

# United Nations Human Rights Council

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*Topic: Human rights violations of refugees*



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### Greetings, honourable delegates.

I'm going to keep this short. First, a bit about me. I am currently studying for an Masters degree in Law and Technology at Tilburg University, having completed my LLB from the University of London. I like long walks on the beach, yada yada. Anyhow.

Excitement runs high in the days leading to the conference and I find myself looking forward to hearing what you all have to say about the carefully selected topics. My own journey through the paradigm of MUNs started in 2012. The very first conference I attended sparked an undying passion for problem solving in the UN setting and debating with equally challenging delegates. 5 years and 9 conferences later, together with my Co Chair Fares, I am pleased to be the Committee Director of UNHRC at TUMUN. I look forward to seeing you all! Godspeed.

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P.S. Everyone loves rhetoric in a speech.



## Background of the Committee:

The United Nations Human Rights Council's overarching aim is to internationally promote and protect fundamental human rights through the assessment of violations and the suggestion of proposals for change. Its mandate extends to the global evaluation of human rights issues and circumstances.

The HRC is a subsidiary body of the General Assembly that plays a unique role as the primary United Nations body tasked with protecting and promoting human rights. The United Nations Charter and subsequent international treaties and laws serve as a basis for HRC's mandate. The HRC is charged with taking proactive measures and fostering international cooperation in order to prevent violations of human rights. In addressing human rights issues, the HRC may initiate studies, call international conferences, submit draft conventions to the General Assembly, and make recommendations

The UNHRC is composed of 47 State Representatives who are elected through the General Assembly. The Council replaced the former Commission on Human Rights and was officially established in 2006 by the General Assembly through Resolution 60/251. Arguably, the Council's most important powers rest in its ability to utilize the UN Special Procedures and Universal Periodic Review. Under the Special Procedures of the UN, Special Rapporteurs are able to monitor and advise on specific areas of Human Rights abuse and issue reports on thematic areas of concern.

The Universal Periodic Review (UPR) enables the UNHRC to evaluate the circumstances of human rights in all Member States. The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however, any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three states, known as "troikas", who serve as rapporteurs. Each selection of the troikas for each State is done through a drawing of lots following elections for the Council membership in the General Assembly.

Currently, no other universal mechanism of this kind exists. The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.

Apart from UPR, individuals and organizations may also evoke proceedings under the provisions of the Complaint Procedure.



## Introduction to the Problem:

A chain of events over the past few years has led to what we now call “a refugee crisis”, a crisis that has had a great toll on the majority of European countries, both EU and non-EU member states, to an extent where it can be described as an identity crisis, characterized by lack of political will, violation of basic human rights and division among and within states.

The member states of the Council of Europe have all been affected, directly or indirectly by this overflow of refugees, but it has not been yet realized that the solution to such an extensive problem that affects the European continent in the long term can only be collective and respective towards the hosting countries’ needs without overlooking the need to protect the rights of migrants and asylum seekers. A European response to such crisis and phenomena can only be based, indeed, on human rights. The situation so far has not, however, been indicative of that; Indications of human rights’ violations are apparent before and after their arrival, including the application of the non-refoulement clause, smuggling, trafficking, their health-care upon arrival etc. The number of refugees entering European countries, like Greece and Italy, is continually increasing and is accompanied by a vast number of asylum claims, the processing of which is nothing but effective.

Until their asylum claim is processed, refugees have to endure slum-like living conditions in shelters and reception centers, away from their families and being unsure of when they will be able to reach their final destination. Unlawful detention, discrimination and in some cases inhumane treatment have become the norm regarding their treatment.

All things considered, a new approach towards the protection of human rights of refugees and asylum seekers is more than necessary so as to ensure that the international and European human rights law is respected.

## History of the Problem:

The ongoing Syrian conflict has led to one of the biggest humanitarian crisis since World War II, with more than 6 million Syrians being eternally displaced, 13 million in need for humanitarian assistance, an almost 3 million Syrian refugees in Turkey and more than 1 million in the European Union. According to Reuters, most asylum seekers in the EU come from Syria, Afghanistan and Iraq.

