

Refugees

Criticisms and Perspectives of the European Union in the light of the Yugoslavian Crisis

Abel Polese

Abel Polese, MA College of Europe, Bruges/Warszawa, Natolin Campus (Warszawa) is currently a Visiting Fellow of CEP (Civic Education Project) at Odessa National University in Ukraine where he teaches geopolitics of conflict and European studies.

ABSTRACT: This article shows the attitude of the European Union towards refugees in the decennium 1990-1999, when the Balkan conflict broke out. It aims at demonstrating that, although it was clear that EU structures and legal framework were insufficient to deal with such a huge number of refugees, no satisfactory solution was found or proposed and negligence was the only reason behind ineffective international protection for people fleeing from the region.

Part one spells out the legal framework, the definition of refugee and the progresses of the last 50 years in matter of international protection. Part two deals with the unclear statistics on refugees of these years, proposes an interpretation and shows some significant anomalies and part three describes the best mechanism (still too weak and adopted too late) provided by the EU in matter of refugees to face the massive income of refugees.

Part I: The Legal Framework The Geneva Convention

After the WWII political dialogue of some countries culminated into the Convention relating to the Status of Refugee¹ and approved on 28 July 1951 by a special U.N. Conference.

The Convention, better known as the Geneva Convention² is, insofar, the most comprehensive document spelling out who is a refugee and the kind of legal protection, other assistance and social rights he or she should receive from states parties to the document.

It also outlines the refugee's rights including freedom of religion and movement, the right to work, the right to an education and accessibility to travel documents, but it also under-

scores a refugee's obligations to a host government such as the respect of local laws³.

The convention also recognized the international scope of refugee crises and the necessity of international co-operation, including burden-sharing among states, in tackling the problem⁴.

There are two fundamental definitions contained in the Conventions.

The first one is the definition of the term *refugee*: the Article 1 of the Convention defines a refugee as

"A person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political

¹ The complete definition of refugee is at page 2 of this article

² Since it was signed in Geneva, Switzerland

³ UNHCR (*United Nations High Commissioner for Refugees*), the refugees; information paper 1997

⁴ UNHCR, Convention relating to the status of refugees; Geneva 1951

*opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution*⁵."

The second main statement is the principle of non-refoulement:

No Contracting state shall expel or return (refouler) a refugee against his or her will, in any manner or whatsoever, to a territory where he or she fears persecution.

More precisely the principle of *non-refoulement* – *refoulement* is the forcible return of people to countries where they face persecution – has become part of customary international law and is binding on all states. Therefore no government should expel a person in those circumstances.

There is also a clear spell out of people or groups of people who are not covered by the Convention⁶.

It is to be said that the Convention does not oblige signatory countries to grant asylum to every seeker. It simply underlines the principles to distinguish a refugee from a migrant by giving some indications⁷.

Over the past year the most criticised part of the Convention was the one on individual concern: to be considered

as refugee, a person has to prove to be in real and personal danger. This statement automatically excludes cases of war as concern is not individual but rather collective⁸.

The scope of the convention is limited to persons who became refugees as a result of events occurring before 1 January 1951⁹.

The Protocol of 1967 and its Ambiguities

The beginning of the *Cold War* raised the necessity of widening the scope of application of the Convention *ratione temporis*.

For this reason, a Protocol relating to the Status of Refugees was prepared and submitted to the UN General Assembly in 1966.

The Protocol came into force on 4 October 1967. By accession to the Protocol, States undertake to apply the substantive provisions of the 1951 Convention to all refugees covered by the definition of the latter without limitation of time¹⁰.

Thought not any longer just victims of the WWII but also the victims of the new political situation could be considered as refugees, this change would have soon shown a fundamental deficiency of the system.

Actually, being the Convention of 1951 only retroactive, it was exhaustive of all potential events which might have generated refugees, whereas the Protocol of 1967, projecting protection into the future, was ob-

⁵ UNHCR, see note 2

⁶ The convention does not contain an explicit right to asylum or a duty of non-refoulement. However a number of its provisions have been interpreted to be of benefit to refugees and asylum seekers, most notably article 3, which contains the Convention's prohibition of torture.

