MIGRANTS

VULNERABILITIES AND PROTECTION

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REPORT

Conference jointly organised by
the International Committee of the Red Cross and
the European Union Institute for Security Studies
in Brussels, on 22nd September 2016

ICRC

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Introction

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This fourth conference, jointly organised by the International Committee of the Red Cross (ICRC) and the European Union Institute for Security Studies (EUISS) on 22nd September 2016 in Brussels, aimed at exploring issues related to "Vulnerabilities and Protection of Migrants".

Migration is a global phenomenon. Worldwide, the number of migrants reached 244 million in 2015, according to United Nations (UN) figures. In Europe, over a million migrants[1] arrived in 2015, a trend which is only set to continue. Migration can be voluntary or involuntary, but most people act on a combination of choices and constraints, as well as threats. These threats include widespread persecution, armed conflict, and other situations of violence, insecurity and poverty.

Regardless of the reasons for migrating, people can become vulnerable at many stages of their journey, as they travel from their home countries, often through numerous other countries. Migrants transit through areas of armed conflict or other situations of violence. Many get stranded. All along their route, they make easy targets for abuse and exploitation, while facing countless other risks. Even those migrants who arrive safely in the countries of destination may endure great hardship during their journey, which can affect their physical integrity and mental health. Every year, thousands of migrants disappear or die along the way.

Migrants who have left or fled their homes are frequently viewed in terms of sheer numbers and a potential source of insecurity. Yet the securitisation of borders, the criminalisation of migration, and the resort to detention as a deterrence measure do not prevent people from starting a journey, only create greater hardship and suffering. As conflicts rage and secure channels to reach safe ground become scarcer, migrants will continue to turn to the few options they are afforded – however risky these may be. The risks people are ready to take are somehow proportional to the threats they are fleeing.

Dealing with these issues from different institutional perspectives, the ICRC and the EUISS aimed to provide new impetus to this important debate.

This conference was held under Chatham House Rules. The present report therefore only includes summaries of the presentations and discussions. The opinions expressed herein are not necessarily those of the organisers.

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(1) It must be specified that the ICRC – like the rest of the Red Cross and Red Crescent Movement – uses a broad description of "migrants" which includes refugees, asylum seekers and irregular migrants. ICRC describes migrants as persons who leave or flee their habitual residence to go to new places – usually abroad – to seek opportunities or safer and better prospects. This definition includes all types of migrants regardless of their legal status, while recognising the special protection of refugees and asylum seekers. For more details, see International Federation of the Red Cross and Red Crescent Societies, Policy on Migration, 2009, available at **http://ifrc.org/pagefiles/89395/migration%20Policy_EN.pdf**

Keynote Addresses
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Dr Helen Durham | Director of International Law and Policy
International Committee of the Red Cross

Your Excellences, Ladies and gentlemen, Dear Colleagues,

A sincere thank you for joining us today for a very important and timely timeout to discuss this issue. The plight of migrants is a critical concern for the ICRC and the International Red Cross and Red Crescent Movement ("Movement") as a whole. Events in the Mediterranean, South East Asia, the Americas, the Gulf of Aden and beyond are important reminders of the great suffering of migrants and their families worldwide. To adequately address protection and assistance needs, significant attention and effort is required from us all at international, regional and national level. In the following remarks, I would like to focus on three specific areas. The first is the role and added-value of the ICRC and the Movement in addressing the needs of migrants and mitigating humanitarian consequences in all phases of migration. The second is the critical issue of balancing legitimate security concerns with humanitarian considerations, and the third relates to the need to provide protection and assistance to vulnerable migrants and ensure respect for international law.

Before continuing, allow me to share an example of our daily work because today, we need to locate our debate and reflections beyond statistics and categories, while reminding ourselves about the human dimension. Khady is a young mother living in Senegal with the daily anguish and pain of not knowing where her husband Mamadou is. In 2006, he made the difficult decision to move from Senegal to Europe because he was not able to provide enough for his family. Since that time, Khady has not heard from him. He disappeared on route. Through the Family Links Network, the ICRC and the Senegalese Red Cross are seeking to help clarify his fate and whereabouts, as it does for thousands of people globally. Furthermore, with an individualistic assessment of the needs, the provision of economic and psychosocial support has allowed Khady to create a small business and better cope with her husband's loss. But Khady has never lost hope that she and her son will be reunited with Mamadou one day. This short story exemplifies the Movement's collective efforts across borders to try identifying the fate of separated persons. It also illustrates some of the humanitarian consequences of migration that are often overlooked.

The ICRC's mandate and exclusively humanitarian mission is grounded in international law, the Statutes of the Movement and in resolutions of the International Conference of the Red Cross and Red Crescent Movement – of which State Parties to the Geneva Conventions are members. We work together with Red Cross and Red Crescent National Societies ("National Societies"), to guarantee that vulnerable migrants receive the protection and assistance they require. The Movement's added-value in this respect can be summarised in two particular areas. The first is the Movement's proximity to vulnerable migrants through our solid and experienced network of responders across migratory routes and in 60 countries of origin, transit and destination. This is a testimony to the migration-related challenges faced in

all regions globally, both common and distinctive challenges, which prompt contextualised and individualised Movement responses. Secondly, our collective and specific added-value also lies in our distinct vulnerability-based approach, addressing the needs of migrants regardless of why they fled, where they are and what their legal status is. Nevertheless, the ICRC's action seeks to guarantee that all individuals receive the protection they are entitled to under international and domestic law. Indeed, migrants enjoy significant protection under international law. They are protected by international human rights law, and by international humanitarian law in situations of armed conflict. Finally, certain categories of people such as refugees and asylum seekers enjoy protection under refugee law. Ultimately, while legal status determines individual rights, the ICRC's response is firstly driven by migrants' vulnerabilities and needs. The Fundamental Principles of the Movement – and more especially Humanity, Impartiality, Neutrality and Independence – are increasingly relevant to both ensure a response that addresses vulnerabilities without discrimination based on objective needs-assessments, and to engage in this complex and highly-politicised environment.

Regarding the need to balance legitimate security concerns with humanitarian considerations, global migration remains a challenging reality, although it is neither new nor limited to a certain region of the world. In the last few years, we have witnessed a hardening of migration policies, with many States adopting measures designed to deter and prevent foreign nationals from arriving on their territory, including through the securitisation of borders and the adoption of restrictive admission and stay measures.

While the ICRC acknowledges that States have a responsibility to uphold public order and security, as well as a right to regulate migration, these must not become the exclusive and primary factors shaping migration policies. Importantly, States' prerogative to regulate the presence of migrants on their territory is not absolute and it must be in line with domestic and international law obligations. For instance, any decision to return a migrant must be in full compliance with the principle of non-refoulement. Containment strategies and other policies, essentially seeking to prevent movement of people rather than genuinely addressing their plight, only create greater hardship and compound existing suffering. Collective measures, such as the systematic resort to detention, do not take into account the specific needs and rights of individuals. In a number of instances, expedited asylum procedures may also be contrary to international law.

Rather than being solely driven by wider considerations of security, policies should be driven first and foremost by humanity, and should focus on addressing the suffering, preserving the dignity and guaranteeing the safety of migrants. Thus, although States may have legitimate security concerns, these should be balanced with humanitarian considerations, and laws, policies and practices must always be in accordance with the law. Ultimately, these must be the decisive factors shaping migration policies and procedures – and their implementation – at the international, regional and national level.

The final point I wish to address you on today relates to the protection and assistance of migrants. Regardless of their reasons for leaving, migrants can become vulnerable, facing many risks at different stages of their journey. Ensuring protection along migratory routes and in countries of transit and destination remains a critical issue for the ICRC and the Movement. The ICRC's work focuses on areas where we have particular expertise and relevance. We play a leading role in the Movement's work on restoring family links, including tracing missing persons and accompanying their families; ensuring the proper and dignified handling of human remains and other forensic services; as well as in immigration detention and other protection aspects.

Throughout the migratory routes, family separation remains pervasive, with many migrants losing contact with their families. The number of unaccompanied and separated children is staggering. Furthermore, many migrants die or disappear along the way, leaving families endlessly searching for answers. States should take measures to prevent family separation, paying particular attention to vulnerable groups, such as children. If migrants go missing, States must also fulfil their obligations towards their families in full compliance with their right to know the fate and whereabouts of their relatives, where applicable, by searching for missing migrants and through the collection and proper management of human remains.

