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Abstract

Since 2015, the European Union has struggled to deal with the influx of refugees coming into its territories. The number of institutions involved in designing a competent response approach, combined with the unilateral and uncoordinated state reactions, have left unclear where to look for when searching for answers and new alternatives. Can the United Nations High Commissioner for Refugees (UNHCR) take a leading role in solving this and future crises? After a brief recapitulation of the crisis, an analysis of UNHCR's statue, relationship to international law, and doctrine will put this question to the test while exploring options that are not only available but also feasible in a system where politics trump both legality and morality. If UNHCR is to play an active role in future refugee policies and become the lead agency it once was, a new daring and innovative approach has to emerge in order to readapt to the power relations that prevail in the twenty-first century.

Zusammenfassung

Seit dem Jahr 2015 sieht sich die Europäische Union einem verstärkten Zustrom von Flüchtlingen ausgesetzt. Verschiedene Institutionen und Politikansätze auf Unionsebene, aber auch in den Mitgliedstaaten erschweren eine einheitliche und sachgerechte Lösung.

Könnte der UN-Hochkommissar für Flüchtlinge (UNHCR) bei der Lösung dieser und zukünftiger Krisenlagen eine führende Rolle spielen? Vor dem Hintergrund der tatsächlichen Ereignisse und der Rechtsstellung des UNHCR unternimmt es dieses Diskussionspapier, nach Alternativen zu suchen.

Um im Dreieck von Völkerrecht, Moral und Machtpolitik wieder eine aktivere Rolle übernehmen zu können, braucht der UNHCR mutige und innovative Konzepte.

I. Introduction

In December 2016, the United Nations High Commissioner for Refugees (UNHCR) launched a new report called "Better Protection for Refugees in the EU and Globally". This report proposes a new approach to overcome fragmentation and manage refugee coordination within the European Union (EU). The proposal includes policies both beyond and inside its borders that will increase cooperation and reduce costs. In March 2017, celebrating the 60th anniversary of the European Union, European leaders met in Rome to sign a statement known as the 'Rome Declaration' where they reaffirmed the values of the Union, including freedom, democracy and human rights, and where they committed, among other things, to a "responsible and sustainable migration policy, respecting international norms"[1].

The 2015 European refugee crisis highlighted flaws in the EU asylum system. Unilateral responses by member states and the agreement of the EU-Turkey Statement[2] ignored the root causes of the crisis and focused on short-term solutions, pushing the problem overseas in the hopes that it could stay away from the media. One year on, the European Commission labelled the agreement a success and 'effective on a daily basis'[3]. UNHCR's report seems to have fallen on deaf ears. It seems that its role has been reduced to long-term humanitarian aid. A response which was meant to be a short-term solution for an emergency phase became permanent: camps. This prompts the questions: is the organisation created with a mandate to ensure the provision of international protection to refugees and the seeking of permanent solutions still relevant? Does it have a role to play in Europe in order to find a long-term solution to the refugee crisis, or is its role reduced to care and maintenance combined with weak language doctrine?

In 2018, UNHCR seems to be under fire from two different fronts: states are more and more often resenting its intrusiveness while at the same time NGOs and refugees themselves are objecting that the organisation is not doing enough to protect their rights. There is no doubt that UNHCR does a unique and remarkable job, affecting the lives of millions of people in a positive way, but in order to remain relevant and effective, it needs to be proactive in the way it deals with governments and surpasses the limits of sovereignty.

This paper will analyse the main flaws and consequences of Europe's main decisions when dealing with the refugee crisis, the suggested solutions by contemporary scholars, and explore the ways in which UNHCR's role can be enhanced in the years to come. In the beginning of a new year, UNHCR has to be the organisation at the forefront of the crisis and achieve a strong commitment by European countries in order to avoid falling into oblivion. Let's not forget that an organisation with a statutory non-political character is navigating the waters of a political crisis where political coherence has been lost. As António Guterres (former High Commissioner and present Secretary General) observed in 2008: "There is never a humanitarian solution to a humanitarian problem – the solution is always political"[4].

