

“SMUGGLERS WILL ALWAYS OUTWIT, OUTPACE AND OUTFOX THE GOVERNMENTS”

François Crépeau

- *Interview with François Crépeau, United Nations Special Rapporteur* •
• *on the human rights of migrants on the so-called “migration crisis” in Europe*

In the week that saw 1,083 migrants die in the Mediterranean – the deadliest week of 2016 to date¹ - François Crépeau took the time to speak to the Sur Journal about the increasingly desperate situation in the region.

He attributes the current situation, in part, to the increasingly restrictive migration policies of the European Union and its Member States. Specifically, he noted the difficulty of obtaining visas, especially for individuals from the Global South, following the negotiation of the 1990 Schengen Convention and also the securitisation of migration policies which is now largely in the hands of ministries of interior and home affairs. In addition, the fact that the borders of Europe – and further afield – are witnessing a considerable degree of conflict and instability means that there are huge numbers of refugees leaving Afghanistan, Iraq, Libya and, in particular, Syria. These two factors lead to a high demand for smugglers who offer ever more dangerous border crossings to increasingly desperate people.

He notes that, for four years, Europe, North America, Australia and New Zealand failed to offer meaningful support for refugees through resettlement programmes. The so-called “migration crisis” therefore has multiple sources. But, according to Crépeau, the single most important factor is the lack of political leadership on the part of most European politicians.

Here he tells the Sur Journal what Europe should be doing and offers a cautious outlook for the recent EU-Turkey Statement, Europe’s most recent response to the situation. He calls on the press and civil society organisations to be the voice of migrants and tell their stories to a public that is currently influenced by politicians who are content on selling negative images of migrants in order to secure votes.

Conectas Human Rights • During your recent mission to Greece, you were very critical of the European Union, describing how "The suffering of migrants in Greece is the result of a complete absence of long-term vision and the clear lack of political will of the EU."² How could Europe have acted differently, and how should Europe be acting currently, to improve the plight of the migrants trying to enter now and in years to come?

François Crépeau • When I refer to Europe, I mean both the authorities of the European Union (E.U.) and also the leaders of the different European countries in their respective capitals. This is not something that the E.U. can do alone, and it is not something that the European capitals can do alone either. Until very recently, external migration into the E.U. was still the concern of the individual Member States. What has not emerged is a consensus that European countries are already immigration countries, that Europe needs immigration and that this immigration should be managed both individually by each country, but also collectively from Brussels. It must be an alliance. That is the first thing.

Second, no common long-term strategic policy vision has been created in terms of migration to the E.U. and mobility across E.U. external borders. It needs to develop a vision and a strategy of where it wants to be 25, 30 or 50 years from now in terms of mobility: for example, a 25-year plan with various benchmarks, and a conference every 5 years to review these benchmarks if needed. For example, one could establish as a benchmark the doubling of the foreigners covered by visa facilitation or visa liberalisation within ten years.

The E.U. already has some good examples of measures that contribute towards mobility like the Blue Card (which is the equivalent of the American green card), the seasonal workers/agricultural workers directive, or the student and researcher directive: the last one is new, but the first two have yielded very disappointing numbers.³ Short-term travel should also be considerably facilitated. The facilitation of legal mobility also happens to be one of the targets of the 2030 Agenda for Sustainable Development Goals.

This would create enormous economic opportunities. We have to get rid of the fear that everyone wants to come to Europe and stay. It is not true. People want to come and go. This has been the experience of the United States of America (U.S.) with Mexican migrants. As long as there was no barrier at the Mexican-American border, Mexicans entered the U.S. when the labour market was buoyant and, when there was an economic downturn, they returned to Mexico. We can also take the example of the United Kingdom (U.K.) and Ireland after 2005, when Central Europeans were admitted to move inside the E.U. The U.K. and Ireland received a million and a half Central Europeans within a few months. These were the boom years. These migrants occupied jobs, they created wealth, they paid taxes and they learned transferable skills. When the economic crisis struck in 2009-2010, many left the U.K., which minimised the unemployment rates in the U.K. They lost their jobs, but they did not stay in the U.K. They went elsewhere to try to find jobs or created their own jobs with the skills that they had acquired in the U.K. This is exactly the kind of mobility we need which the E.U. should be fostering and encouraging.

Conectas • What role should migrant sending and transit countries have in protecting the rights of migrants, given that they are often economically disadvantaged compared to the E.U. and often experiencing extreme political instability?

F. C. • What they can do is educate the citizenry better about the dangers of travelling with smugglers. We must understand however that, in many cases, these countries are very poor and do not have the possibility of creating a labour market that will sustain their youth. The countries of origin also need the hard currency, in the form of remittances, which migrants earn when they go to Europe or elsewhere in the world. Remittances help considerably the development of these states. The countries of origin should negotiate and put pressure on Europe and other Global North countries for more regular avenues for migration.