The escalation of these migration flows has led to the building of barbed wire fences on the borders of European countries, the launching of operations in the Mediterranean, the creation of reception points and the adoption of a Joint action plan between the EU and Turkey.

### ***Building fences across Europe – Fortress Europe***

The arrival of refugees and migrants during 2012 through the land border of Greece and Turkey lead to the launching of operation Aspida (Shield) in the area and the erection of a 10.5km long fence on this land border. This action led to a dramatic decrease of the number of migrants trying to cross the boarders (from 2.000 in August 2012 to less than 10 in October 2012).

The increased security in this border led many of the migrants wishing to make a crossing to Europe to an alternative route, through the Bulgarian - Turkish borders. But it wasn’t long until another fence was built, this time by the Bulgarian authorities, due to their lack of capacity to deal with this migration influx. During this period Bulgaria received an emergency fund of €5.65 million so as to improve its reception services, while the number of migrants declined from 8,000 in November 2013 to 302 in March 2014.

Another case where the erection of a fence was seen as the proper response to the refugee and migrant



flows was in Hungary, where on July 2015 the construction of a fence was initiated. According to government representative Zoltan Kovacs: *“In order to be able to protect the Schengen borders and protect the Hungarian people, as well as Europe, we had to make that decision and take that step (referring to their building of fenced walls around its borders)”*

### ***Actions taken to prevent lives being lost in the Mediterranean Sea.***

The gradual closing of land borders and the presence of increased security led to a shift of the migratory routes and many migrants chose to follow the dangerous sea crossings through the Mediterranean routes. The loss of lives in shipwrecks in the area called for an urgent response and in October 18th 2013 Operation Mare Nostrum (OMN) was launched by Italy and it has been described as the only concrete measure taken so far to prevent the escalation of the death toll in the Mediterranean (Amnesty International, 2014). This operation, launched by the Italian Navy, was a rescue system, which also aimed to combat trafficking and smuggling of refugees. Despite the fact that the operation was successful, with more than 100,000 people having been rescued, the Italian government withdrew the operation and since January 1st 2015 the research and rescue regime returned to its pre Mare Nostrum conditions. Operation Triton followed on November 1st 2014. Nevertheless, the capacity of the endeavor to combat cross-border crime and control irregular migration is not enough, especially compared to OMN.

### ***The creation of reception points across European countries***

The migrants who have achieved to arrive in a European country are waiting for their asylum claims to be processed in the reception points that have been created. The living conditions in these facilities is described as below expected standards of living.

### ***The EU-Turkey Joint Action Plan***

A Joint Action Plan aiming at preventing irregular migration to the EU from Turkey was agreed upon on October 15th 2015. The plan includes Turkey’s agreement to reinforce its capacity regarding the restriction of migration flows towards the EU and to readmit the irregular migrants who have crossed the Turkish borders to the EU and do not need protection under international law by the EU member states. The plan also contains EU’s agreement to provide €3 billion to Turkey, to fund the abovementioned measures. The Joint Action Plan has not yet proved to be effective and its compliance with fundamental human rights and international law is being questioned.

### ***Human Right Violations: Dire Living Conditions***

Reception centers (open or closed) have been constructed or utilized in order to house the highest possible number of refugees, asylum seekers or even irregular migrants as a response to the unprecedented refugee and migrant flows. Furthermore, in some areas, mainly on Greek islands, these centers are characterized as “hotspots”, where identification and processing of asylum applications take place. Nevertheless, the living conditions do not always satisfy the basic necessities of a human being, constituting, thus, a serious threat to a variety of fundamental human rights. Especially, as highlighted by the case-law of the ECtHR, such detention conditions may amount to inhumane and degrading treatment, prohibited by Article 3 ECHR. Notwithstanding to the persons stranded in the aforementioned facilities (only 61,801 as of June 2016 in countries of first arrival or the transit ones in the so-called “Balkan route”), the restrictive border measures, adopted by many member states, led to the creation of makeshift camps of refugees and migrants, mainly in areas next to states’ borders. In these unofficial sites, living conditions are even more severe, putting human rights protection at great risk.



