

Conference summary

Human Act or Devil's Pact?

Human rights aspects of migrations agreements between the EU and third countries

The Hague Institute for Global Justice, The Hague, 18 May 2017

Welcome and opening

The **Chair of the Netherlands Institute for Human Rights, Adriana van Doijeweert**, opened the conference. She reminded us that we talk about deals but it is about people. The aim of the conference is to put human rights approach in the full light it deserves. The Netherlands Institute for Human Rights in cooperation with the Meijers Committee have produced a paper with a human rights yardstick which can be used to assess the EU deals with third countries.

The Chairman of the Meijers Committee Prof. Theo de Roos spoke about the importance of the conference in current times. Migration is a hot topic and is dividing societies all across Europe. When we speak about human rights, we speak of treaties and conventions but we should not forget that those are the norms we chose to live by. Every person is unique and so is their right to life, to asylum and access to justice. Accountability is very important as well: can people really claim their rights if they feel that these rights have been violated. The aim of the conference, and the paper, is to improve the agreements with third countries and take human rights into account.

Session 1: The new EU Migration Partnership Framework

The aim of Session 1 was to get a clearer picture of the new EU Migration Partnership Framework. It started with the opening speech of **Ms. Angelina Eichhorst, Deputy Managing Director for Europe and Central Asia, Director for Western Europe, Western Balkans and Turkey at the European External Action Service**. She spoke about the importance of this topic in politics, elections and in the Dutch formation. She pointed out that everything that happens in Brussels is decided by 28 Member States. The Member States try to stay united, while upholding European law and obligations. The human rights yardstick is an important tool for ensuring that. In EU policies a distinction must be made between migrants and refugees. Cooperation with third countries differ from country to country based on the level of leverage the EU has. For example, Turkey is not only a strategic partner but also a candidate country. Fourteen months ago today, the EU-Turkey statement was signed and the number of dead and injured has been reduced ever since. The business model of smugglers is broken and assistance to refugees in Turkey has improved. The EU has a long-standing presence in most countries and has been working with governments in Africa and Asia for a long time, supporting capacity building with financial and technical assistance. The migration agreements which we are currently talking about will be framed within the this cooperation. An important new focus is indeed on addressing migration flows. Third countries will need to take responsibility. When the Member States and thus the EU stay united, then we can move forward.

Mr. Jan Willem Beaujean, Deputy Director-General for International Migration, Ministry of Security and Justice came with three messages regarding the concept of agreements with third countries. Firstly, the concept of agreements with third countries is sound and

here to stay. The aim is to replace irregular migration with legal pathways. There is a need to invest in regional capacity with financial support and quality technical assistance to improve the capacity of African partners to improve or build asylum laws and practice on the ground. Furthermore there should target people smuggling which is a multi-billion dollar industry resulting in many lives lost. Mutual interest and responsibility should be at the heart of the agreements. And these agreements should indeed be in line with international human rights obligations. The human rights yardstick is thus of great importance. Secondly, implementation is key, and should be assessed on an individual level. The agreements should be made in a transparent way: no dirty deals behind closed doors. Knowledge should be actively sought. The better the yardstick, the better the outcome. Member States should practice what they preach and the EU should hold its Member States accountable for delivering on their promises under the agreements. We need sustainable solutions for the long term and also for the immediate term. The test will lie in the implementation. And thirdly, the agreements are sound, but not the silver bullet. They should be part of a wider approach, both geographically and timely.

Ms. Katrien Coppens, Delegate Director Medecins Sans Frontiers Holland, briefly described the work of Medicines Sans Frontiers and their presence in the field. She pointed out that the EU-Turkey deal is very successful in limiting the numbers of people coming to Europe and drowning at sea. But she emphasised that a lot of people are paying a price for this deal, which she phrased as a transaction of values for money. For example people are now stuck in Greece without adequate assistance to the extent of freezing to death last winter. She failed to understand how the deal can be seen as a success, when few refugees are even able to flee Syria, as the borders with Turkey and Lebanon are closed. This fact is often forgotten in discussions about the migration deals. When it comes to deals with Libya, she emphasised that there is no effective government to hold negotiations with or to trust with implementation of agreements. MSF teams on the ground have access to certain detention centres in Tripoli. The situation is horrific. Many people just want one thing: they want to get out of Libya. But, the moment refugees will be out of sight - no longer crossing the Mediterranean), there will probably be less awareness and less willingness to solve the situation of refugees stuck in Libya. She concludes that she is not very positive about the deals. She suggests to refocus the discussion about the human beings concerns, and not on interest, the ideas of populist parties, or public opinion.