The European Court of Human Rights has found an implicit right for the refugee not to be returned to a risk of torture and therefore a country could be in breach of article 3 if it forcibly returns a person to a country where he or she risks being subjected to torture, see also UNHCR, handbook on refugees for NGOs, Geneva 1999

⁷ SCI (Service Civil International); Handbook on Refugees, Antwerpen, 1996.

⁸ The issue will be considered more deeply in the next section, together with the protocol of 1967.

⁹ UNHCR; see note 2.

¹⁰ UNHCR; Protocol relating to the Status of Refugees, 1967

viously not able to take into account all the future situations to generate refugees.

It is a widespread opinion nowadays that the case of war should at least have been mentioned in the 1967 Protocol or the Convention should have been revisited prior to the ratification of the Protocol itself.

The extension of the Convention, which passed from a static consideration of the events (referring to the past) to a dynamic one (willing to extend it to the future) should have been accompanied by an appropriate follow-up mechanism able to up-to-date regularly the Convention and adapt it to the current necessities.

We can see that the Protocol was a significant achievement in the protection of human rights as the new victims of the Cold War¹¹ and of the new ethnic-religious persecutions¹² could have a legal basis to demand international protection. However the 1967 Protocol started up a perverted mechanism during the recent conflicts¹³.

The Decade 1980-1990

During the 1980s cooperation was merely intergovernmental, not based on any treaties and not involving any

institutions. Some working groups began to work on the Dublin Convention and the External Borders Convention¹⁴.

The phenomenon of refugees increased sensibly¹⁵ over the past 20 years, especially thanks to the Kurdish question and the Iran-Iraq war.

During the decade 1980-1990 the countries of the European Union received 235.781 asylum applications from Turkish citizens (mainly Kurdish). The applications were not equally distributed all over the territory: 57% of those applications were filled in the Federal Republic of Germany.

The other big group of refugee were the Iranians: 147.941 citizens of Iran applied for asylum and 38% of them were directed to Germany.

Applications from Polish citizens were also a large number (212.504) and Germany received more than 50% of the total.

Applications from Sri Lanka were 103.207. Those submitted in Germany made up 40% of them¹⁶.

Being strongly affected by the huge flow of refugees in Europe, Germany created a system of internal repartition among its *länder*s. Evenly distributing the burden of extra citizens among its territorial entities it avoided a potential internal collapse.

Two main considerations were to be drawn from those data: the first one was that a system of *burden sharing*¹⁷

¹¹ After the spring of Prague in the Czech Republic and Solidarnosc in Poland many people fled to Western Europe and United States and, thanks to the protocol of the 1967, could easily be recognized as refugees and guaranteed a sort of protection and basic rights.

¹² Sri-Lanka, Turkey etc.

¹³ *More and more refugees were rejected as they did not fulfil the conditions of the Geneva Convention but nobody considered that the definition offered by the Convention was inappropriate and obsolete, product of a different overall context* J. Van Buuren; *Le droit d'asile refoulé à la frontière*, Manière de Voir, Mars 2002, Paris.

¹⁴ UNHCR, see note 1.

¹⁵ It began easier to cross the iron curtain and more and more people were escaping from their totalitarian regimes: the break out of conflicts in Asia and in the Middle East pushed many people to flee away.

¹⁶ UNHCR; *Asylum application in Industrialised countries: 1980-1999*, Geneva 2001

¹⁷ procedure allocating refugees on a even basis throughout the agreeing countries

was necessary within the EU (not only in Germany); the second was that the whole structure was to revise to face the growing number of applicants.

The system of *burden sharing* was set up with the Schengen agreements of 1986¹⁸ and with the Dublin Convention later on. It aimed at equally sharing the applications as too high a number of refugees in a country would prejudice internal security of the EU¹⁹.

The measures revealed weak and most Iranian refugees were rejected as no special attention was paid to the Iran-Iraq as cause of refugees. Despite this, the European Court of Human Rights started showing some more elasticity and gave precedents for a stronger protection of refugees²⁰.

¹⁸ The Schengen Agreements, in matter of refugees, introduced some "compensatory measures" are to adopt to make up for the lack of security due to the elimination of internal borders.