### ***Hygiene Issues:***

Although member states are obliged to provide accommodation in which the living conditions will be decent and respectful to human dignity, the overcrowded reception facilities cannot reach the required standards. Reports conducted reveal, in many cases, the lack of basic equipment, resulting sometimes in persons sleeping in tents situated on mud and prone to extreme weather conditions. Furthermore, it is likely that quantities of food may not be always sufficient enough or of good quality. Besides, especially in reception centers which have reached or exceeded their capacity limits, access to medical or psychological assistance is not facilitated, whilst the situation in terms of hygiene deteriorates. Considering also the special hygiene needs of children and women, sharing bathrooms or toilets with persons of different gender amplifies the unsanitary character of many reception centers.

### ***Asylum Procedures & Lack of Legal Aid:***

Following the adoption of “hotspot approach” in the EU response to refugee and migration crisis and the conclusion of the EU-Turkey agreement, the asylum process has been entirely combined with the reception centers (“hotspots”), meaning that the asylum seeker has to stay there until the process is completed by the responsible authorities, facing thus a form of “de facto” detention and increasing the number of those staying in these centers. The aforementioned practice has produced a discussion on whether the annulment of the exceptional character of detention for asylum seekers can be justified. Additionally, the slow pace reported in the examination process of the asylum applications contributes to the influx of detainees in “hotspots”. Despite the needs of the stakeholders to seek judicial protection, there are allegations for obstacles in accessing legal assistance, lack of interpreters and of proper information provided as far as their rights are concerned.

### ***Propensity of Violence:***

In addition to the aforementioned dire conditions, persons detained in reception centers are facing also incidents of violence, mainly between groups of different nationalities. Such clashes took place in the “hotspots” on Greek islands, where the detainees outnumber the capacity of the centers. Moreover, there are many concerns on the safety of vulnerable groups, especially children and women, with the latter being prone to forms of sexual harassment. Police has also been accused for stagnancy.

### ***Living Outside Organized Settlements:***

Following the decision of many member states situated on the “Balkan Route” to adopt highly restrictive border controls (e.g. construction of fences), a great number of refugees and migrants were unable to trespass through transit zones. As a consequence, makeshift camps have been created in areas next to borders. In terms of living conditions, they are facing more severe situations than those staying in reception centers, given that there may be no running water, no toilet facilities, they are prone to any weather condition and there is no central state administration oriented to the satisfaction of their basic necessities. There have been also incidents of push-backs and of ill-treatment by border guards. Although the camp of Idomeni in Greece, the bigger one, was evacuated, there are still such camps in other member states and the concerns for serious humanitarian disasters are increasing. The same applies also concerning a great number of refugees and migrants living outside any form of camps, in poor conditions. This phenomenon is very common in countries of first arrival for displaced persons, especially in Turkey. In both the aforementioned cases, member states shall not be indifferent towards these persons, as such situations will probably amount to inhumane ones.



## Human Right Violations: Remedial Measures:

### ***Aid Provided by the Council of European Development Bank:***

The exclusive mandate of the Council of Europe Development Bank is the financing of projects of social character. Based on contributions of member state, it established the Migrant and Refugee Fund, aiming to help its members to cope with the refugee and migrant flows, as well as to help them facilitate their integration. Recognizing also the housing of refugees and migrant as a main priority, it has provided financial help to the majority of affected states in the “Balkan Route” in order to fund the construction or upgrade of reception and transit centers. At this moment, its financing role is subsidiary and additional to the funding by EU institutions.

### ***Other International Organizations Including NGOs:***

In front of the refugee and migration flows, many international and regional organizations, as well as NGOs and volunteers, launched many initiatives in order to reduce the repercussions of the aforementioned situations. Council of Europe has established an extended network of partnerships, including, but not exhausted at the following entities. First of all, the European Commission’s Humanitarian Aid and Civil Protection department is providing financial and technical assistance not only to its member states, but also to other countries as well. Moreover, the Office of the UN High Commissioner for Refugees (UNHCR) plays a key role with the presence and help of its specialized staff in reception facilities and makeshift camps, in countries receiving migratory flows. It addresses also situations that endanger human rights, giving guidelines and proposing alternatives. Regarding assistance to children, UNICEF adopted a great variety of initiatives all over Europe, especially in terms of medical assistance, psychological support, special care, provision of supplies and training of specialized personnel. Last but not least, international, regional and national NGOs are offering humanitarian support (e.g. Red Cross and Red Crescent Societies) or medical assistance (e.g. Medecins sans Frontieres)

