and the European Union (EU).

As a result of the popular movements against the suppressive governments in the Middle East, which has come to be known as the Arab Spring in 2011, more than half of the Syrian population has been

⁴⁶ Orchard, *Right to Flee*, 683.

⁴⁷ Mark Leonard, ‘The Migration Superpowers’, *Project Syndicate*, April 20, 2016, accessed May 25, 2016, <https://www.project-syndicate.org/commentary/immigration-refugees-geopolitical-boon-by-mark-leonard-2016-04>.

⁴⁸ Orchard, *Right to Flee*, 8.

⁴⁹ Loescher, ‘Refugees and the Asylum Dilemma’, 3.

⁵⁰ Skran, ‘International Refugee Regime’, 14-15.

displaced, Turkey has found itself in the position of sheltering two million registered Syrian refugees, around 200.000 Syrians have fled through Turkey to the Greek islands and 35.000 Syrian babies have been born in the Turkish territory by the end of 2015.⁵¹ Because of its geographical proximity to the region of conflict, Turkey may have been assumed by the international community as a natural host country. Nevertheless, legally, economically, socially and politically managing 2 million Syrian refugees on its own, Turkey has overstretched its resources and its calls for a fairer burden-sharing have not yet been sufficiently responded by the international agencies. Although showing international solidarity in “resettlement of refugees to third countries” has been one of the highly esteemed principles of “burden-sharing,” despite all efforts from the UNHCR, “the Regional Refugee and Resilience Plan (3RP) for 2015-16” still remains “more than 60 percent underfunded.”⁵² The free-riders -in this context the rest of the world, according to the Turkish government- hinder the improvement of the situation of the Syrian refugees in Turkey by their inaction.

Turkey’s unwillingness to seek international support in its dealing with the refugees at the outset has partially caused Turkey’s current isolation and overwhelm. In the bipolar world of the Cold War, refugees became “pawns in global power struggles,” which were “used to discredit or destabilize an opponent” such as the United States’ treatment of the refugees from Eastern Europe as demonstration of power against the Communist bloc.⁵³ In a similar light, in 2013 Turkey configured a refugee policy incorporated into its larger Syrian policy, which rose on the ultimate goal of overthrowing the Syrian president Bashar al-Assad. Aiming at sheltering a high number of refugees as the proof of the suppressive character of the Assad regime, Turkey, without asking for international assistance, let a free flow of Syrians enter its territories. Later, when the international community has begun to show a more profound interest in the ordeal of the Syrian refugees, Ankara preferred “not to be included in the first Syrian Regional Response Plan (SRRP)” of the UN and limited its cooperation with the UNHCR to “ensuring supplies of tents for camps.”⁵⁴ Notwithstanding the Turkish government’s emphasis on the selfless, humanitarian aspect of its foreign policy, the global perception of Turkey’s refugee regime has concentrated more on its power politics and becoming a ‘migration superpower.’ Within this framework, Turkey is seen as a contender for becoming a ‘go-between superpower,’ which has the advantage of “geography to extract concessions from migration-phobic neighbours.”⁵⁵

As history reveals, a refugee influx of such great magnitude has serious economic, social, political, and international security outcomes affecting not only the host country, but the entire world. From the economic aspect, “receiving, processing, housing, feeding and finally integrating refugees into the labour market” are all very high-cost steps difficult to be completed solely with the host-country’s domestic resources. The EU estimates a 0,5 percent of new burden on its GDP “given a total inflow of 3,5 million

51 Elizabeth Ferris and Kemal Kirişçi, ‘Not Likely to Go Home: Syrian Refugees and the Challenges to Turkey and the International Community,’ *Brookings Institute*, September 2015, accessed May 25, 2016, <http://www.brookings.edu/research/papers/2015/09/syrian-refugee-international-challenges-ferris-kirisci>, 1,2 and 11.

52 *Ibid.*, 2.

