

**Manuscript version: Author's Accepted Manuscript**

The version presented in WRAP is the author's accepted manuscript and may differ from the published version or Version of Record.

**Persistent WRAP URL:**

<http://wrap.warwick.ac.uk/101738>

**How to cite:**

Please refer to published version for the most recent bibliographic citation information. If a published version is known of, the repository item page linked to above, will contain details on accessing it.

**Copyright and reuse:**

The Warwick Research Archive Portal (WRAP) makes this work by researchers of the University of Warwick available open access under the following conditions.

Copyright © and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable the material made available in WRAP has been checked for eligibility before being made available.

Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

**Publisher's statement:**

Please refer to the repository item page, publisher's statement section, for further information.

For more information, please contact the WRAP Team at: [wrap@warwick.ac.uk](mailto:wrap@warwick.ac.uk).

# Crossing the Eastern Mediterranean Sea in Search of Asylum:

## Re-Evaluating Access, Agency, Policy and Protection

*Dallal Stevens and Angeliki Dimitriadi* \*

### **Abstract**

*This article examines two particular aspects of the 2015 ‘migration crisis’: the implications of EU laws and policies for refugee protection and the manner in which policy fluctuated in response to the movement of people. It explores the legal and conceptual challenges posed by protection and addresses an often neglected dimension– that of ‘agency’ of the individual.*

*This contribution examines the response of policy/law-makers to the ‘migration crisis’, and contrasts this with the expectations of those migrating in search of safety and a life of dignity.*

*The piece draws on rich interview data with new arrivals to Kos in September 2015.*

**Keywords:** *refugee crisis, asylum, protection, refugees, Greece, Kos, Syrians, agency*

### **Introduction**

The European Union (EU) has long faced migration from across the Mediterranean and been a destination for asylum claimants (EUROSTAT annual asylum statistics). Recent years have borne witness to a specific and dramatic statistical change. For several years, the annual total of asylum claims lodged in the EU remained relatively static, while identified deaths

---

\* Dr Dallal Stevens, School of Law, University of Warwick, UK: [d.e.stevens@warwick.ac.uk](mailto:d.e.stevens@warwick.ac.uk); Dr Angeliki Dimitriadi, Hellenic Foundation for European and Foreign Policy (ELIAMEP), Greece: [angeliki@eliamep.gr](mailto:angeliki@eliamep.gr); We are indebted to the two anonymous reviewers for their extremely helpful comments and suggestions as well as Vicki Squire, Nick Vaughan-Williams and Nina Perkowski for their comments on earlier drafts. The authors would like to acknowledge Sklerida Agoli who undertook the research on the island of Kos.

rose between 2002 and 2008 and then appeared to dip in 2010 (Last and Spijkerboer, 2014). Then, in 2011, a perceptible rise occurred; asylum applications increased from around 300,000 annually to 1.3 million in 2015 and deaths in the Mediterranean surged (ibid). The October 2013 Lampedusa shipwreck, in which 339 people died, prompted widespread reaction and condemnation from Pope Frances to the UN High Commissioner for Refugees, António Guterres. While not the first such occurrence, the EU was forced to respond with seeming compassion. Then Commissioner for Home Affairs, Cecilia Malmström, declared:

[...] Let's make sure that what happened in Lampedusa will be a wakeup call to increase solidarity and mutual support and to prevent similar tragedies in the future. (European Commission Memo, 2013)

This call to action was arguably ignored as the EU failed to implement a constructive plan. Instead, throughout 2014 and 2015, the media continued to draw attention to repeated drownings on an unprecedented scale. The focus, if it had ever truly been present, shifted from protection to containment, exemplified clearly by the statement in April 2015 of EU Commissioner for Migration, Dimitris Avramopoulos 'Europe is declaring war on smugglers' (Bonnici, 2015) but went on to add in a debate in the European Parliament that 'It is time to pass from words to actions. Solidarity will stop being a slogan; it will become a reality. ... This is not about Fortress Europe, protecting the borders. This is about more capacities for Search and Rescue.' (Statement of Commissioner Avramopoulos, 2015)

This attempt to meet both the demands of states intent on strong border control and of human rights advocates reinforcing moral and legal responsibilities towards refugees and migrants was always destined to be fraught with difficulty. The most obvious and significant illustration of the dilemma confronted by the EU was provided by the European Agenda on

Migration of May 2015. The European Commission, immersed in the inevitable Member State politics of migration, struggled in its Agenda to provide Member States with a palatable plan to solve ‘the crisis’, whilst meeting their legal obligation to uphold the right to seek asylum as prescribed in Art 14 of the Universal Declaration of Human Rights. While it acknowledged that ‘[t]he immediate imperative is the duty to protect those in need’, and adopted the mantra of ‘saving lives at sea’, it proposed ‘four pillars to manage migration better’, which again reveal the conflict at the heart of EU migration policy: (i) reducing the incentives for irregular migration; (ii) border management – saving lives and securing external borders; (iii) Europe’s duty to protect: a strong common asylum policy; and (iv) a new policy on legal migration.

