

13 May 2016 - Session on “Facing the Refugee Emergency“

Intervention by Dr. Jakob Kellenberger, former State Secretary for Foreign Affairs and former President, International Committee of the Red Cross (ICRC), Geneva, Switzerland

1. You have invited me to introduce the topic as part of the business initiative in the fight against poverty which is, as you are all aware, the main target of today’s development policies. According to figures relating to the end of 2014 or mid 2015 there are 19.5 million refugees worldwide (the 5 million Palestinian refugees of concern to UNWRA included), 38 million IDP’s as a consequence of armed conflict or other forms of violence and about 20 million IDP’s as a consequence of natural disasters and climate change. Despite the fact that you want me to speak on “Facing the Refugee Emergency“ my assumption is you wish me to focus on what is called the “Mediterranean or European refugee crisis“. (I take it that by “crisis“ we mean a delicate situation where decisions have to be taken under time pressure). This crisis is not an old one: Corriere della Sera of 26 April published a table showing that the “Mediterranean landings“ were clearly below 100.000 between 2008 and 2013, reached 216.054 in 2014 and peaked at 1.051.078 in 2015. So far this year arrivals are below 200.000.

You might understandably ask the question what do we understand by “migrants who have arrived in Europe from the Mediterranean?“ Migrants as a generic term for all those who cross borders voluntarily or not, migrants as a term for all those who cross borders voluntarily or migrants as a synonym of refugees in search of protection. Four days later, Il Sole 24 Ore, when reporting on the previous day’s decision by the Austrian cabinet wrote about a sharp increase of refugees in Austria with 88.160 asylum seekers in 2015.

Terminology matters, not least before frightening Europe’s population by the all too familiar metaphor of waves of refugee and migrants. I wonder if the European debate would not have been more rational and flexible if the necessary distinctions between different people on the move and the respective applicable legal frameworks had been made in time. I know the differences between migrants and refugees are not always that clearcut, but it is important to keep the basic differences in mind.

2. We have refugee emergencies and we have emergencies caused by internal displacement as a consequence of armed conflicts, other forms of violence (OSV), natural disasters in general and

climate change in particular. My understanding is you want me to focus on refugee emergencies, primarily those caused by armed conflicts and OSV. I would simply remind you that IDPs are equally very vulnerable. Their legal situation particularly as far as protection responsibilities are concerned, is however different.

Imagine nevertheless for one moment what it could mean if IDP's were to cross the borders, looking for better protection and assistance. Today there are as many IDPs in Syria, Iraq, the two Sudans and Somalia as there are refugees worldwide when we count those of concern to the UNHCR. My intervention focuses on refugees as a consequence of violence and armed conflicts in particular.

3. The first question I wish to address is: what needs to be done immediately to diminish the number of refugees and IDP's as a consequence of armed conflict and OSV's ? The obvious answer is : much more has to be invested in conflict prevention. This has been recognized for years, but little has happened. Reports published on the occasion of the 2015 Review of the United Nations peacebuilding architecture, use clear language. A better developed sensitivity to situations where peace is at risk and a corresponding readiness to invest in conflict prevention are indispensable. One of the reports uses the term « sustaining peace » as encompassing both conflict prevention and peace-building after conflicts. As far as people who move for economic and social reasons are concerned, the answer has been given long since with no effects or only limited ones : much more should be invested in their countries of origin in order to create prospects, not least in the form of jobs. The problem has remained the same for too long: how do you ensure ODA and other financial resources are really spent on the creation of jobs? In fact, you cannot. Many in power will always use the Sovereignty argument in order to prevent a degree of involvement being reached which enables you to ensure the money is spent on where you want it. It is no coincidence that Good Governance is on the development policy agenda of many States. I think conditionality should become tougher in this respect. Sad to say, many Governments still do not see Sovereignty as an obligation to work for the wellbeing of their people but as a means to stay in power and cash in on the money arriving through different channels.

One of the arguments last year when the refugee crisis seemed at its worst in the Mediterranean area was that more should be undertaken in favour of conflict prevention, peace building and support of neighbouring states. This however was of no help in the short term when the refugee crisis needed to be faced. A way must equally be found to develop a sense of responsibility on the part of the

countries of origin of refugees and migrants to the extent we are not faced with failed States who assume no responsibilities.

The Co-Founder of Cap Anamour in an article published in the 15/8/2015 issue of Frankfurter Allgemeine Zeitung drew our attention to the fact that no African President, minister or senior official ever visited places where their citizens arrived as refugees (or not). Is it that they don't care about the fate of their citizens and we have started to find this normal ?