53 Skran, ‘International Refugee Regime,’ 12.

54 Ferris and Kirişçi, ‘Not Likely to Go Home,’ 9.

55 Leonard, ‘Migration Superpowers.’

refugees⁵⁶ and that amount must be true for Turkey as well. It is an obvious commonplace that “coping with humanitarian requirements of a mass exodus” is overwhelmingly expensive.⁵⁷ By the end of 2015, Turkey has spent more than 7 billion USD on 2.2 million Syrian refugees that it hosts.⁵⁸ On the social and political side, it is very possible that “the arrival of large groups of refugees may disrupt an established pattern, such as a fragile ethnic balance.”⁵⁹ Today, the refugees in Turkey has a much more divergent ethnic and sectarian background when compared to the situation in October 2013 and this new ethnic and religious composite of Sunnis, Shiis, Alawites, Yazidis, and Orthodox Christians poses a certain instability to the vulnerably established sectarian balance in Turkey.⁶⁰ Finally from the perspective of international security, a large influx of refugees fleeing from a war zone generally contains a “refugee warrior community,” then in cases like that refugee’s country of origin will consider the host country’s positive attitude towards the refugees “a hostile act.”⁶¹ Yet a violent encounter between the country of origin and host country may take place on the border they share, either through army actions or the deployment of proxies. Along the border between Turkey and Syria, too, there is a 98 kilometre-section through which jihadist or opposition groups pass and re-pass to both sides, armed and supplied.

Given its initial insistence on managing the refugee flow on its own as a part of power politics, in three years’ time Turkey has found itself depleted, source-drained, exhausted and alone with 2.2 million Syrians at hand. That was the point when Ankara has decided to incorporate into the refugee crisis its membership-negotiation process with the EU, which, in this context, has become a free-rider in the eyes of the Turkish government. The massive flow of refugees dispersed out of the Middle East for the past couple of years since the Arab Spring is “the most serious crisis that the European Union has faced since its foundation.” Nevertheless, the EU member-states’ attitude towards this historic humanitarian crisis till now has remained “uncoordinated and ad hoc.”⁶² The relatively new member-states in Central and Eastern Europe have opted to take negative actions towards refugees by closing their borders, i.e. Hungary-Croatia border, whereas rather older member-states such as Germany have agreed to overstretch their resources for the refugees in the name of protecting EU norms and values. In 2015 more than 1.8 million migrants entered in Europe through different routes. This figure, however, was only 280.000 in 2014 and six-folded in one year. Most of them are refugees from war-torn Syria and arrive in the EU by passing through Turkey. Once they step on the Greek islands of Kos, Chios, Lesbos and Samos, they begin to seek asylum from the EU.⁶³

The loaded refugee route of Syria-Turkey-Greece makes the issue a common concern for both Turkey and the EU. Particularly the EU desperately felt that it was no longer capable of monitoring its border in

56 Sebastian Dullien, ‘Paying the Price: the Cost of Europe’s Refugee Crisis’, Policy Brief, *European Council on Foreign Relations*, accessed May 25, 2016 http://www.ecfr.eu/publications/summary/paying_the_price_the_cost_of_europes_refugee_crisis, 2.

57 Skran, ‘International Refugee Regime’, 11.

58 Ercan Gürses, ‘Turkey Spent 7.6 Billion Hosting 2.2 Million Syrian Refugees’, *Reuters*, September 18, 2015, accessed May 25, 2016, <http://uk.mobile.reuters.com/article/idUKKCN0RION520150918?irpc=93>.

59 Skran, ‘International Refugee Regime’, 12.

60 Ferris and Kirişçi, ‘Not Likely to Go Home’, 4.

61 Skran, ‘International Refugee Regime’, 12.

62 Dullien, ‘Paying the Price’, 1.

63 ‘Migrant Crisis: Migration to Europe Explained in Seven Charts’, *BBC*, March 4, 2016, accessed May 25, 2016, <http://www.bbc.com/news/world-europe-34131911>.

