

# Reshaping the External Dimension of EU Asylum Policy: the Difficult Quest for a Comprehensive Approach

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The increasingly protracted character of many displacement situations worldwide has led the international community to introduce innovative approaches to durable solutions for refugees and Internally displaced persons (IDPs). Specifically, international initiatives have focused on two main areas of action: a) strengthening the nexus between humanitarian and development interventions in the context of forced displacement situations; b) introducing legal pathways to protection for refugees through resettlement and other humanitarian and non-humanitarian channels. The emerging of the above-mentioned international agenda has triggered a parallel revision of the European Union (EU) external action in the field of asylum and refugee protection, a process that has gained further momentum as a consequence of increasing migration and asylum flows experienced by Europe since 2014. This Working paper explores the ways in which different approaches to durable solutions have been framed at the EU level and analyses the main strategic orientations and initiatives adopted by the EU in this policy domain.

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## 1. Introduction: forced displacement and the EU “crisis”

The rise in migration and asylum flows across the Mediterranean experienced in the last three years is the result of the interaction between a complex set of political, social, economic and even cultural factors in the main countries of origin and transit of migrants. As exemplified by the case of Sub-Saharan migration to North Africa and Europe, the rigid separation between forced and voluntary migration usually embodied in policy frameworks often overlooks the multi-causal drivers of contemporary mixed flows: underdevelopment, weak states, environmental degradation among other factors often underpin the movement of both refugees and migrants, making it extremely difficult to ascertain the role played by each single motivation at different stages of the migratory process (Van Hear, 2011). While this structural complexity of mixed migration should be recognized, it is nevertheless clear that forced displacement is one of the central factors at the basis of current trans-Mediterranean flows. As official statistics reveal, a large share of the migrants registered on the Italian and Greek shores in 2015 and 2016 were coming from some of the world’s main refugee producing countries, such as Syria, Afghanistan, Eritrea and Sudan (UNHCR, 2016a). Europe, however, is not the epicentre of global displacement: though EU Member States received more than one million asylum applications in 2015 alone, in the same year 86% of the global refugee population under UNHCR mandate (13.9 million) was hosted in

developing countries.<sup>1</sup> Main refugee hosting countries were situated in the Middle East (Turkey, Lebanon, Jordan, Iran), Asia (Pakistan) and Africa (Ethiopia, Kenya, Uganda, Congo, Chad) (UNHCR, 2016b).

Current trends of global forced displacement also point to the increasingly protracted character of many displacement situations, defined by the UNCHR as situations lasting more than 5 years. In 2015, 6.7 million refugees were living in protracted situations (41% of those under UNHCR mandate), with an average duration of displacement of 26 years (UNHCR, 2016b: p. 20). While the international protection regime is premised on states providing durable solutions for refugees – which traditionally include voluntary repatriation, resettlement, and local integration in the country of first asylum – only a small minority of refugees worldwide currently benefits from the available solutions. According to the UNHCR, in 2015, only 201,400 refugees were able to return to their country of origin, and only 107,100 benefited from resettlement in a third country (UNHCR, 2016b: p. 25).<sup>2</sup> One of the consequences of the protracted character of many displacement situations is that refugees are often forced to look themselves for a “solution” by undertaking secondary movements outside of their country of first asylum.

In a context of increased migratory pressure towards Europe, it comes as no surprise that cooperation with countries of origin and transit of flows has come to occupy central stage on the EU agenda. As it will be shown below, the projection of the EU on the external scene has emerged as the most preferred option to address what should be rightly defined as an “EU crisis”: namely, the lack of political willingness and capacity by Member States and EU institutions to deliver a coherent and comprehensive response to migration and asylum movements. This political impasse has sparked tensions across the EU institutional spectrum, resulting in the questioning of the Schengen system (the abolition of internal border controls among Member States) and in the refusal by a group of Member States to take part in the relocation of a (albeit limited) share of asylum seekers hosted in Italy and Greece (Cortinovis, 2017).

The crisis-driven character of EU external action in the field of migration and asylum should not be considered as a novelty: in 2005, it were the tragic events occurring at the Spanish enclaves of Ceuta and Melilla that prompted the elaboration of the Global Approach to Migration, the EU external strategy in the field of migration (European Council, 2005). Again, in 2012, it was the changing geopolitical situation in North Africa and the Middle East following the events of the Arab Spring, and its feared consequences for migration trends, that prompted the EU to adopt a revised Global Approach to Migration and Mobility (GAMM)

<sup>1</sup> In addition to 16.1 million refugees under UNHCR mandate and 5.2 million Palestinian refugees registered under UNRWA (United Nations Relief and Works Agency) the picture of global forced displacement includes 3.2 million asylum seekers and 40.8 IDPs (UNHCR, 2015b).

<sup>2</sup> Local integration, the third durable solutions promoted by the UNHCR, implies that a refugee finds a permanent home in the country of first asylum and integrates into the local community. This is a complex and gradual process which involves distinct legal, economic, social, and cultural dimensions. Naturalization of refugees is considered to be the last stage of integration into a community and often used as a measure of local integration. However, many gaps and challenges exist in measuring local integration by the number of naturalized refugees as data on naturalization provided by States are in most of the cases uneven and incomplete. UNHCR reports that in 2015 the total number of naturalized refugees stood at 32,000 compared to 32,100 in 2014. Countries that reported large numbers of naturalized refugees were Canada (25,900), France (2,500) and Belgium (1,700) (UNHCR, 2016b: p. 27).

(Council, 2012). The GAMM aims to establish balanced and comprehensive partnerships with selected third countries covering all relevant aspects of migration: irregular migration, legal migration and mobility, international protection and asylum, and the development impact of migration and mobility (Commission, 2011).

In the field of asylum, the GAMM emphasizes the objective of working with partner countries to better articulate the nexus between humanitarian and development policies. On this point, the GAMM echoes a debate ongoing at the international level since the 80s, which has focused on the need to bridge the conceptual, institutional and operational divides separating humanitarian and development interventions in the context of displacement situations. As we shall see in section 2.1, this debate has gained renewed momentum in recent years, first due to the huge developmental challenges posed by the protracted character assumed by many displacement crises, in particular the Syrian crisis started in 2011.