That a tension exists within EU asylum policy between the need to meet EU states’ commitments to international refugee and human rights law and the ongoing desire to control borders and migration has been well documented (for example, see Andersson, 2014; Albahari, 2015; van Reekum, 2016; Pallister-Wilkins, 2016). Migration and asylum were, from the beginning, grounded on the conflictual (and imbalanced) relationship between deterrence and protection (Triandafyllidou and Dimitradi, 2014). Much discussion in the field concentrates on a ‘top-down’ analysis – that is, laws and policies are critiqued in light of their moral and legal implications (for example, Gammelthoft-Hansen, 2011; Gibney, 2004). Equally, academics have increasingly explored in recent years the decision-making process of individuals (see Carling & Collins, 2017), how they understand protection, and how destination choices are often made (see Koser and Kuschminder, 2016; Schuster, 2011). This contribution seeks to add to the existing literature by discussing access to asylum in practice,

the notion of protection and how, in the summer of 2015, policy on the ground was reconfigured to respond to the ‘refugee crisis’.<sup>1</sup>

The article examines the interplay between migrant decision-making and policy developments with a focus on asylum and protection. It considers how people on the move have responded to the Union’s external borders’ policies, in the early days of the ‘refugee crisis’ and investigates the relationship between the legal/normative framework and the experience of people arriving in Greece in the summer of 2015. The article documents how – despite the new asylum system in Greece (since 2013) –, the absence of information and lack of access to it, effectively hindered access to asylum and protection and limited the choices available to new arrivals. While Greece was a country of transit for many, this article shows that this transit-status was in fact reinforced through the practices implemented at the arrival points.

The piece opens with a description of the methodology adopted and briefly explores the problem of protection conceptually and legally. We then move on to consider the EU’s approach to asylum and protection from a policy perspective with a particular focus on Greece. Greece holds a special position in the discussion. A first country of arrival, an external border of the Union, it has been called upon (through the Schengen rules and the Dublin Regulation) to both deter arrivals and offer protection to those who succeed in crossing its borders. The country has been the focus of analysis for the past few years as regards its capacity to receive and to protect asylum seekers. To understand the gap between policy and reality, an analysis of protection as understood by those fleeing conflict and post-conflict devastation is necessary and brings to the foreground the element of agency (see Mainwaring and Brigden, 2016; Squire, 2016). Utilizing research undertaken in September

---

<sup>1</sup> In this article, asylum denotes admission to territory, residence and enduring protection (see Goodwin-Gill & McAdam, 2007, ch 7), whilst the meaning of protection is discussed further in this article.

2015, we shall show how the registration process and difficult in accessing the asylum system exacerbated an already difficult situation due to the size and speed of arrivals. We argue that though protection exists, accessing it during that period was problematic, particularly for non-Syrians. The importance of choice and decision-making is revealed in the discussions with interview subjects. As they explain, Greece was never a potential destination for many arriving on its shores, precisely due to the partial asylum system it offers and their personal ideas of the meaning of protection. The article concludes with a brief discussion of the failure of the Common European Asylum System to respond to the 2015/2016 ‘crisis’ and the increased policies of deterrence and containment that heavily impact asylum seekers *en route* and in the EU.

## **Methodology**

The article combines documentary and empirical enquiry. It draws on research undertaken as part of a UK ESRC-funded urgency grant awarded to a multi-disciplinary and international team and entitled *Crossing the Mediterranean Sea by Boat: Mapping and Documenting Migratory Journeys and Experiences* (Squire et al, 2017). In Phase 1 of the project from September 2015 to February 2016, researchers focused on key arrival points in Greece (Kos), Italy (Sicily) and Malta. Semi-structured interviews were conducted with 136 migrants and refugees across the three sites and were aimed at exploring how refugees and migrants negotiate their journeys, their understanding of current policies and what legal and social challenges arise in the context of current policies.

The empirical analysis herein is based, in the main, on interviews undertaken on the island of Kos during a critical period of migration in September 2015. In a three-week visit, 51 interviews were conducted by a research assistant with 29 Syrians; 9 Afghans; 7 Pakistanis; 3 Iraqis; 2 Bangladeshis; 1 Gambian and 1 Iranian. At the time, no official facility (hotspot)

existed on the island of Kos, and interviews took place at places of arrivals such as the main harbour, in unofficial camp-like spaces (usually set up by civil society) and near registration sites (city centre police station). Consent was obtained in all cases. Interviews followed a specific schedule of questions and were interpreter-assisted and recorded. Most interview subjects were from countries suffering ongoing conflict – Syria – or in a phase of post-conflict reconstruction – Iraq and Afghanistan. It is their testament on causes of and motivations for travel, and their experiences and expectations, that provides the basis here for a greater understanding of a ‘bottom-up’ approach to ‘protection’.

### **The Aim and Content of Protection**

Protection can be offered for many reasons and, to obtain protection, it is usually necessary to apply for asylum. Here, we are specifically concerned with protection of asylum claimants, those who might be broadly termed ‘protection seekers’, beneficiaries of humanitarian/subsidiary/complementary or international protection and refugees. In our interviews in 2015, many of the people we spoke talked about protection and what they hoped it would deliver. Part of our research explored the differences between individual aspirations and state assumptions as to the aim and content of protection.

There is an implicit – and sometimes explicit – recognition at the heart of refugee law that protection is its *raison d’être*. Yet, the Refugee Convention fails to define protection, and, as Stevens has argued elsewhere, the meaning of protection is not as clear-cut as might be expected (Stevens, 2013; Storey, 2016). Further, in the 65 years since the agreement of the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention), the landscape of protection has repeatedly changed. The aim of refugee protection at its simplest, and most widely acknowledged, is to prevent persecution and, in order to achieve this objective, refugees must be granted the right to remain in a host country and must not be removed to the

country of persecution (referred to as *non-refoulement*) or to any other country that might return them to a risk of persecution (known as ‘chain *refoulement*’).

The Convention provides us with the template of what, in 1951, was considered fundamental to restarting a new life as refugee in the country of asylum and what can count as a modern version of protection: *inter alia*, non-discrimination; acquisition of movable and immovable property; artistic rights and industrial property; the right of association; access to court, to employment; housing; elementary education, and welfare; freedom of movement; identity and travel documents; prohibition of expulsion or return, except in certain circumstances; and the facilitation of assimilation and naturalisation.

