



HOUSE OF LORDS

Revised transcript of evidence taken before

The EU Sub-Committee on Home Affairs

Inquiry on

THE EU ACTION PLAN AGAINST MIGRANT SMUGGLING

Evidence Session No. 3

Heard in Public

Questions 23 - 31

WEDNESDAY 22 JULY 2015

10.30 am

Witnesses: Steve Symonds and David Mepham

Members present

Baroness Prashar (Chairman)
 Lord Condon
 Lord Cormack
 Lord Faulkner of Worcester
 Baroness Janke
 Lord Jay of Ewelme
 Baroness Massey of Darwen
 Lord Morris of Handsworth
 Lord Ribeiro
 Lord Soley

Examination of Witnesses

Steve Symonds, Programme Director, Refugee and Migrants Rights, Amnesty International UK, and **David Mephram**, UK Director, Human Rights Watch

Q23 The Chairman: Good morning, Mr Mephram and Mr Symonds. Thank you for your time this morning. As you know, we are looking into the EU action plan against migrant smuggling. You have been notified of the questions that we are likely to ask. The session is open to the public, and a webcast transmission goes out live. A verbatim transcript is taken and you will be sent this. Please let us have any corrections that you would like to make. If you want to give us any supplementary evidence after you receive the transcript, please feel free to do so. Would you like to introduce yourselves? If there is anything you would like to say by way of introduction, that would be helpful.

David Mephram: I am happy to kick off. Thank you for the invitation to give evidence to the Committee today. I am David Mephram. I am the UK Director of Human Rights Watch. I suspect that many of you are broadly familiar with the work of Human Rights Watch, but in terms of the perspective and the contribution that we can make to your Committee's discussions and deliberations, we have done an awful lot of work on the countries from which many asylum seekers and migrants are coming—really detailed documentary investigation and research into the human rights conditions in those countries. Most recently, we have done a lot of work interviewing of and talking to people who have arrived off the ships in Italy and Greece, who have a very good understanding of the factors that have contributed to their movement. I do not know whether Steve wants to introduce himself. I have a couple of introductory comments that I wanted to make, but maybe we should do the introductions first and then I will come back to them.

The Chairman: Yes.

Steve Symonds: Hello. My name is Steve Symonds. I am the Programme Director for Refugee and Migrant Rights at Amnesty International UK. That is the UK section of an international movement. We have several sections across Europe that are being co-ordinated by the international secretariat on those issues concerning the agenda. Similarly, as with David, our organisation has partaken in a lot of research both in countries of origin and in reviewing what is happening in the Mediterranean with those arrivals.

David Mepham: Perhaps in terms of introductory comments, we could frame our contribution to your session this morning.

The Chairman: It would be helpful if you could speak up a little.

David Mepham: Of course. I will speak up and speak slowly. While recognising that smuggling is an important issue per se and obviously the focus of your Committee's inquiry, it is important to say at the outset that we at Human Rights Watch do not think that smuggling is the primary cause of the migration crisis that is facing Europe, or that it can be addressed in isolation from the broader context and the broader factors that are contributing to this multidimensional, complex phenomenon. We think that it is particularly important to understand the factors that are leading people to make the choice to take the great risks involved in making the perilous sea journeys to Europe. That is not to say that some smugglers do not act in abusive ways. We have documented examples of that and we can come back to that in the session if that is helpful. But we think that focusing on smuggling to the exclusion of the wider context would not help to address this problem very effectively and might lead to an unbalanced policy response that does not address satisfactorily the major drivers—the major causes—of large-scale migration flows. It might also inadvertently minimise Europe's human rights and humanitarian legal obligations towards some very vulnerable people.

It is fair to say that that is the context, because the Committee is looking at UK government policy as well as EU policy, but we think that there has been a tendency on the part of the Government, including James Brokenshire, who addressed your Committee a couple of weeks ago, to portray this crisis as primarily an issue of law enforcement and border control. We disagree with that analysis in our approach. We think that the UK and the EU should be focusing much more on the underlying causes and underlying drivers and have a policy that is more consistent with legal obligations.

I will make just two more quick points that are relevant to this discussion and this issue that you are grappling with as a Committee. Of course, in this session and in the other sessions that you are having, you will have debates about smuggling and trafficking and the legal distinctions between them. But it is very important that we do not lose sight of the human dimension to this. It is true, of course, that in the last couple of months there has been a big reduction in the number of people dying at sea and that is obviously welcome. That is the result of the fact that, belatedly, European states got their act together and enhanced the search and rescue capacity that had been wrongly scaled back a year before, but people are still dying at sea. The media have moved on now, but actually people are still dying. Just on 7 July, a boat with 30 to 40 people going from Turkey to Greece went down. There are other examples of crossings to Italy where people are still dying. Enhancing, strengthening and maintaining the search and rescue capacity remains essential. I was a bit worried by Mr Brokenshire's comment that the role of the HMS "Enterprise", which has replaced HMS "Bulwark", is primarily about trying to get intelligence on the smuggling networks. He seemed to play down its contribution to actually saving people and rescuing people at sea. That is an issue of concern.

Finally, a contextual point that is very important for your Committee to think about is the desperate conditions that asylum seekers and migrants are facing when they arrive in Europe, particularly in Greece. The focus has switched to Greece a lot and more people are coming to Greece now than to Italy. We have done some research on this in the past couple of months. The conditions are very bad. There is an unfolding humanitarian crisis, in a way. Greece obviously has much wider economic problems that it is grappling with but it simply does not have the resources or the capacity, it seems, to provide appropriate reception facilities or

appropriate conditions to greet the asylum seekers and migrants who are arriving. We have seen examples of overcrowding, insanitary conditions and inadequate access to healthcare and food. The conditions are so poor that in our judgment they may amount to inhuman and degrading treatment facing those asylum seekers. We should not lose sight of that human dimension. There is a very real crisis, particularly in Greece, facing these people who are coming across to Europe at the moment.