Addressing the humanitarian-development divide, however, is not the only priority that has emerged on the agenda of the international community to address forced displacement. A parallel focus has been put by policy-makers, NGOs and academics on the need to open legal avenues to protection for refugees. This debate has been particularly relevant in the European context: as explained in more details in section 3.3, a broad set of institutional actors and NGOs have denounced the limited possibilities for (legally) accessing the European “protection space”, due to visa requirements imposed by EU legislation on citizens coming from the main refugee producing countries. In the absence of legal pathways, both refugees and migrants are often compelled to put their lives in the hands of smugglers: in 2016 alone, more than 5,000 people have died while attempting to cross the Mediterranean Sea, predominantly along the route that connects North Africa to Italy (UNHCR, 2016a).

Besides reducing the loss of life at sea, the establishment of legal pathways has been promoted by the UNHCR as a component of a comprehensive approach to durable solutions and, at the same time, as a concrete expression of solidarity towards countries that are hosting large numbers of refugees (UNHCR, 2016c). The discussion on pathways to protection has gone beyond the traditional channel of resettlement to encompass humanitarian visas, but also non-humanitarian channels, such as extended family reunification opportunities, scholarships programs for students and labour migration opportunities. At the same time, in the context of Mediterranean flows, the introduction of legal opportunities to gain access to European states has been repeatedly advocated as a means to tackle the challenges of mixed migration. As pointed out before, migrants reaching European shores may be forced to leave their countries by a mix of economic and non-economic factors, even if they do not qualify as beneficiaries of international protection under the current legislative criteria. Even if highly controversial from a political standpoint, extending channels to enter Europe regularly for those migrants that do not qualify for international protection would be instrumental in stemming down unauthorized movements and in relieving the pressure on States’ overburdened asylum systems (Long, 2015: p. 7).

This working paper aims to analyse the evolution of the external dimension of EU asylum policy in the aftermath of the refugee “crisis”. EU action, however, does not happen in a *vacuum*, but is placed in a broad international agenda, which is shaped by a wide variety of

actors, ranging from United Nations (UN) institutions (such as the UNHCR and UNDP), international financial institutions (such as the World Bank), NGOs, national governments and regional institutions. For this reason, the following section provides an overview of the main debates and initiatives developed in the last few years by the international community to strengthen the global response to forced displacement. The third section turns to the EU: it describes the EU strategy to address forced migration and highlights its interactions with the international framework of cooperation described in the previous section. This section also takes into consideration some of the main criticisms that have been addressed towards EU policy: in particular, the tension that exists between the objective of establishing a comprehensive and coherent approach in the field of forced displacement and the imperative of containing flows that occupies a central place on European governments' agendas. A final section recaps the main findings of the Working paper and outlines some of the priorities that should be addressed by the EU in order to strengthen its external action and make it more comprehensive.

## **2. The emerging global agenda on refugee protection**

The New York Declaration for migrants and refugees adopted by the United Nations General Assembly on 19 September 2016 is the most relevant among recent initiatives to further international cooperation on migration and asylum (UN General Assembly, 2016). When it comes specifically to refugee protection, the Declaration recalls some other main events that had been held during the previous twelve months: the World Humanitarian Summit, held in Istanbul in May 2016, the High-level meeting on global responsibility-sharing through pathways for admission of Syrian Refugees of March 2016 and the Conference "Supporting Syria and the region" (the so-called London Conference) in February 2016.

Several analysts have delivered a lukewarm assessment of the New York Declaration, describing it has a missed opportunity to substantially upgrade the international community's approach to address large movements of refugees and migrants (Crisp, 2016; McAdam, 2016). On the positive side, the New York Declaration restates parties' commitment to protect the human rights of both refugees and migrants, putting a special emphasis on the protection of vulnerable people. On the negative side, however, the lack of any concrete target has been recognized as a major shortcoming: for example, the proposal advanced by the UN Secretary General in his Report for the Conference to increase resettlement places or other legal pathways for admission to at least 10 per cent of the global refugee population annually was dismissed following to the opposition of many member states. Another proposal, also included in the Secretary General's Report, to launch a "global compact" on responsibility-sharing for refugees, which should include a set of priority actions and commitments by States, has been postponed to 2018, at the end of a consultation process with all relevant stakeholders to be carried out in the coming two years (UN General Assembly, 2016: p. 21-22).

In the section titled "Commitments for refugees", States Parties reaffirm the centrality of international cooperation to the functioning of the refugee protection regime and commit

to a more equitable sharing of the burden for hosting and supporting the world's refugees. The Declaration also underlines the importance of promoting durable solutions from the outset of a displacement situation. This is recognized as a particular urgent task given that, as pointed out in the Introduction, under the current system only a fraction of the total refugee population benefits from durable solutions. On this issue, the New York Declaration takes stock of debates among international actors on the need to revise current approaches to durable solutions, which have focused on two main areas of intervention. The first area aims to strengthen the nexus between humanitarian and development assistance with a view to address refugee (but also IDPs) needs and reinforce the national institutions, services and communities that support them. The second area aims to extend legal pathways to protection beyond the traditional instrument of resettlement, through the establishment of other humanitarian and non-humanitarian channels. These two areas of interventions are considered in more details in the following two sub-sections.

## **2.1 The humanitarian-development nexus**

The issue of the divide between humanitarian and development interventions in the main refugee hosting countries first entered the agenda of the international community in the mid-80s. In that period, the traditional “care and maintenance” model of assistance to displaced populations, based on the extended provision of humanitarian assistance, became subject to increasing criticism. At the basis of that model was the assumption that after a first (and temporally circumscribed) phase, humanitarian assistance would be discontinued and refugees would integrate into the host society. Such expected outcome, however, was not materialising in many concrete situations, especially in those African countries that were also facing huge developmental challenges. The result was that refugees were becoming increasingly dependent on humanitarian assistance, leading to an overburdening of the humanitarian response system (Crisp, 2001).