II. The European system and the crisis

1. Setting the scene

In order to understand UNHCR's role in the European refugee crisis and why it is critical that it plays an active role in the years to come, it is necessary first to understand the weaknesses of the European Asylum System that contributed to the crisis in the first place. In an attempt to be brief, only the main relevant treaties and policies will be analysed.

When the crisis peaked in 2015, the initial burden was falling disproportionally on Greece and Italy, mainly because of their geographic location. It was only a matter of time until refugees started travelling to the rest of Europe. The lack of border control made the process pretty easy. Having a union of countries without border supervision meant there was a need for minimum standards on immigration among all member states. In 2010, the Common European Asylum System (CEAS) was created and brought with it a series of requirements and common criteria for the qualification and reception of refugees. In theory, it was a common approach to guarantee the safety and rights of refugees, to share responsibility and set a minimum of uniform standards that were to be shared by all member states. The CEAS envisioned "fairer, quicker and better-quality asylum decisions" and ensured "that people in fear of persecution will not be returned to danger"[5]. In practice, however, members states adopted different standards according to their needs. Some people would be recognised as refugees in some countries of the European Union but not in others. Within their individual programs, States had the capacity to discriminate. Overall, the system was as weak as its weakest countries: Greece and Italy. States were quick to realise that this was not working, and so decided to update The Dublin Regulation[6] in order to overcome some of the challenges. This agreement, signed in 1990, that came into force in 1997 and went through major updates in 2003 and in 2013, aimed to determine which country was responsible for processing an asylum claim. It stated that the first country by which the asylum seekers entered Europe was the country responsible for processing them, and it meant that other states could deport asylum seekers to this first country of entry. The Dublin regulation was built on the assumption that laws and practices of the EU were based on common standards and that asylum seekers would have the same levels of protection and treatment in all of their member states. However, this was not the case.

Keeping this in mind, it is evident that the main burden of the regulation was to fall on countries whose geographical location made it easier for asylum seekers to travel to. With nothing to lose other than a disproportionate burden, these countries chose simply not to register asylum seekers and let them pass through their territories. Simultaneously, in 2013, Italy launched 'Mare Nostrum'[7], a search and rescue operation aimed at rescuing migrants from drowning in the Mediterranean Sea. Once rescued, Italy had no choice but to bring them to their territory. Officially, Italy was providing a free entry into the Schengen Area and a way for asylum seekers to reach the rest of Europe. Political pressure and lack of funding meant the operation was dropped after a year, which brought criticism from the public given that the drownings did not stop. Italy was not able to deal with all of the migrants alone. By mid-2015, Greece, sharing most of the burden with Italy and with a crippling economy, was ready to collapse.

And it did not take long for everything to go into free fall. Early in 2011, the European Court of Human Rights had ruled that Greece was in no position to live up to the Dublin Agreement and refugees could not be returned there. By August 2015, Germany, with its open-door policy, decided that it was not going to live up to the Agreement: refugees who reached Germany would be allowed to stay there. According to Alexander Betts and Paul Collier the problem was that "since the offer of refuge in Germany did not come with any legal means of getting there, it resulted in a massive expansion in the people-smuggling business"[8]. In a critical note, they add: "while not ill-intentioned, there may be a case for regarding some of the actions of the German government as reckless"[9]. The European Commission decided to launch a relocation scheme of 160000 refugees to ease the pressure in Greece and Italy. A year on, the pace of transfers proved unsatisfactory and, by the end of 2017, the Czech Republic, Poland, and Hungary were referred to European Court of Justice for breaching their

legal obligations and denying the relocation of refugees into their territories[10]. The system was not working.

Ordinary refugees realised pretty quickly that the chances of reaching Europe through a formal process were dim and, fearing prosecution, decided to take alternative options. It is important to take into account that the reasons why people decided to leave their countries in the first place were still happening and a few policy changes in Europe were not going to discourage those fearing for their safety. On the contrary, it only made them more creative, leaving them no choice but to take more diverse and dangerous journeys. Most people choosing smuggling as an alternative would have certainly preferred other means of reaching Europe had states not chosen to adopt a restrictive approach, but in the absence of a reasonable choice but to leave, it became the only option.