The Chairman: Thank you very much for that. Do you wish to make any introductory comments, Mr Symonds?

Steve Symonds: Perhaps I can add just two things. First, we completely agree with that analysis, so I will not repeat any of it. The one matter that is perhaps worth adding is to think back to about 18 months ago, when the Commission was looking at a similar problem following the tragedies at Lampedusa in October 2013, where 500 migrants died. The Commission then set out a series of proposals, which included tackling migrant smuggling and the need for safe and legal routes and resettlement programmes. There were also proposals around border security and co-operation with third countries around that. Last time, the member states, as David has alluded to, concentrated on border security matters and did not address the safe and legal routes. We have seen that the market for people smuggling has grown significantly, so the strength of those networks and the degree of movement have grown and the problem has become much more difficult and more intractable. So here we are again with the Commission again proposing a suite of measures that need to be addressed holistically. Unfortunately, member states, and not just the UK—there are others—are similarly minded to concentrate on the more policing aspects of these at the exclusion of some of the wider issues and certainly some of the issues of creating safe and legal routes, which would reduce, if implemented, the demand for people smuggling.

Q24 The Chairman: Thank you. You have already touched on this, but someone was questioning what the term “irregular migration” means. What are the causes of it? Mr Brokenshire suggested to us that those who are involved in irregular migration are normally economic migrants and not refugees. What is your view?

David Mepham: I expect that we will both have a fair bit to say about that. We produced a report, which we published in June: *The Mediterranean Migrant Crisis: Why People Flee, What The EU Should Do*. If Committee members have not seen that, I am obviously happy to share it with you. It was based on interviews with a whole range of people who arrived in Italy and Greece, research that we carried out in May and June. We have also drawn on research that we have done for many years in the big countries from which these people originate: Syria, Eritrea, Somalia and Afghanistan. Actually, up until May this year, those four countries accounted for more than 60% of the people arriving in Italy and Greece.

I should say a brief word about each of those countries. I do not want to spend very much time on Syria because you will be very familiar with how awful the situation is there. I know that you saw a representative from the UNHCR last week, who talked about the 4 million Syrian refugees outside the country—mostly in Lebanon, Turkey and Jordan—and the 7.6 million internally displaced people, i.e. the one in two Syrians displaced from their homes as a result of this conflict. There is no let-up in that, as we all know. Arguably, in many ways the humanitarian situation within the country is deteriorating further, which is a big part of the explanation of why people continue to leave Syria in very large numbers to seek refugee and safety outside the country.

Eritrea is perhaps surprising. It is not a country that gets a lot of public, political or media attention, but considering it is such a small country it accounts for quite a large proportion of

the people seeking to come to Europe on these boats. Some members of the Committee will be aware of the really appalling human rights situation in Eritrea. We and others have documented that over the years. It is very hard to get access to the country, but on the basis of the work that we have done talking to people who left Eritrea we get a bit of a picture as to what is happening there. There was momentum behind establishing what was called a commission of inquiry by the UN Commission on Human Rights. That was set up in 2014 and it reported in June this year, so very recently. It found that there were, “systematic, widespread and gross human rights violations”. It concluded that, “violations in the areas of extrajudicial executions, torture (including sexual torture)”, compulsory “national service and forced labour may constitute crimes against humanity”. UN reports do not get much more damning than that. It is a pretty good indication as to why so many people seek to leave Eritrea to find security elsewhere. Again, that comes through from the testimony. When we speak to Eritreans, as we have done in Italy and Greece, they tell us very much about these atrocious conditions. Compulsory military service is a big thing that people want to avoid, and it is a very brutal part of the very brutal Eritrean regime.

On Afghanistan, again I suspect that we in the UK are very familiar with what is going on there. Perhaps people have forgotten that human rights conditions in the country remain very poor. The Taliban and other groups have captured some territory and people have been displaced. In 2015, tens of thousands of people have been displaced. Again, that is probably a good part of the explanation for why Afghans continue to seek safety outside the country. A very large number of Afghans have left and continue to leave Afghanistan for the reasons to do with human rights conditions that we are perhaps well familiar with.

Lastly, there is Somalia. Again, people are aware that the Government of Somalia exercise very little control outside Mogadishu. In south-central Somalia you have the problem with al-Shabaab, which is responsible for really egregious human rights abuses such as attacks on children and sexual violence. That is a big factor. Again, on the basis of the testimony that we have from Somalis who arrived in Italy in Greece, that is a big part of the explanation for why they left.

There is perhaps a final factor that is very important for your Committee to think about: the transit country, Libya. A lot of people coming to Italy do so in particular from Libya. As we know, since 2014 in particular there has been a rapid and very serious deterioration in the situation in Libya, with a conflict between the two competing Governments of the country, very widespread human rights abuses and violations, lots of people killed and an estimated 430,000 people displaced. Again, I will just share some testimony with you. This is interesting in a context in which the Prime Minister talked about turning back the boats, suggesting perhaps that people should go back to Libya. But that is a good question: turning back the boats to where? The testimony that we have on the way in which some detainees have been treated in Libya includes these kinds of comments: detainees told us that the guards beat them with iron rods, sticks and rifle butts, and whipped them with cables, hosepipes and rubber whips made from car tyres or plastic tubes. They also said that the guards burnt them with cigarettes, kicked and punched them on their torsos and heads, and used electric shocks on them. This is going on in Libya now. It is a big part of the explanation of why so many people who were in Libya as a transit country—who had left possibly Syria, Somalia or Afghanistan—then decided that the risk was worth taking to make the crossing to Europe. I want to bring Steve in as well, but overall the testimony that we have and the work that we have done in those four countries in particular suggest to us that there are very powerful drivers and push factors that lead people to do this. People as a general rule do not want to leave their homes. They do so if they feel they have no other choice and if the circumstances

are just so violent and dangerous for them that they feel they must flee. That is a big part of the explanation for the flight and migration crisis that we are grappling with.