In order to address this issue, the UNHCR formulated its “refugee aid and development strategy”, which postulated that assistance should be development-oriented from the outset, thus enabling beneficiaries to move quickly towards self-sufficiency. During the 90s, development approaches started to be applied not only in countries of first asylum but also in the context of return and reintegration of displaced populations to their countries of origin, in line with the Post-Cold war shift towards repatriation as the “preferred” durable solution to refugee situations (Crisp, 2001, p. 5).

There is widespread consensus, however, that attempts to integrate humanitarian and development aid into a single and coherent framework have achieved only limited results. The political dimension lies at the hearth of the problem: the short-term negative impact of displacement on receiving societies and the tensions that often arise between displaced populations and host communities over the use of scarce resources have represented a strong incentive for national governments to frame displacement issues as temporary and to favour repatriation as a default option. To this should be added the refusal from main donor



states to endorse the principle of “additionality”, that is the commitment to deploy substantial new resources rather than diverting existing ones (Betts, 2004: p. 17). These two stumbling blocks determined the failure of some of the major international initiatives aimed at mainstreaming displacement into development planning: this is the case of the 1981 and 1984 International Conferences on Assistance to Refugees in Africa (ICARA I and II) and of the 2003 Convention Plus initiative, launched by the UNHCR to facilitate access to durable solutions through improved responsibility-sharing at the international level (Deschamp and Lohse, 2013).

The above-mentioned political stalemate has been compounded by persistent difficulties in establishing effective cooperation between humanitarian and development actors, due to their differing institutional arrangements, funding instruments and programming cycles (OCHA et al., 2015). This has led to the consolidation of a “compartmentalized approach”, which is reflected in the current financial architecture of international aid: assistance to the displaced is generally provided from “humanitarian baskets” that bypass the governments of host states and are based on a short-term programming cycle; in contrast, the provision of development assistance is largely a bilateral exercise, where funds are channelled directly to receiving states’ governments on the basis of multi-annual programs (Aleinikoff, 2015: p. 2).

In recent times, however, the recognition of the protracted character of displacement situations has prompted a reformulation of the conceptual and operational assumptions that underpin the nexus between humanitarian and development interventions. Early formulations of the concept understood humanitarian and development interventions as placed along a *continuum*, that is as two sequential (but separate) phases of a crisis’ response. This model, however, has been recognized as increasingly inadequate to address the complexity of displacement crises, for two main reasons. First, because it overlooks the reality of transitions from conflicts and crises to peace, which are often not characterized by a linear transition but by repeated setbacks and reversals. Second, because it fails to recognize that most issues limiting sustainable solutions for refugees (but also IDPs and returnees) – such as the establishment of livelihoods and employment opportunities, rule of law, and freedom of movement – are developmental and political in nature rather than humanitarian (Cordova, 2016). To address these shortcomings, the nexus between humanitarian and development assistance has been reframed in terms of a *contiguum*: a conceptual shift that implies the simultaneous engagement of development, humanitarian and political stakeholders from the onset of a displacement crisis and the adoption of methodologies that explicitly consider the long-term developmental impact of displacement crises (UNDP, 2015: p. 18).

In the last few years, there have been efforts to translate this revised model into concrete operational activities. The Solutions Alliance (SA), launched in 2014, represents the last of a series of initiatives attempted by the international community to overcome institutional

divisions and provide a joint effort to address protracted situations.<sup>3</sup> The SA starts from a recognition of the limited impact of previous UN-centred initiatives and aims to establish a multi-stakeholder platform, which involves local level authorities, international financial institutions, donors, civil society groups, the private sector, and academia. The SA has a strong focus on achieving operational change on the ground: activities are organised around working groups that target specific situations (Somalia, Tanzania, Uganda and Zambia), and priority is given to so-called “champions”, that is states that are willing to engage in the implementation of comprehensive solutions.<sup>4</sup>

The international community’s response to the Syrian crisis is also a demonstration of the commitment to address humanitarian and development challenges through a synergic approach. The Regional Refugee and Resilience Plan (3RP) for Syria and the region is meant to address the protracted character of the Syrian conflict by breaking down financial silos and delivering an integrated response to the crisis.<sup>5</sup> The 3RP is one of the first attempts to address the needs of displaced populations and host communities in neighbouring countries such as Lebanon, Turkey and Jordan through a hybrid aid architecture. The UNDP manages the resilience component of the program, which focuses on the targeted use of development assistance to support self-reliance of both refugees and their host communities and on strengthening national and sub-national service delivery systems (Gonzales, 2016).

The efforts by the international community to strengthen the humanitarian-development nexus culminated with the first ever World Humanitarian Summit (WHS), held in Istanbul on 23–24 May 2016. In fact, one of the central objectives of the WHS was to explore ways of bringing together humanitarian and development actors in order to overcome organizational and financing divisions. At the end of the Summit, the parties agreed to “transcend” the humanitarian-development divide, and a commitment was signed by the UN Secretary-General and eight UN agencies, and endorsed by the World Bank and IOM, on a new working methodology aimed at reaching collective outcomes over multi-year time frames, based on the comparative advantage of each actor in each specific situation (WHS, 2016).

## 2.2 Legal pathways to protection

As outlined above, the introduction of legal pathways to protection have been advocated by several humanitarian organisations as a way to reduce the loss of life in the Mediterranean. But in addition to that, pathways to protection have also been indicated by the UNHCR as an important instrument to achieving sustainable solutions and in providing for a concrete expression of solidarity towards the main refugee hosting countries (UNHCR, 2016c).

<sup>3</sup> See *Unlocking Displacement Solutions*, Solutions Alliance’s website, <http://www.solutionsalliance.org/resource/unlocking-displacement-solutions>.

<sup>4</sup> More details can be found on the SA website: <http://www.solutionsalliance.org/groups>.

<sup>5</sup> For more details, see the website of the 3RP: <http://www.3rpsyriacrisis.org>.



On the 30th of March 2016, the UNHCR convened a High-level meeting on global responsibility sharing through pathways for admission of Syrian refugees. The Background document drafted in preparation of the event distinguishes between humanitarian pathways, which include resettlement, humanitarian admission programmes and humanitarian visas, and additional (non-humanitarian) pathways, namely: extended family reunification opportunities; academic scholarships, study and apprenticeship programmes; skilled migration and labour mobility opportunities (UNHCR, 2016d).