the Aegean when over 150,000 non-registered entries to Greece took place in September 2015. To serve the purpose of regaining the control over the borders, Turkey and the EU expressed their commitment to implement a joint action plan on 29 November 2015. Rhetorically, this joint action plan is a promise that “[a]ll migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement.”⁶⁴ On the practical side, the joint action proposes the return of all “irregular immigrants crossing from Turkey into Greece” back to Turkey. Also, according to the ‘one-for-one’ principle, EU will let one refugee settle in its territory for each Syrian returned to Turkey. But, most importantly, what seems to preoccupy the Turkish government considerably is that the EU will allocate a fund of 3 billion € to Ankara to be paid based on the refugee-projects drafted.⁶⁵ Both parties agree to reinvigorate Turkey’s accession negotiations with the opening of new chapters; visa wavering by July would be welcomed by Turkey as a sign of good and sincere intentions of cooperation. Because Turkey contends to become a ‘go-between’ immigration superpower, it has brought the major problematic topics in the still unresolved accession negotiations on the table, while the refugee deal is being discussed.

The refugee history is not progressive. It does not pick up from the previous success to repeat or improve it, but rather a new chapter opens, in which positive state attitude towards refugees is not guaranteed. The EU-Turkey refugee deal is a historic moment, which will determine the spirit of the time for all refugees, displaced, wrecked and vulnerable. In order to sugar code the deportation of masses of people consequent to the deal, the EU argues that “Turkey is a safe country for refugees.”⁶⁶ The success of this deal depends on the commitment of all parties to the ‘non-refoulement’ principle of international law so that the possibility of a host state to deport the migrants back to the war zone will disappear. The EU’s ability to honour its promises when combined with Greece’s ability to manage the welfare and safety of hundreds of thousands of refugees on the islands will enhance Turkey’s ability to keep the refugees away from the war and conflict zones. Mutual ability and willingness to help each other will result in systematic protection, fair burden-sharing and collective action.

Conclusion

In all refugee crises, the highest cost of refugee management is assumed “by countries of first asylum” and they are “almost exclusively in the developing world.”⁶⁷ By the same token, Turkey is the country of first asylum in the Syrian refugee crisis and pays the highest cost. Nevertheless, the past crises have shown that failing to act according to the “global interconnectedness”⁶⁸ of the problem and leaving the entire burden on the receiving country would bear no substantial outcome. Turkey, on the other hand, needs to be more cooperative with other states and international and non-governmental organizations while imp-

64 ‘EU-Turkey Statement’, *International Summit European Council Press Release*, 144/16, March 18, 2016.

65 ‘Turkey ‘Illegally Returning Syrian Refugees’- Amnesty’, *BBC*, April 1, 2016, accessed May 25, 2016, <http://www.bbc.com/news/world-europe-35941947>.

66 Patrick Kingsley, ‘EU-Turkey Refugee Deal: Staff Shortages and Rights Concerns Pose Twin Threats’, *The Guardian*, April 1, 2016, accessed May 25, 2016, <http://www.theguardian.com/world/2016/apr/01/refugee-deal-threatened-by-lack-of-staff-and-concern-at-turkish-human-rights>.

67 Orchard, *Right to Flee*, 9.

68 Loescher, ‘Refugees and the Asylum Dilemma’, 4.

lementing its refugee policies. In doing that it must remain answerable to the international community especially about the allegations of violation of the 'non-refoulement' principle.⁶⁹

The fact that the spirit of our time is determined by refugee crisis and asylum institutions is "neither a temporary phenomenon nor a random product of chance events."⁷⁰ If one could read the ongoing economic, political, environmental and demographic crises correctly, a refugee crisis would not have been treated as unexpected, unfortunate singular coincidence. A comprehensive, non-proscriptive approach with a collective, multilevel engagement must be generated by the international community, which will treat all the crises as one. Closing the doors may seem to be the most certain way of dealing with gigantic flows of people, but it will only pass the problem to another country or to next generations. A new refugee regime, freed from the structure of the Cold War and free-riders, must address all the reasons that have created this problem. Without waiting for another Nansen to come, the time to deal with the darkness is now.

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⁶⁹ 'Turkey' Illegally Returning Syrian Refugees.'

⁷⁰ *Ibid.*, 2.

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