The Chairman: Mr Symonds, do you want to add anything?

Steve Symonds: I will add a little but not much. Essentially, our analysis is the same as David's. I think it is essentially the same as you heard from the UNHCR last week, too. There are other conflicts in the region that David might have referred to: the ongoing conflict in South Sudan and in the Central African Republic, and obviously a repressive regime still in Sudan. So there are other places you might look for similar experiences.

The one thing I would say a little more about, though David rightly said a lot about it, is the context of Libya. On the whole, Libya is not a root cause, but it is a particularly cruel additional dimension to what we are seeing. Perhaps it is worth stressing in particular in relation to Libya that a whole range of refugees and migrants have ended up there, not all of whom have been seeking to move to Europe. Libya has been a destination country for people seeking safety with family connections but also for migrant workers for many years. Because of the crisis in Libya and the deterioration of that state, we have seen large numbers of people who have essentially become trapped there. Neighbouring countries have closed their borders. The situation is particularly grave for migrants in Libya. That is the evidence that we have seen. We documented that in our report. Libya is full of cruelty, to which I referred in the written submissions I sent to the Committee. You received those only yesterday, so I doubt Committee members will have seen them yet, but they are there and I refer you to them. That means that in relation to Libya, whether you are talking about refugees—I completely agree with David's and the UNHRC analysis that the majority of the people we are talking about with these movements are indeed refugees—or those who are not refugees, and there are significant numbers of those, many of them are leaving Libya for reasons that are just as strong as everybody else's. They are just as at risk in Libya as any other foreign national migrant. They do not have any other options. Essentially, if the focus on tackling migrant smuggling in relation to the Libya crisis in particular is simply to stop the option of escaping by sea, that will leave tens of thousands of people in a particularly dire and dangerous circumstance—in some instances in the hands of government officials, in others smugglers and armed gangs, but those who have perpetuated extreme human rights abuses, many of which David listed. Other abuses might be listed, many of them to be found in both David's and our reports.

The Chairman: It was suggested to us that the way to tackle the causes of migration was to provide safe and legal routes for refugees. What is your view?

Steve Symonds: We have strongly urged that, and as I said that featured in proposals from the commission, and not just this time around. It featured strongly, although in less detail, in proposals from the commission 18 months ago. You also heard this, although perhaps less clearly expressed, from the director of Europol last week. He essentially told you that an holistic approach is necessary, and that critical to achieving a significant reduction in people smuggling is reducing the numbers of people who turn to people smugglers. Clearly a primary effort in achieving that must be to establish routes for those who have legitimate reasons for travel to seek safety in Europe. That will certainly mean safe and legal routes for refugees. It certainly means an increase in resettlement programmes. Yes, we have emphasised that for many months and will continue to do so.

David Mepham: We would agree with that. Maybe this takes us into the discussion about both resettlement and the relocation of people. There was a meeting of the Justice and Home Affairs Council in Brussels on Monday. We are still very disappointed that the British Government continue to refuse to participate in that. We think it is in many ways a modest

measure to try to ease the burden faced by Italy and Greece. Given the kinds of conditions I described in Greece, it seems a very reasonable and responsible thing that a country such as Britain ought to participate in and say, “We have a sense of solidarity here and we will help to ease the burden and take some of these people to the UK”. The reasons that have been given for not doing so are not convincing.

There is also the resettlement issue that Steve referred to. As you know, and as you will have heard from the UNHCR representative, they asked about 130,000 Syrians—let us talk just about Syrians for a moment—who have particular needs. Anybody who has left Syria has needs, but they identified 130,000 Syrians as particularly vulnerable, and they asked the international community to agree to resettle them. Europe’s collective response to that has frankly been pitiful, and the British Government’s refusal to take those people is also unacceptable.

Lord Ribeiro: I ask both of you: why Europe? Why not Africa? In other words, many of these people are from sub-Saharan Africa. You have described those who have come to Libya as migrant workers and then they are trapped. But it seems to be in one direction only: to Europe. Discussions and accords are taking place under the Khartoum process. There is a suggestion of areas in Niger; there are camps in Kenya. Why should we not look at other routes for these people rather than focus on Europe?

David Mephram: Just to understand the question, when you say look at other routes, do you mean that Britain and Europe should be trying to return people to those countries?

Lord Ribeiro: No, I am saying that Britain and Europe should be having a dialogue with the African Union to find other ways of preventing a push to Europe as opposed to the pull factor we have heard about; in other words, if there is opportunities to find refuge for people on the African continent, why should those not be explored? Your argument seems to be one-dimensional.

David Mephram: It is not one-dimensional. Everyone is in favour of dialogue. It is important that the European Union is talking to countries in Africa about these issues, and perhaps talking in a more intensive way than it has done in the past. Our concern would be whether the conditions in some of these countries are such that migrants and asylum seekers will get appropriate protection.

Lord Ribeiro: The world is not a perfect place.

David Mephram: It is certainly not a perfect place, as we know from our work, but we have some responsibility not to encourage people to go somewhere they are likely to be put in further jeopardy. In those kinds of places we would be very concerned about whether individuals who had been displaced from one conflict, such as Syria, would end up being treated very badly. I am not against the dialogue. I am definitely not against the European Union talking to African countries about strengthening and improving their systems and helping with capacity. The caution that we would bring to it from a human rights perspective is whether there is a slight danger of pushing people away to a place where they are unlikely to be given the kind of protection that they need.

