

## Course on *The European Union and the Politics of Migration*

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### The European Commission's Use of Relocation Quotas to Solve the Syrian Refugee Crisis

Abstract: One of the most pressing and relevant issues facing the European Union (EU) is the large influx of migrants entering the continent from the Middle East and Africa. Sudden waves of mass migration burden the economies of the EU member states by exhausting state resources such as health care, social services, and housing. In order to relieve the migratory burden placed upon certain EU member states such as Italy, Greece and Germany, the European Commission (EC) has implemented population quotas, which use a precise formula to determine how many migrants each EU member state must legally accept and support. This paper will analyze certain EC-proposed legislation pertaining to population quotas specifically, The Dublin III Regulation and Dublin IV Regulation proposal, The EU Turkey agreement, The Relocation and Resettlement Scheme, The Return Directive, Qualification Directive, Asylum Directive, the Reception directive, and in addition will evaluate the European Court of Justice's (ECJ) recent decision to uphold the EC's right to impose mandatory quotas on its member states. Upon completion of the critical analysis of the legislation, the paper will attempt to answer the question, *Are the European Commission's population quotas helping to resolve the migratory burden placed upon EU member states?*

#### Introduction

In 2015, the European Union (EU) was tasked with solving its most pressing issue to date, managing the mass influx of asylum seekers arriving from Africa, and the Middle East, also known as the Syrian Refugee Crisis.<sup>1</sup> Since then, the European Commission (EC) has contributed more resources to rectifying this crisis than any other issue on the EU's agenda.<sup>2</sup> To cope with this dilemma, the EC published the *European Agenda on Migration* (EAM) in 2015, which is a document proposing a

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<sup>1</sup> Attinà, F. (2016). Migration drivers, the EU external migration policy and crisis management. *Romanian Journal of European Affairs*, 16(4), Page 17. Retrieved from <http://myaccess.library.utoronto.ca/login?url=https://search-proquest-com.myaccess.library.utoronto.ca/docview/1866513331?accountid=14771>

<sup>2</sup> Politi, James. Migration Opens the Door to Italy's Populists. *Financial Times*. Accessed September 30, 2017. <https://www.ft.com/content/b964453a-72b1-11e7-aca6-c6bd07df1a3c?mhq5j=e6>.

comprehensive action plan to solving the Syrian Refugee Crisis. According to this document, EU Member States face unprecedented pressure from the extreme flow of people arriving in the EU currently and in the months to come.<sup>3</sup> As a result, the EC triggered the emergency response system entrenched in Article 78(3) of the *Treaty of the Functioning of the European Union* (TFEU) allowing the EU to pass emergency legislation to cope a given crisis.<sup>4</sup> In order to manage this crisis at hand, the EC has passed temporary Relocation Quotas, which use a precise formula to determine how many refugees each EU Member State must legally accept and support. The totality of the 160,000 refugees were supposed to be relocated by September of 2017, thus providing Member States and the EU with two full years to resolve this crisis.<sup>5</sup> In September of 2017 the EC published its Fifteenth Report on the implementation of the EAM, which documented the number of total relocations made by each Member State. Bulgaria for example, was tasked with relocating 831 refugees however it only relocated 50. Furthermore, France, which was legally supposed to accept 7115 refugees from Italy, has only relocated 330.<sup>6</sup> These Relocation Quotas as it seems have not been effective in solving the Refugee Crisis and furthermore have not reduced the burden placed upon

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<sup>3</sup> A European Agenda on Migration. *Official Journal of the European Union*, May 13, 2015. Accessed October 01, 2017. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN>. Attinà, F. (2016). Page 4

<sup>4</sup> A European Agenda on Migration. (2015) Page 4.

<sup>5</sup> Smith-Spark, Laura. Top EU court rejects Hungary and Slovakia migrant relocation case. CNN. September 06, 2017. Accessed October 01, 2017. <http://www.cnn.com/2017/09/06/europe/ecj-ruling-asylum-seekers-hungary-slovakia/index.html>.