Many of those seeking protection might not achieve the ‘gold standard’ status of a refugee – that is, they do not fulfil the demanding criteria of refugee status as stipulated in the Refugee Convention – but may still require protection due to, *inter alia*, flight from ‘serious harm’, human rights abuses, civil war, poverty or climate change.

### **The Temporal/Spatial Aspect to Refugee Protection**

The temporal/spatial aspect to refugee protection is an important additional consideration and can apply in a number of different contexts.

- (i) The protection provided in an emergency phase of refugee flight might be different from that provided as the displacement becomes more protracted.
- (ii) The constituent elements of protection are different depending on where in the world it is provided – in a state party to the Refugee Convention; in a non-state party; in a camp; in an urban setting; in a state party to the Convention but which has entered a declaration of geographical limitation under the Convention.
- (iii) It is also clear that if one interprets the ‘rights’ contained in the Convention as constitutive of the nature of protection that a state party must provide, then certain

elements of that protection will be available at different times, depending on the connection of the individual to the state; not all rights accrue to the refugee at the same time.

It is likely that these temporal/spatial issues place greater demands on regions of the world facing the largest numbers of displaced and where displacement has become protracted. For the purposes of the discussion in this article, such a region is the Middle East, which at January 2018 was hosting about 5,481,000 registered Syrians according to UNHCR. The Arab States involved in hosting Syrians are not party to the Convention or Protocol (Lebanon, Syria, Iraq) and Turkey has a geographical limitation which excludes Syrians from refugee status as well as a 'temporary protection' regime in place to deal with them. While the EU does not consider itself to have a protracted displacement problem, it is now confronting the issues and problems associated with mass influx, which many much poorer or less developed countries have long been facing. In addition, for the first time in many years, it was necessary to treat the arrival in EU territory of tens of thousands of people throughout 2015 as tantamount to an emergency phase. The extent to which the EU institutions and Member State were successful in developing protection-oriented policies will be addressed below.

### **Who is Providing Protection?**

A key purpose of international refugee law is to ensure that states take responsibility for refugees, rather than expect the UN or other agencies to do so. However, in many cases involving non-state parties, who therefore have no treaty obligations, or even state-parties that lack refugee determination procedures, it is often the UNHCR and partner non-governmental organisations (NGOs) that assume considerable responsibility for the displaced. Notwithstanding, they remain subject to the hosting state's permission to be

present on the territory and must adhere to specific governmental demands when made, however contentious. However, this blurring of responsibility between state and organisation can confuse the protection picture, as can the blurring of the distinction between rights and needs (Stevens, 2016; Kneebone, 2016). Interestingly, whereas it is expected both under refugee law, and in accordance with the obligations of the Common European Asylum System (CEAS), that states will provide protection to asylum seekers and refugees, in fact, there has been an increasing need for the assistance of the UNHCR, NGOs and civil society to provide aid to the many who arrived in 2015 and beyond on the Greek islands.

### **Agency, Forced Movement and Protection**

Refugee movement is attributed frequently to structural factors alone (Bakewell, 2010). In addition, terms are ascribed to those on the move, such as: ‘migrant’, ‘asylum seeker’, ‘refugee’,<sup>2</sup> ‘trafficked’, ‘smuggled’, ‘irregular’ and ‘illegal’. This is in part a by-product of UNHCR’s discourse, reinforced heavily in 2015 with its use of the terms ‘*refugee*’ and ‘*migrant*’ when discussing migratory flows, but is also due to the politics of humanitarianism; for an individual to need protection, he/she must be vulnerable and suffering (Ticktin, 2011).

In 2015, the images captured of migrants attempting to reach the Greek shores offered a visual of such vulnerability and suffering. What was clearly absent was the focus on the individual’s understanding of asylum and protection, individual choice and decision-making. Indeed, these are widely neglected in discussions on asylum and protection and on forced migration. From the decision to migrate to the actual journey, transit and arrival to a destination, the individual exhibits agency throughout, but how should agency be interpreted in these contexts? One view is that individuals are not passive recipients of structural obstacles and/or opportunities. In fact, their very mobility is an exercise of agency. Agency

---

<sup>2</sup> The term ‘refugee’ is often widely used in a non-legal sense to denote someone forced to leave their country or region of origin as a result of persecution, human rights abuse, environmental disaster or civil war.

requires the ability to exert some form of control over movement, though this does not negate the significance and impact of structural constraints. Mainwaring and Bridgen (2016), for example, note how migrants not only choose to take certain risks but also at times opt for ‘momentary disempowerment’ to achieve a more significant end goal. In the summer of 2015, on the Greek islands, such moments were regular (see below).

Agency has become essential to discussions of migration. Since the ‘left to die boat’ of 2012 (Shenker, 2012) the official discourse continues to refer to trafficking and smuggling as interchangeable and more crucially as the ‘push factor’ behind mobility. It is an indirect way of victimising migrants that are portrayed as passive recipients of information and events. The ‘fight against smuggling’ declared by the Commission, (see EUROPOL, 2016) essentially disregards the role of human decision-making and choice, which is a crucial part of migration. It also impacts negatively our understanding of what asylum seekers need and want. Protection no doubt. But where? And under what conditions? In other words, is physical protection sufficient or do asylum seekers actually look for a more holistic framework?