Restrictive migration policies often result in the use of coercive measures, including the systematic resort to detention. It is important to recall that the detention of migrants should be a measure of last resort, with liberty and alternatives to detention always being considered first. Any detention must be determined to be necessary, reasonable and proportionate to a legitimate purpose. Furthermore, the rights of detainees must be respected and a number of key procedural safeguards observed.

In addition to its protection activities, the ICRC also works in close cooperation with other partners, in particular National Societies, to ensure that vulnerable migrants receive the assistance and services they require. It is critical that States ensure migrants' access to essential services, in line with their obligations.

As highlighted, migration is a complex global phenomenon. Daily, events continue to show the great suffering of migrants and their families. All too often, the inability or unwillingness of the international system has resulted in a failure to protect migrants and to respond to their most basic needs. Addressing this complex situation requires strong State commitments to international and domestic law, as well as practical cooperation between States, international organisations, civil societies and businesses to come up with new solutions. As always, the ICRC and the Movement stand ready to contribute to the humanitarian response. However, States bear the primary responsibility for ensuring that migrants receive protection and assistance. They must, as a matter of urgency and in accordance with their obligations, protect the lives, preserve the dignity and alleviate the suffering of migrants.

Thank you.

Mr Dimitri Giotakos | Head of Legal Affairs,
on behalf of **Mrs Marta Cygan**, Director for Strategy
and General Affairs, Directorate-General Migration
and Home Affairs, European Commission

Ladies and gentlemen,

Over one million migrants and refugees arrived in Europe in 2015. Since the beginning of this year, more than 360,000 irregular migrants have reached Europe's shores. Just last week, more than 700 arrivals were registered in Greece and more than 2,000 in Italy. It is again an unprecedented flow of arrivals after the summer break, and unfortunately, more and more women and children are attempting to reach the EU. These vulnerable populations require special treatment. If you look at numbers, the share of unaccompanied minors is also increasing, with almost 12,000 arrivals in the first half of 2016 compared to the same number in the whole year of 2015. This year, minors represent 38 percent of arrivals in Greece and 17 percent of arrivals in Italy. Worldwide, one in every 200 children belongs to the migrant population.

This is a big challenge for the European Commission. We need to find ways to protect these people and respond to their vulnerabilities. We are now trying to look at the three stages of the migratory cycle and adopt the adequate measures, which include steps before departure in countries of origin and transit, during the journey, and upon the arrival in countries of destination. In the countries of origin, there is a need to address the root causes of irregular migration and forced displacement, especially in Syria, Iraq or Libya. We should keep on fighting any human rights abuses. We must also pursue our efforts to eradicate poverty and support economic development. This is notably one of the main causes of migration from African countries to the EU. In his State of the Union speech last week, President of the European Commission Jean-Claude Juncker announced an ambitious European External Investment Plan to encourage investment in Africa and the EU Neighbourhood region. It has the potential to raise from €44 billion up to €88 billion in investment if EU Member States wish to contribute. With economic growth in developing countries and Africa at its lowest level since 2003, this Plan should offer a life-line to people who would otherwise take the decision to move.

During the journey, for those people who are forcibly displaced, our position is clear. We need to make their journey as short and easy as possible. We must also find the best ways to reduce the risks that they may encounter during their journey, including potential violations of their human rights. But before that, let me insist and remind that those seeking protection should find a safe place as close as possible to their country of origin, even in a safe part of their own country where possible. I would like to touch upon two main components of our action during this stage.

First, no one can deny that the EU and its Member States are the leading humanitarian and development actors, including in terms of funding. Our humanitarian assistance to refugees worldwide has been considerably increased from €1.35 billion in 2015 to €1.7 billion in 2016. A significant part of this funding is dedicated to vulnerable migrants, in particular women and children. In 2015, the EU allocated €150 million to projects related to child protection and €11.5 million were dedicated to address gender-based violence in Syria and neighbouring countries. This year, the European Commission is multiplying by four its humanitarian assistance to education in emergencies. In Turkey, we will finance projects worth €3 billion that will directly support three million refugees, and especially the most vulnerable, with access to education and healthcare. In this framework, we also support the establishment of seven centres for women in Ankara, Istanbul and Izmir. This week, the European Commission announced an

injection of €90 million in supporting the work of the United Nations Children's Fund (UNICEF) to provide learning opportunities and protection to hundreds of thousands of children and youth who have fled the Syrian conflict and have taken refuge in Jordan, Lebanon and Turkey.

Second, one of the main concerns is to reduce perilous journeys and save lives at sea. The EU has several ongoing operations of maritime surveillance in the Central Mediterranean Sea off the Libyan coast and in the Aegean Sea close to Turkey. These operations are carried out, both with the support of EU and non-EU actors, such as the North Atlantic Treaty Organization (NATO). In the conduct of these operations, the EU has saved almost half a million lives since the beginning of 2015. We also finance projects to provide the necessary psychological assistance, especially to women and young girls who have encountered difficult situations during their journey.

Resettlement is an additional tool. Although it is new and the EU is working on it, it is admittedly the best way to protect vulnerable migrants. Since last year, we are implementing the first EU-wide emergency resettlement scheme for 22,000 people. Over the past year, more than 10,000 people in need of international protection have already been resettled. We are now setting up a Union Resettlement Framework to streamline resettlement procedures towards Europe and offer a sustainable mechanism providing a safe and legal avenue for those in need of protection. In parallel, new rules on asylum are currently being discussed, with one of the main objectives being to strengthen the protection of unaccompanied minors and the assessment of vulnerabilities, as well as the facilitation of family reunification.

Last but not least, the reception in countries of destination is another issue. For migrants arriving irregularly in Europe, the EU has reinforced its assistance for the most vulnerable. As an example, approximately half a billion euro has been allocated to programmes in Greece funded under the Asylum, Migration and Integration Fund and the Internal Security Fund. Both funds are supporting the establishment and operation of reception infrastructures for unaccompanied minors and other vulnerable groups, in addition to a guardianship system, as well as access to education. On top of this, €353 million have been also allocated to the Greek authorities and international organisations, including the International Red Cross and Red Crescent Movement, the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR), as well as EU agencies, such as the European Asylum Support Office (EASO) and Frontex. This significant emergency assistance includes targeted funding to provide accommodation and education activities for unaccompanied minors. In addition, €80 million have been allocated to the UNHCR to support the ongoing EU emergency relocation scheme, notably by establishing 20,000 reception places committed under the rental scheme in December 2015. For 2016, €300 million have been allocated to the Emergency Support Instrument for the provision of live-saving assistance which includes food, water, shelter, and primary health care. In April 2016, an additional €15 million was allocated to child-protection activities in Greece, such as the provision of psychosocial support, child-friendly spaces, non-formal education, family tracing, as well as emergency assistance for unaccompanied minors.

Ladies and gentlemen, as a conclusion, I would like to point out that all these efforts are part of our global goal to offer more protection for those in need. But this is not only a European responsibility. That is why we look forward to working closely with all countries and organisations, such as the ICRC, to implement three main objectives: firstly, to develop the necessary structures to assist vulnerable cases; secondly, to provide safe havens along the migratory routes; and thirdly, to drastically boost resettlement opportunities worldwide.

Thank you very much.

Global Migration: Setting the Scene on Protection Needs and Challenges

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On the heels of the 71ˢᵗ session of the UN General Assembly and the adoption of the New York Declaration for Refugees and Migrants ("New York Declaration"), it was timely to take stock of the reflection on global migration movements, as well as on the challenges faced in addressing the protection needs of refugees, migrants and their host communities.

The first session of the Conference was devoted to setting the scene and providing an overview of the current migration situation worldwide. The responses adopted by the European Union (EU) and its Member States towards the recent large arrivals of migrants in Europe were also discussed.

Migration, vulnerabilities and protection needs

The number of migrants and refugees embarking on a dangerous journey to Europe has been and continues to be significant. Over one million people arrived in the EU in 2015 and more than 300,000 so far in 2016. In a most dramatic manner, these journeys continue to expose those who feel they have no other choice to the risk of death, exploitation, abuse or violence. The arrival of a large number of people on Europe's shores in 2015 has challenged both "frontline" European countries and the cooperation between the EU and its Member States. Statements referring to a migration and refugee crisis in the EU need to be contextualised, taking into account the broader realities of today's global refugee situation and migration patterns.