## Fundamental Human Rights at Risk:

According to Article 4 paragraph a of the Council of Europe Convention Against Trafficking in Human Beings, and for the purposes of the latter, “trafficking in human beings” is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. In addition to affected persons’ inherent dignity, according to the findings of the European Court of Human Rights, trafficking practices may amount to violations of the prohibition of degrading treatment (Art.3 ECHR), the prohibition of slavery and forced labour(Art.5), the right to life in cases of death(Art.2) and persons’ private and family life(Art.8)

### ***Victims of Trafficking:***

This form of trafficking emerges in three different categories: those who face trafficking after their arrival in a member state, those who had been trafficking victims in their countries of origin and the children victims. Regarding the first one, the Group of Experts on Action against Trafficking in Human Beings (GRETA) has reported that, in the context of the refugee crisis, the risk of being trafficking victims rises in countries of transit or of first arrival, due to obstacles in accessing assistance, the deficiencies in the identification progress, the indecent living conditions, the unawareness and the difficulty in accessing labour. Moving on to the next category, it refers to factual or potential victims of trafficking in their countries of origin. According to UNHCR Guidelines, provided that some criteria are met, these persons may be entitled to international protection, pursuant to provisions of the 1951 Refugee Convention in conjunction with the Council of Europe



Convention Against Trafficking in Human Beings. Last but not least, all involved actors stress out the high risk that children, mainly the unaccompanied ones, are facing. Being also a main target of traffickers, the vulnerable character of this group of people is amplified due to shortcomings in their accommodation, their access in asylum procedure and in the prevention of such dangers in general.

### **International Response:**

By virtue of the aforementioned, Council of Europe, along with other international and regional organizations, have addressed the issue of trafficking affecting refugees or migrants. Regarding the issue of unaccompanied refugees and migrant children, Secretary General has introduced their protection from trafficking as a key priority for the Council of Europe's actions. Besides, GRETA, in its 5th General Report, reiterated that any measure taken to manage the refugee and migrant crisis, especially for combatting smuggling, must not be ignorant towards human rights endangered by trafficking practices. In the same perspective, the necessity for collaboration between state authorities and non-state actors has been highlighted, along with other principles and guidelines. Actually, the areas of main focus are the following: identification of victims, protection of unaccompanied children, access to asylum procedure and the applicability of the "non-refoulement" principle. Corroborating the aforementioned, the UNHCR guidelines underpin ways of achieving the highest level of international protection for trafficking victims in order to guarantee that there is no chance of being re-trafficked. As far as other regional initiatives are concerned, Council of Europe is a member of the "Alliance Against Trafficking in Persons", initiated under the auspices of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings. OSCE specialized officer is also organizing visits to countries in need and launches effective initiatives.

### ***Rise in Xenophobic & Racially Fueled Hostility:***

Rise of xenophobia constitutes one of the aftereffects of the migrant crisis, amplified after the terrorist attacks in Paris and Brussels. European Commission Against Racism and Intolerance (ECRI), has reported the increase of islamophobia (since the majority of displaced persons are Muslims), hate speech, violence and hostile stance against refugees and migrants. Sharing the same concerns, Special Representative on Migration and Refugees disfavored the contribution of public figures, including politicians, in the rise of hate speech against these groups of people. Notwithstanding the verbally expressed hatred, there have been also violent actions and turbulent manifestations against the presence of refugees and migrants in many member states, especially in countries of final destination or where many migrants are kept in reception centers. On the contrary, ECRI has recognized that, despite the rise of xenophobia, practices of "welcome behavior" have also been taking place in lots of member states.