If we accept that asylum seekers do not merely flee from somewhere/someone but aspire towards something, then their choices become an integral part of their mobility. They move not only because they are forced to do so, but also because their mobility will lead them to improve their lives through protection, access to education, employment, and reunification with family – that is, they seek an opportunity to flourish as a human being. This was reflected in all the discussions with our interview subjects. An example is provided by our first interviewee in Kos:

*KOS.01.1: My cousin left 2 years ago. He lives in Sweden. He is 17 years old and is waiting for family reunification. They say life is very good. When he arrived, he stayed in a camp for*

*4 months. Now he is learning Swedish. The [ Swedish] government wants him to learn the language so that he can integrate in society.*

*KOS.01.1: A family needs 2000 euros to go from Hungary to Austria and then take a train to Germany. I need 4.000 dollars to get from Syria to Germany. The train or taxi from Hungary takes 400 euros or 600 euros.*

*Interviewer: Who provided you this information?*

*KOS.01.1: People who are already there; my neighbour, my friends, my cousin.*

In relation to protection, many of those on the move had a particular yet refreshingly clear view of what they were seeking:

*KOS.01.13: When I was there [Pakistan], I heard that here they provide protection, employment and legalization to people and they respect humans and human rights...*

In most cases this included safety but also, crucially, family reunification, access to education for children, and the ability to build a future life:

*KOS.01.50: For me safety and citizenship is the same thing. I want a place that can provide me protection in order to be able to bring my family to live altogether there.*

*KOS.01.14: So, after I get legalized [in Italy], I can go to Germany or England or somewhere else so that I can work and build a future for my children, so that they have a better future. Because I also stayed in Turkey for 2 years but I did not manage to accomplish anything...That's why I want to go to Italy so that I can later work in Germany or UK.*

Clearly, these individualised notions of protection for those on the move were generally not considered to be available in Greece and therefore applications for asylum in Greece were low. Though we encountered our interview subjects on the islands, most were already planning their journeys across the mainland and onwards, with specific destinations in mind.

However, over the past 30 years, many national and regional asylum policies have sought to denigrate or undermine the right of the individual to choose a destination in favour of the right of the state to favour certain migrant groups or to exclude altogether. While the EU has arguably led the way in policies that aspire to dismantle individual choice in the migration context, Greece, too, tried to limit individual choice in its own way: by impeding access to the asylum process and tolerating a chaotic system, Greece reinforced its image as a country to be transited and vacated as quickly as possible.

### **The Problem of Protection in the EU**

The EU has long sought to establish ‘a common area of protection and solidarity, based on a common asylum procedure and a uniform status’ as stated in the preamble to the Recast Qualification Directive. It has seemingly been less concerned with the temporal/spatial aspects to protection as described above, as there has been a belief that a CEAS, with its underlying presumption of common standards across the EU, would be a panacea for all asylum-related problems. However, as noted in a recent review of the CEAS, the ‘common’ element is still missing. The EU is still significantly behind in developing an EU-wide asylum system. Rather there are 28 different asylum systems, with different procedures, and often divergent recognition rates (Wagner et al, 2016).

In addition, there is a clear spatial dimension to the CEAS that places the ‘burden’ of responsibility on front-line states. The promotion of policy harmonization in the area of asylum, sought to transfer part of the responsibility from northern Member States like Germany (that experienced high asylum-seeking numbers, particularly during the war in the former Yugoslavia) to the south. The CEAS, sought to achieve both harmonization in asylum policy but also burden-sharing. The CEAS relied on two assumptions. First, that asylum shopping (choosing a country in which to lodge the asylum claim) would reduce by virtue of

the Dublin Regulation, which allocates responsibility for reception and asylum processing to the first country of arrival. Second, unauthorised secondary movement is tracked, in theory, through the EURODAC database. Thus, the system is designed to prevent both asylum shopping and bogus asylum applications. In practice, neither is achieved, with Greece a case in point: asylum in Greece is still not equivalent to that of other member states and a holistic approach remains absent leading many to continue their journey in search of protection.

### ***The Island of Kos: Protection or Disempowerment?***

In 2015 alone, 856,723 people entered through the Greek maritime border according to UNHCR data. Of those, UNHCR estimates that 88% originated from the top ten refugee-producing countries, with Syrians constituting almost 60% of incoming numbers, followed by Afghans (20%). The qualitative nature of arrivals was also different. There were more families, women with children and unaccompanied minors than in previous years. Though migratory flows had increased since 2014, the peak was in fact in April 2015, with almost 14,000 recorded arrivals (UNHCR Data Portal)

Kos was one of the main islands where migrants and refugees disembarked. The island offered a unique context for research. Much has been heard and written about Greek hospitality towards the refugees. The island of Kos, stood in contrast, offering a completely different approach. What was striking in the case of Kos was that the migrants were neither welcomed nor rejected by the local authorities. Rather, in the early days, ‘people [were] completely abandoned’ (Stathis, 2015). Two aspects were missing on the island of Kos, both linked with the broader notion of protection. The first was the limited access to the asylum process and limited information on the options available. The second was filtering of nationalities. This filtering of nationalities reflected state ideas of the “good refugee” and the “genuine” refugee, and were reproduced across the Western Balkan route, but were also present on the Greek islands, in 2015 (Christodoulou et al, 2016).

What differentiated Kos from other reception points was the apparent absence of organisation as well as an unwillingness to set up a top-to-bottom framework of operations. Neither the Ministry of Migration, nor the Asylum Service were present on the island in September 2015, leaving reception, and thus protection, in the hands of civil society and NGOs. The 2015/2016 migration was exceptional in the variety and range of ‘protection providers’ that emerged. Thus, in an inescapable irony, the Greek islands witnessed a secondary migration, as the desire to help or to act drew more people to Greece. Papataxiarchis has termed these cohorts with their different motivations as ‘solidarians’, ‘volunteers’, ‘professional humanitarians’, and the ‘ordinary people’ (Papataxiarchis, 2016).

