THE EU, TURKEY AND REFUGEES: THE NEED FOR HUMANITARIAN APPROACHES

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Executive Summary

The world is experiencing the highest levels of human displacement ever, with over seventy million people displaced around the world. Twenty-six million displaced individuals are refugees – individuals fleeing due to a well-founded fear of persecution. Even though there are more people in need due to displacement, global trends and practices have been less amenable to supporting refugees.

The EU is an example of global trends as significant attention is placed on ensuring that those seeking international protection cannot make it to the borders and on outsourcing responsibility for addressing the needs of refugees. There is also an absence of solidarity and cooperation in support of refugees. Turkey currently has the largest refugee population in the world, but individuals in Turkey face an uncertain future as their status is only temporary given Turkey’s limited adherence to international standards. More of a concern is Turkey’s use of the refugee situation as a tool to compel the EU into particular courses of action in support of Turkey’s domestic and foreign policy objectives.

In 2016 the United Nations General Assembly adopted the New York Declaration for Refugees and Migrants, recognising the need for increased global cooperation to address the situation of refugees through a humanitarian, people-centred approach. In 2018 the Global Compact on Refugees established a Programme of Action directed at responsibility sharing and innovative approaches through multilateral and multisectoral action, to develop necessary and sustainable responses to the needs of refugees, with a focus on the humanitarian dimensions. The initiatives provide an effective framework for moving away from politicising refugees, yet the situation between the EU and Turkey shows that much more needs to be done to support refugees on a humanitarian basis.

The humanitarian crisis facing refugees and other displaced persons should be a matter of intense global concern. With the number of people fleeing a well-founded fear of persecution increasing, action needs to be taken to address the root causes, but more importantly with regards to the reception and accommodation of refugees. Instead states are proving more and more reluctant to support refugees. Governments attempt to demonstrate rhetorical support for refugees but action is focussed on ensuring refugees do not cross their borders.

The absence of humanitarian approaches due to negative attitudes and responses to refugees is a serious obstacle to ensuring that the most vulnerable are not left behind. The current situation between the EU and Turkey demonstrates how refugees are politicised and the detrimental impact this has upon the experiences of refugees.
1. Introduction

From the end of 2012 large numbers of individuals became displaced in Syria as a result of the conflicts there – ranging from the civil war to the impact of ISIS/Daesh. By mid-2013 over a million people a year were fleeing a well-founded fear of persecution and were seeking international protection as refugees. Refugees travelled primarily to Jordan, Lebanon and Turkey. From the end of 2014 the refugee population in Turkey grew significantly, up to a point where today Turkey is the state with the highest number of registered refugees with over 3.5 million. Significant numbers of these refugees attempted to travel to the European Union (EU), overwhelming the EU's framework for receiving refugees and leading to the EU-Turkey Statement of March 2016 to limit the inflow of refugees to the EU. The EU's efforts to stop refugees from entering the EU from Turkey is part of a larger strategy by the regional organisation to ensure that individuals fleeing persecution are unable to make it to the borders of the Member States and therefore cannot make claims for asylum.

Turkey has been overwhelmed with refugee inflows as a result of the conflicts in the Middle East region. Individuals fleeing the conflicts in Syria have been joined by individuals fleeing persecution as a result of the events in Afghanistan and Iraq. Turkey has taken measures to support individual refugees, while at the same time Turkey has also exploited the situation in an attempt to further a number of foreign and domestic policy objectives. Turkey has been using the refugee situation as a bargaining tool to pressure the EU and others for greater support across a range of issues, from financial support for refugees to support for Turkey's idea of creating a "safe-zone" for refugees in Syrian territory.1 These threats have continued and at the end of February 2020 Turkey announced that it would no longer patrol its land and sea borders with Greece.2 This led to thousands of refugees in Turkey attempting to cross into Greece in the hope of seeking asylum in the EU, but they were denied entry by Greece and the EU.

These recent events are part of the ongoing, global humanitarian crisis with unprecedented numbers of refugees, asylum seekers and displaced persons fleeing conflicts and instability. The

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1 "No good deed goes unclaimed; refugees in Turkey" The Economist 3 October 2015, https://www.economist.com/europe/2015/10/01/no-good-deed-goes-unclaimed; "Turkey's Erdogan threatened to flood Europe with migrants" Reuters, 8 February 2016, https://www.reuters.com/article/us-europe-migrants-eu-turkey-idUSKCN0VH1R0
2 "Turkey threatens to 'open the gates' to Europe for refugees" DW, 5 September 2019, https://www.dw.com/en/turkey-threatens-to-open-the-gates-to-europe-for-refugees/a-50317804
scale of the humanitarian crisis is clear as there are 70 million displaced persons around the world and the global support for these people in need is considerably lacking. The trends in the global system towards refugees have been more about states protecting their borders and interests than in providing humanitarian support for people fleeing persecution. Despite the political rhetoric from governments in support of refugees, greater attention and resources are being directed to ensuring individuals in need cannot reach borders in order to claim asylum or minimising support for refugees.

**REFUGEES, ASYLUM SEEKERS, IRREGULAR MIGRANTS**

- **Refugees** – individuals who have been given a specific international status due to fleeing a well-founded fear of persecution.
- **Asylum seekers** – individuals fleeing persecution and seeking a determination of refugee status. This term applies prior to receiving the international status as a refugee.
- **Internally displaced persons** – individuals forced to flee conflicts, violence or unrest who have not crossed an international border.
- **Irregular migrants** – individuals who have entered a country illegally or who have violated applicable immigration rules.

In 2016 the UN General Assembly adopted the New York Declaration for Refugees and Migrants (hereafter the New York Declaration) that recognises the need for increased global cooperation to address the situation of refugees through a humanitarian, people-centred approach. This was followed in 2018 by the Global Compact on Refugees (GCR) that sets out a Programme of Action directed at responsibility sharing and innovative approaches, through multilateral and multisectoral actions, to develop necessary, humanitarian and sustainable responses to the needs of refugees. The current situation of refugees in Turkey and the role of the EU in the matter shows that much more needs to be done to meet the vision and objectives of the New York Declaration and the Global Compact on Refugees, something all states in the world have an interest in following.

