



Provisional version

Human rights of refugees and migrants – the situation in the Western Balkans

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

¹ Reference to Committee: Doc. 13897, Reference 4155 of 02 October 2015.

Contents	Page
A. Draft resolution	3
B. Explanatory memorandum by Ms Strik, rapporteur	6
1. Introduction	6
2. The political context	7
3. The evolution of the Western Balkans refugee crisis	7
3.1. The situation prior to August 2015.....	7
3.2. August – September 2015: chaos and panic.....	8
3.3. October – November 2015: stability and order.....	8
3.4. November 2015 – February 2016: restrictions and confusion.....	9
3.5. February 2016 –: quotas and tension.....	10
3.6. The 7 March EU-Turkey summit.....	11
4. Conclusions and recommendations	13

A. Draft resolution²

1. 856,000 people crossed the Aegean Sea from Turkey to the Greek islands in 2015, almost twenty times as many as arrived in 2014. Almost as many people arrived in the first two months of 2016 as in the first seven months of 2015 and there is every reason to expect that the level of arrivals will exceed last year's. The overwhelming majority – more than 90% – continue to be nationals of refugee-producing countries, especially Syria, Afghanistan and Iraq. Those arriving in Greece and transiting through the Western Balkans may for the most part be refugees, but they do not wish to apply for asylum in any of these countries.

2. Refugees and migrants entering the contiguous continental European Union (EU) via the Western Balkans is not a new phenomenon, and their number had begun rising significantly from as early as 2012. In August 2015, however, unprecedented numbers of arrivals led many of these countries unilaterally to change their policies, either by attempting to block irregular entry onto their territory, or by facilitating rapid transit across it. By September, the situation had stabilised, with a relatively safe route emerging from Greece to Western Europe which, although physically demanding and no substitute for humanitarian pathways, was at least reasonably efficient.

3. A contagious fear of the consequences of border closures further north, however, led the Western Balkans countries to raise increasingly restrictive barriers to entry: first by introducing 'nationality screening', then by introducing daily quotas on admission and, in the case of Austria, on the number of asylum applications accepted. By the end of February 2016, the Western Balkans route was in practice closed to all but a few hundred refugees and migrants per week, although the number of arrivals in Greece showed no sign of abating. There is now deliberate discrimination (nationality screening), deliberate denial of access to protection for arbitrary administrative reasons (daily quotas on admissions and acceptance of asylum applications), and deliberate failure to comply with binding international judicial decisions or authoritative advice not to return asylum seekers to countries that are known to be unable to provide effective protection (returns to Serbia, 'the former Yugoslav Republic of Macedonia' and Greece).

4. As a result, the humanitarian situation of the refugees and migrants in the Western Balkans has deteriorated and they are increasingly at risk of exploitation and abuse, notably by traffickers in human beings and migrant smugglers. Since August 2015 up until very recently, there have been regular reports suggesting the use of excessive force against refugees and migrants by police and security forces of 'the former Yugoslav Republic of Macedonia', Croatia or Hungary at their borders. It is expected that within the near future, as many as 100,000 refugees and migrants will be trapped in Greece, which is well known to lack sufficient reception capacity and longer-term shelter and to have a dysfunctional asylum system; yet despite these serious deficiencies and their consequences for refugees and asylum seekers, other EU member States have effectively failed to implement the agreement on relocation of asylum seekers from Greece and Italy.

5. The Assembly is also concerned by the situation in Hungary. Hungary unilaterally erected razor-wire fences along its borders with Serbia and Croatia, thus closing itself off from the flow of refugees and migrants along the Western Balkans route towards Austria and redirecting it through Croatia and Slovenia. Hungary also introduced very restrictive asylum legislation, lacking essential procedural safeguards. Around half of the asylum seekers in Hungary are detained, sometimes in inadequate conditions. The Assembly considers that Hungary's asylum procedures and detention policy appear to be incompatible with its obligations under the European Convention on Human Rights (ECHR), EU law and the 1951 Refugee Convention, and that the anti-migrant public discourse of its government and other public authorities is incompatible with the fundamental values of the Council of Europe.

6. Europe has so far failed to find a proper, sustainable response to the refugee and migration crisis in the Western Balkans. There has been an almost complete failure to implement some of the most important agreements reached in autumn 2015, notably that on relocation of refugees from Greece, and those of the Western Balkans Route Leaders' Meeting intended to ensure adequate reception capacity and longer-term shelter for refugees and migrants along the route. Mutual trust and confidence have been undermined by unilateral actions and the exclusion of Greece from regional consultations on migration issues. Instead, the focus has shifted to border controls and preventing refugees and migrants from leaving Turkey. The only apparent response to all other problems is money; the idea of relocation seems almost to have been forgotten.

² Draft resolution adopted by the Committee on 22 March 2016.

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7. The Assembly recalls the fragility of political stability in the Western Balkans region. It is absolutely essential that the countries concerned are fully supported in their efforts to deal with the current refugee crisis and that all countries avoid taking unilateral action that might undermine trust, mutual confidence and the prospects for effective cooperation.