Relevant provisions for asylum policy include:

- Allocation of responsibility for the examination of asylum application: it defines which state is responsible for examining an asylum request depending on a list of criteria
- Carriers' sanctions: it states that carriers must assume the responsibility for aliens who are refused entry and they will face penalties if they transport aliens who do not possess the necessary travel documents
- Harmonisation of visa policy

Data on asylum-seekers is not to be included in the SIS; nevertheless the system definitely affects refugees since a country refusing to grant a person the status of refugee will classify the person as a migrant and include it in the system.

¹⁹ M. Guin; Asylum, Immigration and Schengen post-Amsterdam: a First Assessment, Maastricht 2001

²⁰ Cfr. case Ahmed v. Austria, 1996. In 1996, Austria thought to have the right to expel to Somalia Mr. Ahmed as he had been involved in a criminal conviction. The European Court of Human Rights, after checking the internal conditions in Somalia, stated that it would have been a violation of the art.3 of the Convention

The main stages in matter of refugees during the 90s were:

The Dublin Convention, signed in 1990²¹ and thought to replace the Schengen Agreements with regards to asylum. It aimed at avoiding multiple applications for asylum lodged in the territory of the EU Member States whilst guaranteeing that an asylum request will be examined by one of them and sets out the criteria to determine which State is responsible for it²².

The London Resolutions of 1992 introduce the procedure for the Mani-

to *refouler* Mr. Ahmed to his country of origin. Even though Mr. Ahmed was not in personal danger, his return to Somalia, where the internal situation was quite dangerous, would have been considered as a sort torture by the court.

²¹ The Convention came into force in September 1997 in twelve States of the European Union; in October 1997 in Austria and Sweden and in January 1998 in Finland, this convention applies today in all the European Union

²² First of all, a Member State is responsible for the examination of the application if it has already recognized the quality of refugee to a member of the close family (spouse, minor, parents for the minors) of the applicant.

The family criterion thus prevails on all the other criteria (residence permits, visas, etc.).

This criterion does not apply if a close relative remains in one of the Member States under another title (as applicant of asylum or refugee finding his justification under criteria different from the ones of the Geneva Convention).

Apart from the family criterion, the country responsible for the examination is the one which authorized the entry of the applicant:

In case of regular entry, it is the State which delivered the visa; in case of irregular entry, it is the first State of the Union approached by the refugee.

In practice, when a Member State considers, on the basis of documents, that another State is responsible for the examination of the request, it points the authorities of this State.

The Dublin Convention considers, moreover, that a Member State may decide to examine a request for particular reasons. Cfr *France Terre d'Asile*; La Convention de Dublin.

festly Unfounded Applications for Asylum, allowing States to operate accelerated procedures to reject asylum applications in cases where there is clearly no substantive issue under the 1951 Geneva Convention, or no substance to the applicant's fear of persecution in the country of origin²³.

The Maastricht Treaty²⁴ distinguished three great fields of co-operation according a different logic to each of them. All questions related to the establishment of the single market (customs, transport, competition, agriculture) fall within the first pillar and have a strong supranational connotation. The second and third pillars respectively relate to foreign politics and common security and to justice and home affairs.

The ensemble of the three pillars constitutes the European Union. For the matters falling within the second and third pillars the cooperation remains intergovernmental: either the States adopt, unanimously, a common position merely political and not binding or a convention which has to be signed and ratified by all the states before becoming into force. The questions of asylum and immigration follow the same logic²⁵.

²³ The Host Third Country is also a new idea of the resolutions: it introduces the concept whereby an individual may be returned to a non-member State in situations where he or she may have the opportunity to lodge an asylum application there.

Another important instrument is the list of countries where there is generally no risk of persecution to harmonise the approach regarding countries in which there is no risk of persecution.

²⁴ The treaty came into force in November 1993; it envisaged the complete suppression of the internal borders and introduced asylum and immigration as a communitarian matter.

²⁵ France *Terre d'Asile*; le *Traité de Maastricht*; UNHCR, see note 1

The Copenhagen Resolutions introduced, in June 1993, a standard treatment of refugees from the Former Yugoslavia, a resolution on family reunion and a resolution on expulsion concerning third country nationals who work illegally or remain in a Member State beyond the allowed period.

