



Better Protecting Refugees

Ms. Andrea Vonkeman

Here below follows the text of the lunch lecture which Ms. Andrea Vonkeman (UNHCR) gave on 24 April 2017. The lecture was organized by the United Nations Association Flanders Belgium (VFN) and the Leuven Centre for Global Governance Studies. It took place at the United Nations Regional Information Centre (UNRIC) in Brussels. We are grateful to Ms. Vonkeman and UNHCR for taking the time to give this lecture and to UNRIC for its generous hospitality.

Andrea Vonkeman has been working with UNHCR for the past 18 years, in in different parts of the world in different operations ranging from complex emergencies to care and maintenance operations. Since 2011 she has worked as senior policy officer with UNHCR's Bureau for Europe in Brussels where she is in charge of several files. In particular she has been closely following several legislative dossiers, notably the reception conditions directive recast in 2013 and 2016. Andrea has a Master's Degree in international law from the University of Amsterdam.

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Ladies and gentlemen,

I am very pleased to be here and to have such a large audience interested in refugee issues at the EU level and at the international level. I would like to start by thanking you for coming and the UN Association Flanders but also the Leuven Centre for Global Governance Studies for having UNHCR here to lay out our proposal on “Better Protecting Refugees”. Our High Commissioner came to Brussels on the 5th of December last year to launch this set of proposals in reaction to some criticisms that UNHCR should come up with an alternative to what the European Commission has now put on the table in terms of CEAS reforms in the wake of the crisis in 2015 and early 2016. It is not that we were only prompted by that but we also felt very strongly within in our own organization that there could be other and more effective ways in better protecting refugees than what is currently done and being proposed by the European Commission.

Introduction

UNHCR is working worldwide. We have offices in many countries, with about 8 000 – 9 000 employees who work all over the world. In Europe we have country offices in multiple countries and in those countries we advocate for international protection principles vis-à-vis governments together with civil society and others. Here in Brussels we have a small office with about 14 colleagues who advocate with the EU institutions. We regularly meet with the Commission, members of the European Parliament and the Council and we engage and advocate for international protection principles. When there is EU policy making on the table, we try to engage beforehand but also by providing legal commentaries on law proposals in the field of asylum. We do a lot behind the scenes and sometimes we get calls for being more critical but it is always a very delicate balance. We try to work in different ways by talking to EU institutions but also by working behind the scenes with member States. And sometimes we are more outspoken. We recently issued a paper on Hungary because it has a very restrictive policy when it comes to asylum and access to the EU territory. Also very recently we issued a press statement which was very critical of recent developments in Hungary. The Commission is also engaging in discussions with the Hungarians to see how they can bring their laws more in line with the Common European Asylum System. So from our office based in Brussels we work on a lot of different issues. We also have liaison offices with the European Asylum Support Office (EASO) and with Frontex. We advocate with them to make sure that the new policies are in line with international refugee law principles.

The unpreparedness of the EU and its member States in 2015 and 2016

We all know that 2015 was an exceptional year as well as the first two months of 2016. Over 1 million refugees and migrants – a mixed movement – arrived in Europe, on the shores of the Greek islands mostly. Many of them lost their lives on the way. What was interesting was that still member States thought that “few” migrants and refugees were coming so the response was ineffective. It took them as a surprise it seemed.. This was really something that has affected public opinion and trust on whether the member States could actually cope and also whether the EU was able to respond in a concerted manner. There was no uniform response to this movement and this had left many people in the member States behind with an unsettled feeling.

The capacity of member States was very stretched and they were not prepared. People were waved through at one point along the Western Balkan route. A couple of countries really bore the brunt. Many people arrived on the shores of the Greek islands in unseaworthy dinghies leaving life vests scattered on the beaches. It was overpowering to see the determination and resilience of the refugees who were very determined and just marched on to countries West and Northern Europe to join family and friends who had gone there before them.

A couple of countries were more affected than others by these movements. Greece was very affected even though people moved on through FYROM, Serbia, Hungary and Austria and all the way to Germany, which received the majority of refugees. But also many of them moved on to the Nordic countries and also Belgium was quite heavily affected. There were really long lines at the Immigration Office because people could not be registered. There was simply no capacity to register them. People arrived and had to wait even to be registered and get an attestation that they were legally in the country seeking asylum. This led to big problems where people were at one point camping outside in the square in front of the government buildings waiting simply to be registered.

What we also saw was that there were very diverging responses. Some States closed their borders or some States only accepted a certain number of people a day, others responded by restricting the right to family reunification. There were a lot of responses by member States and they were all fragmented and different. This resulted in real operational difficulties and very precarious situations for the refugees and migrants themselves who remained in many cases unprotected.