8. The Assembly believes that no response to the current situation can succeed in the longer term unless it is based on genuine solidarity, recognition of the need for collective action and equitable sharing of responsibility, with full respect for the human rights of refugees and migrants and the basic principles of international and European law.

9. The Assembly therefore calls on the Western Balkans countries, namely 'the former Yugoslav Republic of Macedonia', Serbia, Croatia and Slovenia, as well as Greece and Austria, to:

9.1 Ensure compliance with the principle of non-refoulement regarding asylum seekers at the border claiming international protection, in accordance with the standards of the European Convention on Human Rights, as interpreted by the European Court of Human Rights (ECtHR);

9.2 Refrain from implementing policies that deny access to protection on discriminatory grounds of nationality or on arbitrary grounds of administrative convenience;

9.3 Ensure that police and security forces implement border control without recourse to excessive force, respecting refugees' and migrants' fundamental right to dignity;

9.4 Ensure that national capacity for short-term reception and longer-term shelter is sufficient to accommodate in appropriate conditions asylum seekers in transit or seeking protection;

9.5 Take all necessary measures to ensure that national asylum systems meet the standards of the 1951 Refugee Convention, the ECHR and EU law, as applicable;

9.6 Refrain from returning asylum seekers to countries that are unable to guarantee protection in accordance with the above standards, where applicable;

9.7 Refrain from implementing border control policies that would unreasonably impose a disproportionate responsibility for the protection of refugees and migrants on other states more vulnerable to their arrival;

9.8 Implement in full all aspects of the agreement reached at the Western Balkans Route Leaders' Meeting;

9.9 Ensure that lasting actions in response to the refugee and migrant crisis are only taken following consultation with all other states concerned.

10. The Assembly also calls upon the EU to:

10.1 Ensure that the human rights are given priority in policies to address the situation in the Western Balkans, in particular the right to seek and enjoy asylum, the prohibition on degrading treatment and on *refoulement*, the right to liberty and security, the right to an effective remedy and the prohibition on discrimination;

10.2 Ensure that relevant EU law is implemented in full by all member States, in particular the reception conditions, asylum procedures and qualification directives;

10.3 Ensure full implementation of previous decisions and agreements, notably on relocation of refugees from Greece and on reception and longer-term shelter capacity in the Western Balkans, action against migrant smuggling and human trafficking, provision of information to refugees and migrants on applicable rules and their rights and obligations, registration of arrivals and exchange of information on flows of refugees and migrants;

10.4 Provide all necessary financial and technical support to affected states, at levels sufficient to meet the challenges they face and avoiding onerous procedural requirements that may unduly delay provision of assistance in emergency situations;

10.5 Reform the Dublin system with a view to a more equitable sharing of responsibility, thus avoiding further overburdening of Member States with insufficient protection and reception capacities.

B. Explanatory memorandum by Ms Strik, rapporteur

1. Introduction

1. 856,000 people crossed the Aegean Sea from Turkey to the Greek islands in 2015, almost twenty times as many as arrived in 2014. Almost as many people arrived in the first two months of 2016 (122,600) as in the first seven months of 2015 (130,100). There is every reason to think that the level of arrivals in 2016 will exceed last year's, itself beyond what would previously have been imaginable. The overwhelming majority continue to be nationals of refugee-producing countries: in particular, of arrivals this year, 44% were from Syria (a lower proportion than for last year as a whole), 29% Afghanistan and 18% Iraq (higher proportions than last year). Those arriving in Greece and transiting through the Western Balkans may for the most part be refugees, but they do not wish to apply for asylum in any of these countries. For various reasons – the hope of sustainable protection, family connections, existing communities, aspirations to find work for themselves or schooling for their children, the fear of xenophobia elsewhere – their goal is asylum in Western Europe, often Germany or Sweden.

2. In legal terms, including the availability of effective protection, the refugees' and migrants' journey is complicated. All of the countries along their route (including Turkey) are parties to the European Convention on Human Rights (ECHR) and the 1951 Refugee Convention, although Turkey grants a different, formally distinct status to refugees from non-European countries. The refugees and migrants enter the EU and the Schengen area when they reach the Greek islands, but then leave both when entering and transiting 'the former Yugoslav Republic of Macedonia' and Serbia. They re-enter the EU upon crossing the Croatian border, but not yet the Schengen area, which is only reached when entering Slovenia; although both Croatia and Slovenia (and Greece) are part of the Dublin system.

3. The European Court of Human Rights has ruled that whether from a non-EU country such as 'the former Yugoslav Republic of Macedonia' or, under the Dublin system, an EU country such as Germany, asylum seekers cannot be returned to Greece on account of serious deficiencies in its reception conditions and asylum system. The UNHCR has advised and several national judicial bodies have ruled that asylum seekers should not be returned to Serbia on account of deficiencies in its asylum system; the UNHCR has issued similar advice with respect to 'the former Yugoslav Republic of Macedonia'. In short, not until the refugees and migrants reach Croatia do they find protection in full, effective compliance with the standards of the ECHR and the 1951 Refugee Convention, and countries further south either cannot or should not be considered safe third countries to which asylum seekers can be returned.