The Convention on External Borders of December 1993 stated that control on external borders of the EU had to be assured by several measures²⁶.

A model of "readmission agreement" was also adopted in Brussels in November 1994. EU member states can conclude agreements with non-member countries making it possible to send asylum seekers back to countries they had transited en route to EU territory. Many such bilateral agreements were subsequently signed.

In March 1996 *A Joint Position on the Harmonised Application of the Definition of the Term "Refugee"* in the Geneva Convention tackled the interpre-

²⁶ Amongst those provisions it is worth mentioning:

- The check of persons at external frontiers had to be assured without differences from a country to the other.
- Visa policy: the condition to obtain a European visa had to be uniformed and the body in charge of issuing the visa had to be the same in all the countries as well as the type of visa issued could not differ
- Responsibilities of transport operators: in case the traveller has no valid documents the transport operators are liable and susceptible to pay a fee. This provision has been strongly criticised by many international actors as in time of war it is not easy to get travelling documents and therefore it does not allow people in real danger to have a chance to apply for asylum.

tation of the definition of a refugee and allowed states to follow a restrictive approach favoured by several countries which would bar victims of "non state persecution" from being granted asylum.

The Amsterdam Treaty, signed in October 1998, provides that, by unanimity agreed, the *communitarisation* of the right of asylum would be carried out in several stages:

During a five year transitional period, the question of asylum would be part of the 3rd pillar regulated with inter-governmental co-operation: the Council takes a decision unanimously upon Member State or Commission proposal and after simple consultation of the European Parliament.

After this five year period the matter would be regulated by the mechanisms of the 1st pillar: upon initiative exclusive of the Commission, the Council adopts a decision by qualified majority with co-decision of the Parliament.

After a further three years period, the passage to the co-decision would be done automatically for the ensemble of those questions, unless contrary decision of the Council, adopted by qualified majority.

The Aznar Protocol in its single Article, establishes the absolute presumption that the Member States of the European Union are *safe* countries. Consequently no citizen of a MS can apply for asylum²⁷.

The Tampere Declaration issued after the meeting in Tampere, Finland in

October 15 and 16 1999 had as a central theme asylum and migration politics. The aim was to hinder governments to introduce independently their own programs of legalizing undocumented immigrants²⁸. Every decision should be discussed at European level before being adopted²⁹.

Part II: How the Yugoslavian Crisis Destabilised the EU

The Yugoslavian Crisis and its Consequences

The period of the Yugoslavian crisis was particularly dramatic in Europe. The crisis started with the declaration of independence of Slovenia and Croatia in 1991. After few days, Slovenia was recognised as independent but, because of some Serbian minorities in Croatia, a civil war broke out.

The declaration of independence of Bosnia Herzegovina, and consequent Beograd rejection moved the war southwards transforming Bosnia and Slavonia (Croatia) into an immense battle field. The cease-fire was eventually agreed in 1995 with the Dayton Agreements³⁰.

After a period of relative peace, destabilisation came from tension in Kosovo. The unhappy decision for a military intervention of dubious utility worsened the already critical situation.

²⁸ <http://www.nettime.org> Oct 1999

²⁹ Besides, all the agreements made in the last years (Schengen, Dublin, External Borders Convention) were to be harmonised. A common visa policy, the harmonization of the carrier sanctions, i.e. fines for transport corporations which brought undocumented people or people with false papers across the border were some points on which the EU leaders agreed *Geoff Winestock*, "EU edges closer to harmonization of widely varying legal systems,"

³⁰ *N. Janigro*; L'esplosione delle Nazioni, Feltrinelli 1996

²⁷ The protocol defines the exceptions, when a State breaks its engagements as regards protection of the human rights and of fundamental freedoms.

In addition, the protocol gives MS the possibility of unilaterally deciding whether to receive an asylum application when this is presumed to be "obviously unfounded".

