

Vision for a Better Protection System in a Globalized World

Mending a Broken System

Introductory remarks:

The purpose of this paper is to address the obvious: the present asylum system is dysfunctional in many ways, not fit for a globalized world and needs to be mended.

Until now, we developed a lot of strategies, action plans, papers and bundles of measures without having a commonly agreed goal.

This is a vision paper. While it cannot refer to every detail, it ensures a common direction.

It is a compass - it should ensure that we, for the first time, strive towards the same long-term goal.

Without having a clearly defined goal we will not find the way.

This vision builds on and is meant to supplement the European Council conclusions from June 2018.

Migration and asylum policy will shape Europe's future.

Migration brings change: for migrants, for societies in countries of origin, and for the citizens of destination countries. Change is often deeply felt and politically contested.

Many citizens have lost trust in their governments' ability to deal with the challenges of irregular migration. In the current system it's not only the Member States of the EU that decide who enters the European Union but first and foremost smugglers (and to a lesser extent migrants themselves). The result is a massive loss of trust. Trust will not be restored simply by short-term partial strategies and measures at EU-level. There is an urgent need for an alternative, unifying vision. The priority must be to reassure our citizens by creating a sustainable policy framework that simultaneously has democratic support, meets our legal and ethical obligations, and is sufficiently prudent to avoid a legacy of regrets.

Given our own histories, European countries recognise and appreciate the value of the 1951 Refugee Convention. It will always be a core value of the European Union and its Member States to provide protection to people fleeing persecution due to their race, religion, nationality, membership of a particular social group, or political opinion.

Regrettably, the way in which the 1951 Refugee Convention is currently being implemented, combined with increased opportunities for mobility and communication created by globalization, is enabling increasing numbers of irregular migrants and refugees, who have already found protection in another country, to enter Europe through our asylum systems. It has never been the intention of the 1951 Refugee Convention to promote transcontinental, economically induced secondary migration.

Through this historically determined conceptual weakness fraud is rewarded. Many simply disappear into the informal economy once their asylum claims are rejected. This possibility has long been abused by organized criminal networks that boost irregular movement by selling false hope of a better life in the EU, resulting in thousands of deaths, exploitation, and modern slavery. In spite of these fatal consequences, there are still people who – for various reasons – praise and strongly support the present system.

The criminal networks rely upon appeals to the moral conscience of Europeans, suggesting that we are collectively guilty of the resulting death and despair; suggesting that it is our duty to offer permanent integration to all the people criminals have lured into taking perilous land routes or boat journeys across the Mediterranean. In such a Darwinist system the fittest and not the most vulnerable are rewarded. We are faced with a tragic humanitarian situation that results in the loss of thousands of lives every year. We cannot accept this any longer. We must prevent this unnecessary death and suffering, while ensuring that our asylum and migration policies are sustainable. This is why our highest ethical and political priorities are to develop a better protection system for a globalized world.

This is our vision with seven goals and seven steps towards a better, fairer system.

7 Goals of a Better Protection System

1. **Helping the most vulnerable:** Establish a system that will identify and assist those who really need protection rather than unintentionally favouring those who have the greatest financial means and/or endurance to embark on long journeys.
2. **Help to create perspectives in regions of origin instead of enabling irregular migration to Europe:** Reinforce global support to countries of *first reception*, including by improving economic opportunities and livelihoods, both for refugees and host communities, in order to enhance protection and minimize the need for onward irregular movement.
3. **Prevent further deaths and tragedies in the Mediterranean and along the migratory routes:** Strengthen the capacity of asylum and migration authorities *along the migratory routes* to ensure access to protection and to effectively combat trafficking and smuggling, thus reducing exploitation and the loss of lives of irregular migrants and migrating refugees.
4. **Break the business model of traffickers and smugglers:** Establish a legal Search and Rescue (SAR) framework in the entire Mediterranean, based on existing maritime conventions, as well as set up SAR centres/Regional Disembarkation Arrangements outside the EU to prevent SAR operations from being an unintended operational tool of traffickers and smugglers.
5. **Guarantee effective management of the EU's external borders & Ensure all individuals staying illegally leave the EU:** this should include screening procedures at enhanced hot-spots. Use all necessary foreign policy tools to ensure humane return – preferably on a voluntary basis – of all individuals without a legal right to remain to either 1) their countries of origin 2) a safe third country or 3) a return centre or an alternative legal migration destination located outside the EU. Circumvention of protection opportunities (“safe havens”) along migratory routes should no longer be feasible and shall be taken into account in the national refugee determination systems.
6. **Engage in common but differentiated responsibility-sharing in order to protect refugees and effectively stem irregular migration to the EU:** All EU- and Schengen-States must show solidarity – not least in crisis situations. States should have a choice as to how. Solidarity should include measures in regions of origin, along the migratory routes, at the external border, and upon arrival in the EU.
7. **Offer resettlement to those with the greatest need for protection rather than the strongest selecting themselves:** Once irregular movement is reduced and public trust restored, safe and legal pathways via resettlement are created for the most vulnerable and those with the greatest protection needs.