4. The situation of Hungary should not be overlooked. In mid-September 2015, Hungary unilaterally completed a razor-wire fence along its border with Serbia, and in mid-October another along its border with Croatia. Hungary thus closed itself off from the flow of refugees and migrants along the Western Balkans route towards Austria, redirecting it through Croatia and Slovenia. The Hungarian authorities have defended the creation of fortified borders between European countries as a legitimate border control measure, but the human and political consequences attracted severe criticism from around the world and caused acute friction with neighbouring states. Hungary also last year introduced new asylum legislation, under which persons wishing to enter the country are held in transit zones at the border, where their asylum applications are examined under an extremely accelerated procedure, lacking essential legal safeguards. Asylum applications by those arriving from Serbia are rarely examined on the merits, since Hungary persists in considering it a safe third country, and some are rejected within a day. Around half of the asylum seekers are detained, including those awaiting return to Serbia, even though in most cases Serbia refuses to accept them; detention of migrants for this and other reasons can thus become effectively indefinite, sometimes in inadequate conditions. These legal and administrative measures have been accompanied by a concerted, government-level anti-migrant campaign. For these reasons, a growing number of European countries no longer consider it safe to return asylum seekers to Hungary, and a case against Austria concerning return under the Dublin regulation of asylum seekers to Hungary is pending before the ECtHR.

5. The present report was initiated following my earlier report on 'countries of transit: meeting new migration and asylum challenges', which was already at an advanced stage when the Western Balkans situation burst into the headlines last summer, and which as a result addressed it only as one amongst several issues. From 10 to 13 November, shortly after the Assembly adopted its resolution on transit countries, I conducted a follow-up visit to the Western Balkans, meeting government ministers and high-level officials, as well as representatives of international organisations and NGOs, and visiting the main transit centres in 'the

former Yugoslav Republic of Macedonia', Serbia and Slovenia, where I spoke to officials, volunteers, and refugees and migrants. I presented an Information Note on this visit to the Committee at its meeting in December 2015, and a more complete preliminary draft report to the Committee during the January part-session.³

6. In this report I will examine the main developments of the past eight months, during which much has changed, although little for the better. Since August 2015, the Western Balkans countries have implemented a series of different policy responses. Unfortunately, the consequences of these policy changes for the refugees and migrants have been progressively worse, especially since November 2015, and Europe's collective failure to manage the situation has allowed serious tensions to arise between neighbouring Western Balkan states, between European states more widely and between European states and European institutions.

2. The political context

7. In order to understand the fragility of the political situation in the Western Balkans and the reasons why the refugee crisis may have particularly serious consequences there, it is useful to recall a few key facts about the region.

- i. 'The former Yugoslav Republic of Macedonia' has experienced a series of political crises in recent years. An overdue change in ministerial personnel in late 2015 will be followed in 2016 by new parliamentary elections, scheduled for 5 June. Relations between 'the former Yugoslav Republic of Macedonia' and its southern neighbour Greece have long been complicated by a dispute over the country's official name and numerous other more-or-less related issues.
- ii. Relations between Slovenia and Croatia are also complicated, primarily by a border dispute that has remained unresolved since the break-up of the former Yugoslavia in 1991.
- iii. There are also certain resentments relating to different countries' status in the EU and the Schengen system. In all the countries I visited last November, there was deep dissatisfaction with Greece's perceived inability to control the influx of refugees and migrants, which was taken as a failure in its duty to control the Schengen borders, and/ or to ensure that as the country of first entry to the EU, it processed more asylum applications. The Serbian authorities observed that Croatia, which faced exactly the same challenges as them, had as an EU member State been able to access EU funds far more effectively. The Slovenian authorities complained that as an EU member, Croatia should do more to regulate the flow, share information and not simply transfer refugees and migrants to Slovenia as quickly as possible; and that Serbia, as a candidate country, should also accept greater responsibilities.
- iv. More generally, although it is now more than 20 years since most of the conflicts in the former Yugoslavia came to an end, extremely painful memories persist and many issues remain unresolved. The international community, including the Council of Europe and the EU, has invested enormously in the stability, economic development and European prospects of the Western Balkans. It is absolutely essential that the countries concerned are fully supported in their efforts to deal with the current refugee crisis; it would be a grave mistake simply to take the region's continuing peace and security for granted.

3. The evolution of the Western Balkans refugee crisis

3.1. The situation prior to August 2015

8. Refugees and migrants entering the contiguous continental EU via the Western Balkans is not a new phenomenon. Frontex notes that the route became popular in 2012 when Schengen visa restrictions were relaxed for Western Balkan countries including Serbia and 'the former Yugoslav Republic of Macedonia': in 2013, 20,000 people entered Hungary irregularly; in 2014, over 43,000. In 2015, this figure was passed by the end of May, after which the rate of arrivals began to increase exponentially, reaching a level of almost 108,000 in August.

