

## VIENNA MEMORANDUM 2015

### APPEAL TO URGENTLY SOLVE THE WORLDWIDE ASYLUM AND MIGRATION PROBLEM

Europe is facing one of the greatest challenges since World War II. The crisis in Ukraine, the problems in Greece, the growing indebtedness and the rise in unemployment are unsolved issues. These are intensified by migration flows so that there is the danger, already highlighted by many observers, that Europe will sink into uncontrollable chaos upon the collapse of its social systems.

Prompt action is needed to secure borders; the legal framework for the future needs to be re-designed; the current contradictory and inadequate legal provisions must be adapted to the actual situation.

**The “Wiener Akademiker Kreis“ (Vienna Circle of Academics) therefore calls upon governments in Europe, as well as the European Union, the United Nations and all organizations committed to migration issues to take urgent steps to prevent and ward off irreversible damage.**

#### I. ANALYSIS OF THE SITUATION

1. The migration wave from Africa and Asia has so far not reached its climax. Gunnar Heinsohn, Professor of Military Demography at the NATO Defense College, expects that a total of 950 million migrants will come alone from Africa and the Middle East until 2050.
2. 90% of the migrants are smuggled into Europe by human trafficking organizations over thousands of kilometers, crossing up to 17 countries along the route. At a Frontex meeting the UK representative said that there are about **3,000 human trafficking organizations with 29,000 helpers.**
3. While the tragedies in the Mediterranean with thousands of dead persons have made the European Union to wake up on the issue, efficient measures are still outstanding. **The human trafficking organizations have shifted their routes from the Mediterranean to the land route via Greece, Macedonia, Serbia and Hungary.** Since January 2015 as many as **80,000 migrants have crossed the border into Hungary.** Hungary ranks first, both in terms of the overall number of migrants and per head of population. Building fences – as in Greece, Bulgaria, France and now also Hungary cannot solve the problem.

4. The migrants are not registered in the peripheral countries; in Germany, too, registration no longer appears to be possible. Migration is therefore also becoming a **dangerous security issue**. There are already clear indications that members of the IS, ready to engage in violence, are being channeled into Europe, with the declared goal **to also set up an Islamic Caliphate in Europe**.

5. The European Union has failed so far. The **Dublin III Regulation** is not only unjust, as it places a burden solely on the peripheral countries, but also legally incompatible, as it does not distinguish between refugees and persons entitled to subsidiary protection. Putting the protection of refugees and international subsidiary protection on an equal footing is a political and legal error.

6. Directive 2008/115/EC on common standards for returning illegal immigrants is not efficient and is not being implemented. By the same token, the European Union Agency Frontex, which is responsible for border protection, is toothless and unsuited.

The 10-point plan of the European Commission with the objective to destroy the boats that smuggle people from Libya to Europe does not solve the problem. The same applies even more to the planned distribution of migrants – neither on the basis of a mandatory quota nor on a voluntary basis.

**The immigration avalanche of economic migrants cannot be divided up but needs to be stopped.** Immigration must not be forced upon people. The opinion held to date that migration constitutes a valuable enhancement under all circumstances and to all of Europe has to give way to a realistic approach.

7. **The Geneva Refugee Convention of 1951, which is no longer adequate, needs to be replaced by a convention that does justice to the new threats and the changes in the global political situation.**

## **II. CURRENT LEGAL SITUATION**

Three legal categories of migrants have to be distinguished:

### **1. Refugees according to the Geneva Convention Relating to the Status of Refugees.**

According to the Convention definition this includes a person “who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”

**War, civil war, other war-like actions, armed conflicts, tribal fights are no relevant grounds for asylum.** According to the Geneva Convention refugee status and thus a permanent right to stay can therefore only be granted to a very small percentage of migrants.

## 2. Persons entitled to subsidiary protection

This category includes persons who are not entitled to asylum status but cannot be returned because they are threatened by war-like attacks, death penalty or degrading treatment in their countries of origin.

**In its Directive 2004/83/EC dated 29 April 2004, as amended by Directive 2011/95/EU of the European Parliament and Council of 13 December 2011 the European Union has widened the concept of refugees according to the Geneva Convention and introduced the concept of international protection.** This concept also comprises **subsidiary protection** for persons who do not have the right of asylum but nevertheless cannot be sent back to their home country because they are exposed to **serious harm** there.

According to Article 15 of the Directive serious harm is defined as follows:

- a** death penalty or execution
- b** Torture or inhuman or degrading treatment or punishment
- c** A serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

At the same time the comprehensive list of reasons of persecution in the Geneva Convention is being interpreted and expanded. In particular, gender-related aspects, including a person's sexual identity, must also be considered. A merely political opinion is relevant for granting asylum also in cases where no activities were engaged in on the ground of that opinion.

**By the detour of a Directive the European Union has thus expanded the Geneva Convention; yet, this expanded international protection only applies to members of the European Union – with the exception of the United Kingdom, Ireland and Denmark.**

## 3. Economic migrants

Those migrants who are neither entitled to asylum under the Geneva Convention nor entitled to subsidiary protection, but who are being smuggled into Europe by well-organized human trafficking organisations for purely economic reasons constitute the **largest group (appr. 90%)**.