The 2016 New York Declaration and the 2018 Global Compact on Refugees are designed to address the increase of displaced persons globally and to counter the growing global hostility to refugees. This hostility towards refugees is part of the wider suspicion and dislike of outsiders that is impacting societies. Such hostility is driven by a wide range of issues and concerns that are based on economics, cultural differences, tribal mentality and nationalist spirit, all either real or perceived.

The growing acrimony directed towards outsiders is fuelled further by the current impact of COVID-19 globally. The global response to the pandemic has resulted in further restrictions to border entry and extensive resources being spent on the medical response and on economic support. These will continue to burden government finances in the coming years, which may result in fewer resources and attention being given to the circumstances of refugees and asylum seekers. The COVID-19 impact is going to require a reconsideration of how things are done across a range of sectors and unfortunately it appears that improving policies and action to bring about

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more humanitarian approaches to refugees may not be realised at a time when signification action is needed.

This contribution addresses the problems in the EU-Turkey approach to refugees, demonstrating the negative results inherent in a “divisive and politicized discourse about refugees.” In section 2 the current global situation is set out along with the international framework for refugee protection, identifying recent developments as the necessary reference points for the effective protection and support for refugees. Section 3 assesses the EU’s and Turkey’s policies on refugees in connection to this global framework, demonstrating the disconnect between global norms and actual action towards refugees. Section 4 examines the EU-Turkey Statement in further depth and within the context of EU-Turkey relations more generally, demonstrating how the political interests of states take priority over the humanitarian interests of people in need. Section 5 provides examples on how to move forward on the practical action needed to realise the humanitarian approach set out in the New York Declaration and the Global Compact on Refugees.

2. The Syrian Conflict and State of Refugees in the World

The humanitarian impact of the Syrian conflict from 2011 onwards is clear. As a result of the fighting between government forces and those aligned against the government, including the rise of ISIS and other extremist groups and the government’s action to counter these actors, almost half of the Syrian population of 22 million is either dead (500,000), internally displaced (6.2 million) or have fled the country (3.6 million). The number of Syrian refugees is further enhanced by the significant number of refugees fleeing war and unrest in Iraq and Afghanistan, two further protracted conflicts characterised by instability. In relation to Syria, Turkey is not alone in receiving refugees, as Lebanon (with over 900,000 registered individuals) and Jordan (with over 600,000 registered individuals) have also received significant numbers of refugees. Saudi Arabia has accommodated over 600,000 individual Syrians who have been made refugees because of the conflict and the UAE is hosting approximately 240,000 Syrians. In Saudi Arabia and the UAE these individuals are not registered as refugees by the UN High Commissioner on Refugees but have received effective support.

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Refugee flows in the Middle East region have dominated the headlines in the past few years due to the prevalence of insecurity and conflicts in Afghanistan, Iraq, Syria and Yemen. There is also the extensive presence of internally displaced persons within these states who are not officially registered as refugees, as they have not crossed a national boundary, but who are in need of extensive humanitarian assistance. The Middle East is only a part of the overall global situation whereby, according to the Office of the United Nations High Commissioner for Refugees (UNHCR), the world is experiencing the highest levels of human displacement ever. There are 70 million people currently displaced around the world, with 26 million refugees.

The refugee situation is global and the numbers are increasing year in and year out. At a time when more cooperation is needed to address everything from the causes of displacement to reception and support mechanisms, it appears that such actions are in decline. The UNHCR has been reporting that the security situation for refugees is worsening in many cases, including preventing displaced persons from crossing borders, returning displaced people to insecure situations, the separation of families and the loss of life when individuals turn to people smugglers. Added to that, the “divisive and politicized discourse about refugees and migrants” has increased the protection risks. The UNHCR does credit the international community with increased funding to support the activities of the organisation but again highlights a variety of shortcomings. The primary one is the gap between the funding provided and the funding needed. The limited resources are further restricted as more and more funding given to the UNHCR is also subjected to increased earmarking. Earmarked funding will carry specific guidance for which the money can be used. This allows specific projects to be carried out but equally constrains the ability of the UNHCR to be flexible and responsive in relation to the overall, global needs of refugees.

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6 Report of the United Nations High Commissioner on Refugees, covering the period of 1 July 2018 -30 June 2019, UN Doc. A/74/12, para. 3.
The actions of the EU and Turkey towards Syrian refugees are emblematic of general trends in the world today. States have implemented more and more measures to ensure that their borders are “secure” in response to individuals attempting to enter. This applies across all aspects of migration as visa requirements are increased, travel providers are required to ensure that travellers have the necessary documentation and increased powers are provided for officials at the borders. There are also trends to outsource border responsibilities to third countries, preventing individuals from leaving their places of origin. This has resulted in increasing attitudes of racism and xenophobia in societies and these attitudes are exploited by politicians. The result is that, even though one sees human suffering caused by conflicts, there is often little sympathy to support those fleeing persecution.

Through the United Nations there have been efforts to redress the movement away from humanitarian approaches to refugees. The New York Declaration and the GCR provide significant support to the global framework for global action and cooperation on refugees. The global framework starts with the Refugee Convention of 1951 and the 1967 Additional Protocol to the Refugee Convention. The Refugee Convention set out the core definition of a refugee, which is an individual who is outside their country of nationality and, due to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,” is unable or unwilling to return to that country.\(^7\) The Refugee Convention does not create an individual right to asylum. The obligation upon states is to recognise who is a refugee and to provide necessary support for refugees, with a core obligation on states to ensure that refugees are not returned or sent to any territory where there is a threat to “life or to freedom” on the basis of “race, religion, nationality, membership of a particular social group or political opinion;”\(^8\) commonly called the principle of non-refoulement.