9. In June 2015, 'the former Yugoslav Republic of Macedonia' revised its asylum law to allow refugees and migrants to enter the country legally, provided they state their intention to claim asylum. Under this law – which

³ See docs AS/Mig (2015) 36 and AS/Mig (2016) 04.

takes a similar approach to that already applicable in Serbia – individuals must then submit an asylum application within 72 hours or leave the country. In practice, this allows sufficient time for them to cross to the northern border with Serbia. The intention was to allow refugees and migrants to travel openly, thus reducing recourse to dangerous routes (during the first half of 2015, at least 25 refugees and migrants were killed as they walked on railway tracks) and migrant smugglers. At the same time, the national authorities were critical of Greece, which they accused of allowing refugees and migrants uncontrolled access to the border.

10. In July 2015, Amnesty International issued a report on the situation in the Western Balkans.⁴ This noted the refugees' and migrants' lack of legal protection or status whilst in 'the former Yugoslav Republic of Macedonia' and Serbia, the risks of exploitation, arbitrary detention and ill-treatment variously by the authorities and migrant smugglers, frequent push-backs at the borders of 'the former Yugoslav Republic' and Serbia, and the physical and psychological challenges involved.

3.2. August – September 2015: chaos and panic

11. In August 2015, under pressure of an extremely rapid rate of increase in arrivals, with numbers reaching 3,000 per day, the policy of 'the former Yugoslav Republic of Macedonia' suddenly changed. The government declared a state of emergency in its southern regions, deploying riot police, mobilising its armed forces and closing its border to all but a limited number of the most vulnerable cases. Although the intention had been to allow a few hundred refugees and migrants enter the country each day to coincide with the departure of trains heading north, the growing number of refugees and migrants unexpectedly blocked at the border became fearful and angry. Protests escalated, eventually leading to the police using batons, riot shields, tear gas and stun grenades to repel those who tried to force their way across the border. In the end, thousands of refugees and migrants managed to break through, leading to the effective collapse of the restrictive border policy, which in the meantime had attracted widespread international criticism.

12. The following month, Hungary – which had also been overwhelmed by the number of people transiting the country, often via the central station in Budapest – completed the razor-wire fence that had been under construction for several weeks along its border with Serbia. The effect was immediate, with an almost complete diversion of the flow towards Croatia. At the newly-closed border, Hungarian police used tear gas and fired water cannon at refugees and migrants situated on Serbian territory, to which the Serbian government responded with the "harshest possible protest". Along with other aspects of Hungary's hostile policies towards migrants (see Introduction above), the fence was severely criticised at the time by much of the international community, including European governments and high officials of the Council of Europe, EU and UN.

13. The sudden diversion of refugees and migrants towards Croatia, facilitated by the Serbian authorities' provision of transport from its Hungarian border, resulted in chaotic scenes and clashes also at the Serbian-Croatian border, where once again police attempts to forcibly block the flow were overwhelmed by sheer numbers. In two days up to 13,000 people entered Croatia, which responded by announcing that it would no longer register and accommodate new arrivals, but simply provide food, water and medical care. It also began transporting many of the refugees and migrants directly towards its border with Hungary, which accused it of "people smuggling" (at one point, Hungarian officials claimed that Croatian police had without agreement or prior notice escorted a train bearing 1,000 refugees and migrants on to Hungarian territory: the Croatian police were disarmed and their entry registered, and train staff were temporarily taken into Hungarian police custody). Hungary proceeded to build a further razor-wire fence along this border, which it completed in mid-October.

3.3. October – November 2015: stability and order

14. Although there was no reduction in the flow of refugees and migrants, in some ways the situation stabilised after the effective closure of most of Hungary's borders with its non-Schengen neighbours. Policies were implemented in countries along the Western Balkans route that made transit more regular and orderly. Generally speaking, the journey from Greece to Austria could be accomplished in a series of stages from one border to the next. Individuals were registered at each successive border, and there was access to food, water, basic medical care and opportunities for short-term rest and psycho-social assistance, including for children, at both transit centres and various other locations along the route. Travel between one transit centre and the next border was by public transport for most, or taxi for those few who desired and could afford it. Whilst still a lengthy and physically demanding journey, with some difficult passages in open country to be covered on foot,

⁴ See "Europe's Borderlands: Violations against Refugees and Migrants in Macedonia, Serbia and Hungary".

others in horribly over-crowded and unsanitary trains, and long periods spent queuing in the open air at registration centres, it was at least relatively safe for the refugees and migrants. (Of course, a more rational and humane policy would have involved significant resettlement from countries of first asylum, relocation from Greece and other humanitarian pathways for admission.)