Indeed, the world has seen a dramatic rise in humanitarian crises over the last 25 years, with more than 125 million people currently in need of humanitarian assistance because of armed conflict, natural disasters or social and economic fragility.[2] At the end of 2015, statistics published by the United Nations High Commissioner for Refugees (UNHCR) indicated that 65.3 million people are forcibly displaced across the globe, including more than 21 million refugees and 3.2 million asylum seekers.[3] This means that worldwide, there are more people displaced than at any time since 1951 when the Convention relating to the Status of Refugees was adopted, with one in every 113 people

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(2) United Nations, Office for the Coordination of Humanitarian Affairs, *Global Humanitarian Overview 2016*, 2015, p. 4. Available at **https://docs.unocha.org/sites/dms/Documents/ GHO-2016.pdf**

(3) United Nations, High Commissioner for Refugees, *Global Trends, Forced Displacement in 2015*, 2016, p. 2. Available at **http://www.unhcr.org/576408cd7.pdf**

on earth being an asylum-seeker, a refugee or an internally displaced person. Over 6.7 million refugees falling under the UNHCR's mandate are in a so-called "protracted refugee situation", referring to situations in which at least 25,000 refugees remain displaced for five or more years in a given country of asylum.

Armed conflict remains the most significant driver of forced displacement. Over half of the world's refugees come from three countries, namely Syria, Afghanistan and Somalia. In 2015, nine out of ten refugees in the world were estimated to live in developing regions close to ongoing conflict situations. Furthermore, over 2.7 million refugees were hosted in Turkey, while one out of every five persons living in Lebanon is a refugee.

Most people act on a combination of choices and threats that can include persecution, armed conflict and other situations of violence and insecurity, poverty, deprivation and underdevelopment, climate change, and the desire to be reunited with their family. Irrespective of these reasons, they may find themselves in vulnerable situations and require protection at any stage of their journey, regardless of their status. All individuals are indeed entitled to have their universal human rights respected, protected and fulfilled without discrimination.

In addition, the legal status of individuals is crucial in determining the applicable regime and response by governments and the international community as a whole. While it must be ensured that individuals receive the protection they are entitled to under international and domestic law, certain categories of persons, such as refugees and asylum seekers, must benefit from special protection. Indeed, international refugee law is built upon the recognition that a specific set of rights should be afforded to refugees. By definition, they cannot call upon their own country to protect them from the conflict or persecution from which they have escaped. At the core of this definition lies the person's need for international protection, including *inter alia* the protection from *refoulement*, which provides that a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom. This also includes the right not to be punished for irregular entry into the territory of a State, and a number of additional rights which would allow refugees to rebuild their life in the host country.

A European perspective

Migration is one of the most challenging issues for the EU. Demographic imbalances, growing economic inequalities and climate change are reshaping borders and human mobility, and migration is considered today as the "new normal". This reality, which is set to continue, needs to be taken into account in the preparation of future joint actions. During the UN Summit on Addressing the Large Movements of Refugees and Migrants ("UN Summit"), President of the European Council Donald Tusk recalled that the ultimate objective of the EU was to avoid any repetition of the year 2015, notably by restoring order on its external borders and ensuring the further decrease of irregular migration flows, while increasing humanitarian and development assistance for refugees, internally displaced persons and host communities.[4]

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(4) European Council, *Remarks by President Donald Tusk at the UN Summit for refugees and migrants, 19 September 2016*, available at **http://www.consilium.europa.eu/en/press/ press-releases/ 2016/09/19-tusk-speech-at-un-summit-for-refugees-and-migrants/**

From an institutional point of view, a new momentum was created by the European Council, reuniting the Heads of State of the 28 EU Member States, when it endorsed in June 2016 the proposal of the European Commission on establishing Partnership Frameworks with third countries under the European Agenda on Migration. High Representative of the Union for Foreign Affairs and Security Policy Federica Mogherini was tasked with the implementation of this new approach, while ensuring close and effective coordination between the EU institutions and Member States to develop a more comprehensive cooperation with countries of origin and transit. This represented an important shift on how to handle the "migration crisis", with the EU and its Member States gradually coming up with convergent solutions.

Since 2013, the Integrated Political Crisis Response Mechanism has played a crucial role in supporting the Presidency of the Council of the EU in addressing the EU political level and informing the Member States about the situation on the different migration routes. This has allowed the Council of the EU to develop comprehensive policies towards the migration and refugee crisis. In parallel, in order to improve cooperation between the countries along the Western Balkans route and address migration-related challenges in the region, the Western Balkans Route Leaders' Meeting was held in October 2015 with regular follow-up between contact points.

From an operational perspective, a key commitment of the EU as one of the world's leading donors, was to scale up humanitarian aid and development assistance to refugees, internally displaced persons and their host communities. As part of the international response to the Syrian crisis, the EU and its Member States have allocated over €6.2 billion since the beginning of the conflict. Three additional billion euros were pledged at the London Conference held in February 2016, to support Syrian people inside Syria as well as refugees and host communities in the neighbouring countries. In addition, the European Commission allocated €1.8 billion to the Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa ("EU Emergency Trust Fund for Africa") launched at the Valletta Summit on migration in November 2015, recently increased to €2.5 billion. This is a tangible example of the manner in which the EU has significantly increased its support to help foster stability and contribute to improve migration management in a number of African countries. In September 2016, the creation of a new European External Investment Plan was also announced with the aim to foster investments in Africa and EU Neighbourhood countries, contribute to the implementation of the 2030 Agenda on Sustainable Development Goals and reduce the incentives for irregular migration.

The management of migration has progressively become a central part of the EU foreign policy dialogue, notably through the new Partnership Framework approach. The European External Action Service (EEAS) is currently developing political frameworks to better manage migration flows. This encompasses a mix of short and long term actions aiming at saving lives on the route, fighting against smuggling and trafficking networks, preventing irregular migration, enhancing cooperation on returns and readmission of irregular migrants and stepping up investments in partner countries. These comprehensive partnerships are tailored to the specific circumstances of each country, whether it is a country of origin, of transit or a country hosting a large refugee population. Within this framework, a first partnership agreement was adopted in July 2016 with Jordan to provide additional humanitarian aid and macro-financial assistance, as well as to strengthen cooperation on regional security, economic stability, quality education and job creation. A second agreement was concluded with Lebanon to improve

the living conditions of both Syrian refugees and vulnerable host communities, and enhance the socio-economic, security and stability prospects in the country. In this framework, Ethiopia, Mali, Niger, Nigeria and Senegal were identified as initial priority countries. In October 2016, the EU is planning to organise a Conference on Afghanistan in Brussels, aimed at renewing the commitment of the international community of partnership for prosperity and peace in the country. In the margins of this event, a "Joint Way Forward on Migration Issues" will be signed in order to establish effective return procedures for Afghan nationals and to facilitate their reintegration in Afghan society with European financial support.

Global challenges in the current response and the way forward

At the time of its adoption, the preamble of the 1951 Refugee Convention provided that "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nationals has recognised the international scope and nature cannot therefore be achieved without international cooperation".[5] Lying at the heart of the UN Summit, the principle of shared responsibility must remain at the forefront of the efforts deployed to work together towards a comprehensive response. In this light, the spirit of solidarity needs to be further nurtured.

Robust international cooperation to meet current challenges includes complementary channels to facilitate opportunities for safe, orderly and regular migration, notably a significant increase of resettlement quotas. On this particular issue, Heads of State and Government have expressed their intention in the New York Declaration, adopted during the UN Summit for Refugees and Migrants, to expand the number and range of legal pathways available for refugees to be admitted or resettled in third countries. Yet, these same States continue to not make full use of the toolbox at their disposal to open safe and legal pathways for people in need of international protection.

Considering the growing global phenomenon of large movements of people around the world, UNHCR's main role is to ensure that the agreed international architecture for refugee protection is respected and implemented. In this context, the continued importance and relevance of core principles set out in the Refugee Convention needs to be highlighted. When properly applied, the principles enshrined in the Convention still provide a solid basis for addressing evolving realities and international protection challenges worldwide. The strong recommitment of the international community to the 1951 Refugee Convention and the 1967 Protocol thereto as "the foundation of the international refugee protection regime" was a very important outcome of the UN Summit.