According to the UNHCR, the High-level meeting made it possible to set the stage for progress in several areas, including increased pledges on the part of some states, new states confirming scholarships and student visas for Syrian refugees, and a number of states affirming their commitments to family reunification (UNHCR, 2016e: p. 18). However, some commentators have questioned the results achieved by the High-level meeting, underlying states' reluctance to substantially increase their commitments (Crisp, 2016). Looking at the data on Resettlement and other Forms of Legal Admission for Syrian Refugees released by UNHCR, it is possible to see how total pledges reached 224,694 at the end of October 2016 (they were 171,911 in mid-February 2016). EU Member States (plus Switzerland and Norway) contributed with 110,406 places (about 49%) to total pledges. Major contributors were the United States (50,079), Canada (48,089), Germany (43,431) and the United Kingdom (20,000). Small states such as Norway (9,000), Switzerland (6,700) and Sweden (2,700) also provided significant contributions.<sup>6</sup>

Resettlement is one of the durable solutions that UNHCR traditionally pursues in cooperation with States. Resettlement entails the transfer of refugees from a State in which they have sought protection to a third State that has agreed to admit them either permanently or on a temporary basis. According to UNHCR data, due to continuing outflow of refugees from Syria as well as new and ongoing conflicts worldwide, global resettlement needs for 2017 grew to over 1,190,000, a number in line with the total needs in the previous year (approximately 1,153,000 persons), but a 72 per cent increase compared to projected needs of 2014 (691,000) (UNHCR, 2016e: p. 11). Despite the growth in the number of States involved in resettlement and the *ad hoc* commitments taken to address the Syrian crisis, resettlement needs continue to vastly outnumber the about 100,000 places made available by States annually (UNHCR, 2016b: p. 25).

Humanitarian visas are different from resettlement or humanitarian admission programs, as only an initial screening of the candidate is conducted extraterritorially, while the final status determination procedure is conducted in the receiving country after arrival. The rationale for issuing humanitarian visas is that, in most of the cases, refugees find it extremely

<sup>6</sup> See *Resettlement and other Forms of Legal Admission for Syrian Refugees*, 31 October updates. Online: <https://data2.unhcr.org/en/situations>. The largest share of contributions was made by resettlement places (183,041), followed by humanitarian visas (17,272) and academic scholarships (1,456). UNHCR points out that reported data do not include pledges for family reunification, labour mobility schemes and medical evacuation, since no pledges in this areas have been received.

difficult to fulfil the requirements for obtaining a standard visa, which means they are left with the only option of crossing international borders irregularly to seek protection. Research has shown that more than a half of the EU Member States have, or have had in the past, different mechanisms for issuing humanitarian visas, although such mechanisms have been deployed mostly on an exceptional basis (Iben Jensen, 2014: p. 41). Moreover, in the aftermath of the Syrian crisis, a group of countries, including Argentina, Brazil, France and Switzerland have introduced humanitarian visas' programmes specifically targeted to Syrian refugees (UNHCR, 2016d: p. 8).<sup>7</sup>

Non-humanitarian pathways may not specifically address the protection risks faced by refugees, but can advance protection and solutions and, as mentioned before, serve as an important expression of solidarity towards main hosting countries. Non-humanitarian pathways fall into three categories: family reunification, study, and labour opportunities.

Family reunion allows for the admission of relatives of refugees who are already residing in a third country. Enabling entry for family members is a straightforward way of offering greater protection to refugee groups in moments of crisis, without designing new channels of entry. As explained by UNHCR, governments have several options to reduce barriers to family reunification for refugees, including expanding the definition of family members, review the burden of proof in establishing family relationships where documents have been lost or destroyed, and introducing a travel fund to assist with the travel costs for the admission of relatives (UNHCR, 2016d: p. 12).

Students mobility is another field that can be used by States to expand legal access for refugees. More than a half of all refugees worldwide are children and many young refugees, especially those living in protracted exile, are forced out of education (Long and Rosengaertner, 2016: p. 19). The UNHCR recommends that academic scholarship and apprenticeship programs take into consideration the specific challenges faced by refugees, including lack of documentation and academic certificates. Partnerships between public institutions, industry and educational institutions could also be established to design academic scholarships and apprenticeship programs specifically targeted to refugees (UNHCR, 2016d: p. 15).

Labour mobility is the third area suggested by UNHCR to expand pathways of admission. States willing to act in this field should first work to remove the legal, administrative, and informational barriers that in many cases prevent refugees from accessing exiting labour opportunities (Long and Rosengaertner, 2016: p. 9). Flexibility should be applied to requirements related to travel documents and documentary evidence to establish skills and education, especially when refugees cannot provide original documentation. Beyond facilitating refugees' access to existing channels, targeted labour programs for refugees could be

<sup>7</sup> France, for example, issued 2,622 humanitarian visas for Syrians between 2013 and 2015. Brazil had issued 8,450 humanitarian visas to Syrians citizens up to 31<sup>st</sup> of October 2016. On the Brazilian humanitarian visa program see Long and Rosengaertner (2016), p. 10.

introduced, possibly in consultation and partnership with employers and recruitment agencies of destination countries (UNHCR, 2016d; p. 13; Long and Rosengaertner, 2016: p. 27).

The UNHCR makes clear that the creation of additional pathways in the three above-mentioned fields should be carried out in full respect of international protection safeguards, first the *non-refoulement* principle. In particular, legal safeguards should be introduced to ensure that refugees can benefit from work or education opportunities without jeopardising their refugee status in the country of asylum, as well as their right to seek international protection or family reunification in a third country (UNHCR, 2016d: p. 11).

Beyond addressing the needs of established refugees and unlocking their protracted situations, extended migration opportunities can also contribute to address the multi-causal drivers of mixed flows. While the situation in the Mediterranean has put the challenge of mixed flows on the spotlight, this issue has been debated by international organisations since early 2000: in 2007, the UNHCR released a document titled “Refugee Protection and Mixed Migration: a 10-point plan of action”, which urged policy-makers to consider widening regular migration options to the benefit of people involved in mixed flows, including those fleeing a situation where they cannot return but that are not recognized as refugees (UNHCR, 2007).