Globally, the number of people who have fled their homes has been on the rise and this has particularly been affecting this part of the world since the crisis in Syria started. We do not expect that this number will decrease. World leaders have also recognized this. On 19th September the New York Declaration was made by world leaders who agreed that what was needed was more solidarity. We hope that EU leaders – who also declared themselves to be part of the Declaration – will now also put these commitments into practice. All 28 EU Member States have signed up to this Declaration. The crisis has been not so much a crisis of numbers but rather of management and solidarity. Barely two months after the EU-Turkey statement which came into force on the 21st of March of 2016, the EU Commission put forward a set of proposals to reform the Common European Asylum System. There was one first set of legislation that was put forward to amend the Dublin proposal, the binding regulation assigning responsibility to member States to process an asylum claim. The Commission also put forward Eurodac, a system which takes fingerprints of those seeking asylum and helps the implementation of the Dublin Regulation. At the same time, the Commission put forward a proposal to strengthen the mandate of the European Asylum Support Office.

The second package came out in July and is aimed at amending the current Reception Conditions Directive which introduces common standards of reception of asylum seekers in all EU member States. It also proposed an amendment to the Asylum Procedures Directive to turn it into a binding Regulation. The same amendment was made with regard to the Qualification Directive. These two last Directives are currently not directly binding on the EU member States. The member States need to transpose them into national legislation so there is some leeway for member States. Again this is not resulting in harmonization. With this package, the EU

Commission is trying to respond to those flows and to the situation that occurred in 2015 and 2016 where people just moved on.

We, at UNHCR have a mandate to protect refugees worldwide. This mandate was given to us by the UN General Assembly. It is our duty to engage with member States to make sure that whatever legislation and policies they introduce these are in line with international protection principles. So we are closely engaging in Brussels with the EU institutions but also at the national level with member States through our offices there.

At present there are discussions going on at the EU level on the reform of the EU asylum law package (or Common European Asylum System). The European Parliament is discussing the different legislative proposals put forwards by the European Commission and is making its own proposals in which they develop their own position on the proposals.. The Council then does the same and after they have agreed among themselves, the proposals are negotiated between Parliament and the Council in the trialogies which also include the Commission. Currently, discussions have not reached this stage yet as the Parliament and the Council still need to adopt their positions on a number of files. It is a very slow process as it touches upon very difficult dossiers such as the Dublin Regulation. The multiple EU presidencies try to make progress but there are a couple of disagreements among different member States. The Dublin Regulation is somewhat the linking pin in the whole Common European Asylum System and as long as this dossier does not move forward, it will be very difficult to move forward on the other dossiers.

It is important to keep the linkage between the different instruments in mind because e.g. reception conditions have a great impact on the asylum procedure and so does the Dublin regulation. The instruments are not self-standing therefore The idea is therefore that the Dublin Regulation must absolutely move forward. But it has been proven to be very difficult in the Council.

UNHCR Proposal “Better Protecting Refugees”

That being said, UNHCR has drawn up its own proposal called “Better Protecting Refugees”. To achieve the goal of the principles and a common and pragmatic approach, we have launched this paper on the 5th of December 2016. In this paper we propose a system we believe would work for refugees but also for member States. This trust that has been waning and that has been lost during the crisis in 2015 could be mend by at least considering some of these proposals. The vision that we have in the proposals focuses on the external dimension of the EU and the international dimension of the EU.

External Dimension

With the external dimension we mean what the EU does in countries outside of Europe, e.g. in terms of humanitarian aid and refugee protection outside the EU, including preventing people from taking these dangerous routes or from being exploited by smugglers and human traffickers. With regard to these issues, we explain the importance of legal pathways in this paper of which one is resettlement. UNHCR is trying to engage with the EU Commission, EASO and EU member States to see how we can create more resettlement places and more legal pathways for refugees to come to Europe. With regard to resettlement we have been working with the Commission and in July 2015 member States have committed to resettle 22 000 refugees. So far 14 000 have been resettled as of 6 February 2017. This number needs to be increased to 22 000 but UNHCR

believes this number should be higher. Some member States have never increased their resettlement quota since the early 90's. But the situation has changed dramatically now that so many people have fled their countries of origin so more should be done by member States so we continue to advocate with member States for more resettlement places. This had led to some successes because before 2015 there was no resettlement action plan. Now there is an EU commitment to resettlement and the Commission is really pushing member States to step up their actions in that respect.

Another problem that we are also very actively advocating for is widening the criteria for family reunification as part of our advocacy on legal pathways. We are advocating that refugees can move to Europe under a specific family reunification procedure, outside the resettlement programme and quota. Currently the criteria that are being used by some member States are fairly strict. In reaction to all the refugees coming to Europe, some member States were of the opinion that they could not engage in family reunification for all of them so they introduced in their laws restrictions with the result that only people who have Convention refugee status are eligible for family reunification and not those granted subsidiary protection although subsidiary protection was granted to a great deal of people coming from e.g. Syria. As UNHCR, we have been advocating for years now that both categories should have the same entitlement to family reunification. A refugee is a refugee whether they flee persecution for individualized reasons or whether they flee war and generalized violence. Also, if you look at Syria there may be individualized reasons for people to flee linked to one of the 1951 Convention grounds and so we believe that most of these people should actually be granted refugee status with all the rights attached. We hope now that the numbers have gone down that there will slowly be a bit more openness and flexibility in expanding family reunification possibilities. Apart from the refugee families, it is also better for public opinion to have people come in a legal manner with the right papers instead of illegally to give them a sense that government take control of irregular arrivals to and on ward movement within the EU.