A key step in this context is to realign current practice with the core principles of the 1951 Refugee Convention: Protection for those who need it as close to his or her country of origin as possible. Refugees are entitled to live in safety and dignity; they are not entitled to unlimited migration.

It is essential to support and stabilize the *safe haven countries* that provide safe sanctuary to the majority of the world's refugees. We want to help those states and host communities, particularly in Africa and the Middle East, that provide effective protection to those in need.

The majority of the world's refugees are not in Europe, and probably do not want to come to Europe. They find sanctuary in low and middle-income countries. They are best suited to do so, being in close proximity to the countries of origin and often sharing language, culture and family links with those fleeing their homes. Protection in the region at the earliest possible stage is, in principle, the preferred protection model. This is what we should focus on in our response to refugees.

However, our response cannot be limited to indefinite humanitarian assistance: food, clothing, and shelter. Although this kind of humanitarian aid is, without a doubt, of importance we need more than our current, short-term approach: It must primarily include the restoration of autonomy, dignity and community. This means creating jobs and providing the means for self-reliance. The governments of countries of first asylum will only permit refugees to work, and be willing to keep their borders open, if their own people gain from doing so. This dual task of bringing jobs to refugees, and improved conditions and enhanced economic opportunities to host populations, is the primary obligation of European countries as far as refugees are concerned. Although it is entirely feasible, we have persistently failed to meet it.

Improved safety and access to self-reliance can reduce secondary movements and is an important prerequisite for a durable solution. If we can provide adequate assistance and development opportunities to refugees and their surrounding host communities in the countries neighbouring conflicts and crises, few refugees will need to move onwards to Europe. What most refugees need is not migration; it is safety and normality, until they can go home or are accepted as productive citizens in their regional haven. Here, globalization can be harnessed for good: it can bring jobs to safe havens. As long as the citizens of those countries benefit, their governments will welcome it. This has already happened in Jordan: with European support Jordan offered refugees the right to work.

Furthermore, there is a need to align efforts to support refugee-hosting communities with self-reliance strategies and with national poverty reduction strategies. Under certain preconditions the presence of refugees and other forcibly displaced persons can result in new opportunities and benefits for national and local economies. In culturally and economically comparable countries the refugees' human capital, including labour skills and their demand for goods and services can have a positive effect. This would particularly be the case if more private business would invest in safe haven countries and avail of such human capital. Based on these preconditions refugees can contribute as drivers of development to the benefit of host countries.

Refugees are not natural migrants: they are people who chose to stay home until they were forcibly displaced. In contrast to economic migration, development opportunities for refugees can reduce the demand for onward movement. Examples of progressive policies for the economic inclusion of refugees are found in countries like Uganda, Kenya and Ethiopia, and deserve major European support.

It is not within the scope and purpose of the 1951 Refugee Convention to cross several safe countries in order to ultimately end up in a preferred destination. This misinterpretation of the 1951 Refugee Convention today leads to the suffering and death depicted above.

A sustainable European asylum policy will therefore need to distinguish between refugees who have already found a safe haven close to home, and those who absolutely need to move further afield in order to be safe. Once again it has to be stressed: Refugees have a right to live in safety and dignity; they do not have a right to unlimited migration. Implementing this important distinction – refugees who have yet to find safe haven versus those who have already found it – is operationally challenging but essential.

The European Union and its Member States should therefore strive towards a shared understanding that an application for asylum in Europe will only be accepted, if the country of arrival is indeed the "nearest safe haven". In other words, the person must be a refugee *and* have either 1) faced persecution in a neighbouring country or 2) had no realistic possibility to claim effective protection in a country located between the EU and the country of origin. The application and verification of admissibility should, wherever possible, take place in appropriate locations at, or beyond, the common external border.