15. Around the time of my visit, however, signs of more restrictive approaches were becoming apparent. The Slovenian authorities complained to me that in mid-October, Croatian police under cover of darkness had directed refugees and migrants surreptitiously to cross the Sulta River and enter Slovenia. As a result, Slovenia had put a razor-wire fence (which it describes as “technical measures” or “temporary obstacles”) along part of its border with Croatia, ostensibly to funnel migrants to official border crossings and avoid uncontrolled crossings elsewhere. Parts of the fence are on disputed territory, which led to a peaceful stand-off between Slovenian and Croatian police on a bridge over the Sulta River, resolved the following day at a meeting of the two countries’ presidents. Shortly after my visit, the authorities of ‘the former Yugoslav Republic of Macedonia’ began preparations for a fence along its border with Greece. Austria also announced that it would erect a fence, stating that it was intended to ensure “ordered inflow and not a barrier”.

16. Before moving on, I would at this point recall certain key messages that I heard in meetings with politicians of all the countries I visited: all of them were opposed to border closures as a matter of principle; all of them were afraid of the consequences should Austria or Germany close its borders; and all of them admitted that were borders to be closed to the north of their country, they would be constrained to follow suit. I would also recall my observations in the Information Note concerning the negative consequences of border closures for refugees’ access to protection, given its inadequacy in ‘the former Yugoslav Republic of Macedonia’ and Serbia and the likelihood, according to a group of NGOs, of the Slovenian asylum system being unable to cope with large number of applications.

3.4. November 2015 – February 2016: restrictions and confusion

17. On 18 November, shortly after my visit, ‘the former Yugoslav Republic of Macedonia’, Serbia, Croatia and Slovenia began to admit only Syrians, Iraqis and Afghans (‘SIA’). Those of other nationalities were prevented from entering the territory or from transiting further. Once again, police of ‘the former Yugoslav Republic of Macedonia’ responded with batons, teargas and rubber bullets to protests by refugees and migrants blocked at the border with Greece, where a group of Iranians sewed their lips together and a young Moroccan was accidentally killed by electrocution. Austria and Slovenia began returning ‘non-SIA’ nationals, including Iranians, Somalis, Pakistanis, Moroccans, Algerians, Bangladeshis, and Sri Lankans, to Slovenia and Croatia respectively. These nationality screening policies were strongly criticised, above all by the UN, on the grounds that they would put the refugees’ and migrants’ health and safety at risk, violate the right to seek asylum and prohibition on discrimination, and cause fragmentation of routes and greater recourse to migrant smugglers.

18. Given the very high proportion of ‘SIA’ nationals amongst the refugees and migrants using the Western Balkans route, it was unlikely that these policies would have a particularly significant effect, in relative terms, on the number of people reaching Austria. Indeed, this is confirmed by analysis of the figures issued by UNHCR for arrivals at the Greek mainland and successive borders further north along the route, which show no significant gap emerging between the numbers arriving in Greece, where nationality screening was not applied, and those arriving in countries that applied such screening, notably ‘the former Yugoslav Republic of Macedonia’, the first along the route to do so.

19. At the same time, given the very high number of people arriving in Greece, it was likely that the policies would lead to a significant number of people, in absolute terms, being blocked in Greece or, albeit in far smaller numbers, in countries further north. When I presented my Preliminary Draft Report in January, however, there was very little information available on how many people were affected, where they were located, their access to protection or the conditions in which they were living. There were peculiar discrepancies between national accounts: for instance, Croatia soon began reporting that only ‘SIA’ nationals were arriving, whereas Slovenia continued to report the arrival of ‘non-SIA’ nationals at least into January. It is unclear what happened to those who were returned, for example from Austria to Slovenia, or who were prevented from transiting a particular country. Fragmented information was available on the situation in Greece, which obviously could not account for all of those who must have been prevented from entering ‘the former Yugoslav Republic of Macedonia’. Further details of the situation as it was in January are set out in my Preliminary Draft Report.

3.5. February 2016 –: quotas and tension

20. In mid-February 2016, countries along the Western Balkans route again changed their policies, perhaps because of the relatively insignificant effect of nationality screening on the overall flow of refugees and migrants. On 19 February, Austria announced that it would allow only 3,200 to enter the country and accept only 80 asylum applications per day. (In January, Austria had stated that in 2016, it would accept only 37,500 asylum applications in total, which the European Commission described as being “plainly incompatible with Austria’s obligations under European and international law”; the president of ‘the former Yugoslav Republic of Macedonia’ has stated that once this limit is reached, the Western Balkans route will have to close.) On 21 February, ‘the former Yugoslav Republic of Macedonia’ announced that it would tighten its nationality screening policy by no longer admitting Afghans and admitting Syrians and Iraqis only on presentation of identity cards with photographs, which many do not have. From 26 February, Slovenia, Croatia, Serbia and ‘the former Yugoslav Republic of Macedonia’ began restricting admissions to 580 per day. It can be recalled that in November, Croatia, for example, allowed 6,000 admissions per day, a figure that was reduced by 40% to 3,600 in December; the new limit represents a further reduction of 84%, despite all the evidence suggesting that even greater numbers will arrive in Greece this year than last. In practice, the situation is even more dramatic, with consistent reports that ‘the former Yugoslav Republic of Macedonia’ is admitting far fewer people per day, and only on some days. The Croatian authorities also seem to be applying constantly changing, often spurious admission requirements even on Syrian refugees, such as possession of types of documents that they could not possibly have obtained, limits on time spent in Turkey or originating from the wrong parts of Syria. The future intentions of ‘the former Yugoslav Republic of Macedonia’ were suggested by a recent letter to several (unspecified) EU member States, requesting assistance with building a 300 km fortified security fence along its Greek border, as well as “crowd control” equipment including TASERS, weapons firing rubber bullets, bombs and grenades with rubber-ball shrapnel, and non-lethal sonic weapons.⁵