With the Syrian War reaching its apex and Chancellor Merkel's well-intentioned policies, the refugee influx in Europe reached another high. The rise of people smuggling and its well-known consequences in the Mediterranean Sea only served as a cause to increase the panic and the policies of deterrence. In a democracy, if public opinion is hostile towards refugees, politicians will likely reproduce the same feelings. Faced with domestic pressure from their citizens, tighter legal restrictions increased across countries. With dehumanisation and hostility towards refugees and asylum seekers on the rise, far right anti-immigrant ideas surged in Europe. Fragmented responses and broadened use of detention and inhumane treatment of refugees started to materialize. Denmark, for example, effectively closed its borders and confiscated assets in possession of refugees above one thousand euros. Sweden followed suit. In the absence of an agreement and in the midst of chaos, Europe decided to outsource the problem.

2.   Outsourcing the solution

On March 18 2016, the EU-Turkey deal was agreed, aimed at stopping the flow of irregular migration arriving at the coasts of Greece. Every irregular migrant whose application was deemed inadmissible arriving at Greece via Turkey was going to be returned. For every Syrian returned, one would be resettled in Europe. The agreement stated that migrants who arrived in Greece would have to be duly registered before a decision was to be made. Turkey was to tighten its controls on exit and, in return, money, visa-free travel to Turks to Europe and the prospects of reopening the debate of Turkey's membership to the EU were promised. This was based on the assumption that Turkey was a safe country for refugees to be returned to. According to article 33 of the European Asylum Procedure Directive, an asylum application can be considered inadmissible if an asylum seeker has travelled through a 'safe third country' (defined in article 38) where he could have applied for asylum[11]. Only a few months earlier, the European Commission was reporting a 'serious backsliding' in Turkey's Human Rights record[12]. On the same month as the deal was announced, addressing local politicians in Ankara, President Erdogan declared that freedom and democracy had no value[13]. To top it all off, only a few months later, Turkey suffered an attempted coup and went into a state of emergency. With reports[14] of Turkey returning Syrians back to Syria, the EU-Turkey deal came under scrutiny for its legality under international Human Rights Law. It is important to note, as well, that Turkey still maintains the geographical limitation of the 1951 Convention Relating to the Status of Refugees.

It is clear then why this deal was problematic from the start. When it was announced, Jean-Claude Juncker, the European Commission president expressed "wishes to see our asylum system be the best in the world"[15]. A year on, even though there has been a sharp decrease of migrants entering the EU, the human consequences in Greece are revealing: refugees are

stuck in a limbo while increases in mental health conditions, including suicide and physical harm[16], are striking. In the cold winter, some of them are even freezing to death.

At this point, it is worth mentioning that all the countries members of the European Union are parties both to the 1951 Convention Relating to the Status of Refugees[17], the 1967 Protocol and the Lisbon Treaty. That the 1951 Convention is dated and lags behind the modern challenges that the crisis imposes is well documented and discussed. The moral ideas behind it and the spirit of cooperation no longer fit the behaviour of the States. However, this does not mean that the Convention and its Protocol should be forgotten, disregarded or even bypassed. On the contrary, the convention is still highly valuable. UNHCR might not have a statutory mandate to intervene in Europe's various bilateral or multilateral treaties, but it does have responsibilities derived from the convention that need to be taken into account. In addition to this, the Treaty of Lisbon grants the European Union many new competences in the area of asylum (articles 78, 79, and 80 of the TFEU[18] among others), including the principles of solidarity and fair sharing. But before analysing this, it is essential first to discuss UNHCR's role throughout the crisis.