Similarly, there is a need to work together towards better respect for international humanitarian law and human rights law. Armed conflict and other situations of violence still constitute one of the major drivers of large-scale movements of refugees and migrants. Increasing efforts to address the drivers and root causes of these dangerous journeys, and to prevent and resolve conflicts, are essential means to protect populations affected. As pointed out in the New York Declaration, this notably includes "the prevention and peaceful resolution of conflict, greater coordination of

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(5) Convention relating to the Status of Refugees, 189 UNTS 137, 28 July 1951 (entered into force 22 April 1954).

humanitarian, development and peace-building efforts, the promotion of the rule of law at the national and international levels and the protection of human rights".[6]

Increasing refugee and migrants flows require cooperative, consistent and coordinated long-term responses by the entire international community. The 2030 Agenda on Sustainable Development Goals underlined the positive contribution made by migrants to inclusive growth and sustainable development, and noted that the benefits and opportunities of facilitated safe, orderly and regular migration are substantial and often underestimated. The positive impact of planned and well-managed migration policies for countries of origin, transit and host countries was recognised by the EU in its priorities developed ahead of the UN Summit[7], and reiterated in the New York Declaration.

In addition, the nexus between the humanitarian and development sector has to be strengthened with a view to better responding to the needs of migrants and refugees as well as their host communities. Closer coordination between humanitarian and development actors is required in order to meet direct humanitarian and longer-term development needs, as well as building self-reliance and resilience as a basis for more sustainable solutions. Along these lines, support may be provided to host countries by relevant UN entities, international organisations, international financial institutions, regional development banks, bilateral donors, local authorities, the private sector and civil society organisations.

Large movements of refugees and migrants are "global phenomena that call for global approaches and global solutions".[8] The EU and its Member States, as well as the international community more generally, should grasp the opportunity to harness the momentum generated by recent discussions and events, and put these proposals into action. The preparation and adoption of the Comprehensive Refugee Response Framework and the Global Compact on Refugees as well as the Global Compact for Safe, Orderly and Regular Migration under the New York Declaration will be a clear test of the commitments made during the UN Summit.

(6) United Nations General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1 (3 October 2016), p. 3. Available at **http://www.un.org/fr/documents/view_doc.asp?symbol=A/RES/71/1&TYPE=&referer=http://www.un.org/fr/ga/71/resolutions.shtml&Lang=E**

(7) Council of the European Union, *EU priorities at the United Nations and the 71st United Nations General Assembly (September 2016 - September 2017)*, 18 July 2016, available at **http://data.consilium.europa.eu/doc/document/ST-11201-2016-INIT/en/pdf**

(8) Supra note 6, p. 2.

Protection of Migrants and Human Security

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The debate about migration and security is not new. Nevertheless, there has been a renewed emphasis on security these last years in response to the important number of migrants arriving at the EU external borders and the recent terrorist attacks, with growing implications in terms of policy, laws and practices. States have legitimate security concerns as well as a sovereign right to regulate migration. This right is however not absolute. Even when addressing security concerns, States must respect their legal obligations by ensuring that their domestic legislation and procedures contain adequate safeguards to protect the safety and dignity of migrants.

The second session of the Conference focused on the issue of security and the protection of migrants in relation to the current migration flows in Europe, exploring whether migration movements constitute a real or a perceived threat to States and human security, and how security concerns can be reconciled with the protection of migrants.

Securing EU external borders and saving lives

The EU External Borders Agency (Frontex) experienced a challenging situation in terms of border management in 2015, with 1.8 million irregular border crossings reported at the EU external borders. This created an important workload for the national border control authorities responsible for processing these arrivals, which led to a management crisis at the EU external borders. Migration flows were also concentrated on specific sections of the borders, thus putting a lot of pressure on local authorities and communities in some EU Member States, such as Greece and Italy. The intention of regaining control over the borders did not imply refusing the entry of people into the EU. Rather, it underlined the need to ensure the proper identification and registration of migrants – one of the biggest challenges encountered by national authorities and Frontex.

In terms of identification and registration of arrivals, the situation has today improved, notably through the implementation of the so-called "hotspot approach". It has been acknowledged that, while a marginal phenomenon, the risk of infiltration of terrorists into the migration flows remains a reality. This was notably the case for the attacks in Paris in November 2015. Large mixed migration flows do not undermine States' security as such, although there are growing concerns that migration routes and smuggling networks may be used by terrorist organisations to reach their targets in Europe.[9]

In its Risk Analysis Report for 2016, Frontex also highlighted a rise in violent incidents both along the EU external borders and the main routes within the EU[10], including violence by smugglers against migrants, violence by smugglers against border-control

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(9)   Europol, *Migrant Smuggling Networks: Joint Europol-Interpol Report*, 2016, p. 11. Available at **https://www.europol.europa.eu/sites/default/files/documents/ep-ip_report_executive_summary.pdf**

(10) Frontex, *Risk Analysis for 2016*, 2016, p. 44. Available at **http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf**

authorities to recover and reuse their assets, and violence between groups of migrants in large crowds which required the intervention of national police authorities to restore and maintain order.

Migrants are exposed to organised criminal groups along the route. The EU Law Enforcement Agency (Europol) estimates that "more than 90% of the migrants travelling to the EU used facilitation services. In most cases, these services were provided by migrant smuggling networks".[11] People and networks involved in migrant smuggling are often also reportedly engaged in other criminal activities, including trafficking in human beings, forced labour, drug and weapons trafficking, or document forgery. Frontex estimates that activities of migrant smuggling networks are highly lucrative, as migrants mostly pay smugglers for the whole journey prior to departure. In 2015, it is estimated that it generated more than four billion euros. Smugglers often use old, small rubber dinghies and overcrowded boats with insufficient fuel to reach Europe, putting migrants' lives at risk while maximising their profit. Border control operations have often turned into search and rescue operations, especially on the Central Mediterranean route.

Since 2015, Frontex has been involved in the rescue of over 310,000 people with Joint Operation Triton and Operation Poseidon, deployed respectively in the Central Mediterranean and the Aegean Sea. It is to be noted that EU operations in the Mediterranean also include the EU Naval Force Mediterranean Operation Sophia (EUNAVFOR Med) set up to contribute to the EU's wider efforts to disrupt the business model of human smuggling and trafficking networks in the Central Mediterranean, and preventing loss of life at sea. Unlike Frontex, EUNAVFOR Med is a mission developed under the Common Security and Defence Policy in the framework of the external dimension of the EU policy. Frontex and EUNAVFOR Med cooperate on a wide range of issues, through the deployment of Frontex Liaison Officers within EUNAVFOR Med structures and the exchange of operational information and training. It must be noted that the external part of Frontex's mandate, namely to work with and in neighbouring third countries, will also be progressively reinforced.

Security and protection are not mutually exclusive. The Frontex Fundamental Rights Strategy, adopted in 2011, upholds the right to security of person, a right also enshrined in the Charter of Fundamental Rights of the EU. At the same time, the Strategy emphasises obligations related to access to international protection and the principle of *non-refoulement* as a part of an efficient integrated border management. The principle of *non-refoulement* is also one of the main principles shaping the Regulation adopted in 2014 establishing rules for the surveillance of the external sea borders in the context of operations coordinated by Frontex. Respect for fundamental rights in all activities undertaken by Frontex has been further strengthened in the new Regulation establishing the European Border and Coast Guard Agency, entering into force in October 2016. Given its increased tasks, the mandate of the Fundamental Rights Officer and the complaints mechanism will also need to be reinforced.

(11) Europol, *Migrant smuggling in the EU*, 2016, p. 2. Available at **https://www.europol.europa. eu/sites/default/files/documents/migrant_smuggling__europol_report_2016.pdf**

A human rights-based approach to migration governance

Experience on the ground shows that migrants may become vulnerable *en route* and require assistance both during their journey and upon arrival in the country of destination. Regardless of their status, they have rights. States have a duty to protect all persons subject to their jurisdiction, including their civil, political, economic, social and cultural rights.

Non-derogable rights under the 1966 International Covenant on Civil and Political Rights (ICCPR), including the right to be free from torture or cruel, inhuman or degrading treatment and the right to recognition before the law, also apply to migrants on the territory of a State Party. These rights cannot be restricted or limited, even in times of public emergency. Any denial or restriction of rights must be justified, as for citizens, and cannot be based on discrimination. "National security" may justify restrictions on certain fundamental freedoms, such as freedom of expression or freedom of movement, provided that the criteria of strict legality, necessity, reasonableness and proportionality are met.