Steve Symonds: It is worth adding that it is important to remember that something like 87% of the world’s refugees—not displaced people, which includes a much larger number of people internally displaced inside states—who have left their home country because of persecution are to be found in the poorest nations around the world, many of which are African nations. Ethiopia is currently hosting around 650,000 refugees. Kenya has the largest refugee camp in the world, and has done so for years and years. The situation in other sub-Saharan African states is similarly extreme. So it is not as though there is simply one route in one direction; in

comparison with the global refugee crisis, we are talking about a relatively small number of people. Yes, we also agree that the EU and individual member states should be talking to and seeking to co-operate with the African Union and individual African states. But as David says, just as if we want the co-operation of member states such as Italy and Greece, we have to show some solidarity with what they are experiencing, the same goes for African states. It is no good the European Union thinking that it can simply demand of African states—or, indeed, Asian states that are much poorer than Europe—that they can continue to bear by far the greater numbers and pressure without some greater degree of sharing of responsibility here.

David Mepham: I agree with all that. I would just add that, as we know, the countries that are hosting the vast majority of Syrians are Turkey, Jordan and Lebanon. Frankly, they are creaking under the strain, particularly Lebanon, where refugees make up one in four of the population, but even in Turkey there is a huge number of people—1.7 million is the latest figure, I think. In terms of burden sharing, the countries that are currently bearing the burden of hosting Syrians are the neighbouring countries, not the European Union. As Steve says, the proposition on the table is actually that a very small percentage of those people, who have particular needs, might come to Europe and be given some support in Europe.

The Chairman: We need to move on. Lord Faulkner.

Q25 Lord Faulkner of Worcester: My question is one to which your answer is going to be no, which is: are European Union member states currently doing enough to meet their obligations? Mr Mepham, can you elaborate on what your colleague Judith Sunderland was quoted as saying in the *Wall Street Journal* yesterday, where she called the process disgraceful and described “unseemly haggling over the numbers”?

David Mepham: I have not seen Jude’s article but she is a dear colleague of mine. She was probably referring to the Justice and Home Affairs meeting on Monday, I suspect—unless there is more information from the article—where, as you know, the question of numbers was discussed, the issue about the 40,000 that we have just been talking about was discussed, and Europe argued with itself and still failed to agree to take this very small number of people to Europe and give them some safety, security and protection and to agree a responsibility-sharing arrangement across the European Union. Of course, the British Government are in the position of not wanting to participate in that. They have been very clear that they are not going to participate. As I said a moment ago, I do not see the rationale for that and why they are so obstinate in refusing to do so. Recognising the scale of this crisis, it strikes me as a sensible way forward for the European Union as a whole to say, “This cannot be dealt with by one European country on its own or a handful of European countries on their own. This is going to require some kind of collective response”. Rather than having a sort of Dublin arrangement, where you are supposed to lodge your asylum claim in the first European country you land in—we are stuck with that for the foreseeable future, I suspect—it would make a lot more sense to transition to a better arrangement where Europe took some collective responsibility for looking after those people who are in need of protection and shared that out equitably among member states. That is our critique of what was discussed on Monday.

Q26 Baroness Janke: Does the existing framework strike the correct balance between immigration control and refugee protection? If not—as you are likely to think—how could future EU action address this imbalance, other than going over the same ground?

Steve Symonds: As I understand it, the question is directed to the international framework regarding—

Baroness Janke: The EU action plan.

Steve Symonds: I will just briefly critique the action plan. First, it is important to recognise that it is a fairly high-level document, so I do not want to be too pedantic in my criticism. There are aspects of it that are very important. In its introductory paragraphs, before you get into the specifics around the four areas of action that are proposed, there is a clear reference to the need for more safe and legal ways into the EU, which is also addressed in the agenda. We strongly agree with that, and it is good to see that in the action plan. A problem with the action plan, however, is that when you get into those four objectives, first of all, there is an eliding of prevention of smuggling with assistance/protection for vulnerable migrants. If you look at international documents to do with tackling migrant smuggling or trafficking—indeed, if you look at the EU’s strategy in relation to trafficking—you will see that objectives that are directed to assistance and protection are always separated from those directed to prevention because they are separate and distinct issues. Of course they have to be looked at alongside each other, but they are not simply two sides of the same coin. Indeed, prevention of smuggling can lead to serious human rights abuses and further exacerbation of the vulnerability of, for example, refugees. If refugees do not have routes to seek safety, and you prevent options of smuggling, you potentially leave them in situations where their lives are at risk. It is important, as in other international instruments, to separate these issues out.

Then when one looks at the detail of the action plan under the heading “Enhanced Prevention of Smuggling and Assistance to Vulnerable Migrants”, one sees that there is very little that deals with the issue of assistance or protection. Indeed, the one proposal under that heading is itself not specific. It is a proposal for a consultation about amending a directive, without any clarity as to what direction the amendment might take. Indeed, if one looks more broadly at the other objectives, protection is largely absent. That is a great worry in respect of the action plan. It is also a great worry in how this appears to be influencing the attitudes and approach of individual member states to the situation. It is this – action against migrant smuggling – that many of the member states have prioritised. Certainly our own Government have done so but the Spanish Government, the Dutch Government and many others, at least in their vocal statements, have prioritised this as the measure they want to engage in. If this measure is going to be prioritised in that way but itself does not adequately address issues of protection, it means that the rather depressing analysis that David and I started with of, if you do not take a holistic approach, what happens to the vulnerable people you are concerned with, is at risk of happening again, because this is essentially what happened last time around.