III. The role of the United Nation High Commissioner for Refugees

1.   UNHCR's action during the crisis

While not short on challenges, UNHCR was busy working not only on the ground but trying to influence states and their policies. The regional Refugee and Migrant Response Plan (RMRP) was launched in January 2016 by UNHCR and sixty other partners as a response to the large-scale population movement witnessed in the previous year and continuing on in the beginning of the new year. It is described as a "flexible and pragmatic response to ensure the most effective and protection-centred approach"[19] in the Western Balkan route. When the route was closed in March and with the beginning of the EU-Turkey deal, the number of people remaining in Greece increased. In this context, the focus changed from people on the move to the protection of the static population in Greece and some Western Balkan countries. In the RMRP, UNHCR presents a framework for the humanitarian community to protect the needs of refugees, such as border protection, assistance and promotion to access relevant services and an efficient status determination. Emphasised during this document is the need of an integrated, coordinated and comprehensive response based on comparative advantages. This involves governments, the European Commission, humanitarian agencies, and other relevant agencies. Even though the principles and goals outlined are mostly focused on short-term solutions, it is important to highlight that a desire for a long-term solution to the crisis can still be seen through these policies, especially in the request for a strong and effective common asylum system throughout Europe. This is significant because it seemed that throughout the crisis, the European Union and its state members have not focused on lasting solutions.

Fast forward a year and we can find a new set of documents released by UNHCR, such as the RMRP 2017[20] in January 2017, picking both on the objectives set in the last RMRP and the new challenges faced in 2016 (specially the increase of refugee arrivals in Italy and Spain); the "Better Protecting Refugees in the EU and Globally"[21] report, released in December 2016, which details a step by step program on how the European Union can develop common policies to manage refugee flows in accordance to international law; a yearly "Projected Global Resettlement Needs"[22], outlining the number of people and countries in need of resettlement; "The Way Forward"[23], to strengthen policies and practices for unaccompanied and separate children in Europe; and many other monthly reports, statements, and recommendations.

Among all of these documents, we can find recurrent themes: the need for an accelerated and simplified common asylum system, which protects refugees, the need to expand opportunities for safe pathways, and the demand to respect international law. At the same time, while these reports were coming out, UNHCR was developing response plans to work in the countries of origins.

In the peak of the refugee crisis, UNHCR came under fire for not meeting its purpose. Its policies and recommendations were being ignored and the crisis was only getting worse. People started wondering if UNHCR was still a relevant organisation to manage the crisis or if it was time for it to step down and focus on maintenance, care, and emergency assistance, which was what they excelled at. To understand why, on the one hand, UNHCR plays a big role suggesting policies but at the same time lacks enforcement mechanisms, it is necessary to understand its relationship to International Refugee Law.

2.   UNHCR and international law

There are several ways in which UNHCR relates to international law. To begin with, throughout the time, UNHCR has managed to influence international law and countries' application of it through its doctrinal positions (such as some of the documents mentioned before). By bringing this doctrine to the Executive Committee of the High Commissioner's Programme (known as EXCOM[24] and created in 1958 by the Economic and Social Council to provide advice to UNHCR) and obtaining approval through conclusions in the General Assembly, UNHCR has managed to find an ideal path to have its positions endorsed by states. Even though these are not legally binding (soft law), they have managed to criticize States responses to several refugee crises, shape the ways in which they establish their laws and even introduce new principles not covered in the 1951 Convention. In 1983, EXCOM has acknowledged that UNHCR's work related to "the development… of basic standards for the treatment of refugees is part of UNHCR's protection function"[25]. Hence, UNHCR's doctrine assisted in filling the gaps on protection issues, on procedural standards for the determination of refugee status and also served to extend the definition of 'refugee' under the 1951 Convention.

From a statutory perspective, UNHCR's specific responsibilities related to international law are contained in subparagraph 8(a) of its statute[26]. In a nutshell, UNHCR is to promote the conclusion and ratification of international conventions, supervise their application and propose amendments. Moreover, UNHCR is to obtain information from governments concerning the situation of refugees, the laws and the regulations in their country (sub-paragraph f). It is already from its Statute that we can identify the weaknesses that UNHCR was to have if a big crisis occurred. Its role was going to become one of guidance, supervision, promotion, and recommendation. No enforcing mechanisms are found throughout the Statute. The drafters of UNHCR's statute did not provide any sort of structured system to sanction non-compliance. According to Lewis, these provisions would also serve as a basis for "UNHCR's initially limited role related to State's implementation of their international refugee law obligations"[27]. At the end of the day, the duty to implement refugee law clearly fell on the States themselves and the duty to monitor this fell on UNHCR. In fact, many States have shown unwillingness to have UNHCR integrally involved in their implementation of refugee law and adopted measures which actively violated provisions of the 1951 Convention, showing an objection to follow UNHCR's guidance. Despite UNHCR's frustration, State sovereignty prevailed.