<sup>6</sup> Fifteenth Report on Relocation and Resettlement. *European Commission*, September 06, 2017. Accessed October 01, 2017. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170906\\_fifteenth\\_report\\_on\\_relocation\\_and\\_resettlement\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170906_fifteenth_report_on_relocation_and_resettlement_en.pdf).

EU Member States such as Italy and Greece, as they are the two main countries from which asylum seekers enter the EU. In addition, the EC over the years has passed additional legislation to compliment the Relocation Quotas. This additional legislation has had an inverse effect and resulted in a further burdening of EU Member States. Firstly, *The European Schemes for Relocation and Resettlement* outlines the precise formula for how refugees are relocated to other EU Member States, however is not effective as there is no enforcement mechanism forcing States to not adhere to the quotas. Secondly, *The Dublin III Regulation* forces asylum seekers to remain in the country in which they land thus resulting in logistical concerns for certain EU Member States such as Italy and Greece, where the majority of asylum seekers enter the EU from. Thirdly, *The Reception Conditions Directive*, which, outlines the basic rights, entitled to asylum seekers entering the EU, is insufficient as it strains EU economies by forcing Member States to provide an astronomical amount services and resources to support them. Fourthly, *The Return Directive*, which provides rules for returning and removing asylum seekers staying in the EU irregularly. This only further burden's EU Member States as this document prohibits asylum seekers from being returned to their state of origin even if they are irregular and lack the proper documentation. For the reasons given above, this paper will therefore argue that the legislative documents pertaining to the Relocation Quotas are short sided and have failed to solve the Syrian Refugee Crises, thus further burdening EU Member States and the EU as a whole.

### **The European Scheme for Relocation and Resettlement**

In the wake of the 2015 Migrant and Syrian Refugee Crisis, the EC activated Article 78 (3) of TFEU, allowing it to pass emergency legislation to help cope with a

crisis experienced by the EU and its Members.<sup>7</sup> In that same year, as part of this provision, the EC passed *The European Scheme for Relocation and Resettlement*. This document outlines the basic definition of relocation in addition to a proposed method in coping with the Refugee Crisis specifically a proposed relocation distribution key. This distribution key uses precise a quantifiable and verifiable formula to determine how many refugees each EU Member State must legally accept and support.<sup>8</sup> There are 4 criteria for how asylum seekers are to be relocated. The first criterion and the most influential one, is the size of a Member States' population as it determines the capacity of a Member State to absorb a specific number of refugees.<sup>9</sup> The second criterion, which is equally important as the first criterion, is the total Gross Domestic Product (GDP) of a Member State, which reflects the wealth of a country and determines the capacity of a States' economy to support a certain number of refugees without being strained of its resources.<sup>10</sup> The third criterion is the average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period from 2010 to 2014.<sup>11</sup> This reflects the efforts made by Member States in the past and illustrates how much is already on a Member States'

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<sup>7</sup> Proposal for a Council Decision Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece. EUR-Lex. May 27, 2015. Accessed October 15, 2017. [http://eur-lex.europa.eu/resource.html?uri=cellar:7a15efe3-053d-11e5-8817-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:7a15efe3-053d-11e5-8817-01aa75ed71a1.0001.02/DOC_1&format=PDF). Page 1

<sup>8</sup> European Schemes for Relocation and Resettlement. European Commission. April 08, 2015. Accessed October 15, 2017. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_annex\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_annex_en.pdf) Page 1

<sup>9</sup> European Schemes for Relocation and Resettlement. Page 1

<sup>10</sup> European Schemes for Relocation and Resettlement. Page 1

<sup>11</sup> European Schemes for Relocation and Resettlement. Page 1

plate in terms of supporting refugees.<sup>12</sup> The fourth criterion looks at a Member States' unemployment rate as an indicator of a country's ability to integrate refugees.<sup>13</sup> The higher the unemployment rate the harder it will be for refugees to find employment. In retrospect, the lower the unemployment rate, the larger quantity of employment opportunities present in a Member State.