The Chairman: How does the action plan stack up with the United Nations instruments?

Steve Symonds: I can give the Committee a bit of a steer in relation to that, but I have to make it clear that Amnesty has not undertaken any sort of detailed analysis of the international legal position in respect of people smuggling, not least because people smuggling in and of itself does not constitute a human rights abuse and so traditionally it has not been a particular focus of our work. However, certainly one area of focus that would be of interest is that clearly the UNHCR representative referred the Committee to the work of the UN Office on Drugs and Crime. It takes the lead on both the issue of trafficking of human beings and the issue of tackling people smuggling. In relation to people smuggling, there is an international framework for action to implement the relevant UN protocol. That again sets out four pillars differentiating, as I have said, prevention and protection. In relation to the international framework for action, there is a series of objectives and individual measures, and indeed of individual indicators, that go into great detail which all states are invited to engage with to assess whether their efforts to tackle people smuggling are meeting international standards. Included in that is the provision of protection for the human rights of people who are the

victims in all of this. That is a good framework to start with. I am not an expert and I cannot offer expert evidence in respect of it, but it provides some basis for analysis.

David Mepham: This is not an additional comment on the UN programmes but, similarly, that is not a particular focus of our work. I wanted to make a comment in response to your earlier question, which was about the plan. I agree with what Steve has said about this, but perhaps one point to highlight and flag up is the emphasis that ought to be given to the legal framework—Europe’s legal obligations and international obligations. There is a whole body of European Convention on Human Rights case law about this. There was a very interesting case back in 2012 called *Hirsi Jamaa and others v Italy* in which the European Court of Human Rights found that the Italians had violated human rights by sending people back to Libya. So there are a lot of legal responsibilities on member states which they need to make sure are properly reflected in any kind of framework. My sense at the moment is that it is not given the prominence and priority that it ought to have in a document of this kind.

The Chairman: Do you have a list of all the cases?

David Mepham: I can certainly send you some details of that case and some others, if that would be useful to you.

The Chairman: Thank you very much.

Lord Soley: I do not have a problem with your overall analysis. It has been my view for many years that failed and failing states are going to drive this problem for a long time to come; that is, until we find a better way of dealing with failing states. But what I am struggling a bit with is something that you have referred to several times, which is creating alternative routes. I am aware of what the French do in some of the camps in the Middle East, but actually it is not very much. I am not sure how, at the end of the day, you really deal with this unless Europe in some way, either in Europe itself or in some of these other states, sets up and administers holding centres of some type. Otherwise, you will again be putting your finger in the dyke.

David Mepham: I am happy to take that one first. I do not think that any of us is saying that just the creation of a legal route will solve this problem in and of itself.

Lord Soley: If at all.

David Mepham: It is a complex problem that requires a whole series of different policy responses. Amnesty has just argued that reducing the burden on some of the neighbouring states—let us take Syria as an example—that is, easing the burden on Jordan and Lebanon by taking some of these people would help and would be an important demonstration of solidarity.

Lord Soley: A demonstration of support.

David Mepham: Of course, in addition to that, the European Union and the international community need to do a lot more to address the underlying drivers. In a funny kind of way, if as a result of this migration crisis the world wakes up to the human rights crisis in Eritrea and the unfolding tragedy in Syria, as well as the situation in Afghanistan, and focuses much more attention on those things, as well as focusing much more attention on a political solution for Libya, that would be a good thing because those are the underlying drivers.

Lord Soley: Can I stop you there? I agree with you and people are arguing that case. However, I do not think that it is going to happen any time soon. So when you refer to creating safer routes, is not part of what is necessary for that is for Europe to create holding

centres where we can look after these people, if you like, and protect them in some way? The alternative is what I would call the finger in the dyke.

David Mepham: It depends on where the centres are, which is the answer I gave to Lord Ribeiro. We would be concerned if they were in a country which has a very bad human rights track record—

Lord Soley: Who would protect them when they are there?

David Mepham: —but where the protection was being provided. But also, in practice, of course, and again coming back to Syria, a lot of these people are in Turkey, Lebanon and Jordan. Those countries are taking on the responsibility of hosting Syrians. Another question around how we address this problem is whether enough resource and support is being provided for those countries to do that. Mr Brokenshire will say that we have given £900 million, and that is true. Britain has made a very substantial contribution to address this problem in those countries, but I think that more is probably needed, and more is needed by Europe as a whole and the international community as a whole to reduce the pressures on those countries that are leading to people saying, “We cannot stay here any longer. These conditions are unsustainable. We need to move on”. Actually, it can be argued that if Britain wanted to reduce the pressure, more focus on that might help in some way to ease the need and the desire for people to move on to Europe.

Lord Soley: So you would agree that if the UK or Europe was able to persuade the United Nations and Libya to allow Europe to put a holding centre in Libya and lease it, in other words to look after people while the safer routes bit is dealt with, would that be a way forward? Otherwise, you are still saying that they have to stay in the countries where they are, and they are unsafe. I am not sure that you have thought through properly the issue of creating safer routes. It is a small part of the answer.

David Mepham: I want just to be very clear and unambiguous on Libya: absolutely and emphatically not in Libya. One of the things that we have said very strongly in our public statements—Amnesty has said the same—is that Libya is so dangerous, violent and insecure, and migrants and asylum seekers are treated so appallingly in that country, there should be no scenario in which European leaders or the British Prime Minister are suggesting that people should go back to Libya. Libya should be beyond the pale in these terms.

Lord Soley: We could defend an area in Libya if the United Nations gave us permission to do so.