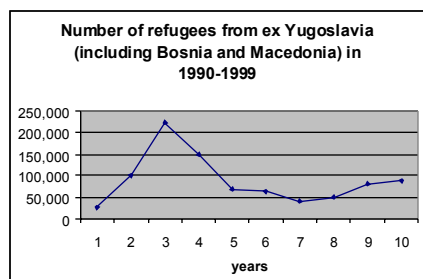
The conflict, like a plague, moved southwards and caused ethnic tensions in Albanian Macedonia in 2001 which eventually forced again people to move out and knock at the doors of the EU.

This section wants to give a critical overview on the attitude of the EU during the longest conflict of the 90s.

Some Statistics I

A huge portion of the 20 million people living in Yugoslavia left their place of residence. Of the 4 million people living in Bosnia, more than 250.000 were killed³¹ and 2 million were forced to move elsewhere.

According to the statistics of the UNHCR, the number of asylum applicants in the European Union during the decade 1990-1999 has been 746.624 from the Federal Republic of Yugoslavia (FRY hereinafter); 133.210 from Bosnia and 10.482 from Macedonia³².



It seems appropriate to remember that those statistics are not very indicative: figures are based on the number of applications but, if for any reasons a person was not allowed to apply for the

status of refugee, was rejected at the border or considered a migrant, it will not figure herewith.

The number of asylum applicants from the FRY is largely the highest in the period 1990-1999: 890.316 of the 3.910.472 applicants in the European Union were from the Balkan region. This means a rate of 22% on the total number of refugees³³.

Almost a million of refugees from one country³⁴, albeit in a 10 year time, were enough to bring to collapse an ancient system used to sporadic applications from individuals and absolutely not prepared to face a so huge flow of refugees and process so many applications at once.

In 1992, at the beginning of the war, 224.138 of the 673.973 asylum applicants were from the FRY (applicants from Bosnia are included in this number). This means that one asylum applicant out of three was a Yugoslavian citizen³⁵.

In 1993 and 1994 the total number of applicants decreases sensibly to 512.891 and to 301.812. The "Yugoslavians" are still the largest group of applicants: 150.228 in 1993 and 68.400 in 1994.

This phenomenon can be subjected to several interpretations: the beginning of the humanitarian aids *in loco*, the internal displacement of the war affected persons who did not need to flee away once they were guaranteed protection within the country.

It is to be remarked, however, that this is also the period of collapse of the refugee system in Europe and, with

³¹ Statistics on deaths are insofar not pacific, the number 250.000 is a mere estimation as the real number is still source of debates

³² UNHCR, Asylum application in Industrialised countries: 1980-1999.

³³ See note 31.

³⁴ The conflict started when Bosnia, Macedonia and Serbia were still the Federal Republic of Yugoslavia

³⁵ UNHCR statistics.

the above figures, it is understandable the expression *Fortress Europe*.

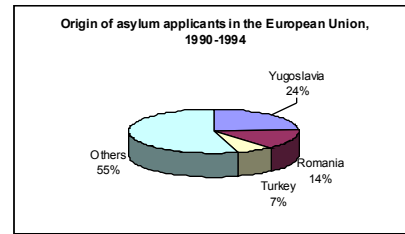
Several accuses were moved to the European Union claiming it made the asylum procedure almost impossible. The EU responded by declaring those accusations unfounded and showing that the percentage of refugees granted protection was constant. It was the massive number of economic migrants that caused increase in border controls.

Although a widely-accepted explanation will never come out, this inversion of tendency during the war looks at least weird. One cannot ignore the hypothesis of some NGOs stating that the fall in the number of applicants was due to the more selective attitude of the EU at its external borders.

Once the criteria to apply for asylum became stricter, far less people fulfilled the conditions to apply for asylum and were rejected as migrants. The result will be that they are not included in the statistics and the rate of acceptance results higher³⁶.

The entity of the war can also be noticed considering the whole period 1990-1994. During those five years, we notice that 569.561 of the 2.382.983 applicants were from Yugoslavia (this means 24% of the total amount of applicants).

The second group are from Romania (343.103 applications) and represent 14% of the total and the third group are from Turkey (167.164 applications, 7%).



About the Interpretation of Statistics

Few words are to be spent concerning those statistics and all the statistics issued on the topic.

First of all, there are no common standards for the recording, compilation and dissemination of statistics on refugees. As a result, their frequency, coverage and format differ significantly between countries.