These illegal migrants have no right to subsidiary protection and therefore also **no right of entry**. However, in practice no distinction is made; they are subject to the same procedure as persons requesting asylum and persons entitled to international subsidiary protection, because there is currently no effective control mechanism available to prevent the illegal immigration of economic migrants. It is also common practice, not to return them to their countries of origin because their country of origin is not known, or their country of origin refuses to take them back, or simply because too much time passes so that a title to stay is eventually acquired, particularly through marriage or taking on a job.

### **III. NECESSARY MEASURES**

#### **1. Revocation or revision of the Geneva Refugee Convention**

After World War II the Convention Relating to the Status of Refugees, which dates back to 1951, served the purpose to protect the persons who had fled and or had been expelled from Communist countries. Already by 1990 it had become outdated, and it now **needs to be revoked or revised according to its Article 45 and adapted to the changed geopolitical situation.**

Today's victims of political persecution mostly flee from Islamist terror as well as violence in Africa and Asia. There appears to be an urgent need for a **geographical limitation of the Convention's scope of application to continents**, as it had already been envisaged by the 1951 Refugee Convention, when the Contracting States could choose the area of application (Europe or "Europe or elsewhere"). On every continent there are countries offering safe protection. The limitation to continents is also in the interest of refugees, as the flight entails fewer risks and as there can also be better integration when persons stay within the same cultural area.

#### **2. Adoption of an International Convention governing the international protection of war refugees**

**It is untenable that, in the absence of international legal agreements, merely the member states of the European Union (with the exception of the United Kingdom, Ireland and Denmark) should be required to admit migrants from war-like conflict zones.** It appears to be indispensable to adopt a convention with binding effect under international law in the framework of the United Nations **governing the protection of victims of wars, aggressions and serious crimes against humanity.** Such persons must be granted **temporary subsidiary protection** whenever the following conditions are met:

- international or internal armed conflict in the form of a war or a civil war
- threat from such an armed conflict
- acts of aggression as they are defined in the Rome Statute of the International Criminal Court in connection with the crime of aggression.

#### **3. Flight alternative**

Whenever there is an **internal flight alternative** or it was possible and reasonable to apply in a **safe third country**, persons shall not have a right to be granted protection. In any event, the application shall be filed on the person's **own continent**. A cross-continental measure and/or granting of protection may be on a voluntary basis, for example for persecuted Christians, who cannot apply or be reasonably expected to apply in an Islamist country. Unfortunately, there is currently no room in Europe for these persons, who are indeed in need of protection, because illegal immigrants have taken it up.

#### **4. Removal of illegal immigrants and securing the external borders**

The most pressing measure at the present moment is to effectively secure Europe's external borders, as this already being the case in the USA and Australia. **Persons who are neither entitled to asylum status, nor entitled to subsidiary protection need to be turned away already at the borders.** This also applies to persons who did not resort to an **internal flight alternative** or avail themselves of protection in a **safe third country**.

There must also be controls in places outside of Europe. To this end, **reception centers need to be set up in Africa and Asia which must be subject to European control, including military control.**

**Frontex**, the agency provided to secure the external borders, needs to be provided with sufficient human and financial resources so that it is in a position to fulfill its tasks. By the same token, the countries which signed the **Prüm Convention of 27 May 2005** need to be supported in order to enable them to meet their obligations, namely to combat illegal immigration.

#### **5. Combatting human trafficking organizations**

Although the centers of the human trafficking organizations are known, their global network, which has revenues in excess of those obtained by drug trafficking, is not crushed. This should be the foremost target. Limiting protection in geographical terms, i.e. to a person's own continent, would undermine the promises offered by smugglers, and eliminate Europe as a destination. The actual crime committed against migrants is that they are financially exploited and coaxed into giving up the basis of their existence in their home countries in the hope of an uncertain future.

#### **6. Legal expert opinions and involving the International Criminal Court**

In cases of a mass exodus an **expert opinion** should be obtained **from the United Nations and/or the International Court of Justice** in The Hague in order to establish the causes of a conflict and to possibly identify the responsible institutions and persons. If such a statement has been obtained **the International Criminal Court needs to become involved in order to examine whether Article 5 of the Rome Statute can be applied to punish a crime.**

#### **7. Preventive action on the ground**

Migratory movements can only be prevented with sustainability by eliminating their causes. Preventive measures on the ground are urgently needed. Please refer to the attached article by Prof. DI Dr. Heinrich Wohlmeyer "Why not apply an asylum policy right at the roots?"

**Vienna, July 2015**

**On behalf of the Wiener Akademiker Kreis:**

Dr. Eva Maria Barki, Lawyer

Prof. Dr. Emanuel Aydin, Bishop-Vicar of the Syrian-Orthodox Christians in Austria  
András Pajor, Catholic Pastor, President of the Christian Cultural Academy, Budapest