David Mepham: I think that that creates a whole new debate about whether you can carve out an area of Libya and police it with UN peacekeeping forces. We are not going to make that recommendation. We do not think that Libya is a place for that at the moment. One hopes that there will be some kind of political resolution in the next couple of years, but at the moment it is not a place where people can be protected.

The Chairman: Lord Soley, we need to move on.

Lord Soley: I want to make one last point. What worries me is that this is being discussed in the United Nations. There is a lack of thinking about safer routes.

Q27 Lord Condon: Good morning. Perhaps I may take you back to the third objective of the EU action plan. You have broadly answered our questions, but the action plan’s third objective, which is the enhanced prevention of smuggling and assistance to vulnerable migrants, has already been referred to by Mr Symonds when he described his unease about the linking of those two issues. We want to explore whether the third objective suggests the

correct measures to achieve it. It is set out in bullet points such as providing information and running prevention campaigns in third countries on the risk of smuggling. Are there any broad headings that you feel should be in the action plan which are not there and that we have not explored or even gone into today? I ask that particularly in relation to assistance to vulnerable migrants. What are the big issues that are still missing from the action plan?

Steve Symonds: Perhaps I can suggest two things, starting with the caveat that I gave about our ability to provide a more detailed analysis of this. The first, which slightly harks back to Lord Soley's inquiry, so he might feel a little disappointed, is that it is disappointing to us that safe and legal ways are identified in the action plan but there is no positioning of that as a proposal in any of the objectives, and clearly this is the one that you would think it would appear in. That is certainly missing. With regard to the other, it is worth slightly elaborating on what I touched on earlier in relation to the international framework for action. That identifies a lot of capacity-building measures for law enforcement and other agencies to understand and identify risks and vulnerabilities of individuals and what to do about them. It identifies the need to understand the broader national frameworks that David was referring to and ensure that they are signed up to and indeed implemented. It is again disappointing that while there is much in this plan about co-operation with third countries, none of the co-operation that is referred to refers to anything about capacity-building on those lines in relation to those third countries, which would clearly be a valuable and important aspect of any working with African or indeed other states in relation to this.

Lord Condon: How should that capacity-building be articulated in the plan?

Steve Symonds: I do not want to get into too much detail because I think that would be for the experts, but the way to go about it would be to go to the framework: you could virtually lift the measures, objectives and indicators from that detailed framework and put them into a plan like this. They are designed to be adopted in that sort of way. They are there on paper. I have the paper here, if anyone wants to take it afterwards, rather than my trying to elaborate on it myself.

David Mepham: I agree. I do not want to duplicate what Steve has said. I think that is a sensible way forward.

Q28 Lord Ribeiro: We have clear strategies and indeed regulations in place to deal with human trafficking. How does the approach to tackling migrant smuggling differ from that, and how should that be tackled?

David Mepham: I shall kick off, although, for the reasons that Steve has given, I think we have relatively little to say on that. There is the legal distinction between smuggling and trafficking, which you talked through with the UNHCR representative last week, so we do not need to rehearse that argument. As a human rights organisation, we have been very focused on the trafficking issue, which is a direct human rights violation if someone is forced against their will to move across the country and all the rest of it. Smuggling is a different concept, because people often seek out smugglers to get from A to B. Even though it is a criminal act to breach an international border without the appropriate certification and so on, it is a different category and is not necessarily a human rights abuse. We do not have specific recommendations for how the UN Protocol against the Smuggling of Migrants should be enhanced. I am afraid it is just not something that we have looked at in any detail.

Baroness Massey of Darwen: Could I follow this up? I would welcome your comments on my three questions here. First, how big is the trafficking problem in relation to migrant smuggling, and where are trafficked people from, compared to people being smuggled as migrants? Secondly, I am not sure how the policy approach that you talked about at the

beginning could apply to people who are trafficked—for example, what would safe and legal routes be, and how would underlying causes effect trafficking? That seems to me to be quite a different thing from human smuggling. Thirdly, you mentioned that you have talked to people who have been smuggled, but have you talked to any people who have been trafficked about how they see it?

David Mephram: Again, I am happy to answer first, although I may have relatively little to say. The short answer about how you deal with trafficking is that trafficking is very clearly a criminal act and human rights abuse, and you need effective international co-operation to deal with it in a way that is consistent, proportionate, focused and all the rest of it. That is a bit beyond what we have been asked to comment on here. Where do they come from? That is a good question. I do not know. I certainly do not have the figures to hand about where people come from who are being trafficked. There are probably bodies out there that have guesstimates.

Baroness Massey of Darwen: Is your impression that it is mainly Africa and the Far East that people are trafficked from?

David Mephram: Outside our focus today on the Mediterranean, we at Human Rights Watch have done a lot of work on the phenomenon in Burma and the Rohingya who have been taken to Thailand in these appalling camps, so there is all of that going on, and of course this phenomenon is not confined to that part of the world. Off the top of my head, though, I could not give you figures.

You asked how big the trafficking problem is. Again, I am not sure that Amnesty or Human Rights Watch are in a position to say how big this phenomenon is. By its nature, it is a very difficult practice to quantify the scale of. There may be figures somewhere for the number of traffickers who have been prosecuted, but I am not sure that we could put a number on the number of trafficked people.

Steve Symonds: I am afraid that my answer is very much the same as David's, although I would add that some of the people who we see making these journeys will have been in the hands of people smugglers and will have been trafficked as well. People move—we can tell this from some of the stories that we hear and have researched—from situations of smuggling to situations of trafficking. Indeed, it would appear that in some instances they may even move back from being trafficked to being smuggled. Certainly, to our eyes, some of the exploitation that we have seen perpetrated in Libya would constitute trafficking, but those individuals may then be able to move on at some point as people being smuggled. So there is a degree of overlap in relation to these phenomena.

