



Training Seminar for Lawyers on EU Law relating to Asylum and Immigration (TRALIM)

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**The European Union's Response to the recent "refugee crisis": the
legal instruments in practice**

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European “refugee crisis”: is it a crisis and why?

❑ it's about refugees : persons falling in the scope of Art. 1a of 1951 Geneva Convention

❖ Number of entries in the EU

2014: 282.962
2015: 1.822.337 -- 1.000.000
2016: 360.000 (-30.6.2016)

Number of asylum applications

In the EU: 650.000 (2014)
1.350.000 (2015)
In Italy: 65.000 (2014), 84.000 (2015)
In Germany: **203.000 (2014), 477.000 (2015)**

(sources: Frontex, Eurostat, EP)

GLOBAL TRENDS (2014, year of refugee crisis in the world)

UNHCR, “World at War – Global trends, forced displacement in 2014”

Internally displaced persons: 11,0 million

New Refugees: 2,9 million

DEVELOPING REGIONS hosted 86% of the world's refugees

The Last Developed countries provided asylum to 3,6 million refugees= 25% of the global total

GLOBAL TRENDS

Top hosting countries:

1. Turkey: 2,5 m.
2. Pakistan: 1,6 m.
3. Lebanon: 1,1 m.
3. Iran: 989.400
4. Ethiopia: 736.100
5. Jordan: 664.100

Sub-Saharan Africa hosted 3.7 million refugees;

South Soudan sent 1,5 m. IDPs + 500.000 refugees to:
Ethiopia (188,500), Uganda (128,400), Sudan (115,500), Kenya (67,000);

From Democratic Republic of the Congo: Uganda (13,300), Burundi (7,500), and Kenya (6,000);

The Central African Republic sent 160,300 persons into Cameroon (116,600), the Democratic Republic of the Congo (19,500), Chad (14,200), and the Republic of Congo (11,300);

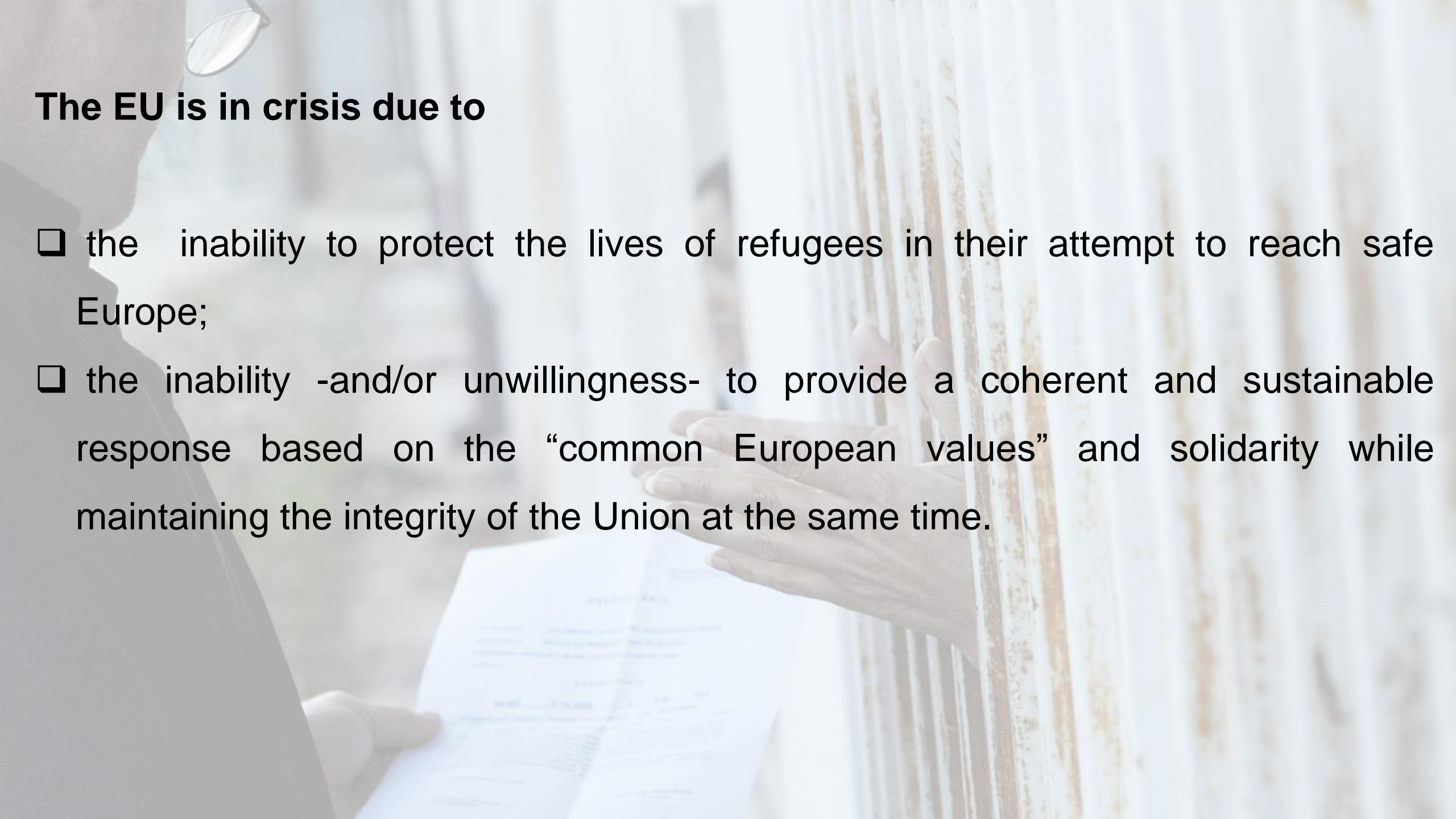
Since 2008, more than 582,000 refugees have arrived in Ethiopia, and by the end of 2014 the refugee population had grown to 659,500 – the fifth-largest such population in the world. As such, Ethiopia became the largest refugee-hosting country in sub-Saharan Africa, a ranking that had been held by Kenya since 2010.