*KOS.01.1: The help they provide here is not organized. Some people stop to hand out things but the people has to go to them. [...] So some of the migrants and refugees get many things and many times while others do not get anything.*

Arrivals were asked to register initially at the police station in the capital of the island. In August 2015, most migrants tried to live near the police station in the hope of either registering or receiving the paper allowing them to buy a ticket for the ferry. Most of our informants had bought tents and stayed mainly on the sidewalks near the police station, on the beach or under the bridge in the city centre. The area near the police station was eventually evacuated in late autumn of 2015 and migrants and refugees ended up renting hotel rooms. For those short of financial capital, the port and the beaches became the only available space for shelter at night.

In the early days, registration was also chaotic. One of our interview subjects described it as biased towards the Syrians, a complaint voiced to this day by non-Syrians.

*KOS.01.39: The names for the Syrians were really fast while for the others nothing. We went crazy and told the police that if they don't answer we will tear apart all the papers, they told*

*us to come back tomorrow morning at 6 o'clock and whoever takes the papers first, that one will be the one who will start writing the names. We went at 6 o'clock in the next morning but the Syrians were there 10 minutes earlier and they had taken the papers and they were writing their names there were only three of them left [...].*

The registration process was evidently an exercise in disempowerment of the individual with varied results. As people arrived on the island, their only way out was to register their arrival with ID documents, submit to fingerprinting and wait for the registration document that allowed them to buy a ticket for the ferry to Athens, the next stop on their passage to northern Europe. Some of our participants, mainly of Syrian origin, went through the process quickly. For others, the structural constraints meant that their journey was uncertain, at least at the time we encountered them.

Finding one's name on the lists published daily by the police was a crucial first step in receiving the registration document and thus, leaving the island. Interestingly, similar problems would then be encountered with the asylum process (see below).

*KOS.01.1: We didn't know there was such a delay here! This is not happening in other islands. We got stuck here. Some friends of me that travelled from Izmir [Turkey] have already reached Germany now. But we are still here.*

Our interview subject is referring to the delays in registration on the different islands.

From arrival to shelter to registration the process appeared confused at best. Some of the participants had been on the island for two weeks at the time of the research and described a different registration process than that encountered by the researcher. Most had to fend for themselves in finding shelter and food, since in early August there were almost no NGOs on the ground, with the exception of Doctors Without Borders and few representatives of international organisations or aid agencies. The only 'facility' in place was an abandoned

derelict hotel, Captain Elias Hotel, on the outskirts of Kos town. It offered temporary shelter to hundreds of people, was run by volunteers and assisted by DWB, until it was closed in mid-August 2015 following a decision to transport gradually those who had been stranded from the islands to the mainland. In any event, as witnessed by the research team, the conditions were dire and effectively limited the capacity of new arrivals to make decisions and take actions to change their situation.

Why did the absence of organised facilities and processes matter? One reason is that it prevented registration, vulnerability screening and the opportunity to receive information on the asylum procedure.

It is perhaps unsurprising that access to the asylum procedure simply could not take place during this period. The Greek Asylum Service, understaffed and overwhelmed as it was, had no asylum officers to spare for the islands, nor a place to set up operations. There was also no Reception and Identification Service (RICs). In Kos specifically, the Municipality had not allocated a space for the creation of a first reception centre, in theory, the place for arrivals to receive information on asylum, register, screen for vulnerabilities and receive medical care. Thus, information on the right to asylum depended on volunteers and the occasional presence of a UNHCR officer rotating between islands. Most interview subjects noted that they had received no information on asylum and no information during the registration process.

*KOS.01.2.a: There is nothing. Only what you hear from mouth to mouth.*

Those with knowledge of the procedure had been informed by friends and relations that had passed through the island and via social media, in particular Facebook pages and newsfeeds and Viber groups.

Though the absence of a top-to-bottom organisation on the island exacerbated the situation, arrivals were also predisposed to opting out of the asylum process in Greece.

*KOS.01.35: I have had no information on asylum here- officially or unofficially...But we intend to [move on], not to stay here. We did not think of asylum here, if it is good or not...We are not thinking of staying here, that's why.*

The choice of destination depends on multiple factors, from social networks and role of diaspora to information on asylum, labour market and access to education (de Haas, 2011; Mainwaring and Brigden, 2016; Koser and Kuschminder, 2016). The interviews revealed that, for many, family reunification was also a critical factor – that is, arriving to and applying in a country where it would be easier to reunite with family members. Most interview subjects arrived already committed to transiting through Greece. The lack of information on asylum was not a hindering factor in continuing the journey, which was the ultimate goal for most. It was, however, a significant barrier in accessing asylum and effectively being in a position to know the option of staying in Greece. Having no idea of the process, whom to contact and what was needed, of the 51 interviewees, not one mentioned the asylum service or declared to have received information on asylum from an official source (UNHCR, police, asylum representative).

### ***Accessing Asylum***

For protection, however defined, to take place, asylum must be accessible. It is insufficient to focus solely on developing a legal framework without also ensuring ease of access. In Greece, in September 2015, access to asylum processes was difficult. Anyone wishing to apply for asylum, could only do so in Athens or on the island of Rhodes, the closest Regional Asylum Office (RAO) to Kos<sup>3</sup> Most new arrivals did not want to pay for a ferry ticket to Rhodes to launch an asylum application and then cover the additional expense of transport to

---

<sup>3</sup> Based on site observations during the research on the island of Kos.