Another problem we are also focusing on (still part of the legal pathways) is private sponsorships programs and more mobility programs. Many refugees in the camps in Africa and the Middle East and Asia are desperate because they do not have any opportunities to work or study so they are just lingering in the camps. If they get no opportunities, they will move on irregularly without any visa or other papers. This is not a solution either. We are working very hard with the EU and other institutions to see how member States can buy into this proposal.

International Dimension

With regard to the international dimension we believe that the EU and its member States should prepare for new influxes. The crisis in Syria has not been resolved and it does not look good in the short term either so we have to reckon with numbers of people arriving to continue to be high. We also have to take into account the rise in people coming through the Central Mediterranean route. Member States really need to prepare as this was the big problem in 2015. We are very pleased to see that the EU Commission shares this view. In the proposal for the Reception Conditions Directive, they have now introduced an obligation for member States to draw up contingency plans meaning that they have to plan for a fictitious scenario in case of a large scale influx. We welcome this very much.

Also part of the internal dimension is our plea for a well-managed Common European Asylum System. In our paper Better protecting refugees we are calling for a common registration system. Now, all member States have different systems at national level which are not connected. So it is very hard when someone moves on to find out who is where etc. We propose to have a common system linking existing EU databases and systems as we believe this can be more effectively done. We hope that when we have a common system, people will be registered and be protected from the start.

Under the system that we are proposing, we are also prioritizing family reunion within the EU. Here we need to make a difference between family reunification from outside the EU to the EU on the one hand and family reunion under the Dublin Regulation on the other hand. The Dublin Regulation basically allocates responsibility to a member States for dealing with an asylum claim. There is a possibility within the criteria to unify with family in an EU member State. We are advocating actually for that to be the first step. From the moment people arrive, they should be given the opportunity to mention that they have family somewhere in the EU. Then the Dublin procedure should be put in motion to make sure that people go as quickly as possible to that country. We have done a study into the functioning of the Dublin regulation and we have seen that sometimes even in the case of children seeking to unify with family it took more than 16-18 months and those were not even complex cases.

We also make practical suggestions for more solidarity in the EU. The Commission is proposing a mechanism for distribution in case there is pressure on a Member State in terms of high numbers of arrivals. However the Commission puts a lot of focus on the first country of entry while we believe that one should first look at family reunion. We also believe that some claims could go through quicker procedures. These are not procedures with less safeguards, however.

In our proposal we also make a call for better protection of unaccompanied children. Many children arrived in Europe in 2015, more than 90 000 of them applied for asylum and that is just the tip of the iceberg because not all children seek asylum. The number of children who came alone, without parents or even a legal guardian, is probably much higher. So we believe that there should be a separate procedure in which children are prioritized and in which they are processed as soon as possible. Now those procedures under Dublin are too lengthy.

What is also important for solidarity is the relocation mechanism, also put in place by the Commission and accepted by member States in the wake of the crisis in 2015. There are currently two member States where relocation happens from, Italy and Greece. Numbers are still not very high though. The situation has also changed with the Balkan route being closed and with the operationalization of the EU-Turkey statement. There have been less people arriving through Turkey and Greece but it still a large number are in Greece with some still moving through the Western Balkan route. Arrival so To Italy have increased though but the composition of the flow is different with more people from North and West African countries.

Another issue we also focus on is integration because we believe that integration is key for those who are recognized as refugees. It is also good if they are engaged in society. People should participate as soon as possible after their arrival on European territory to prevent intolerance and xenophobia from rising.

As I mentioned to you at the start of my speech, our office here in Brussels e has been and continues to engage with the European Parliament which is a co-legislator together with the European Council, next to being in contact with individual European parliamentarians. We are also in touch with Political Advisers and the Council Secretariat and. Sometimes we are asked to for informal advice on how some legal instruments should best be shaped and drafted. We also engage with the EU Presidencies which rotate every six months. We have been writing recommendations to the Presidencies in which we encourage them to advance certain issues on the agenda for their term.. We also have a dialogue with them and seek to influence their approach and priorities under their presidency plans. We have seen some positive results flowing from those combined demarches vis-à-vis the different EU institutions.

I would like to conclude today by saying that contrary to what many believe and say, we should remind ourselves that at the heart of EU law and policy making are actually the member States and national governments. We tend to forget that it is not the Commission that takes the decisions. It is actually our own ministers and Heads of government who come to Brussels and sign off on the different agreements so it is very important for UNHCR, civil society and yourselves to keep that in mind national policy and decision makers to ensure that discussions remain untainted by this kind of rhetoric and focus on the real issue, which is to protect those that deserve our protection.

Thank you.