

## **Treat the root causes of the asylum crisis, not the symptoms**

**Sergio Carrera and Karel Lannoo**

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The tragedy of asylum-seekers throughout the EU is the subject of widespread discussions of an unprecedented scale. The events have created a general climate of shock and discontent over the ability of European leaders to deal with such a critical situation.

On September 9<sup>th</sup>, the President of the European Commission, Jean-Claude Juncker, delivered his State of the Union speech, “Time for Honesty, Unity and Solidarity”, before the European Parliament. Expectations were high that Juncker would seize this occasion as an opportunity to decisively move things forward in the current asylum crisis. And his opening statement – “The first priority today is and must be addressing the refugee crisis” – was promising in this regard. Yet, has the Commission seriously taken this occasion to propose fundamental changes and actions that are most needed?

Up to now, EU responses have been disappointing, both in scope and in ambition. The central problem is that current EU policy debates have lacked a proper focus: What is this ‘crisis’ really about? There are two key challenges behind the current asylum crisis.

First, existing EU rules do not fit the purpose. The so-called ‘Dublin regime’, which lies at the basis of the current European asylum system, does not work in practice. This regime, which dates back to 1990, assigns responsibility for assessing an asylum application to the first EU state of entry. The rule has put immense strain on those states located on the EU’s common territorial external borders, where asylum applications have mainly concentrated. It is also forcing asylum-seekers to remain in these states, irrespective of their other circumstances and their wishes.

Current events are explicitly revealing the unsustainability of these rules. The recent decision by German Chancellor Angela Merkel to stop sending Syrian asylum-seekers back to the EU state from which they first entered the EU sends an unequivocal message: the regime is losing credibility with key EU leaders and is no longer being fully respected in practice. This is further exemplified by the fact that no EU member state is currently ‘sending back’ asylum-seekers to Greece.

Sergio Carrera is Senior Research Fellow at the Centre for European Policy Studies and Associate Professor at the University of Maastricht. Karel Lannoo is Chief Executive Officer at CEPS. An earlier version of this commentary was published by EurActiv, 8 September 2015. It is republished here with their kind permission.

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A second challenge relates to the systemic failure of states like Greece, Hungary and Italy to adhere to the democratic rule of law principles and fundamental rights. This failure arises from the lack of institutional capacity to provide adequate 'first-reception' conditions to asylum-seekers and to extend to them treatment that complies with internationally recognised human rights obligations.

EU asylum and border laws are based on 'mutual trust'. This assumes that all EU states' asylum systems are fit and ensure proper governance standards. The images taken from the ground are telling the world a completely different story.

So, are the initiatives outlined in Juncker's State of the Union capable of addressing these challenges? In short, as of now, not fully. While some of the political principles delineated in the speech have been rightly placed – such as those reminding everyone why giving refuge to asylum-seekers and complying with the fundamental right to asylum is so crucial and that “walls and fences have no place in an EU Member State” – the concrete initiatives are inadequate for addressing the root causes of the asylum challenge.

Most notably, the State of the Union speech has confirmed previous Commission plans for a new quota relocation system aimed at distributing more than 120,000 asylum-seekers arriving in Greece, Italy and Hungary among all EU member states and another system for sharing the financial burden among all EU states in coping with the arrival of asylum-seekers.

These ideas have been controversial since the Commission first tabled the so-called European Agenda on Migration this last May and have not found much support in a majority of EU member states. True, some EU states are not living up to their commitments to common values of equal sharing of responsibilities. Yet, the Commission has so far taken an excessively cautious approach. The prescribed 'cure' does not actually address the causes of the 'disease'. Rather than focusing on the root causes of the crisis, it has tried to alleviate its most visible effects using a 'crisis-management' or 'emergency' approach.

A permanent relocation distribution system, which EU states would be obliged to adopt, would be a welcome step forward to address the most pressing tragedies on the ground. Yet these EU quotas plans have by and large been justified on the need to face an 'emergency-led' situation requiring a quick fix. They still reside within the remit of the Dublin system, which is affected by a deeper malady.

The main dilemma facing these initiatives is the persistent hope that the Dublin regime can still be 'saved' by adding mechanisms that address exceptional crises, but retaining the current unfair regime of distribution of responsibility. Juncker's speech rightly alluded to the need to prepare a “more fundamental change in the way in which we deal with asylum application and notably the Dublin System”. But no innovative ideas have been in fact tabled for such a fundamental change to take place. The quota plans still frame the protection of refugees as a border/burden-sharing issue rather than as a collective EU-wide obligation.

Many voices have called for more 'solidarity' and more 'sharing of responsibility' between all EU states to face the asylum crisis, but the question remains “How best to effectively put these EU values into practice?”

Everyone knows that there are no simple ‘solutions’. Sending more EU funds to the countries concerned has been already tried and it has not worked. How can we ensure effective use of financial capacity-building against the background of inadequate observance of the rule of law?

A relocation distribution system would offer no long-term answers as long as it is still anchored in the Dublin rules. Other plans such as relocating asylum-processing centres in third countries or granting the status of ‘safe third countries’ to neighbouring states that patently do not qualify as such, cannot possibly offer sustainable answers to a dilemma that is primarily intra-European. The next Extraordinary Council of Interior Ministries meeting of 14 September will constitute another testing ground for the Commission’s emergency relocation proposal.

What should the Commission do? Priority should be given to moving away from short-term, crisis-management ‘solutions’ within the remit of the Dublin regime. Experience has shown that temporary or ‘exceptional’ fixes for systemic problems is not the most efficient way to move forward.

A key concern for a majority of EU member states is one of institutional capacity in sharing responsibility. The answer here should be “more EU”, not less. The Commission should officially acknowledge that the Dublin regime does not work and call for it to be urgently replaced by a European Asylum System based on a new innovative model of ‘institutional solidarity’.

This system should take the shape of a Common EU Asylum Service, endowed with the competence to examine asylum applications and independently implement the distribution of asylum-seekers. As the European Parliament has rightly voiced, any new distribution system should take due account of the family and personal circumstances, as well as preferences, of the asylum-seekers concerned. This would overcome the current limits in competences of the EU External Borders Agency (Frontex) and the European Asylum Support Office (EASO). In his speech, the Commission President reiterated old calls for developing Frontex into a European border and coast guard system, but regrettably, he does not envisage any sort of enhanced institutional solidarity in the field of asylum.

Proper and efficient enforcement of current EU standards also remains critical. Juncker’s speech has rightly underlined the need for current EU asylum law standards to be respected in practice and anticipated the start of infringement proceedings against several EU states. The Commission should do more to build its own internal ability to better ensure that all EU member states duly implement existing EU laws, such as their capacities for first reception and dealing with asylum applications, and that they fully comply with the rule of law and fundamental rights on the ground. A further approximation of asylum policies after the refugee status has been granted would constitute another positive step forward. Here priority should be given to Juncker’s proposal to allow asylum-seekers to have access to member state labour markets.

Current migration debates are defying the core values on which the EU is founded. European institutions should give priority to a common policy tackling intra-EU governance challenges, and hence treat the root causes of this asylum crisis. Initiatives such as those envisaged in Juncker's State of Union 2015 Speech constitute a first, yet timid and cautious step in that direction. There is no way back for 'more Union' in Europe's refugee policy.