The Convention system calls on states to treat refugees in a humane fashion. This includes not using state security measures that disproportionately impact refugees (given their situation) and not penalising refugees for violating immigration rules upon entry. Further measures expected by the Convention include ensuring that the asylum claims are done as efficiently and quickly as possible, taking measures for education, in particular education for children and young people, access to housing, public welfare and access to labour markets. These measures are intended to support refugees to live a life of dignity with the potential to become economically self-reliant, benefitting themselves and their host communities.

At the time of the Convention’s adoption it was recognised that particular states faced disproportionate demands, being called upon to manage large influxes of refugees, and this required international cooperation. The importance of cooperation was further emphasised in the Convention “expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.”\(^9\) But states have over time moved away from these guiding principles, including further securitising borders and entry procedures in a way that prevents individuals fleeing a well-founded fear of persecution from ever entering. There has been an increasing use of legal barriers, the creation of buffer zones, stricter visa requirements for travel, using travel providers as front-line enforcers, designating airports as “not the territory of a state” and other measures.\(^10\) The intention of these measures is to discourage individuals from seeking asylum as well as actively preventing individuals who are fleeing persecution from finding a place of safety. The efforts to attempt to discourage refugees are heavily influenced by domestic political pressures regarding migration generally, as well as global trends to securitise borders in response to illicit transnational activity.


\(^8\) Article 33, UN Convention on Refugees, op.cit.

\(^9\) Preamble, para. 5, UN Convention on Refugees, op.cit.
Efforts to change the way the world views refugees came with the New York Declaration for Refugees and Migrants that was agreed in September 2016. The New York Declaration reaffirms the need for global cooperation to address the circumstances facing refugees, with states contributing in a variety of ways. It emphasises that more multilateralism is needed at a time when states are focussing on their own security needs instead. The New York Declaration recognised that a “divisive and politicized discourse about refugees and migrants contributed to growing protection risks.” It further explains that there is a need for a comprehensive refugee response framework grounded in humanitarian values to meet the needs of refugees. This Comprehensive Refugee Response Framework (Annex 1 of the New York Declaration) is based “on the principles of international cooperation and on burden- and responsibility-sharing.” The Framework and overall thrust of the NY Declaration is to “ensure a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons arriving” in states.

Importantly the Declaration strives for a more human-centred approach and ties in with the United Nations Sustainable Development Goals (SDGs). The SDG link is an important part of the multilateral need for cooperation towards refugees, as the SDGs already have a significant buy-in from states and is a verifiable data-driven process. At the adoption of the SDGs it was recognised that “people who are vulnerable must be empowered” and this includes the needs of refugees and displaced persons. The SDG link also brings a holistic approach to the refugee situation by addressing the root causes that lead to insecurity and conflict up through how refugees are treated throughout their journeys. At the ten year review process of the SDGs, a specific indicator on refugees has been included. This will allow for increased attention to be given to the needs of refugees as well as ensuring that programmes designed to realise the SDGs include refugees. The SDGs are built on the belief that “no one is left behind” and as a global project this includes all those fleeing conflicts. The achievement date for the SDGs is

11 New York Declaration, para. 4, op.cit.
12 Ibid, Annex 1, para. 1.
13 Ibid, para. 22.
15 New York Declaration, op.cit., paras. 12 and 16.
now less than a decade away, which will require states to give greater attention to the situation of refugees in the world if they are serious about leaving no one behind in realising the SDGs.

In 2018 the UN General Assembly took a further step in attempting to transform the global regime for refugees through an agreement on the Global Compact on Refugees. The GCR is an integral part of the comprehensive refugee response framework, giving greater detail to the New York Declaration and setting out plans for “concrete and practical action.”17 The purpose of the GCR is to “provide a basis for predictable and equitable burden- and responsibility-sharing among all United Nations Member States, together with other relevant stakeholders as appropriate.”18 The GCR is guided by the same principles as the New York Declaration, such as the “fundamental principles of humanity and international solidarity” in attempting to “operationalize the principles of burden- and responsibility-sharing to better protect and assist refugees and support host countries and communities.”19 The objectives of the GCR include:

(i) easing pressures on host countries;
(ii) enhancing refugee self-reliance;
(iii) expanding access to third country solutions; and
(iv) supporting conditions in the countries of origin for return in safety and dignity.

The GCR responds to the current challenges facing refugees by providing a framework for safety and security. Not only is the number of displaced people around the world at a high level, individuals are also spending more and more time outside their countries of origin due to the protracted nature of conflicts. The GCR provides a structure for ensuring that refugees are treated in a humane way through non-politically motivated cooperation among a range of stakeholders. It seeks to bring about practical measures to improve measures for burden- and responsibility-sharing globally. Practical measures are wide ranging, to ensure that refugees are treated humanely and are able to pursue a dignified life. Globally attention is on increasing support in areas of material and technical assistance, so that states can receive refugees effectively and humanely. Furthermore the GCR calls for increased innovation in realising solutions to refugee situations, which include voluntary repatriation, resettlement and complementary pathways of admission to third countries.

The UNHCHR has viewed the GCR as “a milestone in the refugee protection regime. If implemented in a robust manner, the GCR can be a true ‘game changer’ with the potential to transform the way the international community responds to refugee movements.” Furthermore, the UNCHR explains, the GCR “inspires greater collaboration, imagination and political will to find meaningful solutions for millions of displaced people and their host countries.”20 As with all global aspirations, it is up to states, both individually and collectively, to take action for the realisation of the objectives that have been agreed. In endorsing the Global Compact, only two states voted against – Hungary and the United States. In the explanations of the vote, however, other states emphasised that the GCR is non-binding and does not create any new legal obligations.21 The purpose of the New York Declaration and GCR is not to create binding international legal obligations, but rather that the documents are intended to provide a framework for effective action in support of refugees. As such we can use the New York Declaration and GCR as reference points to evaluate and assess the efforts of states in realising humanitarian approaches to refugees.