For the duration of the crisis, the three main durable solutions to the refugee question, which are resettlement to a third country, voluntary repatriation to the country of origin and inte-

gration in the host country, failed. Refugee warehousing in camps prevailed and UNHCR's approach to a common, regulated and coordinated plan was simply ignored. It is not hard then to understand the frustration that prevailed in scholars, organisations, and refugees that have put their faith in the work of UNHCR as the leading worldwide refugee body. Could UNHCR have found a way in which to impose its views on member states? Is there anything else that UNHCR could have done or, given its statutory limitations, it did everything in its power?

IV. Rethinking the system

1.   Critique

Alexander Betts and Paul Collier are highly critical of the old-fashioned way in which UN-HCR works and the role it played throughout the European refugee crisis. They argue that UNHCR is not meeting either of its two main objectives regarding the protection of refugees and the finding of long-term solutions to their plights. It is their opinion that the road to durable solutions has been blocked and the options left for refugees on the table are either "long-term encampment, urban destitution or perilous journeys"[28]. If the displacement of people come from states that are characterised by fragility, they explain, by making states less fragile through international assistance then the problem would be tackled at the heart. They introduce the idea of seeing refugees less as a humanitarian issue and more as a development opportunity.

They deeply disapprove of the camp-based model, calling UNHCR and organisation stuck in the needs of a post-war Europe. Arguing that most of the refugees are now living in urban areas and not in camps, they criticise the international community for not having found a model for assistance outside of camps. Though camps suit donor governments because they contain the population that otherwise would choose to move on to their own territories and suit UNHCR as a justification for their fundraising needs, they are "ineffective and outdated"[29] and deprive refugees of the most basic sources of autonomy and opportunity, amounting to a humanitarian silo. When refugees choose to settle outside of the camp system, which is more and more the trend, they officially choose to relinquish all assistance by UNHCR and at the same time are locked out of the formal economy as they do not have the right to work. Even António Guterres, in 2015 and during his role as High Commissioner, said: "the reasons for the massive movement are easy to find in the teeming refugee camps of Turkey and Jordan"[30]. In addition to this, Betts and Collier explain that UNHCR's Urban Refugee Policy does little to nothing to help refugees in practice. Consequently, they choose not to focus the discussion on the 10% of refugees who arrive in Europe, but rather on the 90% who do not get there.

Their proposal is straightforward: the focus and resources should be on the haven countries through the development of Special Economic Zones. According to these scholars, working 'close to home' is what makes more sense from an economic perspective. If the goal is the future return of refugees to their home countries, this is a win-win situation for all the parties involved. It is here where they see UNHCR as part of the solution. For their model to succeed, there is a need for an organisation that provides coherence, coordination, and legitimacy, while at the same time being able to maintain a status of authority. If UNHCR was to be this organisation, it would first need to adapt. While good at delivering aid, it is desperately weak in other areas, they say[31]. UNHCR would need to rethink its relationship to politics: its key function should be political. This approach, undoubtedly, creates a tension with its 'non-political' statutory character. Contrary to common belief, to be non-political, though, does

not mean to not be able to be politically engaged. In March 2017, at a presentation to the London School of Economics and Political Science, Paul Collier asserted: "either UNHCR reequips itself to be able to do the job of jobs or it relinquishes the monopoly mandate, stops putting up the big sign 'keep off' to other agencies and welcomes them in"[32]. Though an innovative proposal, some key aspects are not explored by these authors. How can UNHCR actually reform itself to be able to perform this role and, most importantly, would this be enough to outweigh the limitations of the CEAS or is a reform in Europe still needed?

2.   The options

There is no doubt that in order to ensure respect for refugee's right in practice, international treaties must be transformed by States into legal obligations in their national law. According to Lewis, there are several ways in which UNHCR can bring up violations to states, and they vary in formality and importance. These responses can go from a 'note verbale' sent to concerned officials advising of the violation, to communications to the General Assembly through UNHCR's Note on International Protection or its Annual Protection Report[33]. These methods are still very weak and can easily be ignored by countries who are unwilling to bring their national regulations in accordance with international refugee law.