The EU should remain committed to granting sanctuary to those genuinely in need of protection within Europe. EU "mobile protection teams" – composed of asylum experts from EU Member States, EASO and UNHCR – will be required to identify and examine requests from refugees primarily in crisis regions and in need of protection outside their first country of asylum, and bring them safely to the EU. They would then be resettled directly to specific EU Member States. They might be allocated to a particular EU Member State, based on particular national preferences relating to the refugees' background.

This mobile approach, with an emphasis on coordinated resettlement at an EU-wide level, will ensure that the EU offers sanctuary to the most vulnerable. By combining the measure of resettlement with the measures of the other six goals the incentive to unnecessarily embark on dangerous journeys with often tragic outcome is reduced. At the same time, a signal of regaining control is being sent to the European citizens: Planning and steering with regard to quantities, target groups and integration of refugees will be provided. The expectations and needs of the European societies will no longer be ignored and in establishing this model, the core principle of protection is stressed: offering protection to those in need and at the same time destroying the perfidious business model of organized criminal networks; ending death and suffering in the Mediterranean and on the road to Europe.

The core principle of responsibility-sharing shall be mandatory solidarity instead of mandatory allocation. It is the principle of common-but-differentiated responsibility-sharing. All EU member states must contribute, whether by offering asylum to those in need of protection, providing resettlement from a first country of asylum, or through financial or other relevant contributions. All countries should strive to do a bit of each, but the balance should be in accordance with citizen preferences. All means of showing solidarity are to be respected; no one is wrong and reproachable. The main purpose of showing solidarity should be to ensure effective protection and livelihoods for refugees and to reduce irregular migration to the EU.

This system should also be linked to a clear commitment to prevent secondary movements within the European Union. A refugee or an asylum seeker, who has been admitted to a particular Member State for the purpose of protection, may enjoy asylum or apply for asylum only in this particular state. If he leaves to seek his fortune in another state, he must - as a main rule - be returned to a hotspot/controlled centre to have his or her claim re-examined.

Effective return (voluntary or forced) of irregular migrants and rejected asylum seekers is a fundamental element in addressing irregular immigration and a prerequisite for well-managed migration. Any individual with no legal right to stay must eventually be returned to his or her country of origin, a safe third country, offered the opportunity to move to an alternative migration destination outside the EU, or, as a last resort, be placed temporarily in an open and rights-respecting return centre in a third country. All foreign policy as well as development policy tools should be used to facilitate international cooperation in support of these aims.

7 steps towards a better protection system

An improved and better protection system will not be built from one day to the next. The intermediate phase differentiates between measures which can be implemented ad-hoc or in the medium-term. The route to reform relies crucially upon a whole-of-government approach.

Step 1 - Helping the most vulnerable

We need to end the Darwinist reality of our current asylum systems, where we only see those who already made it to European shores. At present, the ones staying in and around crisis regions - including those with great protection needs, who are physically or economically too weak to even attempt to undertake the dangerous journey - are not even considered. Improving the situation in the first countries of reception (step 2) and along the migratory routes (step 3) is key to creating a better situation for the most vulnerable. This also addresses one of the major challenges, that solely improving the situation in regions of origin is not sufficient enough. Such measures must go hand in hand with improving the information available to potential migrants and migrating refugees about the dangers and consequences of irregular movements. In order to definitively prevent the tragic loss of life and eliminate the incentives for dangerous journeys, “Mobile Protection Teams” need to engage directly with the people concerned within crisis regions. *Such teams*, consisting of asylum experts from our authorities, determine who should be offered protection as a refugee; considering vulnerability and need for protection as well as potential links to an EU Member State. These refugees can subsequently be brought to Europe safely and without risking their lives by placing themselves in the hands of human traffickers. Furthermore, it will provide European migration and integration authorities with better management tools as quantities will be more predictable, better plannable and therefore easier to manage for the receiving countries.

Providing sanctuary to the most vulnerable, while upholding the core principle of protection, will allow our asylum and migration policies to become sustainable and resilient.

Step 2 - Help to create perspectives in regions of origin instead of enabling irregular migration to Europe

Stabilization and assistance to regions of origin and countries of first reception in order to expand the protection space and improve living conditions and livelihoods of refugees and host communities, including through the creation of jobs and other opportunities for self-reliance. It should ensure that refugees can enjoy an adequate level of protection, livelihoods and eventually benefit from a durable solution in the region. This should include analysing and improving data on the relationship between inadequate protection, lack of access to

development opportunities, and irregular secondary movement. There is also a need for capacity building regarding integrated social services for refugee and host communities, including those relating to housing, health care and education. It is crucial for the acceptance of refugees that local host populations share in the benefits available to refugees. At the same time, it is necessary to provide targeted and accessible information about viable and regular pathways for migration to Europe as well as the risks of irregular migration.