It is also important to emphasise that not just refugees but the refugees who we have largely talked about are in many ways particularly vulnerable to being trafficked, because of course they are desperate to move for obvious reasons, and traffickers will take advantage of that. One of the phenomena that have to be addressed by anyone thinking about holding centres or reception centres is that we know that a modus operandi of traffickers is to go to such centres looking for victims and finding them there. They are distinct criminal offences and, as David says, one is a clear human rights abuse while the other may entail human rights abuses but need not do so. However, individuals may experience both in their journeys, so it is not easy to distinguish the two from a holistic approach to tackling the wider problem.

Baroness Massey of Darwen: But the root causes might be different.

Steve Symonds: They might, but then again they might be the same. In a sense, the vulnerability of a refugee who has been trafficked has the same root cause as that of the refugee who is smuggled to his or her destination.

David Mepham: I do not want to take us too far from the Mediterranean, but that comes out particularly in the work that we have done on the Rohingya from Burma, who are in Thailand only because they desperately want to get out of Burma. So there is a sort of coming together of smuggling and trafficking in that context in a way that is very messy, and a lot of abuse is associated with that.

Lord Ribeiro: Steve has demonstrated his lack of confidence in the action plan. Do you think the action plan defines the differences between those two crimes?

Steve Symonds: I do not think it does, but in fairness I would not necessarily expect it to. As I am sure the Committee knows, there is a separate EU strategy on tackling trafficking, and that strategy is from 2012 to 2016, so it is still live. I am not necessarily surprised that the distinction has not been drawn specifically in the action plan. I am a bit more concerned about the rhetoric from member states, including our own, that has tended to focus on human trafficking, which appears to be all part of the more general intention of describing this as a policing/law-enforcement matter as opposed to a significant refugee crisis.

Q29 Lord Morris of Handsworth: You will both be aware of the dialogue and the discussions currently taking place around the 2004 directive. What is your opinion of the proposals for extension in respect of residence permits for third-country nationals? All of these human beings are victims of smuggling.

Steve Symonds: Just to be clear about the 2004 directive, as a starting point, it is not simply a directive targeted at victims of human trafficking but includes victims of migrant smuggling within it. The crucial distinction, which leaves room for discussion, is that the measures in relation to residence permits and to victims of people smugglers are discretionary, whereas those in relation to victims of trafficking are mandatory. There is room to do something in the directive, but the directive encompasses both phenomena and the victims of both.

In terms of the proposal for a consultation next year, it is very difficult to comment because I do not know what is at the heart of the thought behind that. I am not aware of anything concrete in respect of it. It is probably worth emphasising that EU legislation has moved an awfully long way on victims of trafficking since 2004. We now have the 2011 directive aimed solely at victims of trafficking—it does not deal with victims of migrant smuggling—which sets out a whole range of protective measures. We have seen those to be necessary to provide the protection for victims of trafficking that perhaps was originally intended to be secured simply by the residence permit.

I cannot make any further comment because I am not sure what ultimately will be proposed. Simply addressing aspects of the residence permit has not proved sufficiently fruitful in terms of protecting victims of trafficking, which is why EU legislation has moved on so far, which is good. Although it is a different phenomenon, there is a question as to how much can be gained from the 2004 directive in respect simply of victims of people smuggling. But we will wait to see what comes from it.

David Mepham: I have nothing to add. That is a very good summary of the situation.

Lord Jay of Ewelme: I want to come back to the question about returning people, which we have already talked about a bit. First, what do you think about the Commission's intention to make it easier to return people, for example by amending the FRONTEX legal base to strengthen the agency's role? Is that a sensible thing for the Commission to do? Secondly—this touches on some of the things we were talking about after Lord Soley's question—is it sensible for the Commission to return people to wherever?

David Mepham: I am happy to take that one first. On the general principle, maybe it is worth stating that if—

Lord Jay of Ewelme: But I do want you to answer the specific question.

David Mepham: Indeed, I will. But if people have had an opportunity for their asylum or protection claim to be fairly assessed, in a proper manner, and it has been concluded that they have no protection need whatever in Europe, of course European Governments are entitled—they have the legal right—to return those people if that can be done in a humane, dignified and sensible way. The reason there is such a big disconnect between the people who are turned down and the people who are returned is often because Europe, to the best of my understanding, does not have appropriate agreements with countries so that it can safely return them. But the legal right is clearly there, and if it can be done safely and humanely, people can be returned. I have not gone through the FRONTEX proposal in great detail but our instinctive response is one of scepticism about whether you would want to give a bigger role to FRONTEX in this. We would be worried about anything that tried to minimise or diminish the obligation on European Governments to assess very carefully not only the asylum and protection claims of individuals but the circumstances in which they might be returned. It is a sensitive matter. They have a right to do it, but it needs to be thought through very carefully and properly rather than pushing it on to a border control agency—I am not sure FRONTEX is necessarily the most appropriate body to have a bigger role in that.

Lord Jay of Ewelme: Why?

David Mepham: Because it is a job for Governments. I am worried about pushing that responsibility on to an operational agency.

Steve Symonds: I think we would share that scepticism. If these proposals are to be developed, we would certainly want to see transparent mechanisms built in to ensure compliance by FRONTEX with the international obligations that the member states have individually. David referred earlier to the important Strasbourg decision in *Hirsi v Italy*. That builds on Article 4 of Protocol 4 to the European convention, which bars collective returns and therefore requires, essentially, individual assessment of asylum claims that people are seeking to make rather than just having collective push-backs. That is what happened in the *Hirsi* judgment—a whole group, mainly Somalis and Eritreans, had simply been pushed straight back to Libya, without any opportunity for them either to make claims or to have their individual circumstances assessed. Indeed, the court went further on their individual claims and found that they had then been subjected to a breach of their Article 3 rights—the prohibition, which I am sure the Committee is aware of, on torture, inhuman and degrading treatment—both in Libya and because they had been placed at risk of being pushed back by Libya to Eritrea and Somalia, where they faced similar degrees of risk.