Session 2: Alternatives to managing migration

The second panel discussed alternatives to managing migration and started with **Prof. James Hathaway, founding Director of Michigan Law's Programme in Refugee and Asylum Law and Distinguished Visiting Professor of International Refugee Law at the University of Amsterdam**. First Prof. Hathaway pointed out that everybody should stop talking about people smuggling as a problem. People smuggling is often the only option refugees have to flee their country. Human trafficking is of course illegal, but people smuggling is often the only option refugees have to flee their country to safety. And thus the Refugee Convention acknowledges the right of a refugee to enter a country in an illegal way to seek asylum. Hathaway states that there is nothing wrong with the Refugee Convention per se, but that States are currently not abiding by its intention, its spirit. According to Hathaway Europe does not take sufficient responsibility and does not have sufficient and adequate refugee reception conditions. The current system is a total mess and needs a makeover., It is risky, chaotic, and absurdly expensive. Firstly, he pleads for easy and quick access to protection within and outside Europe. After a quick but thorough assessment and vetting, refugees need to be assigned to a country for temporary protection and ultimately - if there is no chance of return to the country of origin - resettlement. This can be a country in or outside Europe. States have the responsibility for burden-sharing as mentioned in the Preamble of the Refugee Convention. Every refugee is entitled to protection somewhere, but not necessarily in the country of first asylum. Secondly, refugees need to be empowered, they want and have a right to get back on their

feet and to get on with their lives,. Ensuring adequate and access to work, healthcare, education and social assistance during temporary protection and after resettlement will not only benefit the refugees themselves, but also the communities they live in and the state as a whole. It will make them productive contributors to society in the global south as well as the global north. Focus on protection by resettlement, gives us the time for security vetting before arrival. It saves time and money. The plan UNHCR has recently tabled for a new refugee protection mechanism is terrible, according to Hathaway, and serving its own interest. He calls for action now, as too much time has been spent on talking already.

Joris Schapendonk, Assistant Professor in Geography, Planning and Environment at the Radboud University Nijmegen asked himself why we should embrace Hathaway's plan. He believes its dependence on international cooperation is a challenge in itself. New systems and mechanisms, such as Hathaway's, require us to broaden our perspectives. Turkey and other third countries are not only transit countries. It is important to see the global perspective and dynamics. The situation in Europe also needs to be put in perspective in terms of numbers. We should have a system that *prepares* for movement instead of reacting to movement. For social geographers, such as Schapendonk, it is more exciting to look at where protection best be best provided. Hathaway's resettlement mechanism is based on a lottery system. It pays little to no attention to the wishes of the refugee regarding the place of resettlement. Not taking these into account could lead to further migration of refugees who are not happy with their country of resettlement - for various reasons. Schapendonk asked Hathaway: Will there be sufficient political will to accept so many more refugees? Will a lottery system where a refugee can end up in the global north or south be viable? How does his plan distinguish and provide an answer to the difference between refugees and economic migrants, or even multiple considerations in a refugee's decision? And may the lack of choice for a specific country for resettlement not lead to further migration and a break-down of Hathaway's system in the end.