Protecting migrants under international human rights law does not mean that borders and controls should be removed and that States must allow everyone to their territory. In its General Comment No. 15 on the Position of Aliens under the ICCPR, the UN Human Rights Committee has notably stated that "the Covenant does not recognise the rights of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory".[12] In doing so however, all measures taken should be in line with the international human rights obligations of States.

State sovereignty and human rights are often pitted one against the other in political and social discourse, as well as law-making, with national courts often having to decide which of the two should prevail in a particular situation. This is particularly the case in times of uncertainty, as, one could say, is currently the case in Europe. Insisting on the need for thorough measures in dealing with the large number of arrivals to Europe, especially in the aftermath of terrorist attacks, human rights are at times treated as empty words or lofty ideals, and claimed to be "unhelpful". Closely attached to the concept of State sovereignty, the "State security" paradigm is premised on the right to control territory and borders, and by extension, on the right to grant or deny citizenship or residency.

Understood holistically, the concepts of security and human rights are, at their core, mutually reinforcing. Respecting human rights is a fundamental component of State and human security. In this context, the application of a human rights-based approach to migration governance at borders means that the vulnerabilities and needs of migrants are identified immediately upon their arrival, so that victims of human trafficking, sexual and gender-based violence, torture, or persons with specific health issues are properly assisted and protected. It also implies that detention is to be used as a measure of last resort ordered on the basis of a decision taken in each individual case and is avoided for the most vulnerable migrants, including children. Moreover, migrants must have access to proper information about their rights and to legal assistance, so they can make a fully informed choice about their situation, notably if they wish to return voluntarily to their

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(12) United Nations, Human Rights Committee, *CCPR General Comment No.15: The Position of Aliens Under the Covenant*, 11 April 1986, p. 1. Available at **http://www.refworld.org/docid/45139acfc.html**

country of origin. Respecting and protecting these rights, and providing mechanisms that would enable migrants to lodge complaints about domestic violence, exploitative work or hate crimes without fear of "getting caught" are a few standards that, if upheld, can contribute to social cohesion and stability.

Shaping the discourse around migration

In the current climate, it seems clear that the perceived security threat linked to migration flows is high – if mainstream media, high-level political statements and policy documents constitute any evidence. The population has become accustomed to hearing an anti-migrant discourse on a regular basis. The perception that migrants will change the European way of life, and increase competition for limited jobs is also part of such anti-migrant discourse. One of the root causes of the perceived threat of migration is fear, and fear of the other, which is notably being fed and exacerbated by political rhetoric about migrants in many EU Member States.

According to the Eurobarometer surveys for 2014 and 2015, immigration was identified as the most important challenge facing the EU. Similarly, immigration was mentioned as one of the three main concerns encountered at national level - together with the economic situation and unemployment.[13] The arrival of large numbers of migrants, from social or cultural backgrounds that are different from the host communities, is perceived as challenging social cohesion and exacerbating the rising tension and polarisation in European societies. This also feeds right-wing extremism.[14] In the meantime, the mounting evidence of the positive contribution that migrants make to the social, cultural and economic fabric of the host countries often remains overlooked and ignored. This results in a strong pushback, with citizens supporting, and some calling for, the building of walls, and the use of immigration detention. Citizens accept intrusions into their privacy to a much higher degree than they used to. There is also a rise in reports of hate messages, xenophobic attacks and incidents targeting accommodation centres, as well as migrants themselves committing acts of violence.[15]

UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein recently stated that "adopting policies that place security ahead of human rights has frequently led to intrusions on freedoms, an 'us versus them' mentality, and measures suggestive of racial or religious discrimination. I do not believe such policies can make people safer and they have clearly marginalised and alienated communities".[16] In this context, the perception of the threat shapes the reality, hindering migrants' integration and undermining social trust at the local, national and regional levels, ultimately contributing to insecurity and

(13) European Commission, *Eurobarometer*. Available at **http://ec.europa.eu/public_opinion/ archives/eb/eb83/eb83_fact_eu28_en.pdf**

(14) RAN Centre of Excellence, *Ex Post Paper - The refugee and migrant crisis: New pressing challenges for CVE policies*, 2016, p. 1. Available at **https://ec.europa.eu/home-affairs/ sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ ran-papers/docs/ran_ex_post_paper_the_refugee_and_migrant_crisis_en.pdf**

(15) FRA, Fundamental Rights Report 2016 - FRA Opinions, 2016, p. 9. Available at **http://fra. europa.eu/sites/default/files/fra_uploads/fra-2016-fundamental-rights-report-2016- opinions_en.pdf**

(16) United Nations, Office of the High Commissioner for Human Rights, Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights at the "The Future of the Human Rights Covenants", 6 October 2016, available at **http://www.ohchr.org/ EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20647&LangID=E**

instability. Resorting to purely repressive measures against migration, such as closing borders, the use of force and detention is the easiest way to pretend that the terrorist threat is being addressed. However, this misses the point about the complexity of terrorism, its origins and how it manifests itself, noting that terrorism already operates well beyond the scope of borders.

More than a real threat to State and human security *per se*, these concerns rather point out a need for appropriate migration governance, which includes effective integration programmes for migrants. If well managed, challenges can be turned into opportunities.

To change the negative perception towards migrants, the work to strengthen the laws and institutions ensuring the protection of human rights should continue – including courts, parliament, local councils, and other civil society groups – not only because it is appropriate, but also because it ultimately represents the most effective and sustainable means of pursuing stability within States. Long-term security can never be ensured in the absence of the rule of law, due process and respect for human rights.

A sustained evidence and rights-based narrative is also needed, to go beyond some of the piecemeal campaigns developed to illustrate "success stories". Some unique initiatives have popped up, such as the Refugee Radio Network in Germany. In this context, governments and media have an important role to play. As the UN High Commissioner for Human Rights emphasised, "they must find the courage to break the downward spiral in the predominant discourse that tends to oversimplify problems and solutions".[17] The responsibility of media in providing balanced reporting on migration should be promoted, as they constitute active players in building a more secure society. In line with the 2030 Agenda for Sustainable Development adopted one year ago, the courage should also be found to speak out and demonstrate that migrants can make positive contributions to economic and social development in their host societies. Finally, fighting against marginalisation, and ensuring inclusion within host communities should be a priority.[18]

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(17) United Nations, Office of the High Commissioner for Human Rights, *Statement by the High Commissioner for Human Rights at the "Migration: Why human rights matter", Austrian Federal Ministry for Science and Research, 29 April 2016*, Available at **http://www.ohchr. org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19913&LangID=E**

(18) Supra note 14, p. 4.

Access to International Protection

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The limited availability of legal channels to access international protection in the EU has rein-forced migrant smuggling and human trafficking networks, exposing migrants to exploitation, abuse and life-threatening journeys. It has been estimated that up to 90 per cent of those granted international protection in EU Member States resorted to irregular channels to access Europe. This highlights the importance of developing complementary pathways to enhance safe and regular access for the admission or resettlement of people in need of international protection to the EU.

The third session of the Conference examined the external dimension of the EU asylum policy. Indeed, migration and asylum have progressively made their way into EU foreign affairs, resulting in a growing number of EU policy initiatives towards third countries in this field. Discussions were held on the status of mechanisms currently developed and implemented by the EU in this respect, with a focus on refugee-related schemes, such as resettlement, humanitarian admission and visa as well as family reunification procedures.

An overview of policy developments at the EU level

The EU has often been accused of navel-gazing and being obsessed with the so-called "migration crisis". However, it must be acknowledged that refugee and migrant flows to Europe have grown over the years and that they reached unprecedented levels in 2015, with significant political implications for the EU and its Member States. Over 1.2 million first time asylum seekers were registered in the EU in 2015 - more than double the number of asylum applications received in 2014.[19] Due to Europe's geographical position, this trend is set to continue in the coming years.

In this context, the European Commission adopted the European Agenda on Migration in May 2015, to move from an emergency to a managed migratory situation where the EU can meet its international obligations, tackle root causes and address migration flows in an effective way. The purpose is to better manage migration through a strong asylum policy, including a reform of the Dublin system which has been under great pressure. The European Agenda on Migration also brought to the fore an increased focus on the EU external policy.