Athens. Thus, for those who wanted to submit an application, the preferred choice was to travel directly to Athens.

Impediments to access were the first obstacles. Nationality was the second and perhaps most crucial barrier. Since September 2014, the Asylum Service fast-tracked Syrian applications provided they were holders of valid identity documents (preferably passport or national ID). Asylum claims would be registered and decisions issued on the same day. The decision to fast-track the Syrians sought to quickly address a category of applicants that were non-deportable and considered eligible for some form of international protection. Syrians had a 95% recognition rate in 2015. However, the new system did not take into account any likely increase in arrivals and while the number of applicants did rise, the staff available for asylum processing remained the same. Syrians were also waiting for months to lodge an asylum application, usually outside the headquarters in Athens. Skype was introduced to register appointments for applications, in an effort to reduce waiting times. It proved a largely unsuccessful measure. In early July 2015, those speaking English, French, Farsi/Dari, Arabic, Urdu/Panjabi and Bangla could only schedule registration appointments through Skype. Everyone else had to appear before the Asylum Service to apply and brace through the long queues for weeks at a time. Throughout these changes, Syrians remained fast-tracked.

The Skype system proved a major impediment in accessing asylum. It required access to the Skype application, a solid connection and time availability (there were specific time slots available) which were not necessarily possible nor available to most would-be applicants.

For non-Syrians, nationality was an additional problem since they faced an extremely slow examination of the admissibility stage of their application, which, according to the AIDA report (2015), could last for months. The same report notes that: 'Even if currently the general trend is reported to be for the newly-arrived not to wish to apply for international protection

in Greece but to opt for other EU Member States, [...] it is not sure at all that the situation remains unchanged, taking into account the added task of the Asylum Service to implement the relocation procedure for 66,400 people within the next 2 years, for the initiation of which registering an asylum application is necessary.' (ibid, 25)

The distinction between Syrians and non-Syrians frustrated and confused migrants. It was a distinction that was noticeable from the moment of registration (see above) all the way to the application for asylum. It is a distinction that eventually spilled over to EU policies of relocation, and resettlement.

*KOS.01.18: I heard on the News that for the Syrians is different, especially Germany...that is not recognizing fingerprints in other countries, even from Hungary.*

Many of our interview subjects informed us that they had a right to asylum, that their application would be (and should be) prioritised, and that, in some countries such as Germany, the Dublin rules had been suspended. Some had better information regarding asylum (and what that entails) for countries of destination rather than for Greece.

*KOS.01.40: In Germany, Norway and Netherlands...They declared it on TV that they will receive refugees...But I do not know if there is asylum in Greece. Of what I know, there is no asylum in Greece.*

Others were not only informed but chose to opt out of asylum in Greece on the basis of the information available.

*KOS.01.27: I know I can also apply in Greece...But you know what are every country is capable of. I know now that Sweden...You always you look at the best option for you. Now I know that Sweden is better for me... for the studies...and I also know France is good for studies...I know this kind of things...You always look out for the best...*

The implication is clear. Greece might offer asylum, and therefore a form of protection, but it does not offer the ‘right kind’. It is, rather, itself a push factor for the continuation of the journey. This was one of the main deficiencies of the old asylum system and remains to this day (Dimitriadi, 2018). Yet, most arrivals were unaware that the asylum system had changed and that Greece was indeed offering positive recognition to many applicants, in contrast to the past. What remained unchanged were the poor reception conditions. The economic crisis of recent years did not facilitate the development of a good reception system. It should also be noted, however, that since the early 2000s, Greece systematically differentiated reception from protection, determined to limit reception conditions to avoid being seen as an attractive destination for asylum seekers, while at the same time managing to fall in line with national, European and international legal obligations on asylum. Thus, what was unique in Kos in 2015 was not only the lack of organised facilities but the absence of an organised process that would ensure arrivals could make an educated choice about their future: to be informed that they could apply for asylum, and would likely be granted protection, or to decide to continue the journey onwards in any event.

In 2015, the lack of information and/or misinformation on registration, screening, and asylum were perhaps the most crucial obstacles arrivals encountered. They were crucial because the processes were linked. One had to register, be screened (nationality identification) and leave the island for Athens if they wished to submit an asylum application. It is impossible to know how many were deterred from applying for asylum due to the structural barriers in place, but what is clear is that the conditions in Kos limited the capacity of new arrivals to enact change and caused confusion over differentiated treatment across Europe and between nationalities of those arriving.

## **Concluding Thoughts**

The research undertaken for our project has exposed a problem at the heart of the EU asylum system, and, indeed, in relation to protection and refuge across the globe. Law has constructed notions of asylum and protection that devalue the right or ability of the individual to choose, to make decisions and effect change. The capacity of this ‘top-down’ approach, which reflects the preferences of the state and largely excludes or undermines the agency of the individual, to survive in the face of many contemporary migrations is questionable. Furthermore, Greece’s failure in the summer of 2015 on the island of Kos to establish effective access to asylum and protection on site, combined with poor reception conditions, lack of information, limited interaction from representatives of the State’s mechanism, and nationality filtering, functioned as a deterrent policy: migrants were effectively urged to continue arduous and dangerous journeys onwards and Greece’s undesirability as a destination was reaffirmed. This deterrent model also wrestled options and choices away from people, many of whom were desperately in search of conditions conducive for both survival and to live a dignified life with meaning – which we have termed in this piece the ‘individualised notion of protection’. The voices from Kos echo clearly such aspirations. Our interviewees repeatedly stressed the desire to build a future and a better life, to reunite with family and return to normalcy.