4. If armed conflict cannot be prevented, then the degree to which international humanitarian law is respected will have a strong influence on the number of refugees and IDP's. If provisions on the protection of civilians are ignored or dealt with as an issue of secondary priority, residents will start to move in order to find places where they feel better protected. The same can happen when they see better prospects of being assisted away from home, for example, in IDP refugee camps. In today's major armed conflicts producing the highest numbers of IDP's and/or refugees, there is poor respect for IHL regarding the protection of civilians. Even if violence does not reach the level of armed conflict, respect for International Human Rights Law still plays a similar role. This law however has no legal standing on the conduct of hostilities. To put it bluntly while looking at today's situation : if IHL were better respected in Syria, Afghanistan, Iraq, in South Sudan etc the number of IDP's and refugees would be lower. Improving compliance with IHL's existing laws is considered the priority by those dealing with the humanitarian consequences of armed conflicts and OSV's. Judging by the outcome of the December 2015 International Red Cross and Red Crescent Conference, States do not show much a sense of urgency in this respect. To be in full control of every process leading to the development of IHL seems to matter more to them than the setting up of modest mechanisms which might lead to some improvements ... and yet. Nothing will happen until another proposal is presented at the next International Conference in 2019. Consequently it would be wrong to argue they see a close link between compliance with the law on the protection of civilians and the number of refugees and IDP's. Or if they see it, the so called Sovereignty matters most of all. Having followed the war in Syria for the last five years, you will have noted: to lower the number of refugees or IDP's is not a major concern of the Parties in conflict. They wish to remain in power.

5. Where Refugee (IDP) emergencies cannot be prevented, it is important to be aware that refugees (the same holds true for IDP'S) want to stay close to their places of origin. I will limit the following remarks to refugees. This experience has been made long since in the Afghan context for example, where refugees preferably went to Pakistan and Iran. The same happened with Syrian refugees who

first went in large numbers to Turkey, Lebanon and Jordan. It is essential that the neighbouring countries hosting large communities of refugees get the necessary international support to offer an infrastructure attractive enough for refugees to stay until the moment they can return home. In the case of protracted conflicts, education must be part of the programme. I wonder if this well established fact was not ignored for too long in the Syrian context. Could what has been settled in the 18 March agreement with Turkey not have been agreed before? Should other neighbouring States of Syria hosting large communities of refugees not get much more generous support in order to be in a position to offer refugees a decent life until they can return home? I understand Jordan receives a good deal of support, but what about Lebanon, which moreover is in a very delicate political situation? I wonder if the EU and its member States had been more aware of the gaps, grey areas and untested waters of their so-called common asylum-system, would they not have invested much more for refugees in the region. The difficulties of the EU to apply a common asylum system with a minimum degree of solidarity between member States should have been and should be an additional incentive to support Syria's neighbours as strongly as possible. It is remarkable that the EU praised itself for a European asylum system while many member States never cared to translate into national legislation the three directives which, together with the two ordinances, form this system. It is equally remarkable that decisions on the distribution of refugees are not or cannot be enforced due to the resistance by some member States. I understand that a first and failed attempt to have a distribution system dates back to 2001. No wonder certain Member States – for example Austria at the end of April - prepare to take quite radical measures having lost any trust in a viable EU distribution system. After the latest news from Poland, the Czech Republic and Hungary rejecting any degree of solidarity with other EU member States, Vienna must feel encouraged to continue its present policy.

Yes, the principle of proximity matters. This may be a partial explanation for the fact that not more IDP's cross the border and become refugees. You probably know that the strong increase in the number of IDP's is one of the sad developments of recent years.

There are twice as many IDP's as a consequence of armed conflicts and OSV's than refugees.

6. One assumption often heard is that many of the refugees moved to Europe as a consequence of the paradise story spread by human traffickers.

Why is it – with all the EU's means of communication and those of its member States – this misleading narrative couldn't be opposed by a more realistic one, speaking also about the refusal of EU member States to receive refugees, States who only became members in 2004 and profit moreover from generous financial support by other European member States. I know it is difficult

to explain how members of a Community of values – the self understanding of the EU - can justify such attitudes.

Why not explain to them that there is no functional European asylum system with all the uncertainties linked to this ? How to understand that not more could be undertaken and at an earlier stage to prevent these human traffickers doing their deadly job ? I think these are questions which will have to be answered one day. It could be painful for the EU and its claim to have a common asylum system.

7. What to do in the EU should the present drop in the number of migrants and refugees prove to be only temporary ? After all, the war continues in Syria; Libya remains more or less a failed State and Lebanon, hosting more than 1 million refugees or a quarter of its population, is in a very precarious situation. And future developments in Turkey after PM Davutoglu stepped down or was forced out look more uncertain than some weeks ago. Negotiations between the EU und Turkey are not finished either and the debate on Turkey's status as a safe country may not be over.