21. The impact of these developments on refugees and migrants was again acute at the border between Greece and ‘the former Yugoslav Republic of Macedonia’, whose police once more resorted to tear gas and stun grenades as protesting crowds sought to break through the fence. There has also been an increase in returns by countries to their neighbours further back along the route: around 600 in each case from Slovenia to Croatia, from Serbia to ‘the former Yugoslav Republic of Macedonia’ and from ‘the former Yugoslav Republic of Macedonia’ to Greece, over 800 from Croatia to Serbia and over 1,800 from Austria to Slovenia during January and February 2016. Although those returned or denied further transit are advised on the possibility of applying for asylum in the country where they find themselves stranded, it is still unclear how many do so, what are their reception conditions, and how they are accommodated.

22. The situation of these refugees and migrants remains particularly worrying given the continuing failure of the Western Balkans countries to fulfil the commitments they made at the October 2015 Western Balkans Route Leaders’ Meeting. In particular, the European Commission’s February Progress Report on implementation of the agreements reached at this meeting notes a “lack of political will to create permanent reception capacity” and failure to meet the target of 50,000 new longer-term places, with “no immediate plan/political will to fill the gap in order to reach this global target”.⁶ (These measures were intended to mitigate the effects of achieving the main aim, which was to slow down the flow – it is important to note that the meeting did not agree to block the flow, even partially.) At the end of February, UNHCR stated that it continues to receive “credible reports of push-backs, expulsions and refusal of access to territory or fair and efficient asylum procedures on arbitrary grounds, police brutality, family separations, and the misinformation of stranded refugee populations, increasingly affecting also refugee women and children from Syrian and Iraq. These developments led to a tangible deterioration of refugees’ humanitarian situation and heightened the risk not only of their exploitation and abuse by smugglers, traffickers, and other criminals but also of serious tensions and security incidents along the Balkan route”.

23. It is also becoming increasingly apparent that the build-up of non-Syrian and non-Iraqi refugees and migrants in Greece is reaching critical proportions. On 1 March, UNHCR warned that Europe was on the verge of a “largely self-induced humanitarian crisis”, noting that there were now 24,000 refugees and migrants needing accommodation in Greece. This included around 8,500 at Eidomeni near the border with ‘the former Yugoslav Republic of Macedonia’, of whom at least 1,500 were without shelter and facing shortages also of food, water and sanitation. The Greek authorities had responded by setting up two camps nearby, with a

⁵ See “Leaked Skopje letter exposes ‘closed borders’ coalition”, EurActiv.com, 4 March 2016.

⁶ See “Follow-up to Western Balkans Leaders’ Meeting – State of Play”, COM(2016) 85 final, 10 February 2016.

projected capacity of 12,500, and were preparing a third, and on 23 February had transported around 1,000 Afghans back to Athens – although reception capacity there is also overwhelmed, with many now living on the streets. Following the decision by ‘the former Yugoslav Republic of Macedonia’ no longer to admit Afghans, UNHCR estimates that over 40% of those arriving in Greece will not be able to transit the Western Balkans, with almost three-quarters of these being Afghans. The Greek authorities fear that by the end of March, as many as 70,000 refugees and migrants could be stranded in the country; unless things change elsewhere, that figure will continue to rise exponentially as the year progresses. The Greek authorities anticipate that this situation could last for up to three years and that up to 100,000 refugees and migrants will require shelter.

24. These developments have caused serious tensions between Greece on the one hand, and the Western Balkans route countries and Austria on the other. On 24 February, Austria convened a migration summit of Western Balkans countries, excluding Greece, with the subsequent justification that it wanted to “coordinate with the states that pull in the same direction”. The Greek government responded by lodging a diplomatic protest with Austria against the “unilateral and non-friendly” conference and recalling its ambassador. Greece has also threatened to block decisions at the forthcoming EU migration summit unless other EU states participate proportionately in resettlement and relocation of refugees. It should be recalled that by early March, almost six months after EU states agreed to relocate 66,400 refugees from Greece, only 322 refugees had actually been relocated. The EU has made somewhat better progress on establishing hot-spots for asylum processing on the Greek islands, increasing reception capacity, accelerating the rate of returns and expanding Frontex operations, which is revealing of where political priorities really lie. The results announced, however, are clearly inadequate to resolve the manifold problems resulting from the huge discrepancy between the rate of arrivals on the Greek islands and that of departures to ‘the former Yugoslav Republic of Macedonia’.