The next section looks at the way the two areas of action described above have been incorporated into the EU approach to forced displacement. A central question that has to be addressed here regards the tension that exists between development and mobility approaches to displacement and the long-standing security imperative that continues to permeate the EU framing of asylum and migration, and the way this uneasy relation has been accommodated in EU policy responses.

### 3. The European Union’s response

#### 3.1 Mainstreaming the humanitarian-development nexus in EU external policies

Attempts to address the humanitarian-development divide in EU policies date back to the early 2000s. Discussions concerning the concept of “protection in the region of origin” ongoing at the time were strictly related to initiatives for targeting development assistance to refugees advanced by the UNHCR, such as the *Agenda for Protection* and the *Convention Plus Initiative* (Commission, 2003). In its 2004 Communication “Improving access to durable solutions”, the Commission set the stage for future EU actions in the main countries hosting refugees: the Communication recognized that the current level of humanitarian assistance was neither sufficient nor adequate to address all the needs arising from protracted situations and to ensure durable solutions, and underlined the importance of adequate initiatives linking relief, rehabilitation, and development (Commission, 2004: p. 12).

The next step taken by the Commission to give substance to its vision of protection in the region of origin was the establishment of Regional Protection Programs (RPPs). The main

objective of RPPs was to improve the institutional capacity of asylum systems in hosting countries, but the programs also foresaw development interventions akin to those suggested by the UNHCR. In the Commission's formulation, RPPs should assure complementarity between different EU external policies, in particular humanitarian and development policies. The ensuing Communication on Regional Protection Programs set up the arrangements for launching two pilot RPPs in the Newly Independent States (NIS) – Ukraine, Belarus and Moldova – and in the Great Lakes Region (with an initial focus on Tanzania) (Commission, 2005). In 2010, two other RPPs were launched in the Horn of Africa and in North Africa (Papadopoulou, 2015: p. 8).

Despite the comprehensive framework envisaged in the RPPs Communication, the projects included in the RPPs dealt predominantly with capacity-building at different stages of the asylum process, including the establishment of new infrastructure and training programs for national officers and NGOs (Papadopoulou, 2015: p. 8). An external evaluation of the two pilot programs conducted in 2008–2009 concluded that coordination between refugee, humanitarian, and development policies had proved difficult to achieve, in particular due to the lack of strategic direction and involvement of Member States' agencies. Moreover, the fact that RPPs were not financed through a dedicated funding stream further emphasized coordination and visibility problems (GHK, 2009: p. 75). The same structural weaknesses were recognised by the Commission in its 2013 Communication on the Task force for the Mediterranean, in which it was stated that for RPPs to be successful they would need longer term engagement and funding, as well as better coordination with all the stakeholders involved (Commission, 2013: p. 12).

In 2013, the Commission launched a Regional development and Protection Program (RDPP) in the Middle East, targeting Lebanon, Jordan, and Iraq. Compared to previous programs, the Middle East RDPP features a dedicated socioeconomic and development component, which aims to address the impact of displacement in targeted countries by expanding livelihood opportunities of refugees and their host communities (Papadopoulou, 2015: p. 14). The 2015 European Agenda on Migration called for extending the RDPP "formula" in North Africa (Algeria, Egypt, Libya, Morocco, Tunisia) and the Horn of Africa (Ethiopia, Kenya, Sudan). The RDPPs are based on a thicker governance structure compared to their predecessors: activities are supervised by an implementing consortium – composed of interested Member States, the Commission, UNHCR, and IOM - and each program has a "leading" Member State tasked with steering the implementation process.<sup>8</sup>

The centrality acquired by the humanitarian-development nexus in EU external action is testified by the launch, in 2014, of a public consultation on the EU approach to forced displacement, with a view to defining the EU position in the run-up to the 2016 World Humanitarian Summit. This process resulted in the Communication "Lives in dignity: from aid dependence to self-reliance" presented by the Commission in April 2016 (Commission,

<sup>8</sup> Author's interview with European Commission's official, DG Home Affairs and Migration, June 2016.

2016a). The Communication is the result of cooperative efforts between three DGs –development, humanitarian affairs, neighbourhood policies – and the European external action service (EEAS), a fact that signals the willingness to overcome organisational and operational divides that had hampered coordination in the past. In line with ongoing initiatives at the international level, the Communication advocates for the adoption of a “resilience approach” to displacement crises: integrated humanitarian and development strategies should be deployed to enhance self-reliance of both displaced people and the hosting communities, thus setting the stage for sustainable solutions, be these in the form of return or local integration (Commission, 2016a: p. 2).

On an operational level, the Commission calls for a better division of labour not only at the headquarters but also on the ground, so that those actors that are best placed to intervene in a specific situation (be they Member States, EU delegations, UN institutions) should be those leading the process. Strategic engagement with partner countries is also considered as key in implementing the envisaged approach: policy dialogues with host governments should be established from the beginning of a crisis and cooperation with local authorities should be given special attention, since the local level is the one most directly affected by displacement (Commission, 2016a: p. 10).

The Communication also stresses the importance to deploy flexible and predictable funding. The EU Trust Funds (TF) are singled out as an instrument to integrate different EU funding streams and funding from other donors, including the Member States. The Madad TF, set up in 2014, focuses on non-humanitarian priority needs of refugees and hosting communities affected by the Syria crisis: specifically, the Madad TF, with a volume of €736 million, supports the resilience component of the 3RP for Syria and the countries in the region (Lebanon, Jordan, Iraq and Turkey), a particularly urgent task given the initial lack of adequate donor contributions to that component (Commission, 2016b). The Emergency TF for Africa was established in October 2015 in the context of the EU-Africa Summit on Migration. The Africa TF is currently endowed with €1.8 billion and targets 23 countries in North Africa, the Sahel region and Lake Chad area and the Horn of Africa. While also including a set of resilience-based actions, the Africa TF is designed to address a wide variety of migration-related issues and has a strong focus on migration control and border management issues (D’Alfonso and Immenkamp, 2015: p. 7).