By 2016, the situation on the Greek islands, including Kos, had changed. The hotspots, established across the main islands of entry, function to this day as hybrid sites that both ‘welcome’ arrivals and offer reception services (health care, registration, interpretation and information on asylum) and simultaneously detain individuals pending deportation or return to Turkey (Dimitriadi, 2017). After 20 March 2016, and in line with the EU Turkey Statement, those who end up stranded on the islands fall outside the EU relocation scheme or indeed the broader level of protection on offer (in theory) on the mainland (for example,

shelter, education, work and cash aid). The hotspots, in their own way, are a means to ‘further [restrict] the access to the asylum process and to supplement other legal and spatial strategies of containment’ (Tazzioli, 2016).

Immobility, confusion and fear of return now make up the fabric of the experiences of those abandoned or trapped in the hotspots on the islands; Greece transformed overnight from a transit country to a place of ‘strandedness’. This is for many a dehumanizing experience, with agency revealed in small acts of defiance: leaving the camps to seek alternative accommodation (at a cost); attempting to leave the country (on their own or with smugglers); opting to return to Turkey or their country of origin.

Policy changes are also taking place regarding family reunification (with significant delays) but also pertaining to the CEAS, currently in revision. The more ambitious proposals, which would create a permanent burden-sharing mechanism, have been abandoned in favour of maintaining the Dublin Regulation and a more conservative approach where burden-sharing and relocation are implemented as an emergency response. The focus, rather than being on protection, is on removal, return and containment.

At a time, following the New York Declaration of September 2016 (UN General Assembly Resolution, 2016), when the global community is seeking to develop a ‘comprehensive refugee response framework’, seemingly ‘people-centred’ and with an emphasis on ‘empowerment’, reflection on the meaning and reality of protection for those affected, and the role they played in realising change, is timely. Those participating in current global discussions would do well to learn the lessons of the 2015 migration and subsequent developments in Greece. Yet, even as we write, questions must be raised as to whether states and other stakeholders are willing to change. The recently published *Global Compact on Refugees – Zero-Draft*, which seeks ‘to transform the international community’s approach to

providing protection, assistance and solutions for refugees and supporting host countries and communities' (Global Compact on Refugees, 2018, para. 3), has already been criticised for insufficient inclusion of the refugee voice and refugee participation, failing to reference refugee rights, with only one mention of human rights, an overemphasis on aid at the expense of resettlement options, a lack of specific commitments and limited legal obligations on the state (Refugees Deeply, 2018).

While it is early in the negotiation process, this is extremely disappointing. It is not acceptable simply to pay lip-service to the worth of the individual, to the ideas of asylum and protection, nor to place limitations on these fundamental principles. From our research, we argue for the voice and choices of people on the move to be heard, acknowledged and acted upon. Without such an approach, EU and global responses will continue to disregard individual preferences, thereby failing to be truly 'people-centred'; short-term state interests will prevail, the mid- and long-term consequences will be serious and violence, suffering and death will continue to be the inevitable consequences – that is, the *status quo* will continue, as, tragically, ongoing deaths in the Mediterranean reveal. Drawing on our findings, we therefore reinforce the importance of recognising the right to agency and choice in decisions to migrate and stress the need for real and effective access to fully functioning and timely asylum information and procedures within a rights-oriented legal framework.

Of equal importance is the need for greater orientation of protection towards individual aspirations for a life of dignity, to include family reunification, education and work – a demand clearly expressed through the stories shared by our interviewees. Not only will this help achieve the people-centred approach that seeks to empower the individual, and, as shown, has been recognised widely as crucial to

future cooperation and commitments on migrant and refugee movements, it will also, in the end, assist states to manage migration fairly and appropriately to the benefit of all.

## Bibliography

- Albahari, M. (2015). *Crimes of peace: Mediterranean migrations at the world's deadliest border*. Philadelphia: University of Pennsylvania Press.
- Andersson, R. (2014). *Illegality, Inc.: Clandestine migration and the business of bordering Europe*. Oakland: University of California Press.
- Bakewell, O. (2010). Some reflections on structure and agency in migration theory. *Journal of Ethnic and Migration Studies*, 36(10), 1689-1708.
- Bonnici, T. (23 April 2015). Europe is already at war against smugglers. Commissioner for Migration Dimitris Avramopoulos, *Malta Independent*, available online at: [www.independent.com.mt/articles/2015-04-23/local-news/Europe-is-already-at-war-against-smugglers-Commissioner-for-Migration-Dimitris-Avramopoulos-6736134333](http://www.independent.com.mt/articles/2015-04-23/local-news/Europe-is-already-at-war-against-smugglers-Commissioner-for-Migration-Dimitris-Avramopoulos-6736134333).
- Brigden N. & C. Mainwaring. (2016). Matryoshka Journeys: Im/mobility During Migration. *Geopolitics*, 21(2), 407-434.
- Carling, J. & Collins, F.L. (2017). Aspiration, desire and drivers of migration. *Journal of Ethnic and Migration Studies*, Special Issue: Aspiration, Desire and the Drivers of Migration, 1-18.
- Christodoulou, Y., Papada, E., Papoutsis, A. & Vradis, A. (2016). Crisis or Zemblanity? Viewing the 'Migration Crisis' through a Greek Lens, *Mediterranean Politics*, 21(2), 321-325.
- Crawford, N., Cosgrove, J., Haysom, S., & Walicki, N. (September 2015). Protracted Displacement; Uncertain Paths to Self-Reliance in Exile. London: Humanitarian Policy Group, 11.