From a statutory perspective, paragraph 9 of UNHCR's Statute states that "the High Commissioner shall engage in such additional activities… as the General Assembly may determine"[34]. In this context, the General Assembly can extend UNHCR's mandate to include new areas of interest. Effectively, it has done so on many occasions, in particular directing UNHCR to protect and assist categories of persons other than refugees defined by the 1951 Convention. Another way in which UNHCR's role can evolve is policy guidance. Paragraph 3 of its Statute mentions that the High Commissioner shall follow policy directives given to him by the General Assembly. These policy directives are legally binding on UNHCR. It is derived then from its Statute that we can find alternatives by which UNHCR could be legally mandated to play a bigger role in the crisis. The issue converges, once again, in a political spectrum. It is the willingness of the State members of the General Assembly to allow a resolution like this to pass. This is not impossible. During the Cold War, and before the 1967 Protocol, whenever issues arouse that did not correspond to the geographical and temporal limitations of the 1951 Convention, UNHCR was able to extend its mandate and request new authority through General Assembly's resolutions. This was possible because the General Assembly was increasingly dominated by post-colonial states who were, coincidently, suffering many refugee situations themselves and not covered by the Convention. Given the current power relations and UNHCR's weakened role, it is very unlikely that a resolution that enhances UNHCR's role in order to manage the European crisis can be achieved.

Another road to take, briefly mentioned previously, is through EXCOM's advice. EXCOM is currently comprised of members of 101 States[35] and provides advice in the form of conclusions on international protection. Through its conclusions, UNHCR has managed to extend its areas of work. That UNHCR would manage to influence EXCOM to let them take a lead role in solving the European refugee crisis is, again, highly unlikely. Firstly, and most important, because EXCOM is subjected to States will. If UNHCR wants to update itself, it must exhibit new creative approaches in order not to undertake activities that would be opposed or criticized by States. Secondly, because its conclusions are not legally binding. Thirdly, because it takes time. The body only meets annually in Geneva and influencing member States to approve such a conclusion, if even possible, would take more than one year. Lastly, because EXCOM cannot be said to be a fully representative body as not all parties to the 1951

Convention are members. In this sense, keeping in mind that we are discussing if UNHCR could take a lead in Europe, we hit another dead end.

Worth mentioning, but extremely unrealistic, would be to take the issue to the International Court of Justice (ICJ). One avenue is for UNHCR, according to Article 65(1) of the statute of the ICJ[36], to request an advisory opinion related the interpretation of the 1951 Convention or the 1967 Protocol. Less likely, would be for States themselves, under article 38, to submit a dispute against another State. Neither of these options have ever been invoked regarding the refugee situation. "Essentially, the refugee system has been, and continues to be, primarily a system of voluntary compliance with international refugee law by States", claims Lewis[37].

It is at this stage that UNHCR's funding system needs to be mentioned. The organization relies on annual voluntary contributions for almost all of its budget. In 2017, the main contributions came from the United States, Germany, and the European Union[38]. It is apparent then to visualize the main challenge: in order to sustain operations, UNHCR depends on state donors, and, at the same time, it needs to able to develop the necessary autonomy to protect refugees, many times against state's own self-interest. The camp system serves this purpose: it provides a graphic and tangible justification of the money expenditure. Influencing, lobbying and navigating the political river is not only not appreciated by states whose own interests are at heart, but also is a very dangerous card to play. Unsatisfied states can easily pull back their donations. Add 'compassion fatigue' to the mix, and we have the perfect recipe for a funding crisis, which is exactly what UNHCR faced in 2015 in the midst of the Syrian crisis.