17 Global Compact on Refugees, op.cit., para. 2.
18 Ibid, para. 3.
19 Ibid, para. 5.
3. The EU-Turkey Responses to Refugees

The New York Declaration and GCR are intended to refocus the treatment of refugees around the world. We have yet to see any major changes in approach. The situation of Syrian refugees in Turkey illustrates how much needs to be done, as both the EU and Turkey are prioritising self-interested political objectives over the humanitarian treatment of refugees and asylum seekers. At present the circumstances of almost four million people depend upon political calculations by both the EU and Turkey, rather than on a concentrated effort at multilateral cooperation in support of a more humanitarian approach.

A. EU-Turkey Relations

The EU-Turkey response to refugees is caught up in EU-Turkey relations more broadly. This relationship is continually fraught with complications and is heavily influenced by domestic political situations. Turkey has been active in European-based multilateral initiatives, joining the Council of Europe in 1949 and NATO in 1952. In 1963 an Association Agreement was signed between Turkey and the EU (then the European Economic Community) that formalised relations, seeking to establish a customs union, regulating trade and related measures and foreseeing eventual full membership of Turkey to the EU. Turkey formally applied for membership in 1987 and negotiations on accession to the EU formally opened in 2005.

As membership to the EU is defined by specific criteria, all new member states have to meet the established criteria as set out in agreements. The EU is not required to accept any state that wishes to join and over the years the depth and breadth of membership criteria has increased. Turkey’s membership to the EU has, from the start, thrown up a range of political concerns and questions regarding membership. Military coups in the 1970s and 1980s concerned the intergovernmental organisations of Europe in relation to Turkey’s respect for democracy and human rights. Concerns over human rights have been a continual point of contention, ranging from the treatment of

Kurds, to denials of civil and political rights and to prohibitions of the media. The continued occupation of northern Cyprus by Turkish forces raises issues of compatibility with the UN prohibition on the use of force and politicians have regularly raised questions about Turkey’s compatibility with Europe and its values, including concerns over migration. This latter point has often been explicitly racist, which has not been conducive to effective relations.

For all applicants to the EU there exist established membership criteria (the Copenhagen Criteria), which include respect for human rights and the rule of law, and there exist processes for suspending membership negotiations. In 2016 the European Parliament requested a suspension of membership negotiations as a response to the measures taken by the Turkish government following the alleged coup that year. The European Council took the decision not to open up any new negotiations on membership and a 2019 report from the European Commission says negotiations on accession “have effectively come to a standstill.”

At the same time the changing dynamics of the domestic political scene in Turkey influences relations with Europe. The Turkish position to the EU has fluctuated from a keen desire to join the EU to outright rejection of joining the bloc and to all or nothing demands of the membership process. The situation has become tenser under the leadership of Prime Minister and President Erdoğan. In 2012 Turkey refused to engage in any negotiations for the six-month period in which Cyprus held the rotating presidency of the EU. That same year Prime Minister Erdoğan said he expected full membership of Turkey to the EU by 2023. President Erdoğan has also made clear that any status less than full membership to the EU would be unacceptable. At the same time Erdoğan has rejected the EU’s views on democracy and human rights, even though this is part of the EU’s criteria for new members. He has criticised Europe for not allowing his government to undertake political activities in Member States, using the term “Nazis” to describe European governments, and he has characterised the EU-Turkey relations as a battle between Christianity and Islam. These animosities have continued through the current refugee situation, discussed further below.

In 2016 the European Parliament requested a suspension of membership negotiations as a response to the measures taken by the Turkish government following the alleged coup that year.

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B. The EU and Refugees

The EU’s system for refugees and asylum seekers is a complex set of instruments that strives to bring about a collective approach to addressing the needs of refugees. At the heart of the matter is Article 78 of the Treaty of the Founding of the European Union (TFEU), which provides:

The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 ….

The current system for administering EU activities in relation to asylum seekers and refugees is known as the Dublin rules, a system of legal instruments that have been in force since 1997. The core of the Dublin rules is that individuals fleeing a well-founded fear of persecution must apply for asylum in the first state of entry into the EU and that state must process the decision on asylum. This results in a disproportionate burden on the EU states that are in close proximity to conflicts. Demands for reform of the system have been in place for a considerable time, with few substantive changes. The main point of contention is the absence of burden sharing across the Member States, as a number of Members do not wish to engage in burden sharing due to domestic political interests that are not amenable to support for refugees. That results in an absence of cooperation within the EU that impacts the bloc’s ability to provide humanitarian solutions for refugees.

This was vividly illustrated when the number of refugees from the Syrian war increased dramatically from 2013 to 2015. It was clear that the Dublin system was insufficient when addressing such a humanitarian crisis. In 2015 and 2016 emergency measures (the necessity of which are recognised in Article 78(3) TFEU) had to be adopted by the European Commission, allowing for the relocation of asylum seekers to other Member States as a way of alleviating the pressure on EU frontline states. These measures were however not well received by a number of Member States. The emergency measures set targets to lessen the pressure Italy and Greece by

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relocating asylum seekers to other states. It was intended that 160,000 individuals would be relocated, but in the eighteen months following the adoption of the measures only 12,000 individuals had been relocated.

A 2019 report by the Court of Auditors found that there is a disparity between the objectives desired in the emergency measures and the results achieved and that the measures have not alleviated the situations in Greece and Italy.29 Across the EU states refused to cooperate, not allowing for any relocations, while others made use of the various conditions and restrictions built into the relevant legislation to prevent relocation, in spite of the emergency measures. The absence of a cooperative approach across the EU was illustrated by legal actions taken by Hungary and the Slovak Republic contesting the emergency measures designed to support refugees.30

Germany broke away from the EU Dublin Rules in 2015, allowing refugees to claim asylum in Germany and over a million individuals travelled to Germany before the end of 2015. But this did not alleviate the situation overall and neither did the EU’s investment and pressure on Greece to improve the conditions for refugees. While groups of Members States attempted to put forth areas for action, there was no overall effort to support refugees, with some States such as Hungary actively putting obstacles in place to deter refugees and to hinder EU cooperation.31 Across Europe there appears to be growing opposition to humanitarian approaches to refugees that would allow for more receptive policies that support them.32

