

Migration terminology matters

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Failure to employ correct terminology has consequences beyond semantics. More efforts are needed to educate people – especially those whose words are widely disseminated – in the correct use of migration-related terminology.

Current efforts to discuss and address the ‘migration crisis’ in Europe are marked by polemics, fed in part by imprecise and sometimes inflammatory terminology used to describe migrants. This also risks contributing to the erosion of migrants’ rights.

The term ‘crisis’, which has routinely been used to describe migration to Europe during the course of 2015, should itself be subject to some scrutiny. Other countries, many of which have far fewer resources than Europe, have been facing acute versions of this migration flow for some time. As of mid-November 2015 Turkey, with a population of 76 million, was hosting 2,181,293 million Syrians – a ratio of 1 Syrian to every 35 Turks. In Jordan, the ratio of Syrians to Jordanians is approximately 1 to 10, and in Lebanon, the ratio is a compelling 1 to 5. It is important to keep a perspective on the scale of the ‘crisis’ in Europe.

Legal and illegal

Debate over terminology is not a question of political correctness, as it is sometimes characterised. It has real implications for migrants. Many people, including some members of the general public, journalists and government officials, reduce the entire body of migrants to only two categories: those who are ‘legal’ and those who are ‘illegal’. This is a false dichotomy in more ways than one.

People cannot be illegal, only acts can. Furthermore, the word ‘illegal’ implies a juridical conclusion, without giving the individual migrant the benefit of pleading his or her case. In the realm of criminal law, if someone is accused of an unlawful act it is inappropriate for anyone – including and maybe especially journalists and politicians speaking in public – to refer to that individual as a ‘criminal’ before there is a finding of guilt. This is in keeping with the presumption

of innocence. Yet, in the migration context, public figures routinely employ the term ‘illegal’, and it appears in respected news publications and in court decisions.

The term ‘illegal’, referring to lack of valid status, is often used to describe migrants who enter a territory clandestinely. However, this usage focuses a disproportionate measure of criticism on a group that makes up only one part of migrants without valid status. Worldwide, the single largest category of migrants without valid status is of those who entered a country legally and then stayed longer than their authorised period of admission. These over-stayers make up the bulk of the so-called ‘illegal’ migrant population.

The UN Special Rapporteur on the human rights of migrants has emphasised that the irregular entry onto a territory should be only an administrative offence, not a criminal one. The International Organization for Migration and other international organisations have long promoted use of the term ‘irregular’ instead of ‘illegal’, following the recommendation the UN General Assembly made in 1975.¹

Smuggling and trafficking

Smuggling and trafficking need to be better understood as two distinct crimes. Differentiating between them continues to be a challenge for journalists and politicians alike. The distinction matters because victims of trafficking are entitled to a special set of protections under international and European law. If they are not correctly identified, those protections are not available to them. Trafficking requires intent to exploit a victim through means such as force, other forms of coercion, fraud or deception, and it does not necessarily involve legal or illegal crossing of a border.²



UNHCR/Kitty McKinsey

Two Afghan men waiting to meet their smugglers walk through the grounds of a Serbian brick factory where dozens wait for a chance to get across the Hungarian border.

Smuggling, on the other hand, is a crime that is defined as procurement, for financial or other material benefit, of illegal entry of a person into a state of which that person is not a national or resident – in other words, it always involves the illegal crossing of a border.³

The only meaningful way to ensure that whatever protection or services a migrant may be entitled to are properly identified is to conduct an individual assessment of the migrant's situation to determine whether trafficking or smuggling has occurred. In either case it is the perpetrators who commit the crime, not the migrants.

Refugees, asylum seekers and other migrants

Politicians may disagree about the logistics of protecting refugees but they rarely dispute the fact that refugees are entitled to protection. In other words, they are perceived as 'good' migrants, whose right to protection is clearly set out in the UN Refugee Convention.

Asylum seekers, by contrast, may be viewed with scepticism by politicians, the press and the general public. This is in part because the term 'asylum seeker' is not well understood. Asylum has a specific legal definition, and not all migrants who seek it qualify for it. However, a decision on an asylum seeker's

case is separate from the migrant's right to request asylum. That right exists regardless of whether asylum is eventually granted.

A tendency exists to categorise all other migrants as 'economic migrants' and to portray them as 'bad' migrants, motivated only by self-interest. The term 'economic migrant' does not exist from a legal standpoint. Terms that do exist in international treaties, such as 'migrant workers', are more appropriate because the overly broad and imprecise categorisation 'economic migrant' fails to recognise the individual circumstances of each migrant, which may consist of multiple motivations. The danger in using

it is that it risks leading to the incorrect assumption that such migrants are never entitled to any regularised status and thus can be summarily refused entry or deported. In some instances, a migrant who is neither a refugee nor an asylum seeker may have the legal basis for regularised stay in a reception country. In any case all migrants have rights which must be respected

It is important that public discourse recognises the distinctions above in order to enable reasonable and respectful solutions to be found. Terminology can play an important role in shaping the discussion of effective migration governance.

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1. General Assembly, Measures to ensure the human rights and dignity of all migrant workers, 3449, 2433rd plenary meeting, 9 December 1975.

www.worldlii.org/int/other/UNGARsn/1975/87.pdf

2. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime <http://tinyurl.com/UNTOC>

3. Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the UNTOC www.refworld.org/docid/479dee062.html