Commission’s efforts to overcome the humanitarian-development divide were met with widespread approval along the EU institutional landscape. The Council of Ministers endorsed the Communication “Lives in dignity” in its Conclusions of May 2016; on the same occasion, the Council adopted Conclusions in view of the World Humanitarian Summit, in which it reiterated the central role the EU aims to play in engaging international partners to address the impact of protracted displacement and achieving durable solutions (Council, 2016a).

The previously described initiatives are also in line with the “holistic” approach to migration and asylum advocated on several occasions by the European Parliament (EP). Since the



unfolding of the migration crisis in the Mediterranean, the EP has advocated for more integration of financial resources and policy-making instruments at the EU level. For example, while welcoming the decision to establish TFs, the EP underlined how those new instruments were needed because the EU budget lacked adequate and flexible resources to address migration crises promptly and comprehensively and called for a more organic response to be considered in future financial programming (D'Alfonso and Immenkamp, 2015: p. 9). In a Resolution of April 2016, moreover, the EP laid down a holistic EU approach to migration and asylum: the Resolution stresses the need for a long-term strategy to help counteract the “push factors” of migration in countries of origin and underlines the inadequacy of merely preventive measures for managing current migration flows (European Parliament, 2016). More broadly, the critical stance assumed by the EP, but also by many human rights organisations (Amnesty International, 2015), towards the short-term and security-driven response provided by the EU and its Member States to the “crisis”, invites an interrogation on the relation that exists between the EU approach to forced displacement described before and parallel strategies that aim to contain migration in the regions and countries of origin and transit.

### **3.2 Development assistance as a migration management tool**

Concerns that EU initiatives to support regions hosting refugees (and, more broadly, regions of origin of migration flows) would be motivated by a “burden-shifting” strategy instead of genuine burden-sharing have been at the centre of criticisms addressed towards EU action since the early 2000s. Many voices have underlined the securitarian approach that has driven the mainstreaming of migration and asylum issues into EU external relations, pointing to attempts at linking the provision of development assistance to cooperation on migration control and readmission. The same criticisms have been addressed also towards more recent initiatives described in the previous section: critics have exposed the “double-faced” nature of the EU’s strategy, emphasizing how increased assistance to hosting regions has been accompanied by high-level diplomatic action aimed at co-opting third countries’ governments in the containment of flows. This view is substantiated by the fact that the financial support provided to Turkey in the context of the Madad Fund and through a dedicated €3 billion financial facility was accompanied in March 2016 by a controversial EU-Turkey statement, which foresees the repatriation to Turkey of irregular migrants and asylum seekers who arrive on the Greek islands (Council, 2016b). In parallel, the financial support channelled through the Africa TF was placed, in the context of the Valletta Summit Action Plan, into a broad agenda in which control and containment of flows occupy a central role (Council, 2015).

The most recent expression of this approach is included in the Commission’s Communication on a new Partnership Framework with third countries under the European Agenda on Migration, released in June 2016 (Commission, 2016c). The Communication starts from the assumption that high migratory pressure has become the “new normal” in the EU and that, therefore, a more structured and effective approach is needed to engage third countries on



the management of migration. The partnership framework proposed by the Commission revolves around “migration compacts” to be offered to selected third countries, which should employ, in a coordinated manner, all the instruments, tools, and leverage available to the EU in different policy areas, including development aid, trade, mobility, energy and security. The Commission is explicit in stating that the EU should use both “positive and negative incentives” to assure the cooperation of partner countries (also when it comes to “adequately host persons fleeing conflict and persecution”), thus abandoning the softer formula of a “more for more approach” included in the GAMM (Commission, 2016c: p. 9).<sup>9</sup>

Since the adoption of the Communication, cooperation has started with five priority countries: Niger, Nigeria, Senegal, Mali and Ethiopia. As recognized by the Commission itself, however, some of those countries are not only important countries of origin or transit of irregular migration but are also hosting large numbers of refugees and are confronted with situations of internal displacement (Commission, 2016d: p. 4). High-level visits to priority countries have been conducted during 2016 by EU Commissioners and Member States’ high rank politicians, and, according to a Commission Report on the implementation of the compacts, first results on issues such as combat migrant smuggling and readmission can already be seen. The same Report informs that under the EU Trust Fund for Africa, contracts in support of the actions foreseen in the Valletta Action Plan were signed for almost €400 million (Commission, 2016d: p. 13).

The bargain-oriented nature envisaged by the migration compacts is not unproblematic in relation to the overall coherence of EU policy in the field of forced displacement outlined above, whose stated aim is to increase access to durable and sustainable solutions. The concern, expressed by several human rights organizations, is that joint EU and Member States pressure on third countries hosting a large number of refugees, asylum seekers or IDPs may result in the increasing use of detention and control measures, with the consequence of constraining many forced migrants to stay in countries where they enjoy only limited protection and where they have no real prospect of economic and social integration (ECRE, 2016a; Siegfried, 2016). The resulting unbalance with respect to the comprehensiveness and coherence of the EU approach to durable solutions can become even more pronounced if, as explained in the next sub-section, the introduction of legal pathways to protection is not properly addressed in EU policy responses.

### **3.3 Opening legal pathways to protection in the EU: a fragmented response**

The increase in the number of migrants who have lost their lives in the Mediterranean in the last few years has dramatically exposed the lack of legal channels to access protection

<sup>9</sup> The Commission’s strategy also features the launch of an ambitious European External Investment Plan, which is expected to provide a coherent overall framework to improve investments in Africa and the Neighbourhood, in order to promote sustainable development and tackle the root causes of migration. The Plan will rely on EU funds totalling €3.35 billion until 2020, while Member States are also expected to contribute with additional funds. The Commission expects the Plan to generate total investments up to €88 billion (Commission, 2016e).

in the EU, multiplying statements from international organizations and NGOs about the necessity of opening legal avenues to protection (ECRE, 2016b).