For example, a number of countries, amongst which Denmark and France, include resettlement arrivals in asylum statistics, factor influencing both the number of asylum applications and the percentage of positive decisions.

Secondly, it is often not clear who is counted and who is not. Thus, the statistics may refer to adults, principal applicants (*cases*), or to all persons.

In some countries asylum seekers are not admitted to the normal eligibility procedures because they come from, or have transited through a country considered "safe". Others are rejected on the border, as undocumented migrants, or prevented from continuing their journey as a result of pre-boarding checks arising from career sanctions.

It is unclear in most of the cases whether asylum-seekers, who are denied access to status determination procedures on these and similar

³⁶ SCI (Service Civil International), campaign on refugees, 1996

grounds, are included in the asylum statistics³⁷.

Some Statistics II

In 1995, the Dayton agreements were signed and a period of relative stability started. Even though the war was over, the Balkan region (particularly Bosnia Herzegovina) had been seriously damaged and the refugees continued fleeing to the European Union.

The number of refugees from Bosnia Herzegovina dropped from 13,524 in 1995 to 5,126 in 1996 and remained relatively constant over the following years: 6,059 in 1997; 7,959 in 1998 and 4,594 in 1999³⁸.

This was a quite good result if considered that the applications from Bosnia in 1993 had been 62,000 and in 1994 20,717.

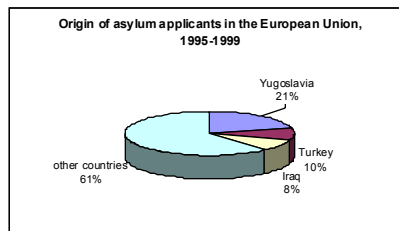
On the other hand the refugees from Yugoslavia followed a different trend: after reaching the peak in 1992 with 210,907 applications, were decreasing progressively until 1996 (32,001) but growing again and reaching 82,726 applications in 1999.

Between 1995 and 1999, of the 1.527.489 applicants, 320.755 were from the Balkan region (Yugoslavia, Bosnia and Macedonia) and they make up 21% of the total number of asylum applications (1.527.489).

The second largest group are from Turkey (145.864; 10% of the total)

and the third from Iraq (128.818; 8%)³⁹.

The main event in this period was the Kosovo crisis. However the Macedonian crisis was cause of a new growth in the trend of the application from the Balkan region⁴⁰.



Fortress Europe?

Within Member States, worried by the massive flows of refugees, we can see some close behavioural trends. The first reaction of most Member States was to consider their national provisions sufficient to stand the burden of incoming flows.

After few months, showing the huge amount of asylum applications that they could no longer face the situation passively, Austria, Germany, Sweden and the Netherlands were concerned in the debate about *ad-hoc* provisions whilst countries like France never developed a real reflection about it⁴¹.

The most appropriate way to compensate for the inefficient implementation of the Convention and lack of harmonisation among the MS was considered the system of temporary asylum. Accepting refugees only tempo-

³⁷ Furthermore, whereas in Sweden asylum applications (particularly in the case of citizens of the FRY) are individually screened, some other European countries granted these persons temporary protection on a group basis. As a result, ex-Yugoslavians are included in the Swedish asylum and adjudication statistics, but mostly excluded from the statistics of other countries.

³⁸ UNHCR, Asylum application in the European Union 1980-1999

³⁹ UNHCR, Asylum applications in industrialised countries 1980-1999

⁴⁰ the study of refugees from Macedonia goes beyond the purposes of this article.

⁴¹ Many reflections mentioned in this article are the result of some interview I had with NGOs representatives and EU functioners.

rarily (in average not longer than two years) enable EU countries to accelerate the asylum procedure and, at the same time, accept a higher number of refugees without endangering domestic security.

The situation during the debate on temporary protection was quite complex and the solidarity problem divided the EU into two blocks: pro and con temporary protection⁴².

The result of the lack of homogenous opinion, the confusion and the collapse of the system was the so called *Fortress Europe*⁴³.

Officially nothing changed but we can notice the number of the asylum applications decreasing from 224.128 in 1992 to 150.228 in 1993 and 68.400 in 1994⁴⁴ although the war ended only in 1995.