This notion of having all Member States accept a certain number of refugees is a very respectable one. It flows logically that Member States should each support a quantity of refugees, that way not one single country is forced to do so on their own. The issue that arises however is that Member States are not accepting and sufficiently relocating refugees. The following table demonstrates how many refugees each Member State is obliged to relocate compared to the actual number of relocations completed.

**Table 1: Relocations from Italy and Greece by September 2017<sup>14</sup>**

<b>Country</b>	<b>Relocated From Greece</b>	<b>Relocated From Italy</b>	<b>Total (GR and IT)</b>	<b>Allocated Quota</b>
France	3,948	330	4,278	19,714
Germany	4,447	3,405	7,852	27,536
Netherlands	1,595	762	2,357	5,947

<sup>12</sup> European Schemes for Relocation and Resettlement. Page 1

<sup>13</sup> European Schemes for Relocation and Resettlement. Page 1

<sup>14</sup> The Refugee Crisis Through Statistics. *European Stability Initiative*, January 2017. <http://www.esiweb.org/pdf/ESI%20-%20The%20refugee%20crisis%20through%20statistics%20-%2030%20Jan%202017.pdf>. Page 18

Finland	1196	755	1951	2,078
Portugal	1,116	299	1415	2,951
Spain	1089	168	1257	9,323
Romania	682	45	727	4,180
Ireland	487	0	487	600
Lithuania	355	27	382	671
Luxembourg	217	111	382	557
Belgium	677	259	936	3,812
Latvia	294	27	321	481
Slovenia	117	45	217	567
Malta	101	47	148	131
Estonia	141	0	141	329
Cyprus	96	34	130	320
Sweden	1392	511	1,903	3,766
Bulgaria	50	0	50	1,302
Croatia	60	18	78	968
Czech Republic	12	0	12	2,691
Slovakia	16	0	16	902
Poland	0	0	0	6,182
Austria	0	15	15	1,953
Hungary	0	0	0	1,294
Norway	693	815	1508	not applicable
Switzerland	344	778	1122	not applicable
Iceland	0	0	0	not applicable
<b>OVERALL</b>	<b>8,451</b>	<b>19,244</b>	<b>27,695</b>	<b>98,255</b>

This table concludes that very few refugees have been effectively relocated, in comparison to the EC's goal of having all refugees relocated by September 2017. As of right now, there are no other legislative measures enforcing the Relocation Quotas, which allow States like Poland to reject refugees.

Furthermore, in 2015, Hungary and Slovakia in addition to Romania, and Czech Republic actively apposed accepting refugees as part of the new *The European Scheme for Relocation and Resettlement*. The Relocation Quotas were enacted to help relocated 160,000 refugees from Italy and Greece.<sup>15</sup> The issue that arose is that no refugees have been relocated by Hungary and the Czech Republic had only relocated 12 (See Table 1). As part of the Relocation quota scheme, Hungary was obliged to accept 1294 refugees, and Czech Republic was obliged to accept 2691 refugees (See Table 1). These Hungarian Minister of Defence, attributed Hungary's rejection of the Relocation Quotas to the notion that Hungary was formerly Communist and argued that they would struggle to absorb refugees because of the fact that they were mainly Muslim.<sup>16</sup> Hungary and Slovakia brought forth a case to the ECJ to have these Relocation Quotas struck down and annulled. On September 6<sup>th</sup> of 2017, the ECJ rejected the claims made by Hungary and Slovakia suggesting that they were in breach of EU Law. The EC in turn responded by proposing the "pay-to-not-play" option, which is a new system for enforcing the Relocation Quotas by requiring Member States to pay 250,000 Euros per refugee they refuse to relocate as per the relocation

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<sup>15</sup> Smith-Spark, Laura. Top EU court rejects Hungary and Slovakia migrant relocation case.