SYRIAN CRISIS (UNHCR, Sept. 2016):
4,8 m. refugees in Turkey, Lebanon, Jordan, Egypt and Iraq.
+ 6.6 m. IDPs.
EU: 1 m. applications (Germany: 300.000, Sweden: 100.000)

European “refugee crisis”:

Key features:

- ❑ arrivals in the EU are extremely uneven between Member States;
- ❑ Major influx at coastal EU border countries (Italy, Greece);
- ❑ lack of safe legal paths towards the EU = loss of lives at sea;
- ❑ unequal distribution of refugees among member states;
- ❑ lack of decent reception conditions;

A person in a dark suit and glasses is looking at a document. A hand is reaching out from the right side, touching the document. The background is a blurred window with vertical bars.

The EU is in crisis due to

- ❑ the inability to protect the lives of refugees in their attempt to reach safe Europe;
- ❑ the inability -and/or unwillingness- to provide a coherent and sustainable response based on the “common European values” and solidarity while maintaining the integrity of the Union at the same time.

A person wearing glasses is shown in profile, reading a document. The background is a window with vertical bars, suggesting a restricted or institutional setting. The text is overlaid on the image.

Consequently, it is more a political crisis within the EU and among member states than it is a refugee crisis in itself...

(see BREXIT referendum, 2016)

A DISCUSSION ON BORDERS & DISPLACEMENTS

- What is a border?
- Is the border open or closed?

Deaths in the Mediterranean

USA – Mexican border

Evros wall

- Can we close the border?
 - Practically?
 - Legally?
 - Who can close the border?
 - Can we open it for some people and close it for others?

In Idomeni, was / is the border closed or open?

A person wearing glasses is shown in profile, looking at a document held in their left hand. Their right hand is pressed against a rusty metal fence. The background is a blurred outdoor setting with a fence and some foliage.

migration/displacements of people:

Refugees

Migrants

Environment

OTHER



What is an illegal entry?

Why is it illegal?

Is LEGAL entry possible?

Punishment of illegal entry (?)

The **FORCED** character of displacement

What are the reasons/motivation for a forced displacement

❖ Top nationalities of asylum seekers:

- Syrians
- Afghans
- Iraqis
- Western Balkans
- Eritreans
- Somalis

ONCE IN EUROPE WHAT DO THEY LOOK FOR?

- **Safety + security**
- **access to basic rights**
- **education, healthcare, shelter, employment**
- **be with the family/where they may have community links**
- **right for self determination: ability to run a household + be in a position to determine life**
- **human dignity**

EU LEGAL INSTRUMENTS

“Traditional” instruments:

- ❑ Need for protection = access to asylum + fair procedures within the EU
- ❑ Need for harmonized approach + equal level of protection of refugees within EU m/s= Common European Asylum System (CEAS)
- ❑ Need for responsibility sharing among member states = Dublin Regulation
- ❑ Need for decent living conditions = reception directive
- ❑ Need for protection of family unity within the EU: family reunification

A person wearing glasses is looking at a document. A hand is reaching out to touch the document. The background is blurred, showing what appears to be a window or a wall with vertical lines.