At the time of writing the situation of asylum seekers and refugees has worsened because of the border restrictions in place due to the COVID pandemic.33 This supports the policies of the Member States attempting to deflect responsibility for refugees and will continue to influence the inability of the EU to foster cooperation in support of humanitarian approaches to refugees. The EU’s approach to refugees has been to try and ensure that individuals cannot make it to the EU’s border, by outsourcing responsibility and by securitising external borders.34 This externalisation of responsibility runs contrary to Article 18 of the EU Charter of Fundamental Rights and Freedoms, which provides that an individual’s right to asylum is guaranteed. As set out above, international refugee law does not contain an individual right to asylum, making the EU stand out as an example of a more humanitarian actor in this regard. But the concomitant policies and actions of externalising and securitising the EU’s borders are not in line with a humanitarian approach to refugees. The absence of solidarity amongst the Member States in relation to refugees will continue to hinder a collective humanitarian approach.

32 For example, political parties that are against immigration generally and refugees in particular have been gaining increased followings in Austria, Germany, and Italy, John Henley, “What is the current state of migration in Europe?” The Guardian, 21 November 2018, https://www.theguardian.com/world/2018/jun/15/what-current-scale-migration-crisis-europe-future-outlook.
C. Turkey and Refugees

In relation to refugee inflows, as a “front-line” state there is no doubt that Turkey faces a range of challenges. Turkey has a substantial history of hosting refugees and its position in relation to global cooperation has varied. At the time of the ratification of the 1951 Refugee Convention Turkey declared that for its purposes, refugee status is only applicable to individuals fleeing persecution in relation to events in Europe. In relation to refugee flows from the 1990s onwards, Turkey has continued to rely upon this declaration and has taken a securitised approach to refugees, limiting humanitarian support. Turkey has worked with the UNHCR in providing support for refugees but this cooperation has fluctuated as well. More recently Turkey has stated it will undertake efforts to act in accordance with the Refugee Convention, but individuals fleeing from states other than in Europe still have no legal guarantees in line with international standards for protection.35


Turkey has recently adopted domestic legislation that establishes a differentiation between refugees under international protection and those whose protection remains at the discretion of the government. Law No. 6458 of 2013, amended in 2016 and dealing with “Foreigners and International Protection,” sets out the differentiation of individuals entering Turkey fleeing persecution. In the legislation “refugees” are only individuals fleeing persecution in relation to events in Europe, in line with the state’s declaration under the 1951 Convention. There is then a second legal category of “Conditional Refugees” which covers individuals fleeing from events outside Europe. According to the legislation, conditional refugees are allowed to stay in Turkey only temporarily, until they return home or move to a third country.36 While Turkey worked with the UNHCR to register individuals fleeing the Syrian conflict as refugees, the UNHCR’s work to register individuals formally ended in September 2018.37 As a result of the new domestic

![Number of Refugees in Turkey](https://bit.ly/2YTvJZX)
legislation conditional refugees will continue to face uncertainty in Turkey, thereby limiting the realisation of sustainable solutions and deviating from the humanitarian approaches contained in the New York Declaration and the Global Compact on Refugees.

Turkey’s main solution to the inflow of Syrian refugees is the creation of a “safe-zone” inside Syrian territory. The safe-zone idea has been around since the start of the conflict, with its justification based on a range of Turkish strategic objectives that have been “consistent in cloaking its [Turkey’s] political ambitions under a humanitarian cover.”38 The safe zone idea contains a range of problems with regards to viability, as Turkey’s plan is to build, almost from scratch, new villages and facilities at a cost estimated to be over US$25 billion.39 The key obstacle is that the territory of the proposed safe zone is Syrian territory and Turkey’s plans are an illegal seizure of territory under international law.40 This means that Turkey does not have a legitimate justification for its actions in the immediate term and over the long-term the territory, if controlled by Turkey, will continue to be disputed by Syria. Such circumstances will not provide security for any individuals who are settled there.

4. EU-Turkey Statement for responding to Syrian Refugees

The desire of the EU to externalise its responsibilities to refugees and Turkey’s wish to use the refugee situation to achieve a variety of political objectives means that individuals fleeing persecution have not been able to realise effective humanitarian support. Remaining consistent with the tense relations between the EU and Turkey, President Erdoğan has used threats of allowing refugee flows into Europe as a means to gain support for his wider foreign policy objectives. The EU, on the other hand, wanted to ensure that refugees would not make it to the EU borders. This combination of factors led to the EU-Turkey Statement of March 2016.

Negotiations on the agreement began in November 2015. From the outset the discussions were not framed as ensuring humanitarian support for refugees, rather the meetings were billed as an “EU-Turkey discussion on a range of issues”.41 The discussions on individuals fleeing their homes

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due to conflicts and the fear of persecution were given the label of "irregular migration" and were combined with other reasons for individuals trying to migrate to the EU. This is highly problematic, for it starts with the assumption that anyone coming to the EU borders other than via established travel channels is somehow engaging in illicit acts. This requires a criminal justice or restrictive approach rather than a humanitarian one that would be more in line with the global framework on refugees. The humanitarian agenda was superseded by other political considerations such as liberalising visa entry for Turkish citizens and progress on the EU's accession process for Turkey.42

There are reports that relations between the EU and Turkey at this time were very tense, with President Erdoğan demanding greater respect from the EU and the EU keen to get Turkey to prevent refugees from reaching its borders.