Conectas • One of the ways the E.U. has responded to the current situation is with the E.U.-Turkey Statement⁴ that was announced in March 2016, the legal nature of which you described as “uncertain”. What is your opinion of the “Statement” now, both in terms of how it has worked in practice and from an international law point of view?

F. C. • The E.U. and Turkey stated that, if Turkey meets various conditions – including accepting the return of any irregular migrant that is caught crossing from Turkey to Greece – Turkey will receive EUR 6 billion from the E.U. and there will be visa liberalisation for Turkish citizens. This would mean that Turkish citizens could come to Europe freely for short-term visits, including to look for work or business opportunities. Turkey also has the obligation to stop the migrants on its territory reaching Europe by limiting the activities of the smugglers and to better protect the refugees and migrants on its territory.

Firstly, we have learned that it is not an agreement. It is now referred to as the “EU-Turkey Statement”. It is therefore not a legal agreement; it is a political statement.

Secondly, its implementation hinges upon Turkey obtaining visa liberalisation, which is based on Turkey meeting a number of conditions that the E.U. has set: it is not certain that Turkey will meet all of them.

The third issue is that the Statement is based on the idea that all refugees can be returned to Turkey. However, I must stress the importance of having individual assessments carried out which would ensure that vulnerabilities are identified and decisions are made on an individual basis depending on their protection needs. We already have a Greek judgment that found that a Syrian could not be sent back to Turkey because it had not been proven that Turkey was a safe country for that person.⁵ This is an important example of courts upholding the rights of refugees to have individual assessments and upholding the principle of non-refoulement as other courts such as the European Court of Justice and the European Court of Human Rights have done in the past and hopefully will continue to do so in the coming months and years.

Therefore, my main preoccupation is how the E.U.-Turkey Statement will be developed and finalised while at the same time guaranteeing the protection of the human rights of migrants.

Conectas • There have been reports that following the E.U.-Turkey Statement, smuggling in the Aegean Sea has been reduced. However, you have noted that “fighting the smugglers’ is a red herring”. Can you expand on why the securitisation of migration, a policy trend that we see across the world, is not the answer?

F. C. • If you have push factors, such as violence and poverty, and pull factors, such as underground labour markets, mobility is created. This mobility is helped by technological advances that did not exist ten years ago: smart phones. The most important possession of migrants last summer was the smart phone, with Google Maps and Facebook and the ability to be in contact with family and friends. If you put a barrier in between a push factor and a pull factor, the only thing you create is an underground market for criminalised gangs. And that is exactly what happened. Smuggling rings have taken over the mobility market as the states refuse to offer mobility solutions.

You can disrupt the smugglers for a time by destroying a boat here, patrolling a bit more there and erecting a fence at this point. But these smugglers are very resourceful, they are tech-savvy and they will find other crossing points. It will increase the financial and human cost for migrants. It will certainly increase the danger for the migrants, but in the end they will find other ways.

We have seen a reduction in the number of crossings to Greece from Turkey with the implementation of the EU-Turkey Statement. However, we have seen the number of people going through Libya and trying to reach Italy grow again. The smugglers are at work and they will always outwit, outpace and outfox the governments.

This is the historical experience we can derive from the Prohibition era in the U.S., or the current “War on Drugs”: the U.S. reclaimed the market from the bootleggers by taking over the sale of alcohol and many states around the world are now legalising, regulating and taxing drugs, as well as offering safe injection sites.

What is needed is for states to reclaim the mobility market from the hands of the smugglers through offering safe, legal and cheap mobility solutions to the many, and to build an open but controlled mobility regime over a generation. This type of mobility is not science-fiction. Until the late seventies, most people did not need a visa or could obtain a visitor’s visa easily. In the 50s, 60s and 70s, millions of North Africans and Turkish citizens entered Europe legally either without a visa or with an easily obtainable visitor’s visa, which they changed into a work permit as soon as they found a job. Since mobility was not prohibited, there was no market for smuggling rings. No one died in the Mediterranean, as everyone took ordinary ferries. No one spent all their savings to secure an irregular passage. Very few lived in the shadows of an underground economy. And everyone’s ID and travel documents were controlled at every border, as this was before the EU regime of free movement of persons.

Conectas • Despite a brief moment of reprieve in September 2015 following the tragic photograph of Aylan Kurdi lying on a Turkish beach, the media stokes a largely anti-immigrant rhetoric. What role do politicians have in fuelling this discourse – and from your missions have you seen any evidence to suggest a change to this trend?

F. C. • Politicians in democratic countries respond to electoral incentives. That is the nature of the system of representative democracy in which we live. Politicians listen to the electorate because their election is at stake. This is something that every marginalised group who has tried to further their interests on the democratic stage has understood - industrial workers at the end of the 19th century, women throughout the 20th century, aboriginals in the second half of the 20th century in Canada and Australia, or gays and lesbians more recently. These groups realised that if they spoke up and incentivised politicians to listen, they will start listening and they will change their behaviour, slowly, but surely.