Step 3 - Prevent further deaths and tragedies in the Mediterranean and along the migratory routes

It is important to stabilize and support transit countries as well as receiving countries. The asylum and migration authorities of these states must be sufficiently equipped to provide effective protection, respect human rights, and combat smuggling and trafficking. In addition to the information campaigns mentioned above, support should focus on areas such as return counselling and a range of tailor-made return and reintegration assistance. Capacity-building should be undertaken in such a way as to reduce the incentive to use countries along the EU's common external border as a viable means to access sanctuary in the EU. The primary route into the EU should be through enhanced resettlement from first countries of asylum.

Step 4 - Break the business model of traffickers and smugglers

Effective management of the external border of the European Union is a prerequisite for the functioning of any European Migration and Asylum System. Unfortunately, today the word "asylum" and the unintended use of the SAR-regime offer an open door to Europe and undermine effective border control. This further subverts the concept of asylum by making it vulnerable to abuse by organized criminal networks and irregular migrants, as described above.

It is important to increase the capacities of FRONTEX, to expand its mandate – while upholding sovereignty of states – and to intensify cooperation with third countries, especially those on the African side of the Mediterranean. Migrants trying to come to Europe with smuggler-boats shall be rescued as quickly as possible and brought back to SAR-centres / Regional Disembarkation facilities outside the EU. It is of fundamental importance that asylum and resettlement to/in the EU cannot be sought by those having been rescued; such an opportunity would constitute a significant pull factor and further incentivise dangerous journeys at the hands of smugglers.

Step 5 - Guarantee effective management of the EU's external borders & Ensure all individuals staying illegally leave the EU

Implementation of step 1 to 4 will lead to a significant drop in asylum applications in the EU. This limited future number of applications must be made at the external border. At hotspots, people will be registered, fingerprinted and screened for security reasons. However, this does not mean they have the right to enter the European Union. The procedure will be conducted directly at the hotspots (Controlled Centres) or transit zones. There, the safe third country or first country of asylum concept will be applied and manifestly unfounded claims will be rejected. The legal option for such processing already exists in the EU-acquis but could be strengthened further.

Rule of law is a core principle of the European Union and therefore needs to be clearly reflected in our actions: those who do not have a right of residence cannot and must not stay in the EU. Therefore, following a negative decision, the person shall be returned directly from the hotspots/transit zones to their country of origin or first safe country of asylum. All foreign policy tools must be used to ensure that countries of origin readmit their nationals. In cases in which return is not possible, the person should be placed in an open Return Centre in a third country or given the opportunity to migrate legally to an alternative third country. Such centres are to meet European human rights standards and provide intensive return counselling. The possibility of accessing an assisted return and reintegration programme will be provided.

Step 6 - Engage in common but differentiated responsibility-sharing in order to protect refugees and effectively stem irregular migration to the EU

During and after establishing and implementing a better protection system, all Member States should contribute to a functioning mandatory European solidarity mechanism according to their strengths and abilities. This could be done through different means of solidarity. Solidarity could be provided directly to the frontline Member States, for example through the secondment of experts, through conducting joint processing of asylum claims or through the engagement in shared return efforts. Other solidarity measures could include the provision of financial resources to enhance protection of refugees in regions of origin and along the migratory routes to the EU, support to disembarkation arrangements outside the EU, support to authorities of transit countries to fight trafficking and smuggling, resettlement or any other active assistance. All such solidarity measures must aim at enhancing protection of refugees, stem flows of irregular migrants and migrating refugees and build on the principle of differentiated responsibility-sharing.

Step 7 - Offer resettlement to those with the greatest need for protection rather than the strongest selecting themselves

Once irregular migration is reduced and public trust restored, enhanced EU-wide resettlement efforts targeting the most vulnerable refugees, based on mobile protection teams, will present a key element of a Better Protection System for a Globalized World. "Mobile Protection Teams" will determine the need for protection and identify the most vulnerable directly on-site.

These are the seven steps we need to take; seven steps to regain control, order and trust; seven steps to arrive at a fairer and better system capable of operating in a globalized world.

Once in place, it will lead to

- less exploitation and loss of lives along the route
- less irregular migration
- less profit for organized crime
- more protection to people in need
- more social cohesion
- more money for regions of origin
- more acceptance and trust in receiving countries

and become a protection system that is worthy of its name.