25. The European Council of 18-19 February called for “an end to the wave-through approach and to uncoordinated measures along the route”, stating that “We need to get back to a situation where all Members of the Schengen area apply fully the Schengen Borders Code and refuse entry at external borders to third-country nationals who do not satisfy the entry conditions or who have not made an asylum application despite having had the opportunity to do so”. If the intention is to prevent all secondary movement of refugees within the Schengen area, then the obvious outcome would be that Croatia should refuse to admit from Serbia any asylum seeker who had travelled through Greece; it is also obvious that Serbia, followed by ‘the former Yugoslav Republic of Macedonia’, would then implement a similar policy. (If the intention were to require Greece to refuse entry to asylum seekers arriving by sea from Turkey, it would be completely unrealistic: Greek coast guard and naval vessels cannot enter Turkish territorial waters, so any intercepted refugees and migrants must be taken to Greek territory.)

26. It is understandable if Greece felt that the EU had effectively abandoned it to its fate, offering only money (Greece has requested €480 million in emergency funds, and the EU has since announced €700 million over three years, primarily for ‘front-line’ states) but little else in the way of solidarity or genuine responsibility sharing. The Austrian chancellor recently declared that “Austria is not a waiting room for Germany [and] cannot and must not become a distribution hub [for refugees]”, yet Greece has found itself in a much worse position – a dead end.

3.6 The 7 March EU-Turkey summit

27. On 7 March, the EU held a further summit with Turkey, devoted to migration. The stated aim was to ensure full and speedy implementation of the EU-Turkey Joint Action Plan, “in order to stem migration flows and tackle networks of traffickers and smugglers”. In advance of this meeting, European Council President Donald Tusk visited Austria, the Western Balkans countries, Greece and Turkey, noting that “the country which we must support in particular is Greece”, underlining the importance of involving all EU member States in the search for solutions, “otherwise, the risk will be a further erosion of trust”, and stating that “unilateral decisions without prior coordination... are in fact detrimental to the European spirit of solidarity”. At no point in his recent statements has President Tusk made any mention of the relocation agreement.

28. At the summit, Turkey tabled a new set of proposals. The key elements were that “for a temporary period”, Turkey would take back all refugees and migrants who reached the Greek islands in future – on condition that for every Syrian refugee taken back, another would be resettled from Turkey to the EU – and the EU would give an additional €3 billion financial assistance to Turkey’s efforts to support Syrian refugees over the next three years, bring forward visa-free travel to Schengen countries for Turkish citizens and accelerate negotiations on Turkish EU accession. The summit was unable to reach a final agreement on these proposals:

Hungarian Prime Minister Orban reportedly “vetoed” the resettlement element; and Cyprus opposed accelerating Turkish accession without progress on its own reunification. Important legal questions remained unanswered, including compatibility with international refugee law on issues such as refoulement and discrimination on grounds of country of origin. President of the European Commission Mr Jean-Claude Juncker nevertheless argued that the agreement “will break the business model of smugglers exploiting human misery”, and President Tusk that “the days of illegal migration to Europe are over”. Although welcoming the proposals, Chancellor Merkel recognised the uncertainties, observing that the agreement would be “a breakthrough if it becomes reality”; she also objected to any formal declaration that the Western Balkans route was now closed.

29. In the longer term, if finally agreed and successfully implemented, the plan could have the advantage of establishing a formal basis for orderly, large-scale resettlement from Turkey of Syrian refugees, potentially selected on the basis of need; it would also avoid additional pressure on Greece, although it would not resolve the issue of the tens of thousands already there. The exact scale of resettlement would depend on how many Syrian refugees continued to reach the Greek islands. This would presumably at least to some extent remain under Turkish control: it should be noted that a leaked Eurojust report is said to be highly sceptical of Turkey’s ability to control its borders and reduce irregular migration, whilst also noting the very low number of readmissions to Turkey under its existing agreement with Greece. Furthermore, implementation of the March agreement may first require Turkey to conclude readmission agreements with countries of origin, which would take some time. In the meantime, refugees and migrants would presumably continue to arrive in Greece, where their living conditions would continue to deteriorate, pressure mount and tensions with the Western Balkans countries and Austria increase.

30. On 8 March, the day after the EU-Turkey summit, Slovenia, followed by Croatia, Serbia and then ‘the former Yugoslav Republic of Macedonia’, announced new measures intended to block all transit migration. Reports indicate that Slovenia will only admit those prepared to apply for asylum at the border and those with clear humanitarian needs; Croatia will only admit those with Schengen visas; Serbia will only admit from ‘the former Yugoslav Republic of Macedonia’ and Bulgaria those with Schengen visas; and the police of ‘the former Yugoslav Republic of Macedonia’ stated that “We have completely closed the border”. The Slovenian ministry of the interior announced that “From midnight, there will be no more migration on the Western Balkan route as it took place so far”; Croatia stated that “The border of Europe will be on the Macedonia-Greek frontier; the Serbian ministry of the interior stated that the country “cannot allow itself to become a collective centre for refugees, so it will harmonise all its measures with those of the EU member states”; and the interior ministry of ‘the former Yugoslav Republic of Macedonia’ likewise stated that “Macedonia will act according to the decisions taken by other countries on the Balkan route”. I am quite frankly appalled by these countries’ flagrant disregard for the situation of the refugees and migrants blocked in Greece or en route through the Western Balkans, their complete lack of any solidarity with Greece, and their blatant rejection of President Tusks calls to avoid unilateral actions.