Given the fact that the war was still on, and therefore people were still motivated to leave, an intuitive explanation suggests that the asylum application procedures were complicated and EU countries adopted stricter criteria to grant the status of refugee⁴⁵. People on the border were sent back on the

basis of the fact that they were not really refugees and this contributed to cut back statistics⁴⁶.

Officially, the European Union was intensifying the border controls because the illegal migration which, on the wave of the flow of refugees from Yugoslavia, was dreadfully increasing. The reason why the European Union could not be object of any official accusations is that the distinction between refugee and economic migrant is ambiguous and often depending on a subjective judgement.

With the adoption of stricter criteria of evaluation, a larger number of refugees can be refused access pretending they are only migrants. The classification of a refugee as a migrant also affects reliability of the statistics as he/she will not be included in the statistics on refugees but in those on migrants and this is a way to explain the drop in the asylum application after 1992.

The statistics of the UNHCR show that the tendency to accept refugees had a sensible drop after 1989⁴⁷.

The EU justified this fall as the price of the deeper degree of internal security reached; however it seems quite unfair this was assured to the detriment of the refugees rights.

Part III: Perspectives and Feedback Temporary Protection, a Possible Solution? - Brief History

When, in 1992 the flow of refugees became too big no special provision

⁴² I. e. France, Spain and Portugal were declaring their intention to follow the criteria of the Geneva Convention to grant the status of refugee and to accept asylum applications, at the same time avoided the diffusion of reliable statistics. In this way most of the war affected persons from the Federal Republic of Yugoslavia were not given access to the asylum procedure. They should have waited until they were able to prove to fear individual persecution.

⁴³ This was the definition that many NGOs used once it was evident that the European Union was hampering the access to foreigners even though it never completely closed his borders.

⁴⁴ UNHCR statistics, see www.unhcr.org

⁴⁵ there is also another possibility, that is people suddenly realised that their country, afflicted by civil war, was not a bad place to leave and stayed home.

⁴⁶ It is indicative that an EU official, when asked an out out question on whether the borders were closed up, refrained from answering.

⁴⁷ The tax of acceptance of refugees fell from 15% in 1989 to 11% in the period 1989-1993 (UNHCR statistics on the EU)

was adopted by the EU: in 1992 and 1993 the Ministers in charge of immigration had approached barely shallowly the matter in London and Copenhagen.

It was only after the treaty of Maastricht, in 1995 that a resolution concerning the reception and the temporary residence of displaced persons was adopted.

The most appropriate way to compensate for the inefficient implementation of the Convention and lack of harmonisation among the MS was considered, since the beginning, the system of temporary asylum⁴⁸.

Not all the Member States were disposed to accept the temporary protection beside the normal system but, those who did, settled some internal criteria. Germany, in particular started to allocate refugees in its *länder* according to their capability of acceptance.

The initiative was carried out so efficiently and Germany that this latter also proposed to extend its internal provision to other Member States.

The principle of *burden sharing*, based on the principle of equal repatriation of refugees within the Union, was to be adopted to assure protection to a larger number of people but also to assure internal security.

Unfortunately the diverging legislations of the different Member States had as main consequence an entropic distribution of the asylum applications and uneven distribution of refugees.

It was only during German presidency, in 1999 that the EU set up

some urgency measures to be adopted during the Kosovo crisis in 1999⁴⁹.

Thanks to this, in spite of their ideological differences, Member States committed themselves, with the treaty of Amsterdam, to adopt some minimal norms for the grant of a temporary protection.

Drawn on the basic principles stated in the 90s but aware of the political difficulties, the Commission proposed a two-year-maximum period of temporary protection⁵⁰ as a compromise with those countries reticent to the idea of temporary protection.

About the repatriation

The proposition suggested two possible conclusions of the temporary protection: when the delay of two years is passed or when the Council decides, by qualified majority, after proposition of the Commission.

The decision shall be based on the acknowledgement of a safe and durable internal situation in the country of origin (the art.33 of the Geneva Convention⁵¹ has to be respected).

Historically, when countries in which temporary protection is on, had to face the repatriation dilemma, two main attitudes emerged: to expel and to tolerate.