<sup>16</sup> Bayer, Lili. Hungary says refugee ruling 'raped' EU law. POLITICO. September 07, 2017. Accessed November 14, 2017. <https://www.politico.eu/article/hungary-says-ecj-ruling-on-refugee-quotas-has-raped-eu-law-asylum-seekers-italy-greece-relocation-scheme/>.

scheme.<sup>17</sup> This case study demonstrates how the EU lacks an enforcement mechanism for the Relocation Quotas seeing as the proposed date of relocating all refugees was September 2017 and only a small percent of the refugees have been relocated. The EC must pass complementary legislation outlining what the consequences are if Member States do not comply with EU law and address specific punishments that the EU can impose on its Members that are so severe it will deter them from breaching any EU law again. This can come in the form of restricted access to the EU's benefits, such as the Common Market and impose heavy sanctions that can cripple an economy, such as the ones placed on a non-EU European state; Russia.

### **The Dublin III Regulation**

The second piece of legislation pertaining to the Relocation Quotas is the *Dublin III Regulation*. This agreement, which was signed in 2013 and replaced the Dublin II agreement, outlines the responsibilities of Member States while examining an asylum application. The key responsibilities of Member States are outlined in Article 3 (1), "Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them,"<sup>18</sup> Article 3 (2), "The first Member State in which the application for international protection was lodged shall be responsible for examining it,"<sup>19</sup> Article 13,

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<sup>17</sup> Winneker, Craig. Price for rejecting refugees: €250,000 per head. POLITICO. May 05, 2016. Accessed October 01, 2017. <http://www.politico.eu/article/commission-wants-to-make-eu-countries-pay-for-not-accepting-refugees/>.

<sup>18</sup> Dublin III Regulation. June 26, 2013. Accessed October 15, 2017. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN>.  
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<sup>19</sup> Dublin III Regulation. Page 7



“...that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection,”<sup>20</sup> and Article 17 (1), “The Member State, which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility.”<sup>21</sup>

To summarize these four obligations, a Member State must examine all asylum applications lodged on their territory. Furthermore, the Member State in which the asylum seeker landed is the country that must examine the application. Finally the Member State that examines the asylum application is the country that must undertake all responsibilities that arise with supporting the asylum seeker. The logic behind these provisions illustrates the EU’s desire to prohibit asylum seekers from “abusing the system” by submitting multiple asylum applications in different Member States. Asylum seekers will often apply in multiple EU Member States in order to be provided with extra services such as an additional income. Although this logic is justified, *The Dublin III Regulation* is short sided as it creates an abundance of other logistical issues not foreseen when it was originally passed. For example, the majority of asylum seekers enter the EU through Italy and Greece’s southern ports. These two countries in turn are burdened the most by this crisis because as per *The Dublin III Regulation*, the country in which a migrant lands, is the country that must accept their asylum request, register them, and subsequently support them. This signifies that Italy and

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<sup>20</sup> Dublin III Regulation. Page 10

<sup>21</sup> Dublin III Regulation. Page 12

Greece are the two main countries registering and supporting the majority of asylum seekers. Due to there being so many asylum applications brought within Italy and Greece, the EC put forth Relocation Quotas where once, the asylum seekers have been registered, they are sent to another country to be supported economically and socially. The issue that arises is that other EU Member States are rejecting asylum seekers from entering their country and thus not cooperating with these Relocation Quotas. For example, Austria temporarily closed its borders during the height of the migrant crisis in order to limit the number of refugees entering.<sup>90</sup> If other Member States do not cooperate with the Relocation Quotas, then majority of the asylum seekers are forced to remain in the country in which they land in, primary Italy and Greece, thus further burdening these two Mediterranean States. In turn, the *Dublin III Regulation* although signed and passed in good faith has caused more harm than good to the already economically struggling EU Member States and thus should be modified by having to address the issues raised in this argument.