Because, as shown, UNHCR has no longer the same degree of organisational independence to adopt initiatives it once had, another tactic would be to make reference to human rights law in relation to the protection of refugees. If States are unwilling to follow the obligations that arise from the 1951 Convention and the 1967 Protocol, they can then be held into account by obligations stemming from other international treaties they are parties to. The three most important to mention are the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1989 Convention on the Rights of the Child (CRC). The ICCPR applies to 'individuals within its territory'[39] and contains protections not found in the 1951 Convention, as for example the right not to be subjected to arbitrary arrest, detention or exile (Article 9). The Convention against Torture enhances, in article 3, the protection against refoulement[40]. In article 22, the CRC, includes specifics provisions pertaining refugee children[41]. These instruments, among many others, extend the content of refugee law beyond the protections offered by the 1951 Convention and apply (depending the convention) to States that are not parties to it. For instance, the Human Rights Committee has issued a decision that concludes that the general obligations imposed on States under the ICCPR apply not only to citizens, but also to aliens within their territory, and thus, to refugees[42].

Working hand in hand with human rights law means that refugees have access to petition the monitoring body of each treaty. This can prove to be a successful alternative for refugees whose applications are rejected. In 'X. v. Denmark', an Eritrean national ordered to leave Denmark after an unsuccessful asylum application managed to stop its deportation claiming infringement by Denmark of the ICCPR. The Human Rights Committee concluded that Denmark was indeed in violation of its obligations and requested information about the measures taken to give effect to the Committee's views within 180 days[43]. This is only one example of the many where monitoring bodies ruled in favour of individuals. That UNHCR should shift its focus to human rights violations and disregard refugee law is not advisable

and would most definitely not solve the European crisis. Refugee law and Human Rights law should work simultaneously.

V.   Conclusion

It is reasonable to conclude that if UNHCR wants to actively improve the situation in Europe, taking drastic measures is not the right strategy. 2018 brings a new opportunity for UNHCR to be at the forefront of the crisis. On September 2016, the United Nations General Assembly adopted unanimously the "New York Declaration for Refugees and Migrants", where member states committed to enhancing the protection of refugees and migrants, with the aim of providing legal pathways of admission that would enable the resettlement needs identified by UNHCR to be met. Within this declaration, UNHCR was given three big roles. Firstly, it would lead a new Comprehensive Refugee Response Framework (CRRF) which involved working with host countries early on in new crises and engaging a much broader scope of stakeholders than it usually does, linking humanitarian and development ideas with a focus on durable solutions. This approach started being tested in Africa and Central America in the beginning of 2017. Secondly, UNHCR is to present a "Global Compact of Refugees"[44] to the General Assembly in 2018. This Compact will include the results of the CRRF and provide a programme of action that will highlight a "more equitable and predictable responsibility-sharing arrangement among countries of origin, transit and destination to address large movements of refugees"[45], as well as identify gaps that need to be addressed. Mechanisms for ensuring that the responsibility for hosting and supporting refugees are shared more equitably will be central to this programme. This means that UNHCR will have the task to address burden sharing and introduce action plans that States should take. Lastly, UNHCR is to work with member states to develop a Global Compact for safe, orderly and regular migration which will set out a range of principles, commitments, and understandings among Member States regarding international migration in all its dimensions.

Overall, in Europe, there is a need for an action plan that will support long-term solutions and address the root causes of migration while caring for the already displaced people, enabling legal ways to migration, and respecting human rights and international law. Cooperation from States, international and local organisations will be needed. This plan needs to be headed by a central authority, and it is the opinion of this author that UNHCR should be this authority. The New York Declaration showed new political will from states to act and, with the Global Compact for Refugees coming up, it is up to UNHCR to take the opportunity and emerge as a rejuvenated organisation ready to lead the crisis. It will need to be bold and politically engaged. It will have to take on an active role and be ready to criticise States. The time is not ripe for a new international treaty, and a reform of the organisation will not be suggested from the outside. Even though a new international treaty would certainly be welcomed, it is not critical. An effective organisation, on the other hand, is indispensable. It is the task of UNHCR to reflect if the role it wants to have in the years to come will continue to be passive or if it wants to update its business model and lead from the front. New York can provide the fresh start that is needed. After all, as James McDonald, High Commissioner for Refugees Coming from Germany, said more than eighty years ago: "when domestic policies threaten the demoralization and exile of hundreds of thousands of human beings, considerations of diplomatic correctness must yield to those of common humanity"[46].

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