Traditionally, however, commitments of EU Member States to open legal channels for protection have been relatively limited, as has their willingness to explore opportunities of cooperation in this field at the EU level. The most relevant results have been achieved in the field of resettlement. The Asylum Migration and Integration Fund (AMIF), which spans the period 2014–2020, envisages a system of financial incentives to be provided to Member States willing to resettle refugees according to common EU priorities. Moreover, in July 2015, the Member States agreed to resettle 22,504 refugees over the following two years in the context of an EU-wide resettlement scheme announced by the Commission in its Agenda on Migration. Finally, in July 2016, the Commission tabled a Proposal for a Regulation establishing a Union Resettlement Framework, whose aim is to create a structured, harmonized and permanent framework for resettlement across the EU. The Commission's proposal envisages the implementation of annual EU resettlement plans, still based on Member States' voluntary contributions, which should be adopted by the Council and operationalized by targeted EU resettlement schemes adopted by the Commission. The new Resettlement Framework should also set out the criteria to be followed when determining the regions or third countries from which resettlement will take place, also considering the potential role of resettlement in a tailored engagement with third-countries in the context of Migration compacts (Commission, 2016f: p. 5). The new framework proposed by the Commission is expected to address the issue of Member States' differing levels of commitment in the field of resettlement. In fact, while a small group of European countries have had developed resettlement programs for decades (such as Sweden and Denmark), some countries have only recently launched formal programs, while other countries still do not take part in any kind of regular resettlement activity (ERN, 2016).

The same divergences characterize Member States' practices on the issuing of humanitarian visas. While discussions on a common EU approach to humanitarian visas began in the early 2000s, no concrete result has been achieved so far, mainly due to Member States' opposition (Cortinovis, 2015). The reform of the EU Visa Code Regulation, initiated in 2014, has represented an opportunity for the EP to push for a common EU approach on humanitarian visas. In its Report of April 2016, the EP Civil Liberties Committee introduced an amendment in the Commission's proposal to allow people in need of international protection to apply for a "European humanitarian visa" directly at any consulate or embassy of the Member States (Neville and Rigon, 2016: p. 4). This proposal, still to be given final approval by the Council at the time of writing, is indicative of the attempt by MEPs to translate the protection-sensitive approach they have advocated in many resolutions into a concrete legislative instrument.

In line with the notion of "additional pathways" advanced by the UNHCR, in the midst of the refugee crisis in 2015-2016, both the Commission and the EP urged the Member States to

complement their resettlement and humanitarian programs with other channels, such enhanced family reunification opportunities, private sponsorship and flexible visa arrangements, including for study and work (Commission, 2016g: p. 15-16; European Parliament, 2015: p.13). The limited scope of harmonization achieved by the EU in the area of legal migration, however, represents a major obstacle to the adoption of a common approach to additional pathways.

Labour migration is a case in point. The 2007 Treaty of Lisbon, though extending the co-decision procedure to the entire field of legal migration, retained in Article 79(5) TFEU Member States' right to set the volume of admission of third country nationals coming from third-countries to seek work. Moreover, in line with Member States' desire to preserve a wide room for manoeuvre in the area of labour migration, the development of EU legislation has followed a sector-specific approach, which has led to the introduction of directives regulating the entry of residence of specific categories of workers, such as highly-skilled workers and seasonal workers. Those instruments, however, have provided only for a limited level of harmonization of Member States' legislation (Commission, 2016g: p. 17).

Refugees' access to EU legal migration opportunities was a debated topic during discussions on the revision of the EU Directive on high-skilled workers (the so-called Blue Card Directive), one of the priorities set by the Juncker administration in 2014. In its contribution to the consultation process launched by the Commission, the UNHCR stated that the "Blue Card" Directive represents an opportunity to provide a viable route for highly qualified refugees to enter the European labour market on an equal basis with other migrants. The UNHCR also put forward a proposal suggesting the inclusion of refugees residing in non-industrialised countries as an additional category of qualified workers who can benefit from the revised "Blue Card" Directive (UNHCR, 2015). The Commission's proposal on the revision of the Blue Card, published in June 2016, incorporates UNHCR suggestions but only regarding beneficiaries of international protection already residing in the Member States. According to the proposal, high-skilled international protection's holders should be able to take up employment in another Member State without losing their protection in the first Member state or acquiring protection in the second (Commission, 2016h: p. 14).

The limited and fragmented scope of EU Labour migration policies on the internal side described above has been reflected on the external side of EU policies. The trajectory of Mobility partnerships (MPs), the "most-sophisticated expression of the GAMM" in the words of the Commission, is an example: while the original Commission's proposal envisaged the pooling of Member States' labour quotas and innovative circular migration schemes, those two elements were not included in the list of initiatives proposed by the Member States to give substance to the partnerships (Lavenex and Stucky, 2011). This circumstance, of course, does not bode well for the possible establishment of labour migration schemes targeted to refugees in the context of EU cooperation with third countries, also considering the

additional legal and bureaucratic hurdles associated with the inclusion of refugees into normal migration channels outlined above (Long and Rosengaertner, 2016: p. 11; *supra* section 2.2).

As pointed out in section 2.2, family reunification is another area that could play an important role in opening legal avenues for those in need of protection. The 2003 Directive on Family Reunification, however, includes only limited provisions to ease the process of reunification for refugees' family members; the same Directive, moreover, does not include holders of subsidiary protection in the scope of those more favourable provisions (UNHCR, 2012). Against the backdrop of limited EU legislative harmonization, several EU Member States have recently enacted legislation to delay the arrival of family members or restrict the application of family reunion to particular categories of protection holders. This is the case, among others, of Germany (the EU country which has received by far the largest number of asylum applications in the last three years): in 2016, the German government introduced a provision to suspend family reunification for two years for beneficiaries of subsidiary protection. Similar measures were introduced by Denmark, Austria and Sweden (Brenner, 2016).

An ambitious roadmap for reform of the EU asylum and migration framework was set out by the Commission in its April 2016 Communication on the Reform of the Common European Asylum System and enhancing legal avenues to Europe. The Communication stresses the objective of establishing a proactive policy of sustainable, transparent and accessible legal pathways for entering the EU. More specifically, the Commission called for a smarter and well-managed legal migration system and stressed the need to look at the migratory phenomenon in a broad and comprehensive manner, considering all the interlinks between the different aspects of migration, including asylum policies (Commission, 2016g: p. 18). As showed early in this section, some steps in the direction foreseen by the Commission have already been taken, such as the proposal for a common EU resettlement framework and the extension of the Blue Card to beneficiaries of international protection. The future will show if the above proposals will eventually be endorsed by the EU co-legislators (the EP and the Council of Ministers) and if the Member States will be ready to proceed to their full implementation.