- Dimitriadi, A. (2018) *Irregular Afghan migration to Europe: at the margins looking in*. London: Springer.
- Dimitriadi, A. (2017). Governing irregular migration at the margins of Europe. The case of hotspots on the Greek islands. *Etnografia e ricerca qualitative*, 75-96.
- European Commission Memo. (8 October 2013). Commissioner Malmström's intervention on Lampedusa during the Home Affairs Council press conference. Available online at: [http://europa.eu/rapid/press-release MEMO-13-864\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-864_en.htm).
- EUROPOL Press release. (22 February 2016). Europol launches the European Migrant Smuggling Centre. Available online at: [https://www.europol.europa.eu/content/EMSC\\_launch](https://www.europol.europa.eu/content/EMSC_launch).
- Gammelthoft-Hansen, T. (2011). *Access to Asylum: International Refugee Law and the Globalisation of Migration Control*. Cambridge, UK: Cambridge University Press.
- Gibney, M. (2004). *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees.*, Cambridge, UK: Cambridge University Press.
- Global Compact on Refugees – Zero Draft*. (31 January 2018). Available online at: <http://www.unhcr.org/Zero-Draft.pdf>.
- Goodwin-Gill, G. & McAdam, J. (2007) *The Refugee in International Law*. Oxford: Oxford University Press.
- Greek Council for Refugees. (November 2015). Country Report: Greece, Athens: AIDA Project.
- de Haas, H. (2011). The determinants of international migration: conceptualising policy, origin and destination effects. *Working Papers*. Oxford: International Migration Institute (IMI).

- Hathaway, J. (2005). *The Rights of Refugees under International Law*, Cambridge, UK: Cambridge University Press.
- Kneebone, S. (2016). The Strengths and Weaknesses of Regional Protection Frameworks for Refugees. *The International Journal of Human Rights*, 20(2),153-172.
- Koser, K. & Kuschminder, K. (2016). Irregular Migrants Decision Making Factors in Transit. DIBP Occasional Paper Series No.21.
- Last T. & Spijkerboer, T. (2014). Tracking Deaths in the Mediterranean, in Fatal Journeys – Tracking Lives Lost During Migration, International Organisation for Migration.
- Mainwaring C. and N. Brigden. (2016). Beyond the Border: Clandestine Migration Journey, *Geopolitics*, 21(2), 243-262.
- Pallister-Wilkins, P. (2016). Interrogating the Mediterranean 'Migration Crisis'. *Mediterranean Politics*, 21(2), 311-315.
- Papataxiarchis, E. 2016. Being 'There': At the Frontline of the 'European Refugee Crisis'— Parts 1 & 2. *Anthropology Today*, 32(2), 5.9; 32(3), 3.7.
- van Reekum, R. (2016) The Mediterranean: Migration Corridor, Border Spectacle, Ethical Landscape. *Mediterranean Politics*, 21(2), 336-341.
- Refugees Deeply. (9 February 2018). Expert views: How promising is the Global Refugee Compact Zero Draft? Available online at: <https://www.newsdeeply.com/refugees/articles/2018/02/09/expert-views-how-promising-is-the-global-refugee-compact-zero-draft>.
- Schuster, L. (2011). Turning refugees into 'illegal migrants': Afghan asylum seekers in Europe. *Ethnic and Racial Studies*, 34(8): 1392-1407.

Shenker, J. (28 March 2012). Migrants left to die after catalogue of failures, says report into boat tragedy. *The Guardian*, available online at:

[www.theguardian.com/world/2012/mar/28/left-to-die-migrants-boat-inquiry](http://www.theguardian.com/world/2012/mar/28/left-to-die-migrants-boat-inquiry).

Squire, V., Dimitriadi, A., Perkowski, N., Pisani, M., Stevens, D., & Vaughan-Williams, N. (2017). *Crossing the Mediterranean Sea by Boat: Mapping and Documenting Migratory Journeys and Experiences*, Final Project Report,

[www.warwick.ac.uk/crossingthemed](http://www.warwick.ac.uk/crossingthemed).

Stathis, K. (17 July 2015). No Welcome for Migrants and Refugees Landing in Greek Dodecanese Islands. *Border Criminologies*, available online at :

<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/07/no-welcome>.

Squire, V. (2017). Unauthorised migration beyond structure/agency? Acts, interventions, effects. *Politics*, 37(3), 1-19.

Stevens, D. (2016). Rights, Needs or Assistance? The Role of the UNHCR in Refugee Protection in the Middle East. *The International Journal of Human Rights*, Special Issue, The Strengths and Weaknesses of Regional Protection Frameworks for Refugees, 20(2), 264-283.

Stevens, D. (2013). What Do We Mean by Protection? *International Journal on Minority and Group Rights*, 233-262.

Storey, H. (2016). The meaning of “protection” with in the refugee definition. *Refugee Survey Quarterly*, 35(3), 1-34.

- Tazzioli, M (2016) Greece's Camps, Europe's Hotspots, *Border Criminologies*, available online at: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/10/greece%E2%80%99s-camps>.
- Ticktin, M. (2011). *Casualties of Care: Immigration and the Politics of Humanitarianism in France*. Berkeley: University of California Press.
- Triandafyllidou, A. & Dimitriadi, A. (2014). Deterrence and Protection in the EU's Migration Policy, *The International Spectator: Italian Journal of International Affairs*, 49(4), 146-162.
- UN General Assembly, Resolution adopted by the General Assembly on 19 September 2016, A/RES/71/1, 3 October 2016 ('The New York Declaration').
- Wagner, M., Baumgartner, P., Dimitriadi, A., O'Donnell, R., Kraler, A., Perumadan, J., Schlotzhauer, J.H., Simic, I., & Yabasun, D. (2016). The Implementation of the Common European Asylum System. Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs, LIBE.