President Erdoğan made his position clear in early 2016 in a domestic speech, stating that Turkey may open its borders to Europe, allowing refugees into the EU, as the EU had betrayed its promises to Turkey.43 Before he could follow through however, on 18 March 2016 the EU and Turkey came to an agreement on concrete measures to address the refugee situation. The EU-Turkey Statement stipulates that

- “irregular migrants,” regardless of nationality, travelling to the Greek islands from Turkey would be returned to Turkey for processing.
- For each Syrian returned to Turkey after the agreement, another Syrian would be resettled in the EU from Turkey.
- Turkey was to take “any necessary measures” to prevent new sea or land routes being used for irregular migration to the EU.
- A Voluntary Humanitarian Admission Scheme after irregular migration recedes should be created.
- A roadmap to be accelerated for removing visa requirements for Turkish citizens travelling to the EU.
- The disbursement of up to €6 billion from the EU to the Facility for Refugees in Turkey that would fund projects supporting refugees in Turkey.
- Further work on the EU-Turkey Customs Union Agreement.
- A re-energising of the accession process for Turkey and working at an accelerated pace regarding future membership to the EU.
- And finally, an agreement that “The EU and Turkey will work to improve humanitarian conditions inside Syria.”

The agreement was condemned by intergovernmental and non-governmental organisations.45 The UNHCR distanced itself from the Statement as it made reception centres in the Greek islands into “detention facilities.”46 The agreement thus became a clear example of the EU out-sourcing the refugee problem regardless of the conditions faced, even though Article 78 TFEU makes clear that EU action on refugees is to be in accordance with the 1951 Refugee Convention. Through the Statement the EU has given Turkey the label of a “safe third state,” with minimal evidence of the
actual conditions being faced by refugees. Furthermore it is difficult to balance the position that Syrians can be returned to Turkey safely, as EU Member States approve asylum claims from Turkish citizens fleeing after the 2016 coup attempt in Turkey.

On 9 October 2019 Turkey began military operations in Syria, named Operation Peace Spring, its third operation in as many years. The objectives of the operation, which consisted of a military incursion by Turkey into Syrian territory, were to respond to the threat posed by the Kurdistan Peoples Party (PKK) and the People’s Protection Units (YPG); to preserve the territorial integrity of Syria by ending the operations of the PKK/YPG; to continue the fight against Islamic State/Daesh; and to create a 30 kilometre safety zone into Syrian territory, allowing at least two million Syrian refugees to return to Syria. From the outset, President Erdoğan demanded that the EU should show political and financial support for the operation’s objectives and if not “We [Turkey] will open the gates and send 3.6 million refugees your way.” In a November 2019 speech in Hungary, President Erdoğan called for more aid from the EU to support refugees in Turkey, concluding “if this doesn’t work out, then we will have to open the doors.” In north western Syria, conflict forced more people to the Turkey-Syria border, which had been reinforced with a barrier that limited access to those fleeing. In January 2020 President Erdoğan publicised this matter further. At the end of February 2020 thirty three Turkish soldiers were killed in military operations, leading Turkey to announce that it would no longer prevent refugees and asylum seekers from travelling to the Greek border, causing unrest at the border as Greece prevented any entry.

This led to renewed attention to the EU-Turkey statement and to the measures to be taken. At a press conference on 9 March 2020, the President of the European Commission Ursula von der Leyen spoke of the need to map out once again the implementation of the 2016 Statement, looking at what is remaining or missing. She stated that the EU will move on its obligations “provided that this is reciprocal.” The more disturbing points in the March press event were the talk from the EU about the need to interpret the facts and to evaluate how the Statement is implemented. Four years on from the agreement this is problematic, as implementation by all parties should be well underway. Turkey for its part claims that it has met all its obligations in the Statement, that the EU has failed to release the necessary funding, and the EU has not acted on Turkey’s desire for visa free travel to the Schengen zone or on moving the accession process forward.

The EU has attempted to triumph the effectiveness of the Statement and its implementation. In a March 2020 update from the European Commission, the “success” of the agreement was presented
in terms of limiting the arrival of refugees at the EU’s borders. But the situation is far from unresolved and refugees at the EU borders and in Turkey remain in a perilous situation, only made worse by the COVID pandemic. It is clear the tensions between the EU and Turkey are unlikely to subside as long as millions of refugees remain in Turkey. Turkey will be able to use the situation to pressure the EU and the EU will not be able to take effective action due to the absence of solidarity within the bloc when it comes to refugees.

That leaves Syrian refugees in an indeterminate situation as both sides persist in maintaining their entrenched positions. President Erdoğan has claimed that Turkey has met all of its obligations under the Statement, further claiming that the EU has acknowledged this and that it is the EU that has been slow in meetings its own obligations. It is clear that Turkey is not taking the New York Declaration or the GCR as necessary standards for ensuring humanitarian support for refugees, instead using the situation to maintain domestic support and as part of its foreign policy calculations. The EU is also continuing its position by ensuring that refugees cannot access its borders. In response to the latest events, the EU Commission President Ursula von der Leyen made the statement that “people are not just means to reach a goal,” yet she also thanked Greece for being the “shield” for Europe. The use of terminology like “shield” clearly indicates that the EU’s approach to refugees is to keep asylum seekers at a distance.

The current COVID pandemic has brought the EU’s asylum system to a halt both at the border hotspots and further afield. At the current pace of development it is unlikely that the EU and Turkey will establish a more effective means for dealing with refugees that is based on humanitarian approaches. The absence of cooperation amongst the EU Member States and Turkey’s continued use of the refugee situation to gain support for its military operations leaves millions of refugees and asylum seekers in uncertain circumstances. The impact of the disregard shown by the EU and Turkey has been exacerbated by the COVID-19 situation, with refugees and asylum seekers facing even more dire insecurity.