The external dimension of EU migration and asylum policy has thus been reinforced, given the direct link between migration policies inside and outside the EU. It pursues three main objectives: first, a humanitarian one, to ensure that the EU acts as a

(19) Eurostat, *Asylum in the EU Member States: Record number of over 1.2 million first time asylum seekers registered in 2015*, 2016. Available at **http://ec.europa.eu/eurostat/ documents/2995521/7203832/3-04032016-AP-EN.pdf/**

responsible member of the international community eager to address migration and displacement challenges worldwide; then, a solidarity consideration which is inspired by the importance of assisting the third countries bearing the greatest burdens in terms of hosting refugee populations; and finally a migration-management purpose, to manage migration flows in accordance with the social, economic and security interests of EU Member States. These motivations are not mutually exclusive, but are rather closely interlinked and reinforce each other. These policies are meant to be fully compliant with international human rights standards.

The objectives of the EU external asylum policy are consistent with the UNHCR's durable solutions, which include voluntary repatriation, integration and resettlement. While the possibility to resettle in the EU remains limited, there has been an increasing commitment in this respect. A proposal to establish a Union Resettlement Framework was introduced by the European Commission in July 2016, in order to create a more structured, harmonised and permanent approach to resettlement across the EU. The Union Resettlement Framework is to be implemented in complementarity with other resettlement and humanitarian admission initiatives undertaken at the EU level, including the European Resettlement Scheme established in July 2015.

These developments are in line with a more comprehensive EU policy progressively built up over the years, as for instance the EU Regional Development Protection Programmes. Funded by the EU, these Programmes aim at improving the management of refugee and migrant flows and enhancing protection capacities in countries of origin and transit, notably in the Middle East, North Africa and the Horn of Africa. More generally, the EU action includes "soft" advocacy, in terms of promoting adherence to international standards and norms in its external relations. In the context of EU enlargement and liberalisation processes, it has for instance set a number of asylum-related benchmarks to be met by third countries. The EU also provides development and humanitarian aid, and engages in peace-building and conflict prevention programmes to tackle the root causes of migration and facilitate durable solutions.

Particular attention is also attached to agreements with third countries, such as the EU-Turkey Statement of March 2016, which is considered by the EU as a successful example of cooperation. In addition, the Communication presented by the European Commission in June 2016 on the new Partnership Framework approach further determines the future of these EU relations. The ultimate aim for the EU and its Member States is to use its external instruments to increase leverage vis-à-vis third countries in the field of migration and border management. Different policy elements, such as trade, energy and neighbourhood policy, as well as development aid are to be combined to achieve this objective. Countries that readmit their own nationals and cooperate in managing irregular migration flows from third countries are to be rewarded via the EU development aid policy.[20] Along these lines, financial support to achieve the purposes of this approach is deployed in a more targeted manner, with a focus on projects aimed at improving migration management, as well as return and readmission through reintegration and capacity building. This also includes innovative and more flexible financial tools, including the Facility for Refugees in Turkey and the EU Emergency Trust Fund for Africa.

(20) European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration*, COM(2016) 385 final, 2016. Available at **http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf**

To sum-up, the EU is actively engaged in addressing the global migration challenges, as well as the root causes of migration. The EU also advocates for global shared responsibility in achieving a more equitable and sustainable repartition for hosting refugees worldwide. The Comprehensive Refugee Response Framework, which is to be adopted in 2018 in the framework of the New York Declaration, is expected to play an important role in this respect.

Pathways to access international protection

Pursuant to the 2030 Agenda on Sustainable Development Goals, the New York Declaration adopted at the UN Summit for Refugees and Migrants, calls for durable solutions and refers to the need to facilitate orderly, safe, regular and responsible migration and mobility of people. Through the Declaration, Heads of State and government have committed to expand the number and range of legal pathways available, notably by providing an increased number of resettlement places.

With the protracted conflict in its sixth year, Syria is the first country of origin of refugees worldwide, with 4.9 million registered refugees. This is however not the only current protracted conflict, with millions of people affected by decades of conflict in Afghanistan, Iraq, the Democratic Republic of Congo and Somalia.[21] In this context, UNHCR have been advocating for the development of admission pathways, with a focus on resettlement. At the global level, the UNHCR has been reminding the international community that Turkey, Pakistan, Lebanon, Iran, Ethiopia, Jordan, Kenya, Uganda, Democratic Republic of Congo and Chad remained the ten main refugee-hosting countries by the end of 2015.[22]

There have been positive developments at the EU level over the past few years in this respect. Indeed, while only six Member States have resettled refugees on an annual basis in 2003-2004, 27 Member States took part in resettlement schemes as of July 2015. Yet the EU's overall contribution to global resettlement remains modest, with 8,155 refugees resettled in the EU in 2015.[23] It is estimated that a total of 1.19 million refugees will be in need of resettlement in 2017[24], out of which Syrians, Sudanese, Afghan and Congolese refugees account for more than half.

In relation to the resettlement needs of the Syrian refugee population, the UNHCR has been calling for the resettlement of ten per cent of these refugees over the next three years. To date, over 200,000 pledges have been made by the international community. The efforts of the EU in this regard are to be commended, as more than 100,000 of these pledges were made by EU Member States and Schengen countries.[25] Among others, France has established a humanitarian admission and a visa asylum programme,

(21) ICRC, *Protracted conflict and humanitarian action: Some recent ICRC experiences*, 2016, p. 38-39. Available at https://www.icrc.org/sites/default/files/document/file_list/protracted_conflict_and_humanitarian_action_icrc_report_lr_29.08.16.pdf

(22) Supra note 3, p. 15.

(23) Eurostat, *Resettled persons – Annual data*, Available at **http://ec.europa.eu/eurostat/tgm/table.do?tab=table&plugin=1&language=en&pcode=tps00195**

(24) Supra note 3, p. 13.

(25) United Nations, High Commissioner for Refugees, *Resettlement and other admission pathways for Syrian refugees*, 2017. Available at **www.unhcr.org/protection/resettlement/573dc82d4/resettlement-other-admission-pathways-syrian-refugees.html**

Ireland has developed a private sponsorship programme and the United Kingdom a new scheme additional to the UK's Vulnerable Persons Resettlement Scheme. Similarly, Austria has a humanitarian admission programme, while Italy announced a private sponsorship project, notwithstanding the great number of arrivals on its territory over these last few years. These concrete initiatives constitute positive examples of tangible responses provided when the political will exists.

However, the need to move away from an *ad hoc* response in an emergency situation to the development of predictable programmes to be integrated into the European protection landscape was also emphasised by the UNHCR. In this respect, the proposal to establish a Union Resettlement Framework was generally welcomed as an EU commitment to contribute to global resettlement with a longer-term perspective. Yet, a number of concerns were raised, notably by the UNHCR which recalled that resettlement is a humanitarian activity that should not be made conditional on the cooperation of third countries with the EU in the area of migration management, returns and readmissions.[26] In addition, the European Council on Refugees and Exiles (ECRE) stressed that access to this Framework should not be denied to refugees that previously attempted to reach the EU irregularly[27], as proposed in the current draft proposal.

Overall, it was underlined that resettlement should however neither replace nor substitute existing schemes. In addition, it needs to be carried out in parallel of the examination of spontaneous asylum applications made on the territory of the Member States.

In the European Agenda on Migration EU Member States are also encouraged to use other available legal avenues for people in need of international protection, including private sponsorships, humanitarian visas and family reunification procedures. These provisions are fully consistent with the New York Declaration, which calls for the expansion of existing humanitarian admission programmes.

Regarding private sponsorship programmes, the UNHCR reminded that there are examples of such programmes already developed in some EU Member States, as well as elsewhere in the world. This includes Canada, which has facilitated the resettlement of more than 275,000 privately sponsored refugees since the creation of the programmes in the 1970s.

Humanitarian visa procedures, allowing EU Member States to issue a short-term visa on humanitarian grounds, could constitute an additional and complementary tool for people in need of international protection to access the EU. According to a study carried out in 2014 by the European Parliament, 16 EU Member States have or have had some scheme for issuing humanitarian visas. It is estimated that in 2015, more than 100,000

(26) United Nations, High Commissioner for Refugees, *Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council UNHCR's Observations and Recommendations*, 2016, p. 6. Available at **http://www.refworld.org/docid/5890b1d74.html**

(27) ECRE, *Untying the EU Resettlement Framework: ECRE's Recommendations on breaking the link with migration control and preserving the humanitarian focus of resettlement*, 2016, p. 3. Available at **www.ecre.org/wp-content/uploads/2016/10/Policy-Note-01.pdf**

of such visas were issued by Member States[28]. However, in the absence of an EU-wide scheme setting common criteria for humanitarian visas, this tool is barely used. Many organisations, including the Red Cross EU Office, encourage the increased use of humanitarian visas.[29] In this respect, the current negotiations around the European Commission's proposal for a recast Regulation on the Visa Code can represent an opportunity to develop common guidelines and procedures, provide for a more transparent process, and facilitate the issuance of these visas in EU Member States.