Migrants however do not vote and cannot get elected. There is no electoral incentive to say anything smart or good about migrants because there are no votes to gain. On the contrary, several countries have seen the emergence of nationalist-populist political parties who have only one line. They only talk about immigration, national identity and are usually very conservative and sometimes, close to the extreme right. Migrants cannot contradict all the stereotypes that are made about them in the way that women dispelled the stereotypes that were made against women 50 or 60 years ago, or like gays and lesbians in the past decade have dispelled the stereotypes about them that were circulating in our society. Migrants do not do that because they fear being deported. Migrants do not raise their voice. They rarely mobilise, they rarely protest, they rarely go to court to fight for their rights because their objective is to stay in the country, earn money and send money home.

So, good politicians are in a bind. Politicians with principles and who care for human rights will often avoid making statements on migration issues. They say nothing because they do not want to say anything pejorative about migrants, but they also do not want to lose the next elections. They are in the business of winning elections. So very often they just remain silent. The politicians who want to win votes and who have less principles rant about migrants in order to try to win votes from nationalist-populist movements that have become a large part of the electorate. This is a problem because it means that these less scrupulous politicians are validating the nationalist-populist discourse and that there is no public discourse emerging to contradict the nationalist-populist stereotypes and fantasies about migrants. In Europe, most do not have the courage to create a pro-immigration, pro-mobility, pro-diversity discourse that would tell the electorate that these nationalist populists are wrong on every count. It happens to an extent in the U.S. because besides the 11 million undocumented migrants, which are the focus of so much attention, there is a huge community of over 20 million Latino – mostly Mexican-Americans - who vote and who care about what happens to undocumented Mexicans in the U.S. But in Europe, you do not see this and that is very problematic.

Now, the media is interesting because you have the “yellow press”, which is very interested in migration issues because they live on the outrage of their readership and anything bad you can say about migrants will encourage that outrage. But you have the good press as well, which is much better educated today than it used to be ten years ago. You now have journalists who have met the migrants, who have been to the Andaman Sea and met the Rohingyas, or to Greek camps in Idomeni, Samos or Lesbos, who have interviewed people and who know exactly what they are talking about. I expect that there will be much better questioning of politicians in the coming years thanks to the better educated media.

Conectas • How do you evaluate the way the Human Rights Council has treated the situation in Europe – noting that there has not been a resolution nor a special session on the issue?

F. C. • In the name “United Nations”, the important word is “nations”. It is the countries that decide what they want to talk about. Many countries around the world do not want the migration issue to be discussed in international fora. Many states that fall under the category of “countries of destination” and are often criticised for the way they treat migrant workers do not want the U.N. to take up that issue. Member States will argue that it is a question of territorial sovereignty, that cross-Mediterranean movements are a European affair, and that the U.N. should not meddle. So if the countries of the Human Rights Council do not want the Council to create an investigation or to create a special session, those countries will make sure that the Council cannot do it.

Conectas • Drawing on your experience of what you have seen during your many missions, what is the most effective way that international civil society – in particular from the Global South – can work toward ensuring both a greater empathy and understanding for migrants as well as contributing to better frameworks which more effectively protect their rights?

F. C. • What is most important is that this issue becomes personal. Migrants must be seen as human beings with rights, as people just like us who strive for safety and human security, free from fear and want. This is why many people in Europe have empathised with and welcomed migrants. That is what the NGOs, civil society and the media can do best: trying to make this personal. Tell stories. Show that if we were in their shoes, we would do the same for ourselves and our families. Bring individuals to decision-makers, to courts, to unions, to national human rights institutions, to ombudspersons, to the media. Bring these individuals to the people who can shape opinion. By making those stories known and by making the issue of migration personal – making it an issue between one individual and another - we can successfully develop campaigns that focus on celebrating diversity and thus make people think differently about migrants.

NOTES

- 1 • 25 May – 31 May 2016, see “Mediterranean Migrant Deaths Spike in May,” International Organization for Migration, June 2, 2016, accessed June 17, 2016, <https://weblog.iom.int/mediterranean-migrant-deaths-spike-may>.
- 2 • “Greece: ‘Europe’s lack of political will creating serious suffering for thousands of migrants in Greece’ – UN rights expert,” The Office of the United Nations High Commissioner for Human Rights (OHCHR), May 17, 2016, accessed June 17, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19976&LangID=E>.
- 3 • For more information see “Coming to the EU?,” EU Immigration Portal, May 11, 2016, accessed June 17, 2016, http://ec.europa.eu/immigration/who-does-what/what-does-the-eu-do/coming-to-the-eu_en.
- 4 • For more information see “EU-Turkey Agreement: Questions and Answers,” European Commission, March 19, 2016, accessed June 17, 2016, http://europa.eu/rapid/press-release_MEMO-16-963_en.htm.
- 5 • “Migrant Crisis: Greek Judges Tell Syrian Refugee Turkey is Unsafe,” BBC, May 21, 2016, accessed June 17, 2016, <http://www.bbc.com/news/world-europe-36345990>.

Interview conducted in May 2016 by Ana Cernov and Oliver Hudson (Conectas Human Rights).



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