A human tragedy made worse by bad laws

The current European refugee crisis stems from deliberate decisions taken by our and other governments to make it impossible for those fleeing persecution to enter safe countries lawfully, says Charlotte Kilroy.

States including the UK know the current laws lead to people trafficking; they prefer this to providing lawful routes to asylum.

It is important to understand that the only things that weren’t predictable about the refugee crisis engulfing Europe were the conflicts that gave rise to it. Every other element in the crisis is the direct result of deliberate choices made in the drafting of the key legal instruments that govern the treatment of refugees under international and domestic law.

People who are fleeing for their lives and seeking refuge are forced to enter safe countries unlawfully and into the hands of people smugglers because of the decisions made by the UK and other EU member states. Signatories to the 1951 Refugee Convention and EU member states have chosen to make it impossible for anyone seeking asylum to enter their territories lawfully. The obligations imposed on states by the convention only arise once a refugee arrives on the territory of that state; until then, states have no legal duty to refugees, save the requirement not to actively send them back to the source of persecution (the principle of non-refoulement). In addition, there is no requirement on any state to facilitate arrival on its territory. During the drafting of the convention and in the subsequent decades, states such as the UK have resisted any modification of this approach.

Domestic and EU laws, meanwhile, have made it impossible for people to reach state or EU borders lawfully. Seeking asylum or even having refugee status are not accepted as criteria for being granted a visa, and penalties are imposed on legitimate carriers such as airlines, shipping companies, hauliers, charities and kind individuals who bring refugees or asylum-seekers over state or EU borders.

States including the UK know this leads to people trafficking; they prefer this option to providing lawful routes to claiming asylum.

EU states also impose excessive burdens on border countries close to the potential sources of refugees. The 1951 convention does not place any requirements on individuals as to where they seek to exercise their rights as refugees, nor does it impose any obligation on signatory states to admit them. What it requires, instead, is that individuals are not returned to the source of their persecution. The EU has modified this position by establishing, in the Dublin Regulation (Regulation (EU) No 604/2013), a list of criteria as to where individuals claiming asylum in one of the EU states should have their claim considered.

Those criteria deliberately place an excessive burden on EU border and transit states because they provide that if it can be proved that an individual has irregularly crossed the border of a member state, their asylum claim must be considered there.

The Eurodac Regulation (Regulation (EU) No 603/2013), meanwhile, requires member states to register and take fingerprints from all those irregularly crossing into their territory. These twin requirements mean countries on the EU border such as Greece and Hungary are required to shoulder a disproportionate number of asylum-seekers, while the UK, on the other hand, should, if the system were working as intended, have to process virtually none. Despite lofty statements in the preamble, these provisions of the Dublin Regulation make clear it is not a humanitarian measure; on the contrary, it incentivises border countries to stringently police the outer edges of the EU to keep out refugees.

There is no binding system for allocating asylum-seekers evenly among member states in the event of a mass influx of refugees. States have consistently resisted any obligations for the reception or allocation of refugees, even in circumstances giving rise to an exodus from a place of conflict. They know this means unreasonable burdens will fall on states that border the conflict, or on transit countries, and this may adversely affect refugees in a range of ways, including by giving rise to a risk that they may be sent back to persecution by states seeking to relieve the pressure on their infrastructure. States have nonetheless deliberately chosen this situation rather than commit themselves in advance to taking a fair share of refugees.

The chaos and tragedy of the current refugee crisis was therefore entirely predictable. Indeed, it has, over many decades, consistently been predicted by international agencies working in the refugee field. Ad hoc measures are now being taken in the EU to attempt to address some of these problems, most notably by the suggestion that binding quotas be adopted for EU member states.

However, unless EU states and others eschew the choices they have made in the past, the current refugee crisis will continue and be replicated again, with dire consequences for men, women and children fleeing for their lives.

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