Last but not least, many who embark on dangerous journeys are believed to have family members in EU Member States, which highlights the importance of family reunification as a means to enhance safe and legal access to Europe.[30] The Directive on the Right to Family Reunification of September 2003 establishes common rules determining the conditions under which family reunification is granted to third country nationals residing lawfully in the territory of a Member State. Nonetheless, beneficiaries of international protection and their family members increasingly encounter obstacles in accessing their right to family reunification in the EU. In this respect, a number of concerns were raised in a report produced by the Red Cross EU Office and ECRE.[31] It notably underlines that in some Member States, timelines for applicants to lodge their request are unrealistic due to a range of factors, including delays in locating family members and collecting necessary documents. It also refers to lengthy and costly procedures, as well as the difficulties in obtaining reliable information and in accessing legal aid. While family reunification is considered as an important aspect for integration in the host community, certain EU Member States increasingly apply restrictive procedures, rather than more favourable rules enabling refugees to enjoy their right to family life.

(28) European Parliament, *Towards an EU humanitarian visa scheme?*, 2016, PE 556.950. Available at **http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/556950/IPOL_BRI(2016)556950_EN.pdf**

(29) Red Cross EU Office, Position Paper, *Legal Avenues to Access International Protection in the EU*, 2013, p. 1. Available at **https://redcross.eu/positions-publications/legal-avenues-to-access-international-protection-in-the-eu.pdf**

(30) Red Cross EU Office, *Perilous journeys: Vulnerabilities along migratory routes to the EU*, 2015, p. 7. Available at **https://redcross.eu/uploads/files/Latest%20News/perilious%20journeys%20conference/booklet%20Migratory%20Trail_web.pdf**

(31) Red Cross EU Office and ECRE, *Disrupted Flight: The Realities of Separated Refugee Families in the EU*, 2014. Available at **https://redcross.eu/positions-publications/disrupted-flight-the-realities- of-separated-refugee-families-in-the-eu.pdf**

The Missing and the Dead

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According to the International Organisation for Migration (IOM), more than 3,600 people were recorded as dead or missing in the attempt to reach Europe by sea between January and October 2016.[32] IOM data also show a dramatic increase in migrant fatalities in the Mediter-ranean Sea over these last few years. However, the true number of migrant deaths is certainly higher. Many bodies are never found, and for those that are, many are never identified.[33] Hence, thousands of families are left in limbo over their loved one's fate. This uncertainty, which may last for years, does not only result in a huge emotional strain, it can also have social, economic, legal and administrative consequences for those left behind.

The fourth session of the Conference aimed at shedding light on the issues of dead and missing migrants, with a focus on the identification of dead migrants in Italy. The consequences for the relatives of a missing migrant were also discussed, to raise awareness on the plight and needs of the families left behind.

Managing and identifying the bodies of dead migrants

The number of migrants who lose their lives in the attempt to reach Europe remains under-represented in official statistics. Yet, this number has continuously risen over the last years and the likelihood of migrants going missing can notably be one of the unintended consequence of migration policies. Many dead migrants remain unidenti-fied, therefore remaining missing persons[34], and depriving their bereaved family of the right to know and to mourn and honour their remains.

It is today well-acknowledged that forensic specialists play a crucial role in supporting the proper and dignified management of dead bodies. They have the necessary tools and expertise to advise the authorities responsible for the search, recovery, proper management and identification of human remains. The forensic identification of human remains can be defined as a legal determination based on the scientific matching of

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(32) IOM, *Mediterranean Migrant Arrival Reach 317,209; Deaths at Sea: 3,632*, 2016. Available at https://www.iom.int/news/mediterranean-migrant-arrivals-reach-317209-deaths-sea-3632

(33) IOM Global Migration Data Analysis Centre, *Fatal Journeys Volume 2: Identification and Tracing of Dead and Missing Migrants*, 2016, p. 1. Available at **https://publications.iom.int/ system/files/fatal- journeys_vol2.pdf**

(34) To be noted that the ICRC defines "missing persons" as a person *"whose whereabouts are unknown to his or her relatives and, or who, on the basis of reliable information, has been reported missing in accordance with national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority"*. See ICRC, "Guiding principles/model law on the missing", *The Domestic Implementation of International Humanitarian Law: A Manual*, Annex IV, available at **https://www.icrc.org/eng/resources/documents/publication/pdvd40.htm**

information on missing persons with unidentified human remains. The identification process requires a holistic approach that takes into consideration all available scientific and contextual evidence.[35] It consists in matching ante-mortem data – information mostly collected from families pertaining to the person before going missing, including general personal information, physical appearance, medical and dental history, clothes and personal items, and other distinguishing features – with post-mortem data collected from a set of human remains and any circumstantial evidence.

Beyond ethical considerations to guarantee the dignity of dead bodies, and with due consideration of legal requirements, the identification of dead migrants is also necessary for the thousands of families left in limbo over their loved one's fate. However, important challenges still remain in this respect.

In Europe, it was observed that forensic capacity and practices range from excellent in most large urban centres to below-standard in some peripheral settings where dead migrants may also be found. To this day, there is no consistent single system used across Europe for forensic identification to record and manage information on the dead, and the lack of transnational cooperation on forensic practices remains a huge challenge. For instance, there is no centralised database containing information on all unidentified decedents at the European level. Where such databases do exist at the national level, they only contain partial information, which is not accessible to all concerned stakeholders. Yet, there has been some progress in the use of centralised databases, including the ICRC Ante-Mortem / Post-Mortem Database.[36]

In November 2013, together with the *Università Degli Studi di Milano*, the *Laboratorio di Antropologia e Odontologia Forense* ("LABANOF Institute") and the Italian Red Cross, the ICRC organised a first Conference on the management and identification of unidentified decedents, with an emphasis on dead migrants. Held in Milan, this Conference focused on the experience of European Mediterranean countries and brought together a number of stakeholders, such as heads of forensic science departments, authorities and international organisations. It aimed at fostering dialogue and raising awareness about the humanitarian tragedy of unidentified dead migrants, sharing information about situations and practices in Spain, Italy, Greece, Malta, France and Portugal, identifying and promoting best practices at national and European levels, as well as improving communication, coordination and cooperation among concerned stakeholders for preventing and addressing this tragedy. This event resulted in a set of recommendations, and a plan of action for both practitioners and policy makers, to address the challenges identified - from the proper and dignified management of the bodies to outreach to the families. In October 2015, a follow-up Conference was organised in Barcelona by the ICRC, together with the Spanish Red Cross and the *Centro para la Cooperación en el Mediterráneo*, to share lessons learned from the implementation of the above-mentioned recommendations and to adjust them accordingly.

(35) ICRC, *Forensic identification of human remains*, International Committee of the Red Cross, 2013, p. 2. Available at **https://www.icrc.org/sites/default/files/topic/file_plus_list/4154-forensic_identification_of_human_remains.pdf**

(36) The Ante-Mortem / Post-Mortem (AMPM) Database is an electronic tool for managing information on missing persons and human remains. It aims to facilitate the identification process by supporting the archiving, standardisation, reporting, searching, and analysis of forensic data, as well as the automated basic matching of ante- and post-mortem data. For additional information see, ICRC, *The Ante-Mortem / Post-Mortem Database: An information management application for forensic data*, 2013. Available at **https://shop.icrc.org/icrc/pdf/view/id/1568**

These recommendations are *inter alia* based on field experience, notably lessons learned from migratory flows in Central America, particularly in Mexico, where the ICRC works with the authorities to develop domestic procedures and promote the standardisation of protocols to improve the management and identification of human remains.[37]

There is scope and need for action for improved communication, coordination and co-operation between concerned stakeholders. To this end, the management and the identification of dead bodies should be strengthened, notably through the implementation of standardised protocols and forms at the national and European levels. This should include the setting up of mechanisms to centralise data on unidentified decedents – including migrants – and missing persons, at the national and regional levels.