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59 President of the European Commission, Ursula Von Der Leyen, used the term ασπίδα – aspida. The PM of Greece immediately followed up saying “We translate “aspida” as shield.” And there was no clarification or correction by the EU. “Statements by Prime Minister Kyriakos Mitsotakis in Kastanies, Evros, following his visit with the heads of the EU institutions at the Greek-Turkish border” Office of the Prime Minister of Greece, 3 March 2020, https://primeminister.gr/en/2020/03/03/23458.
5. Pursing a “new chapter” for humanitarian approaches to refugees

The UNHCR has described the adoption of the New York Declaration and GCR as a significant milestone that has the potential to “be a true ‘game changer,’ with the potential to transform the way the international community responds.” But as the circumstances of the Syrian refugees in the EU and Turkey demonstrate, much needs to be done before one sees any real change. This paper has placed great stock in the global framework for dealing with refugees, as set out in international legal treaties and political declarations. It is recognised that the value of these instruments lies primarily in the humanitarian rhetoric expressed. This humanitarian rhetoric is necessary in order to change the attitudes of governments and societies. Also, the international instruments can be utilised in assessing the extent to which humanitarian approaches to refugees are being realised. Substantively the international legal system for addressing the movement of people across borders and the standards to be applied to refugees give states the ability to outsource or even avoid the humanitarian approaches to refugees that are expected.61

Achieving the potential of the New York Declaration and GCR requires a change of mind-set that better understands the lived experiences of refugees. Such a change, if realised, would facilitate the pursuit of innovations in receiving and accommodating refugees and in fostering multilateral cooperation when dealing with displacement. A key change needs to come with the realisation that the displacement of refugees is not a temporary process with a quick resolution through return. The Syrian conflict will soon be into its tenth year and there is no indication that the violence is coming to end, much less achieving stability. The individuals currently displaced are likely to remain in their current circumstances for a number of years. This requires the pursuit of sustainable solutions that allow refugees not only to maintain their dignity but also to pursue life development, especially with regard to the situation of children. Maintaining almost four million refugees in Turkey is not a sustainable solution by any measure. Of course voluntary return is a key objective in bringing an end to refugee situations. In relation to current conflicts, in particular with those in the Middle East, voluntary return is however highly unlikely and with the conflicts in Syria and Iraq it has proven not to be viable.62

There is also the need to stop fearing migration in any form and to realise that “stronger” preventative measures do not stop people who are fleeing persecution. States are taking substantial efforts to ensure that vulnerable individuals fleeing persecution cannot make it to state borders, outsourcing the situation whereby refugees are forced to seek protection in states where acceptance and protection are limited, or taking a range of actions to get refugees to return to where they came from. The fact that individuals and families will travel extensive distances from their homes, put themselves at the mercy of people smugglers, or undertake dangerous crossings by land or sea, demonstrates the frightful conditions they faced and the urgency of their circumstances. A clear indicator of the failure of preventative measures is the number of people dying in the effort to reach a safe place for asylum. The International Organisation on Migration has a project on “Missing Migrants” that tracks deaths along the migration routes. Significant numbers of these deaths occur when individuals attempt to reach the EU.

If work is done to change mind-sets and to stop seeing refugees as a security threat, then the manipulation of refugee situations for political gain would be minimised. In practical terms, if sustainable solutions can be found to relocate a significant portion of the refugees in Turkey, Turkey would no longer have the leverage to exploit the humanitarian situation. Such a shift requires the EU to adopt the humanitarian approach to refugees more effectively, as set out in the New York Declaration and GCR.

Action along these lines would require significant support for increasing capacity in the receiving and processing of refugees. Instead of the EU putting resources and attention into the outsourcing responsibility of refugees, funding should be redirected to efforts within the EU that support measures intended to allow refugees to lead dignified lives and to achieve self-reliance. Research has shown that there are alternative models to displacement that more closely adhere to the humanitarian approach. In Saudi Arabia, not a signatory to the Refugee Convention, Syrians fleeing the conflict have been welcomed into the country, not as refugees but as “Arab brothers and sisters.” Both new entrants and Syrians already in the country have been given a range of legal benefits such as the facilitated renewal of visas, access to education and healthcare as well as...
access to the labour market. Of course in this system the individuals involved have no regularised status in law or the backing of international protection. There exists the potential that their status could be arbitrarily changed but the viability of the Saudi approach has proven more stable than measures in either Europe or Turkey in accommodating a large number of individuals in need. The most important result in the Saudi approach is that it allows individuals to pursue a dignified life and self-reliance in a way that supports sustainable solutions for development.

As discussed above, the New York Declaration and GCR directly link the treatment of refugees to the SDGs. This link allows for further innovations towards displacement by situating refugees as positive contributors to the development objectives of the international system. Instead of seeing refugees solely as recipients of aid and as threats to security, the SDG link should lead to greater recognition and the realisation of the positive benefits refugees can bring, in particular in economic growth and development. Emphasising the economic benefits that refugees bring is not an invitation to exploitation but is a view that places the ability to support oneself and the family as an essential part of human dignity. Plus if it means that refugees can become self-reliant rather than dependent on aid, reception and accommodation will have positive benefits for the receiving state.

There already exists a wide range of complementary pathways along with resettlement plans that contribute to the more effective management of refugee situations and that could be applied to Syrian refugees. Greater attention needs to be given to existing as well as to new and innovative programmes that support refugees in order to find solutions for the millions of Syrian refugees in Turkey. One immediate area for action is family reunification, whereby if a refugee has a family member already settled in the EU they are able to join him/her. The importance of family reunification should be self-evident but clearly the point needs to be made how important family life is in a humanitarian approach to refugees. With more than 50% of the world’s refugees being children, family reunification needs greater attention in order to expand the scope of this action and to minimise the restrictive policies and procedures that are in place. The Dublin rules and the EU’s Common Asylum Policy recognise that asylum seekers with family already settled in the EU should be given priority. As the inflow of refugees has stretched the available capacity of the EU, individuals have not been given a direct decision on refugee status, rather they are given subsidiary protection that does not include the same levels of protection and rights as refugee status does, including family reunification. States such as Saudi Arabia and the United Arab Emirates where large numbers of Syrians currently live should also consider expanding family reunification programmes, as this would result in significant numbers of individuals realising sustainable solutions.

Educational opportunities are another way to provide refugees with sustainable solutions based on self-reliance. In these programmes states or educational institutions within a state offer a range of scholarship and support programmes for refugees, allowing them to pursue education and further training. Bringing refugees into a state on such programmes clearly provides benefits to the individual refugee, as they support the furthering of knowledge and skills necessary for an independent life. It also has an added benefit when family members are able to join, as it helps to normalise the situation of other individuals. Furthermore, the state hosting educational opportunities will benefit as these programmes will lead to the creation of new knowledge through postgraduate study as well as educated and trained individuals supporting local research and development.