### ***Efforts to Combat Xenophobic & Racially Fueled Hostility:***

Xenophobic practices, especially the violent ones, entail a series of violations towards affected persons' basic rights. International organizations focused on human rights, with the bodies of Council of Europe in the forefront, are promoting the idea of unhindered integration, whilst opposing on the marginalization of refugees and migrants. Furthermore, ECRI publishes both general and country-by-country reports in order to monitor the level of protecting human rights against racism and intolerance, eliminating thus all the aforementioned practices. In the same perspective, ECRI and many of their bodies, in European and international level (e.g. European Union FRA and OSCE ODIHR), are highlighting the necessity of raising public awareness through a variety of initiatives.



### Proposals for Future Actions:

The measures taken so far regarding an effective response to the refugee crisis and the protection of affected persons' fundamental rights have not produced the desired outcome. The revision of Europe's policy and future actions towards these matters is, thus, of imperative significance and any decision should be taken under the scope of protecting refugees' and migrants' dignity as well as right to life and humane treatment. The capacity of hosting countries, such as Greece and Italy, should be further supported via the provision of humanitarian aid, including, transferring of know-how regarding more effective managing of available resources. The role of international organizations should be further supported and welcome by all countries, as their input regarding collection of data on violations of refugees' and migrants' human rights can be a valuable tool, in order to respond in the appropriate manner. Furthermore, a strategy for tackling the refugee crisis by the member states of the Council of Europe should not be short-sighted, but it should rather focus on long term solutions, especially regarding the integration of migrants and refugees. More specifically, an effective integration policy should address, among others, the following aspects, as defined by Council of Europe Commissioner for Human Rights:

- Family reunion;
- Long-term residence;
- Language and integration courses;
- Calling services and employers to work with migrants;
- Effective anti-discrimination policies;
- Inclusive democracy.

### Conclusion:

*“And, from all of our member states, we ask that they respond to this crisis with full regard to the European Convention on Human Rights and the case law of the European Court of Human Rights”*

Council of Europe Secretary General made in May 2016 the previous statement<sup>70</sup>, crystallizing the challenge emerging under the pressure of the recent events: ensuring the protection of fundamental human rights while managing the refugee and migrant crisis. As already presented, agreements have been made and countering mechanisms are established. Nevertheless, member states' obligations regarding international human rights law must not be questioned. Countering measures are putting directly or indirectly basic human rights in peril: a response accomplishing both the aforementioned goals is needed.



### Questions To be Addressed by a Resolution:

- Which are the principles that states should abide by while taking measures managing the refugee and migrant crisis?
- How can the existing operations in the Mediterranean be further implemented and enhanced in order to prevent lives being lost in shipwrecks and combat cross-border crime (smuggling, trafficking)?
- How can the EU-Turkey Joint Action Plan be implemented in the most effective while ensuring that international and European law regarding human rights is upheld?
- What steps can be taken towards the amelioration of living conditions in reception points and hotspots?
- What measures should be taken by hosting countries in order to ensure that asylum claims are processed properly and with the necessary legal assistance to the asylum- seekers?
- In what way can we ensure that incidents of violence among migrants in reception points are avoided, while ensuring protection of human rights?
- What measures should be taken in order to ensure that the rights of persons living outside organized centers are also protected?
- Is the confiscation of refugees' and migrants' assets an effective and justified measure? Are there any alternatives?
- How can smuggling of migrants be prevented?
- How can victimization of refugees and migrants by traffickers be prevented?
- What actions can be taken to combat trafficking of migrants and what is the role of GRETA regarding such actions?
- What measures should be adopted to protect victims of trafficking, including both those becoming victims in destination countries and those having been trafficking victims in countries of origin?
- Which measures should be adopted in order to protect migrants and refugees from phenomena of xenophobia, racism, hate speech and discrimination?
- How can cooperation between Council of Europe, its member states and other actors operating in the field of protecting human rights be enhanced?
- In what way should hosting countries that are in the frontline of the migration flows, e.g. Italy, Greece, Turkey, be supported in their efforts?
- What specific measures should be adopted so as to protect human rights of vulnerable groups of people, especially unaccompanied minors?
- Which initiatives adopted should be put in the forefront? How can they be generalized and strengthened?
- What constitutes an effective long-term solution to the refugee crisis? How can migrants be integrated in their destination countries?