A concrete example: The situation in Italy

In June 2016, the IOM Global Migration Data Analysis Centre described the Central Mediterranean route to Italy as "deadlier than ever".[38] More than 3,600 migrant deaths were reported on this route between January and October 2016, a significant increase from approximately 3,800 and 3,300 deaths respectively recorded in total for 2015 and 2014.[39] IOM also estimates that "more than 6,000 bodies remain unrecovered in the Mediterranean from incidents between 2014 and May 2016".[40] In this context, the number of dead bodies have rapidly overwhelmed the available capacities and expertise of the national authorities particularly exposed to this tragedy.

Italy is a country under particular pressure, as it is confronted with the continuous arrivals of migrants, both in small and large numbers, and in different locations throughout the country. When incidents do occur, the recovery and identification of dead bodies are often carried out in different sites. This raises important issues, since the approach used to carry out the identification process may depend upon the Office of the Prosecutor involved. In addition, given Italy's geographical position, dead bodies from the same incident may be recovered and managed in different countries altogether. From a technical point of view, these bodies may be handled in different ways, resulting in the loss of important data and compromising the identification process.

In order to ensure the proper management and identification of dead migrants, the Italian Government established a Special Commissioner for Missing Persons ("Office of the Commissioner") in 2007. The Office of the Commissioner works towards coordinating efforts in the management and identification of dead bodies, while reaching out to the families of missing persons. This initiative is today considered as an example of good practice, although important challenges persist, notably in terms of lack of human and material resources.

(37) ICRC, *Mexico and Central America: Missing persons and their families*, 2015. Available at **https://www.icrc.org/en/document/mexico-and-central-america-missing-and-their-families**

(38) IOM Global Migration Data Analysis Centre, Data Briefing Series, *The Central Mediterranean route: Deadlier than ever*, 2016, p. Available at **https://publications.iom.int/system/files/pdf/gmdac_data_briefing_series_issue3.pdf**

(39) IOM Global Migration Data Analysis Centre, Data Briefing Series, *Migrant deaths and disappearance worldwide: 2016 analysis*, 2017, p. 2. Available at **https://publications.iom.int/system/files/pdf/gmdac_data_briefing_series_issue_8.pdf**

(40) *Ibid.*

In close cooperation with the LABANOF Institute, the Office of the Commissioner has been focusing on a number of identified shipwrecks, which results in efforts being dedicated to ensure the collection of quality data, as well as the development of outreach activities. Indeed, while it is crucial to involve the families in the investigations as they are often the most valuable sources of ante-mortem data, they are also entitled to receive information about this process and its results.

The shipwreck near Lampedusa in 2013 is the first case in which the Office of the Commissioner has been involved, with more than 300 deaths reported. Following the collection of post-mortem data by the police on the bodies recovered, the Office of the Commissioner – with the support of civil society organisations – sent calls throughout Europe to people who might potentially have lost a family member during the shipwreck. These calls gave information about the possibility to provide ante-mortem data to facilitate identifications in two sites set up in Rome and Milan. So far, about 70 persons interviewed have been confirmed to be relatives and have identified dead bodies. Nonetheless, over 190 bodies remain unidentified.

Under the auspices of the Office of the Commissioner, a post-mortem task force was also established to work on the cases of around 900 migrants who reportedly lost their lives during a shipwreck which took place in April 2015. The intention behind this task force was to create a mechanism independent from law enforcement authorities and to go beyond investigations mainly driven by the wish to prosecute smugglers. The Italian Navy, together with the Commissioner, played an important role therein, notably by bringing the sunken vessel to the Italian shore in June 2016 and by providing a site to set up the facilities required to handle such a large number of bodies. Through the work of this task force, around 200 bodies have been examined so far, and 35 bodies have been tentatively identified based on personal effects found with the bodies. Yet, all these efforts remain meaningless if ante-mortem data is not collected.

Both cases show that it is possible to collect data on dead bodies recovered after incidents. But they also illustrate the efforts needed in collecting ante-mortem data and information from families, which is required for the identification of their loved ones. A central mechanism or structure should be created in countries of origin – and transit where relevant – to which the families of missing migrants could willingly turn. This should be done so families can register their missing family member, as well as receive information on the follow-up measures undertaken to trace and locate their loved ones. The exchange and transmission of information should be coordinated and facilitated from and to families on the one hand, and between countries of origin, transit and destination on the other hand. To this end, adequate resources and funding should be allocated for capacity-building and forensic activities at national, regional and transregional levels.

While the identification process strives to ensure proper documentation and protect the dignity of human remains, it also enables the issuance of relevant documents, including death certificates. As an example, a Sudanese child whose mother died in the 2013 Lampedusa shipwreck was recently reunited with his aunt living in Sweden, following the delivery of his mother's death certificate. Without this document, the child would have struggled to be reunited with his only remaining living relative. This story notably illustrates how the lack of identification of missing and dead migrants may affect families.

Addressing the needs of families of the missing

Families of migrants can be left in very vulnerable situations, especially when they have no news of their loved ones for prolonged periods of time.[41] If the missing person is a victim, one must not forget that family members are also particularly affected.[42] Disappearance is a synonym for anguish for families not knowing whether their relative is alive or dead. Whereas relatives of the confirmed dead have a specific status as mourners, it has been observed that those of the missing do not benefit from a recognised social identity or place in the community.

Recently, the Mediterranean Missing Project carried out a research to understand the impact of disappearance on family members. In this framework, relatives of missing migrants were interviewed in five countries, including Tunisia, Syria and Iraq. The objective was to give them a voice, since they often remain underrepresented both in the identification process and the policy discussions. As the Mediterranean Missing Project's final report reminds us, "Families are the principal reason why efforts are made to identify the dead and they are the most important source of ante-mortem data".[43] As a primary consideration, it is critical that the families of missing persons are informed of the fate and whereabouts of their loved ones. Many will search until they find answers, even if it takes years. Divergent opinions on the missing person's probable fate may fuel family conflict. The Mediterranean Missing Project considered that families are left in a state of "ambiguous loss",[44] as uncertainty over a loved one's whereabouts creates a range of psychological and psychosocial effects. In addition, when a person goes missing, the family often falls into financial difficulty, especially when the missing relative was the breadwinner. This may impact family roles, notably for women. At the administrative level, the lack of recognition of "missing" as a legal status may have many consequences on the family's rights to property, inheritance, or guardianship of children.

In 2013, the ICRC and the Senegalese Red Cross conducted a needs-assessment in Senegal to better understand the specific needs of the families of missing migrants and to propose solutions.[45] In addition to the need to know what happened to their missing relative, the families identified socioeconomic and psychological needs, as well as lack of legal and administrative support as their most pressing needs. These

(41) The Family Links Network of the Red Cross and Red Crescent Movement is composed of the ICRC's Central Tracing Agency and the tracing services of ICRC delegations and the 190 National Red Cross and Red Crescent Societies. Restoring Family Links is the generic term for a range of activities that aim to prevent people from disappearing or getting separated, restore and maintain contact between family members, and clarify the fate of persons reported missing. For additional information, see ICRC, *Activities for Migrants*, 2015. Available at **https://shop.icrc.org/icrc/pdf/view/id/2140**

(42) ICRC, *Living with the absence: Helping the families of the missing*, 2014, p. 8. Available at **https://www.icrc.org/sites/default/files/topic/file_plus_list/4152-living_with_absence_helping_the_families_of_the_missing.pdf**

(43) Mediterranean Missing, *Missing Migrants in the Mediterranean: Addressing the Humanitarian Crisis*, 2016, p 11. Available at **http://www.mediterraneanmissing.eu/wp-content/uploads/2015/10/Mediterranean-Missing-Summary-report-290816.pdf**

(44) Supra note 43, p. 4.

(45) CICR, « Barça ou Barsak » : *Étude sur les besoins actuels des familles de migrants sénégalais disparus*, 2013, p. 17. Available at **http://www.icrc.org/eng/assets/files/2013/familles-migrants-senegalais-disparus.pdf**

consequences may last over several generations. While national authorities bear the primary responsibility for responding to the needs of the families of the missing, international and civil society organisations play an important role, both by providing direct assistance to the families and facilitating discussions between the authorities and family associations. Based on the findings of this needs-assessment, the ICRC and the Senegalese Red Cross have been running so-called "accompaniment" projects in northern Senegal since 2015, offering psychosocial support, literacy classes, vocational training and financial assistance to set up small businesses and improve their economic security to the families of missing persons. The importance of solidarity in the community was also recalled by the Mediterranean Missing Project. Associations for families of missing migrants play a crucial role to bring these families together and help them cope with the disappearance of their loved ones.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.