I see two options: the first is radical and is based on the assumption that an EU internal distribution system will not be agreed: scrap the so-called European asylum system and transfer responsibility for asylum issues back to the member States. After all, they have maintained it is their responsibility to decide on the number of migrants they accept. This option will probably mean the end of the Schengen system - a setback, not a drama. This being said: wouldn't it indeed be disappointing if a refugee crisis of limited proportions had the potential to bring down an important policy in a Union of more than 500 million inhabitants? This can only be thought in a Union with low standards of solidarity or where some member States think solidarity only works in one direction, meaning in their favour. Individual EU member States will remain bound by the provisions of the 1951 Geneva Convention and the 1967 Protocol as well as the EU provision on subsidiary protection.

The EU Commission looks determined to go the second way : re-enforce the European system with more reliable border controls and an element of solidarity between member States. The idea advanced at the beginning April to transfer responsibility for the treatment of asylum applications and the distribution of the refugees among member States to EU bodies no longer figures among them. The resistance of some member States must have been too strong. We are not living in times where an increasingly heterogenous EU is ready to transfer responsibility to the EU level.

Two different situations under which the distribution mechanism will be triggered are now being discussed. Warsaw, Prague and Budapest have already rejected the milder of two versions. Their refusal has the potential to start a discussion on solidarity within the European Union which goes far

beyond the refugee issue. In both proposals under discussion, the obligation to receive refugees would be in function of a member State's population and economic strength. It is not clear to me whether Schengen can be maintained under such a system, but intensified controls at the borders may offer a solution. Refugees may always be tempted to go back to the country of their preference.

Thinking of the future, I do not believe we will have less refugee (or IDP) emergencies affecting Europe. First it does not look as though we have entered an age with less armed conflicts and OSV's. Second, numerous people think the number of people displaced internally or across borders as a consequence of natural disasters or climate change will increase. The latter will also imply some major legal work. There are indeed serious legal gaps with regard to cross-border movements, not least where admission, stay and basic rights are concerned. The so called Nansen Initiative is addressing these issues. The goal is to build consensus among States on principles to protect people displaced across borders. Planned outcome: a protection agenda.

It is an excellent and obvious idea to invest more in the Near and Middle East in Conflict Prevention and Peace Building. It is an obvious idea too to invest more in the creation of jobs in Africa and the region just mentioned. But even assuming these additional investments are being made, important short term effects on the flow of refugees and migrants are unlikely. This being said, the opening of a credible perspective for peace in Syria would lead many Syrians to return home as soon as possible. But just now, it does not look as if such a development will materialize in the near future.

8. You are dealing mainly with the social aspects of business. I wish therefore to end my intervention on migrants in the specific sense, meaning people who move voluntarily for mainly economic reasons, and the EU. The UN Convention on the protection of the rights of all migrant workers and members of their families contains the following definition: «Person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national». In our European debate they appear as those who can be refused entry without any further problem if they do not have the necessary documents for staying and working in an EU-member state. Migrants play an important economic and social role for the countries where they send part of their income and for the countries abroad where they carry out jobs where nationals are not available. It goes without saying that migrants are protected by international human rights law and other bodies of law. It goes without saying they deserve the same humane treatment as anybody else in a specific country. Many people are not aware of the following figures that show the important role they play. Without their remittances millions of people, especially in failed or close to failed

States, could not survive, nor send their children to school etc. Among the States where they send their money there are moreover others where there is little presence of humanitarian or development organizations. In 2015, according to the IOM, there were 240 million worldwide. The remittances they sent home are a major economic factor in the life of many countries. The estimated 583 billion US\$ is three times the amount of official development assistance (ODA) which sounds almost incredible. 436 billion were sent to developing countries. To give just one example of a country with no reliable statistics: remittances (money transferred by migrants back home) must make up for more than 25% of the GDP of Somalia (Puntland and Somalia included). In Nepal, remittances account for 25% of the GDP.

9. A final word

The refugee crisis has been and remains a serious challenge to the EU from various aspects. Going back to the origins of the present crisis, Member States might ask whether more could not have been done to avoid dramatic developments like the ones in Syria. The Common Foreign and Security Policy is more of a pretence than a reality. Ad hoc coordinations of individual Member States foreign policy when seeming convenient to some Members States are not a common policy. The refugee crisis has been and is a serious reality check for the so called common EU asylum system. If progress has been made in recent times, it remains surprising that the EU seemed to live until recently in the belief it had a common asylum system operating under demanding conditions. We only gradually learnt that some of the directives which should constitute the system have not been translated into national law or in a way which leaves little common ground. I do not speak of the two Ordinances which are directly applicable.

The refugee crisis has confirmed what we know from other policy areas: the EU has become a very heterogenous Union in particular since the 2004 enlargement. It is more and more difficult to take timely decisions or any decisions at all. This clearly has wider implications than the refugee issue. The EU's self-understanding is that of a Community of values. If this is taken seriously then it is difficult to understand why EU member States should not be capable of practising a generous approach towards genuine refugees in urgent need of protection. Well beyond the refugee question, the overriding question is the one on the minimal level of solidarity still existing between the member States.