## 4. Conclusion

The expanding scale and increasingly protracted character of many displacement situations worldwide have underlined the urgency to establish a coordinated and sustainable international policy response. The New York Declaration, adopted by UN General Assembly in September 2016, testifies of the relevance acquired by migration and asylum issues on the agenda of international leaders, together with the recognition that these problems should be addressed through a comprehensive and long-term strategy. At the same time, however, the New York Declaration is also a reminder of the reluctance by many States to assume

new commitments for the admission of refugees, in the context of worsening perceptions about migration and asylum within their societies.

Debates carried on in the main international fora have questioned the effectiveness of traditional durable solutions to tackle current displacement situations. In fact, the protracted character of many displacement crises precludes large scale repatriation programs (the “preferred solution” for the international community), while resettlement annually benefits only a fraction of the global refugee population. Local integration, the third durable solution promoted by UNHCR, is in many cases resisted by hosting countries for internal political reasons.

Against this backdrop, efforts to strengthen and expand the scope of solutions for refugees and IDPs have followed to main directions. The first direction has addressed the long-standing issue of the divide between humanitarian and development interventions in the context of forced displacement. Operationally, bridging this gap implies addressing the socio-economic needs of both displaced populations and their host communities, thus preventing the emergence of social tensions. According to the proponents of this approach, enabling displaced populations to become self-reliant would end dependence from humanitarian assistance and set the stage for achieving sustainable return or local integration.

The other priority area recognized by international organizations (such as the UNHCR) but also by many NGOs is the opening of legal pathways to enable those in need of protection to safely seek or enjoy asylum in a third country. The UNHCR has pointed to the opening of additional pathways to protection, both humanitarian and non-humanitarian, as a concrete manifestation of solidarity towards those countries most affected by displacement and as an option to pursue in order to “unlock” protracted crises. On March 2016, the UNHCR convened a High-level meeting to call on States to increase additional pathways for Syrian refugees, through resettlement, humanitarian visas, but also by extending family reunification opportunities, and exploring programs and schemes for the admission of refugee students and workers.

The gathering international momentum for a new governance architecture in the field of forced displacement has mobilized EU institutions. Indeed, the EU has aimed to play a major role in shaping the outcome of major international events, such as the May 2016 World Humanitarian Summit.

In parallel, the EU has started a process of internal reform with the aim of overcoming institutional and organizational barriers that in the past had prevented cooperation between different services, in particular humanitarian and development actors. This process of internal institutional reconfiguration has been accompanied by the deployment of substantial resources to address development challenges in the context of displacement situations. Trust Funds have been established to allow for the rapid and flexible deployment of resources in priority areas, as in the case of the Madad TF for Syria and the Region and the TF for Africa.



The EU strategy in the field of forced displacement, however, has continued to be heavily influenced by the imperative of containing flows, a long-standing priority on the agenda of Member States' governments. Both in the context of cooperation with Turkey and with African countries, the deployment of significant additional financial assistance has been included in a framework of cooperation whose ultimate aim is that of ensuring the containment of flows. The bargaining-oriented approach that lies at the heart of the EU-Turkey deal and of the so-called Migration compacts, launched by the Commission with priority African countries, has been criticized by many NGOs advocating for refugee rights. One of the main concerns put forward by critics is that the enactment of measures to increase border controls and stem down unauthorized movements, which are an integral part of those agreements, would have the consequence of further shrinking the protection space for refugees and IDPs originating in or transiting through those countries.

Charges that the EU approach would eventually result in "burden-shifting" towards countries already heavily affected by refugee movements and marked by socio-economic conditions far worse than European countries, could be tempered by the adoption of a well-defined framework of legal pathways to the EU. In this area, however, the response envisaged so far by EU policy-makers has been rather fragmented. While there have been attempts to establish a common EU framework in the field of resettlement, the use of financial incentives and the elaboration of common EU priorities have not been enough to ensure a common and cohesive response by the Member States. The lack of a common EU approach is even more visible with regard to humanitarian visas: while a coordinated approach in this field has been repeatedly advocated by the Commission and the EP, humanitarian visas have been adopted only sporadically by Member States. Against this backdrop, the proposal put forward by the EP to amend the EU Visa Code in order to introduce the possibility to apply for a "European humanitarian visa" at any consulate or embassy of the Member States could be, if approved and fully implemented, a step in the direction of extending and harmonizing the use this instrument at the EU level.

Finally, there is the issue of non-humanitarian pathways to protection, such as extended family reunification, scholarships for students and labour migration opportunities. Also in this case, in the context of limited legislative harmonization at the EU level, approaches assumed by the Member States have varied significantly. A group of Member States, for example, confronted with an increase in the number of spontaneous asylum seekers during the last two years, have tightened requirements for family reunification of beneficiaries of international protection, thus moving in the opposite direction than that suggested by refugee organizations.

In conclusion, in order to be truly comprehensive and to address concerns put forwards by human rights organisations regarding the protection of refugee rights, EU external action in the field of asylum should address two main priorities. First, migration management initiatives should not be established with countries that show a negative human rights record and that do not provide adequate reassurances that migrants and refugees that are hosted



or returned there will be treated in full respect of their human rights. Effective and robust monitoring mechanisms should be established to ensure this condition is fully fulfilled. This is a precondition for the EU to establish itself as a credible international actor, which aims to “lead by example” as often declared in official statements. Second, in the long-term, the EU should set in place a predictable and comprehensive system of legal pathways for both humanitarian and non-humanitarian reasons (also in light of the need to address mixed migration movements). This objective, as recognized by the Commission, can only be achieved through a broad reform of the EU legislative framework in the field of asylum and migration, which (as pointed out in this Working paper) is partially already under way. What remains to be seen is if Member States’ governments will support the adoption of those far-reaching legislative measures that are needed to ensure a coherent EU external action and provide for effective solidarity towards the main refugee-hosting countries.

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