### **The Reception Conditions Directive**

The next piece of legislation that affect the implementation and function of the Relocation Quotas is the *Reception Conditions Directive* (2013). This document outlines the basic necessities that must be provided to asylum seekers upon entry into the EU. These include housing, food, clothing, health care, and education for minors. There are a number of key provisions that address these basic rights, firstly, Article 7 (1) states that, "Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall...allow

sufficient access to all benefits under this Directive.”<sup>22</sup> Secondly, Article 15 (1) states that, “Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged<sup>23</sup> and Article 17 (2) suggests that, “Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.”<sup>24</sup>

These conditions are important to the Relocation Quotas because it forces Member States to provide services to the asylum seekers that enter the EU. When an influx of asylum seekers entered the EU from Greece and Italy, these two Member States were forced to accept and register the asylum seekers in their respective country (*Dublin III Regulation*). As part of the registration process, they are also provided with the necessities listed above. Italy and Greece are the two Member States in which the majority of asylum seekers enter and are subsequently registered signifying that their government’s are forced to provide all these services to these asylum seekers. The number of asylum seekers in these two countries is so large that that the government’s are unable to support all of them and as a result their economies have been strained. Italy in particular has requested monetary support from the EU in addition to the 900 million it has already been provided.<sup>25</sup> Lack of financial stability and poor economic performance has generated animosity among EU citizens. A percentage believes that

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<sup>22</sup> The Reception Conditions Directive. *Official Journal of the European Union*, June 26, 2013. Accessed September 29, 2017. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>. Page 6

<sup>23</sup> The Reception Conditions Directive. Page 9

<sup>24</sup> The Reception Conditions Directive. Page 9

<sup>25</sup> Politi, James. Migration Opens the Door to Italy’s Populists.

these refugees are stripping Europeans of basic governmental services and are the reason for poor economic performance within their country. This in turn leads to anti-EU sentiment and subsequently the increase in support for populist groups and Far Right Parties who oppose the accepting of asylum seekers and the Relocation Quotas altogether. For example, during Last year's French Presidential Election, Marine Le Pen leader of the Front Nationale (Far-Right Party) ran on an anti-refugee platform, arguing against the acceptance of the Relocation Quotas.<sup>26</sup> Equally important, in the recent 2017 German National elections, a Far Right Party acquired seats within the German Legislature by having persuaded citizens that the Refugees are hurting their country and Europe as a whole.<sup>27</sup> *The Reception Conditions Directive* if amended to solve these discrepancies will potentially resolve the political strife caused by the Refugee Crisis and reduce support for Far-Right parties, which are steering Europe down a detrimental path.

### **The Return Directive**

Finally, in 2010 *The Return Directive* outlining the rules and procedures for removing third party nationals that had entered the EU illegally, was passed. There are three key provisions outlined in the Return Directive, Firstly Article 6 (4) states that, "Member States may at any moment decide to grant an autonomous residence permit or other authorization offering a right to stay for compassionate, humanitarian or other

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<sup>26</sup> Chassany, Anne S. France's National Front Taps into Rising Anti-Immigrant Mood. Financial Times. September 06, 2015. Accessed October 27, 2017. <https://www.ft.com/content/62131206-5473-11e5-8642-453585f2cfd>.