NEW LEGAL INSTRUMENTS

- a. Need for more solidarity among EU members + safe passages within the EU + timely protection = relocation mechanism**
- b. Need to reassess Dublin Regulation – Dublin IV proposal**
- c. Need to control migratory influx, guard the borders + confront illegal migration = EU – Turkey agreement**
- d. Reinforcement of Safe passages towards Europe/Resettlement?**

RELOCATION MECHANISM

Objectives:

- to establish an emergency mechanism for a fairer distribution of asylum seekers within the EU
- alleviate Greece and Italy (Commission proposal included Hungary)
- provision for permanent mechanism for future “crisis”
- Common European response to the refugee crisis
- Cover immediate protection needs

RELOCATION MECHANISM

Legal basis: Art. 78.3 TFEU

"In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament"

Adoption of 2 EU Council Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece:

- Decision (EU) 2015/15231: 40 000 applicants
 - Decision (EU) 2015/16012 : 120 000 applicants for international protection are to be relocated from Italy and Greece and from other Member States
- In a period of 2 years from the decision (Sept. 2015-2017)

RELOCATION MECHANISM

Beneficiaries:

- “in clear need of international protection”
- nationalities which have an average recognition of at least 75% within the EU

... who has the right to choose?

... uncertainty over selection criteria and procedures

RELOCATION MECHANISM

One year after...

IS IT WORKING?

IS IT A USEFUL INSTRUMENT FOR ALLEVIATING THE CRISIS?

5.290 persons relocated from Greece (out of 66.400)

1.156 persons relocated from Italy (out of 39.600)

=

Total number relocated = 5.290 or 3% of the original target

(source: UNHCR, 21st Sept. 2016)

RELOCATION MECHANISM

- **System not attractive to asylum seekers**
- **Lack of confidence in the EU**
- **Bureaucracy + lengthy procedures**
- **Uncertainty + not enough information/counselling**
- **Based on country profiles – not individual**
- **Only for applicants having arrived before 20th March: discrimination?**
- **Incompatible with requirements of rule of Law + human rights**

RELOCATION MECHANISM

- ❖ URGENT NEED OF SPECIFIC LEGISLATION that would take into consideration the above
- ❖ Need for more places for relocation
- ❖ Need for speedy + fair procedures
- ❖ Need for legal aid + counselling
- ❖ Need for transparency in decision making
- ❖ Need to reinforce the choice of applicants: insist on cooperation

DUBLIN III and recast proposal

Regulation EU 604/2013 of the European Parliament and the Council of 26 June 2013

establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third country national or stateless person.

Sets Criteria for Responsibility allocation for examination of claims

OBJECTIVES:

- Guarantee rapid access to asylum procedures**
 - Prevent from multiple applications**
 - Combat secondary movements**

THE DUBLIN SYSTEM IN PRACTICE

Widely criticized for being highly dysfunctional + ineffective:

- ❑ most common criterion applied for responsibility is the illegal entry criterion
- ❑ puts extreme pressure on border countries
- ❑ discourages refugees to apply in country of 1st entry
- ❑ extremely technical provisions + procedures
- ❑ lengthy + bureaucratic procedures (not rapid access to protection)
- ❑ fails to protect family unity
- ❑ discretionary clauses for humanitarian purposes almost never used
- ❑ large-scale disparities in reception conditions and procedures
- ❑ lack of cooperation among states

COMMISSION PROPOSAL FOR DUBLIN RECAST

Aims at:

- Bringing more efficiency to the system
- Ensuring timely access to protection
- Discouraging secondary movements within the EU/ “asylum shopping”
- Ensuring fairer responsibility sharing among states
- Empowering applicants’ rights

COMMISSION PROPOSAL FOR DUBLIN RECAST

A critical approach:

... does not reflect the current questions in asylum

... does not deal with the refugee crisis

Complicates the system further

Does not relieve overburdened states

More restrictions of movement within the EU

Disproportionate sanctions for ensuring compliance

Not in line with European human rights standards, CJEU, ECHR

Does not prevent secondary movements

The EU – Turkey agreement:

Prevent – Return – Resettle

- All “irregular” migrants crossing the Turkish-Greek borders after March 20 will be returned to Turkey. [...] Those not applying or whose application is found inadmissible or unfounded will be returned to Turkey.
- For every Syrian returned to Turkey from Greece another Syrian will be resettled from Turkey to EU.
- Turkey will take any necessary measures to prevent new sea or land routes for illegal migration.
- Once irregular crossings between Turkey and EU are ending or at least have been substantially and sustainably reduced, a Voluntary Humanitarian Admission scheme will be activated.
- The fulfilment of the visa liberalization roadmap will be accelerated vis-à-vis all participating member states with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met.
- The EU in close cooperation with Turkey will further speed up the disbursement of the initially allocated 3 billion euros under the facility for refugees in Turkey.

The EU – Turkey agreement:

Prevent – Return – Resettle

Major problematics and criticism

- No reference of the term “refugee”
- Creation of a tool for combatting illegal migration used for prevention of entry of refugees
- Presumption of Turkey as a safe third country

The EU – Turkey agreement:

Prevent – Return – Resettle

**In order for the deal to be enforced
the rule of law should be ignored:**

- EASO experts in the Greek islands recommend...
- Greek Minister of Migration => intervention in the role of the “independent” members of the asylum appeals’ committees

The EU – Turkey agreement:

Prevent – Return – Resettle

Present Day:

The EU – Turkey deal is officially suspended