Improving access to labour markets is another area where states can take action to support refugees. Access to labour markets in this situation requires states to provide specific pathways for refugees as part of the regular migration rules, as well as active multi-sectoral efforts from private companies and NGOs. The state acts to facilitate the administrative process, private companies provide the opportunities and civil society organisations work to support the development of language and social skills. Programmes in support of access to labour markets include direct support to refugees to gain meaningful employment, support in improving language ability and skills, facilitating the recognition of skills and education achieved, as well as specialist recruitment and job placement companies working with employers and refugees to match skills and needs.

There is no shortage of innovative ideas out there in support of refugees. The Global Compact on Refugees has resulted in the reinvigoration of attention and efforts in sustainable solutions through multi-sectoral approaches. As the GCR makes clear, a range of actors is needed to realise sustainable solutions. The first Global Refugee Forum in 2019 signalled a good start in this regard. The event had participations from four heads of state, ninety government officials at ministerial level, fifty-five international organisations and representatives from one hundred thirty companies and two hundred civil society groups. Most importantly seventy refugees were able to attend and participate in the activities. The diversity is to be welcomed, but concern should be raised over the low rate of engagement from states and private companies. While it is necessary to expand the range of participants supporting refugees, the GCR makes the point that states continue to have the primary responsibility for refugees, in particular allowing for diverse actors to provide support for them.

There has also been the development of a digital platform by the UNHCR that provides data on pledges and contributions made in relation to the Global Compact on Refugees. This is proving to be an important tool for charting efforts that contribute to sustainable humanitarian approaches. It also shows the diversity of supporters, from states to the private sector and from NGOs and others.

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**Actors making pledges and contributions in support of the Global Compact on Refugees (as of 8 May 2020)**

<table>
<thead>
<tr>
<th>States</th>
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<th>Parliaments</th>
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<th>Faith Based Organisations</th>
<th>Academic groups</th>
<th>Civil society organisations</th>
<th>Local Authorities</th>
<th>Sport organisations</th>
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Source: [https://globalcompactrefugees.org/index.php/channel/pledges-contributions](https://globalcompactrefugees.org/index.php/channel/pledges-contributions)

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68 Global Compact on Refugees, op.cit., section 3.2.

6. Conclusion – Recommendations

The humanitarian crisis facing refugees and other displaced persons should be a matter of intense global concern. With the number of people fleeing a well-founded fear of persecution increasing, action needs to be taken. Instead states are proving more and more reluctant to support refugees. In terms of rhetoric, states are vocal in their support for refugees and some are even generous in their financial support. But this support is primarily focused on ensuring that refugees do not enter their borders. While a great deal of work is being done with the financial support received by the UNHCR, it remains a seriously underfunded institution, with a funding gap of 4.35 billion USD in 2019.70

The funding gap is not the only difficulty in realising sustainable solutions for refugees. The absence of humanitarian approaches due to negative attitudes and responses to refugees is a serious obstacle. The current situation between the EU and Turkey demonstrates the need for attitudes to change. The New York Declaration and GCR call for humanitarian approaches to refugees, but both the EU and Turkey are failing to support such approaches as refugees remain contingent upon national political interests. The New York Declaration and GCR have provided an effective framework for moving away from politicising refugees.

However, realisation of the desired objectives of the New York Declaration and GCR and taking refugees away from political manipulation is going to be difficult in the current situation of COVID-19. At a time when greater cooperation and humanitarian support is needed for all, in particular for the vulnerable to ensure that no one is left behind, states, governments and societies are drawing back in many ways. One has seen how the pandemic is fuelling divisive political attitudes within and among states, there has been a competition for resources and governments are reluctant to admit the scale of the situation or are taking less than effective action in response. As limits on travel and transport have been necessary to control the spread of the virus, it has also resulted in outsiders, whoever they may be, being viewed as threats or as a further strain on limited resources.

This places refugees and asylum seekers in extremely precarious positions, regardless of where they may be in their journeys.71 For those seeking international protection, borders are even more

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inaccessible or facilities are extremely overcrowded and even more dangerous because of the threat of COVID. For those with refugee status, the strains on national budgets and limits on social spending will impact these individuals greatly. And with more and more divisive attitudes and feelings in society, acceptance and support for refugees and asylum seekers will remain limited.

The necessity of measures to deal with COVID and the long-term impact of the pandemic will be felt by all. At the same time it is imperative to ensure that the most vulnerable in society, regardless of who they are, continue to be treated in a humanitarian way so that no one is left behind. The situation between the EU and Turkey, in using refugees as part of a process of political contestation, needs to be resolved. This requires greater attention to the New York Declaration and the Global Compact on Refugees in the following ways:

- Governments and societies need to change attitudes towards refugees and asylum seekers, to stop viewing people fleeing persecution as a security threat to the state or society. In the spirit of the Sustainable Development Goals, the common humanity of all needs to be recognised and supported.

- This can be achieved through greater recognition of the New York Declaration and the Global Compact on Refugees in both spirit and practical action. The Declaration and Compact provide a necessary framework for action through multilateral approaches that will prove to be more beneficial than restrictive unilateral approaches.

- The Global Compact, through its online platform, provides evidence of good practice and policies that can be emulated by others. The Global Compact also calls for multi-sectoral engagement in the humanitarian support for refugees, allowing non-state actors to provide innovative solutions. States need to ensure that non-states actors have the ability to make further contributions in support of refugees and not face restrictions on support.

- It is essential to maintain attention upon the Global Compact’s online platform as it provides metrics to measure what states and other actors are doing in support of the Compact. Maintaining attention on what is actually being done supports the spread and scaling of good practices and helps to identify where further action can be taken.

- States need to refocus practical measures regarding refugees away from the politicisation and securitisation of individuals fleeing persecution. The EU-Turkey situation shows that neither approach is beneficial for vulnerable individuals fleeing persecution.