

**"Does Europe need a new legal framework to tackle the crisis of mass migration?"**

Whatever the solution to the crisis of mass migration, it is not a *magnum opus* of jurisprudence. The crisis needs political actors to take practical steps, and these steps can be taken within the existing legal framework. Legal frameworks (such as the UK parliamentary process or the legislative mechanisms of the European Union (**EU**)) are merely the boundaries within which such steps are taken. Whilst a suitable legal framework may be a process through which decisions can be taken to tackle the crisis, it will not in and of itself be a solution. This essay will establish, therefore, that the focus should be on taking action within the existing legal framework. Second, entirely 'new' legal frameworks tend to be created where there is a *non liquet*, which is not the case in this instance. Third, in any event, creating a new legal framework would be impractical.

First, the action that Europe should continue to take to address the crisis can be achieved within the existing legal framework. Member States of the EU subscribe to one of the most sophisticated international legislative processes in legal history.

Admittedly, not all European states are EU members. However, the EU, together with the members of the European Economic Area and European Free Trade Association, has sufficient centripetal clout over European nations to take practical steps to solve the crisis. Moreover, there is a further framework at a more global level, such as the 1951 Refugee Convention and associated 1967 protocol, which are already in place

and address key legal issues such as the definition of a refugee and the relevant obligations of states.

The EU's centripetal clout can be seen in press release IP/15/5596, in which the European Commission (**EC**) proposed a series of 'concrete measures' to tackle the crisis, including an emergency relocation proposal for 120,000 refugees from Greece, Hungary and Italy and a €1.8bn trust fund for Africa to address the root causes of the crisis. A further practical step which should be taken is to enhance the role of Frontex, an EU organisation established in 2004 to help border authorities from different Member States to work together. These examples demonstrate that the EU can and should take practical steps to solve the crisis. In short, the legal framework stands ready to facilitate those who can harness the requisite political will.

Second, new legal frameworks tend to be created where there is a *non liquet* or where the existing framework is insufficient to achieve a desired solution. For example, the Nuremberg and Tokyo Charters created a mechanism for the conduct of trials following World War II, and the International Criminal Tribunals for Rwanda and Yugoslavia created frameworks to bring the relevant prosecutions. These legal frameworks, although idiosyncratic in their purpose, are, at least as legal frameworks, similar in that they were all created where the existing framework was insufficient to achieve a desired purpose or there was perceived to be a lacuna in the

existing legal offering. There is simply no parallel in relation to the crisis of mass migration. The EU's legislative framework and those of Member States are mature mechanisms which have been developed over time, which have responded and adapted to various crises, and which have always continued to allow political actors to pursue solutions. Europe's leaders have a suitable legal framework within which to take appropriate action; if they do not, history will perceive a lack of political will but will not condemn the legal framework.

Third, the creation of a new legal framework would be completely impractical, raising significant issues relating to timing, cost and jurisdiction. In terms of timing, the crisis is happening now. Legal frameworks are not noted for the speed with which they can be conceived. Designing a new framework to tackle the crisis would take months, even years. Surely it would be better to build upon the 'concrete steps' proposed by the EC within the existing framework than to focus efforts on redesigning European jurisprudence?

Cost would be another issue. The creation of a legal framework would require significant effort from lawyers across Europe; even the process by which such a framework were created would be hotly contested, not least given other challenges which the EU currently faces, such as a possible Brexit. History would not forgive

Europe's leaders if they were to divert finite resources to the lawyers and away from the real crisis.

There would also be significant issues of jurisdiction. A new framework would struggle to find a place alongside existing legislative mechanisms and, in any event, would rely on Member States consenting to be bound. Such a task should not be underestimated. An historical analysis of not dissimilar initiatives reveals mixed success, even where there was significant political imperative. For example, neither China nor the US are signatories to the Rome Statute – the international treaty that establishes a permanent International Criminal Court in The Hague – and decisions of the United Nations Human Rights Committee are routinely ignored by the states which have voluntarily agreed to submit to its jurisdiction. Without the consent of Europe's nations to submit to the jurisdiction of a new framework it could not begin to facilitate appropriate resolutions.

To conclude, the crisis of mass migration will be solved by political actors using the existing legal framework to take practical steps, such as the measures already proposed by the EC. The existing EU framework is fit for purpose. Given the existence of the EU, Europe has a suitable international legal infrastructure within which to tackle the crisis. New legal frameworks tend to be created in the absence of such infrastructure and, in any event, tend to bring with them their own difficulties

relating to cost and jurisdiction. Even if it could be done, such an idea would be a slow and cumbersome response to a crisis which is immediate and desperate. The most appropriate way to tackle the crisis, therefore, is to use the existing legal offering to take the practical steps needed.

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