<sup>27</sup> Wildman, Sarah. Meet the far-right party that's bringing racism and xenophobia back to Germany. Vox. September 26, 2017. Accessed October 27, 2017. <https://www.vox.com/world/2017/9/26/16360916/afd-german-far-right-racism-xenophobia>.

reasons to a third-country national staying illegally on their territory.”<sup>28</sup> Secondly, Article 4 (4) suggests that, “Member States shall ensure that their treatment and level of protection are no less favorable than as set out in Article 8(4) and (5) (limitations on use of coercive measures), Article 9(2)(a) (postponement of removal), Article 14(1) (b) and (d) (emergency health care and taking into account needs of vulnerable persons), and Articles 16 and 17 (detention conditions).”<sup>29</sup> Thirdly a general provision outlined in the introduction suggests that, “...A third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.”<sup>30</sup>

One of the main reasons why only 40% of the 400,000 to 500,000 of foreigners entering the EU are returned is due to logistical issues such as not being able to locate the proper documentation and identification for the asylum seekers arriving irregularly.<sup>31</sup> It then becomes the customary process for officials from EU Member States to contact the country from which these asylum seekers departed in search of the missing documentation.<sup>32</sup> Practically it is simply not possible to acquire all the required documents so the asylum seekers are forced to remain in the state in which they land. EU Member States in turn, are left with a choice to either to grant asylum

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<sup>28</sup> The Return Directive. *Official Journal of the European Union*, December 16, 2008. Accessed October 07, 2017. <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>. Page 5

<sup>29</sup> The Return Directive. Page 5

<sup>30</sup> The Return Directive. Page 1

<sup>31</sup> Return and Readmission. Migration and Home Affairs. Accessed November 02, 2017. [https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en).

<sup>32</sup> Return and Readmission.

seekers legal status or to deport them. However asylum seekers cannot always be sent back to their host countries, as the departing must coincide with International Law and cannot infringe upon migrant's rights. For example as per Article 33 of the *Geneva Convention* passed in 1951, a refugee cannot be sent back to a country in which, they would experience harm or persecution.<sup>33</sup> This then signifies that the asylum seekers are forced to stay in the Member State in which they land and must be given legal status. The vast majority of asylum seekers that remain in the EU must therefore be relocated through the quota system, upon completing the registration process. *The Return Directive* was implemented in order to prohibit asylum seekers from remaining illegally within the EU. In response, the EU should formulate bilateral agreements with as many "Third States" as possible in order to manage the flow of individuals attempting to make their way to the EU illegally. This will ensure that EU States can logistically manage and support those who arrive from Africa and the Middle East in addition to ensuring the easy registration and relocation of refugees and asylum seekers.

**Conclusion:**

This paper argued that the EC's Relocation Quotas and supporting legislation have failed to solve the Refugee Crises, and in turn have further burdening EU Member States and the EU as a whole. To support this claim four legislative documents were analyzed and scrutinized specifically, *The European Schemes for Relocation and Resettlement* which outlined the structure and composition of the Relocation Quotas however failed as there was no enforcement mechanism to ensure

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<sup>33</sup> Smith, Rhona. A Guide to the Geneva Convention for Beginners, Dummies and Newly Elected World Leaders. ABC News. January 30, 2017. Accessed November 15, 2017. <http://www.abc.net.au/news/2017-01-31/guide-to-the-geneva-convention-for-newly-elected-world-leaders/8225730>.

the quotas were adhered to, the *Dublin III Regulation* which forces asylum seekers to remain in the Member State in which they land subsequently burdening States such as Italy and Greece which are the two main points of entry into the EU, *The Reception Conditions Directive*, which force Member State's to provide services to asylum seekers has resulted in anti-EU sentiment as many EU States and citizens blame the asylum seekers for using up all the state's resources and for the economic hardship plaguing many EU States, and finally the Return directive which prohibits asylum seekers from being returned to their state of origin even if they are irregular and lack the proper documentation and are forced to remain in the EU. The Relocation Quotas imposed by the EC in theory are practical and useful for managing the Refugee Crisis, however in practice fail to support the needs of Member States. To improve upon this crucial aspect of the Asylum and Refugee Policy, the EU must address the issues of efficiency and accountability among its Members. It is vital for the EU, Member States, and European citizens to unite and work in unison to help resolve the crises currently occurring on European soil and for the dilemmas to come in the future.

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