⁴⁹ Even though Germany, during its presidency was for an authoritarian system, the principle of double voluntarism (*double voluntariat*) could not be denied.

According to that principle:

- 1) a MS cannot oblige a refugee to go to a country where they do not want
- 2) a MS cannot be obliged to accept refugees against its will

⁴⁸ The refugees were accepted for a limited period of time and this enabled Member States to accelerate the asylum procedure and accept more refugees with less fears

⁵⁰ one year plus two six-month extensions

⁵¹ M Guin, Asylum, Immigration and Schengen Post-Amsterdam: a first assessment

During the Balkan wars, once the period of three years was elapsed, Germany used to expel its temporary refugees as soon as their right to temporary protection expired whilst Sweden showed more pragmatism: aware of the situation in their country of origin it was not too keen to expel the temporary refugees.

No permanent solution has, so far, been found. The actual policies of return do not have a follow up once the refugee has quitted the country: there is no monitoring in the country of origin. It is a delicate question to decide whether a country may expel without infringing the principle of *non-refoulement*. Who can guarantee the safety of a country? According to which parameters? Who would be responsible in case of mistake?

The new system of temporary protection needs a common schema of return policies and strict standards to respect. It is also vital to have some monitoring once the refugee is sent back as resettlement is often problematic.

According to a Survey organised by the University of Novi Sad, only a mere 4% of the respondents replied that they would return *regardless of everything* while a further 3.9% would return if they were given guarantees regarding their safety.

A 34.2% of the respondents, in addition to their safety want the existence of appropriate financial conditions while 57.9% would not return under any condition⁵².

⁵² Centar za Demografiska Istraživaja Instituta Društvenih Nauka Univerziteta u Beogradu, Stanovništvo jan-jun 1997 (courtesy of Prof. Sasha Kicosev). Those statistics although drawn on a sample of internally displaced persons, are significative

Those statistics point out the importance of a good monitoring in the country of origin before, during and after the repatriation. If the Union wants to assure stability and send back the temporary refugee, it has to assure a sustainable situation.

Conclusion: The Way to the Future

The introduction of the temporary refugee rose up the need of following all the steps (grant of asylum, stay in the country and repatriation) of the procedure. The main problems are an elephantine bureaucracy that slows down the asylum procedure and the lack of proper structures in most countries⁵³.

The temporary protection seems, however, the best solution so far proposed. Efficiently applied, beside the normal protection, it might be a precious instrument to improve the capacity of the Union to accept people in danger.

Despite some political meetings and tentative solutions, the refugee problem still remains one of the main unresolved issues of the EU. The main initiative insofar taken was the Convention Plus by the UNHCR but solution at EU level seems miles away.

Although this paper was to show the inadequateness and incapacity of the EU with regards to the refugee question during the 90s, very little has changed and the main questions remain unanswered.

⁵³ Italy, Portugal and Spain have scarce resource for refugees. In Italy there are no official structures and only interventions of Church and local NGOs limit degeneration of the situation whereas and in Portugal a centre has recently been opened but it can host only up to 24 refugees

Why did the procedure on temporary asylum take so long before being approved? Why no other initiative is successfully carried out? Will one ever find out the real attitude of the EU towards Yugoslavian refugees? What were the internal instructions that police and border control was given in that period to make up for the inefficiency of the juridical system?

In addition to that, the 11th of September events have obliged the EU to improve anti-terrorism standards which strongly affects (we wonder how unwillingly) refugees and migrants.

Fear of illegal migration can be invoked in this context and is leading to a policy of zero migration inside the EU. Asylum seekers will surely be affected by this attitude. First of all because more and more people will try to enter the EU as refugees and with this respect the EU is right. But secondly, and mainly, because the EU, dwelling on popular racist and nationalist feelings, openly justifies its extremely restrictive policy towards incomers from low-living standards countries as protective to his citizens to avoid an unlikely case of massive migration into the EU.

It is understandable that the EU wants to keep high living standards for its citizens and an uncontrolled inflow of people would rise up criminality and reduce wages. Nevertheless higher living standards at the price of millions of deaths and, at least, millions of people dieing at the borders of the EU for indolence of this latter is a price that few think it is worth paying.

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