31. If refugees and migrants continue to arrive in mainland Greece and find the border with ‘the former Yugoslav Republic of Macedonia’ closed, they may seek other routes north. The Albanian prime minister has stated that his country “will not be a new route for refugees on their way to Europe” (which could be via the Adriatic to Italy) because it lacks “the conditions, strength, and enthusiasm to be saving the world while everyone else is closing their borders”, and the authorities have posted an additional 450 police to the southern border, with reports already of small groups of refugees and migrants being turned back to Greece. Nevertheless, the interior ministry has reportedly begun converting former military facilities into reception centres. The Montenegrin prime minister has announced that his country “will have to close its borders if Macedonia closes the border with Greece”, and yet the authorities have reportedly begun making preparations for up to 10,000 refugees and migrants in transit, with reception capacity for 2,000. Bulgaria already has significant levels of transit migration from Greece. In February, the parliament authorised the army to take part in border patrols, and in early March the prime minister announced the deployment of 400 additional personnel to the Greek border. There have been numerous reports of serious abuse and violence of refugees and migrants by Bulgarian police, as well as multiple incidents of push-backs. It is far from certain that any policy dependant on ‘the former Republic of Macedonia’ closing its border with Greece will be effective in stopping the flow of refugees and migrants – what is certain is that it will force them into the hands of smugglers and make their journeys even more dangerous.

4. Conclusions and recommendations

32. Europe has still not found a sustainable response to the refugee and migration crisis in the Western Balkans that respects states' obligations under European and international law, including the ECHR and the 1951 Refugee Convention, and is based on genuine solidarity and responsibility sharing. In some ways, we are back to where we were in August 2015: the border between 'the former Yugoslav Republic of Macedonia' and Greece is again closed, albeit only partially, and police are using tear gas and stun grenades on refugees and migrants. In other ways, the situation in the Western Balkans is now worse: there is deliberate discrimination (nationality screening), deliberate denial of access to protection for arbitrary administrative reasons (daily quotas on admissions and acceptance of asylum applications), and deliberate failure to comply with binding international judicial decisions or authoritative advice not to return asylum seekers to countries that are known to be unable to provide effective protection (returns to Serbia, 'the former Yugoslav Republic of Macedonia' and Greece). There has been a serious failure to implement the key political agreements of autumn 2015, notably those intended to ensure sufficient reception and longer-term shelter capacity in countries along the Western Balkans route and to relocate refugees from Greece. At the same time, the motivations behind those agreements – to ensure minimum protection for refugees and migrants situated in the Western Balkans and to relieve the pressure on Greece – remain at least as valid now as they were then.

33. Europe's response to the Western Balkans refugee and migration crisis must be based on genuine acceptance of certain basic principles. Whatever the root causes of the flow of refugees and migrants, whatever the distance separating different states from the points of entry, and whatever the history and culture of different states; in a Europe whose profound integration on many levels is based on respect for human rights and the rule of law and dependent on both costs and benefits in all areas being shared equitably: no response to the current situation participation can succeed in the longer term unless it is based on genuine solidarity, recognition of the need for collective action and equitable sharing of responsibility, with full respect for the rights of refugees and migrants and the basic principles of international and European law.

34. I therefore propose that the Assembly makes policy recommendations to the states concerned and to the EU, as appropriate, relating to the following areas:

- Ensuring that the human rights of refugees and migrants are given priority in policies to address the situation in the Western Balkans;
- Ensuring asylum seekers' effective access to protection without discrimination or arbitrary restrictions;
- Preventing the excessive use of force by police and security forces against refugees and migrants, and ensuring respect for their dignity;
- Ensuring provision of sufficient, appropriate capacity for short-term reception and longer-term shelter of asylum seekers along the Western Balkans route;
- Ensuring that national asylum systems meet the standards of 1951 Refugee Convention, the ECHR and EU law, as applicable;
- Preventing return of asylum seekers to countries that are unable to guarantee protection in accordance with applicable international and European standards;
- Avoiding border control policies that would unreasonably impose a disproportionate responsibility for the protection of refugees and migrants on other states more vulnerable to their arrival;
- Implementing in full the decisions on relocation of refugees from Greece and the agreement reached at the Western Balkans Route Leaders' Meeting;
- Reform the Dublin system with a view to a more equitable sharing of responsibility, thus avoiding further overburdening of Member States with insufficient protection and reception capacities.
- Ensuring that actions in response to the refugee and migrant crisis are only taken following consultation with all other states concerned;
- Providing all necessary financial and technical support to affected states.