We would therefore be very anxious to ensure that if FRONTEX is to be given such an expanded role, the EU starts by building into that how FRONTEX will avoid, and be seen to avoid, conducting such actions. It is oftentimes much easier to monitor the actions of individual states than the agencies that they subcontract or delegate their authority to. That would be our concern.

Q30 Lord Jay of Ewelme: I will just come to the second part of my question. On the assumption, for the moment, that all those sorts of issues have been resolved, and people are to be returned in the appropriate fashion in accordance with law and so on, what are the circumstances in which you think it would be sensible for that to take place? What would need to be the position in the returning state for it to be a reasonable thing for FRONTEX to do?

Steve Symonds: Clearly, the primary concern for us is the human rights situation for the individual in the state of return. Assuming that all the assumptions that you started with were met—and that may be a very big question, but none the less if they are—like David, we have no objections to returns. It is not wrong for the EU to see returns as an important part of the overall plan. The question in many ways is whether, just like the issue of migrant smuggling, the issue of returns fits into a holistic picture. For instance, when I mentioned co-operation with African Union states, which means having solidarity with them and sharing some of the pressures they face, that applies to this issue as well as to migrant smuggling.

Q31 The Chairman: I think that that is all from us. Are there any supplementary things that you want to say? Would like to make any concluding comments?

David Mepham: We had a discussion about the causes of the migration movements. Also, in the questions that we were sent, we were also asked to give a view as to whether the Government were right to say that they were economic migrants and not asylum seekers. We have moved on a bit but I had something important that I wanted to share with the Committee on that. Basically, as the Committee may know—and this is important for you to look at—on 3 June, in Prime Minister's Questions, David Cameron said: "The vast majority of people who are setting off into the Mediterranean are not asylum seekers, but people seeking a better life". In the period since, he has presented no evidence or analysis that underpins that statement. It would be appropriate for this Committee or other parliamentarians to ask him to provide the evidence that supports that bold and strong claim. In fact the evidence, such as we have it, would suggest that it is not right. Actually, if you look at the UNHCR figures, Syrians, Afghans, Eritreans, Iraqis and Somalis make up 66% of all the people who have arrived in Europe since 1 January this year. If you look at the recognition rates—the rate at which European Governments give asylum status or protection to people of those nationalities—you find that the figures for those countries are: 95% for Syrians, 92% for Eritreans, 90% for Iraqis, 67% for Afghans and 59% for Somalis. If you do the calculations, if people whose claims were being assessed in the latter part of this year were to be given protection status on the same basis as people from those nationalities in the recent period—in the last six months—you actually have 56% of people being given protection in the European Union. You could say that the cohort coming in was slightly different from the cohort that came in in the last six months, but nothing substantial has changed in Syria, Somalia or Eritrea for that to be likely, so at the very least the Prime Minister and the Government should explain the analysis. Indeed, Mr Brokenshire said the same thing before your Committee. What is his analysis for making that claim?

Lord Soley: That is right and I do not believe it for a moment. Frankly, I know that it is failed states. I was pushing you hard on the other issue because I do not think that even if you answer that question you begin to solve the key problem. That is why the United Nations has a key role here. It is very difficult because the Security Council is split on the ability to intervene effectively. You do not need to occupy a whole state but you do need to do something to create safe havens. I say this as an MP who had masses of immigration problems, over many years. I know the complexity, and you can return a person. For example, in Afghanistan, some areas are very safe and other areas are not safe. You can return someone who you think is Somalian who may be Kenyan and you have umpteen problems of that type. When you have a massive increase in refugees as a result of collapsing states you need to focus on how you deal with them in a safe way. I understand your concern and I share it. I share your anger, in a way, with the Government saying that it is economics. It is not. But I am not sure that we have an answer that deals with the problem. Some of this has to be about

permission for Europe to deal with the problem in some of the countries of origin. I would not rule out Libya, by the way. I think you are mistaken about that.

Baroness Janke: Could I ask for any work that you have done on the safer routes argument or anything that you can point us to in terms of the practical developments that Lord Soley referred to? Could we have those in the form of written evidence to consider?

Steve Symonds: Shall we both take that away? There may be something further that we can provide.

Baroness Janke: That would be very helpful.

The Chairman: I think that your point about unsubstantiated evidence about whether they are refugees or people seeking better lives is well taken by this Committee. The assertion was repeated by Mr Brokenshire when he gave his evidence a couple of weeks ago.

David Mepham: This is very relevant to what you were just saying. Lord Bates, who speaks for the Government in the House of Lords on these matters, was asked in a debate not long ago on 14 July about precisely this. He seemed to backpedal when he said that he thought Mr Brokenshire was referring to “the central Mediterranean ... That is not the case—and I am sure we would agree on this—in the eastern Mediterranean”, so I think they are changing their story somewhat in response to the patterns.

The Chairman: Indeed.

Baroness Massey of Darwen: How can we get a copy of your report?

David Mepham: I shall send it to the Committee.

The Chairman: Thank you very much indeed for your evidence. If you can let us have your report, the information requested by Baroness Janke and the detail of the case that you referred to, that would be very helpful. Obviously, if there is anything that, on reflection, you would like to add to anything you have said, or if you would like to provide further evidence, that would be very welcome. Thank you.