Session 3: EU migration agreements with third countries: human rights considerations

The third panel focussed on human rights considerations of EU migration agreements with third countries. The first speaker **Mr. Gerald Knaus, Director of the European Stability Initiative**, pointed out that Europe is in fact facing a few crises. The number of migrants drowning in the Mediterranean is still rising. Greece and Italy are overburdened with arrivals and conditions for refugees are often unacceptable. The Dublin system is failing. And anti-islam, anti-EU and anti-refugee sentiments connected to the migration crisis are influencing policy. Knaus believes that while an agreement with Turkey was the right way to go, agreement with countries like Libya is unacceptable, when there are no or unstable governments to deal with. However we are morally, politically, and legally obliged to save people at sea. And any policy needs to keep that in mind. Knaus emphasises that policies need to preserve the Schengen agreement, protect migrants, and strengthen relations with Africa. Most importantly, we need to negotiate readmission agreements with countries of origin, not countries of transit, as they may not want to take back non-nationals. According to Knaus, only those whose asylum application got rejected may be returned. If these returns are executed quickly, it will be a deterrent for migration. At the same time the readmission agreements need to be accompanied by an increase in legal possibilities to enter Europe, such as work or student visas. This will further reduce people smuggling and unsafe passage via the Mediterranean. Europe should link these agreements to development aid. However, offering money to deal with refugees can also be an incentive. Knaus believes this proposal would be politically viable. Negotiations with African countries need to continue. Italy needs to supported to improve asylum procedures to last eight days with one week for appeal. Dublin will never work, so it should be dismissed. Equally, Greece is in need for more support to be able to treat migrant in a dignified manner. It is unacceptable to leave people in tents during winter. people in tents during the winter. Furthermore, a European project at the external borders is necessary. And last but not

least, in order to win the argument for increased resettlement to EU Member States, Knaus proposes an EU representative on migration from a country with a credible track record when it comes to treating migrants and adequate resources.

Dr. Maarten den Heijer, Assistant Professor in International Law at University of Amsterdam reflected on the EU-Turkey agreement. While admitting that agreements with third countries per se is not wrong, what matters is both the design and the execution of these agreements. While Knaus still believes in the contents of the EU-Turkey agreement, but blames the lack of implementation for its faults, Den Heijer insisted that the design of the agreement itself is flawed in various ways. For instance, the presumption that Turkey is a safe country is flawed - courts in Greece have concluded it is not and thus the return of migrants from the Greek Islands to Turkey has stopped. Moreover, the resettlement of Syrian refugees was contingent on a voluntary humanitarian resettlement scheme. That is the reason why so few refugees have been resettled from Turkey to EU Member States. The only success is arguably the reduction of boat arrivals to the Greek islands. However, Den Heijer questions whether this can be attributed to the EU-Turkey agreement. Figures suggest that other factors may play an important role: winter, closing of the Balkan route among others. Den Heijer ended his commentary by questioning the proposal to provide large sums of money to every country that currently refuses to take back its own nationals to encourage them to readmit them on grounds of being a wrong incentive for (other) countries. will not create the wrong incentives for other countries.

Ms. Fransje Molenaar, Research Fellow at the Conflict Research Unit of Netherlands Institute of International Relations Clingendael focussed her commentary on Libya, since a deal is currently being negotiated with this country. Agreements with third countries are being presented as a quick fix. However, the quick fix is a failure, and based on an incorrect view of reality. Governments from African countries are not reliable, they have their own agendas and may well stop holding their end of the deal at any point. Libya is a good example. Furthermore, these deals cost a lot of money, while not taking the realities of migration sufficiently into account. People smuggling does no longer only entail transferring one person from A to B. It increasingly involves forced labour, sexual exploitation, and detention. As such it has evolved into human trafficking. In Libya it is also difficult to make a distinction between state and non-state actors as the government is fragmented. The idea that the EU can create safe circumstances for migrants in Libya without putting people on the ground is unrealistic. Moreover, it is impossible to know what happens to migrants that are brought back to that country. Slave markets and (illegal) detention centres are a reality. Possible solutions? For economic migrants: the EU should invest in informing them about the dangers they face. Protecting migrants must be a key component of a deal. So far the EU only focuses on keeping migrants from crossing into Europe. The EU is unable to reform its own asylum and migration system, and it is failing in its migration policy in the African region. These two problems should be pulled apart and are too often mixed up.

Closing remarks

The President of the Netherlands Institute for Human Rights and the Chair of the Meijers Committee ended the conference with closing remarks on a successful event, debate and contributions from the audience. They both reiterated the usefulness of the human rights yardstick and encouraged participants to use it in their daily work on these issues.