

# FORCED MIGRATION review

Issue 51  
January 2016

## Destination: Europe

*plus a range of articles  
on other aspects of  
forced migration*



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## Forced Migration Review

(FMR) provides a forum for the regular exchange of practical experience, information and ideas between researchers, refugees and internally displaced people, and those who work with them. It is published in English, Arabic, Spanish and French by the Refugee Studies Centre of the Oxford Department of International Development, University of Oxford.

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ISSN 1460-9819

**Designed by:** Art24  
[www.art24.co.uk](http://www.art24.co.uk)

**Printed by:**  
Fine Print (Services) Ltd  
[www.fineprint.co.uk](http://www.fineprint.co.uk)



## From the editors

Europe is experiencing the mass movements of displaced people in a way that it has largely been immune from for decades. The ramifications and manifestations of what is being called a 'migration crisis' are extensive, intersecting with national as well as pan-European politics, existing economic problems, xenophobia, fear of terror attacks, and much more. This crisis, in effect, seems to dwarf in scale and complexity any other crisis that Europe has faced since the end of the Second World War.

The manifestations are as disparate as the building of fences to stop people crossing normally peaceful borders, the deaths of people transported by smugglers in unseaworthy boats, EU political leaders bickering over a Common European Asylum System and the numbers they will or will not allow into their respective countries, and contentious responses to the disaster that continues to unfold in Syria. Alongside this we also see an upsurge of grass-roots compassion, solidarity and assistance to those whose human suffering on a grand scale in and around Europe constitutes the reality behind the rhetoric.

In this issue of FMR, authors throw legal, practical, moral and experiential light on a variety of the multifarious issues and manifestations that make up this 'crisis'.

We would like to thank Elizabeth Collett (Migration Policy Institute Europe), Cathryn Costello (Refugee Studies Centre), Madeline Garlick (UNHCR) and Richard Williams for

their assistance as advisors on the feature theme of this issue. We are also grateful to the International Organization for Migration, the Open Society Foundations, the Swiss Federal Department of Foreign Affairs and UNHCR's Regional Bureau for Europe for their financial support of the issue.

FMR 51 also includes a range of 'general' articles on other aspects of forced migration.

The full issue and all the individual articles in this issue are online in html, pdf and audio formats at [www.fmreview.org/destination-europe](http://www.fmreview.org/destination-europe). This issue (and its accompanying expanded contents summary) will be available in English, Arabic, French and Spanish. If you would like printed copies, please email us at [fmr@qeh.ox.ac.uk](mailto:fmr@qeh.ox.ac.uk).

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Marion Couldrey and Maurice Herson  
Editors, Forced Migration Review

**Cover image:** A group of Hazara refugees from Afghanistan at the train station in Presevo, Serbia, November 2015. UNHCR/Daniel Etter • *Editors' comment:* We chose this image in contrast to some of the more stereotypical images of the European refugee 'crisis'. We liked the garden fence dividing the cosy inside from the excluded outside, and the humanity and sense of warmth of the family group – the reminder that refugees and migrants are people who can smile and support each other even when times are very hard.



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## Foreword: Banking on mobility over a generation

François Crépeau

**Europe need not renounce its freedom of movement; it should instead develop a better controlled mobility regime. It would then, in effect, much better control its borders.**

Migration cannot be stopped, without massively violating the human rights of the migrants. It may be deflected and rerouted, for a time. But European efforts to stop irregular migration will fail on a massive scale given the push and pull factors at work, such as survival needs on the part of the migrants and labour market needs on the part of European countries. 'Fighting the smugglers' in isolation is useless; the irregular migration market is created by the barriers to mobility. As for many other social issues, prohibition is part of the problem, not part of the solution. People need to move and mobility services are being offered by opportunistic mafias. It would be a lot more efficient and less costly to organise mobility than to try resisting it.

Equating territorial sovereignty with the power to stop everyone at the border is a fantasy. All borders are porous and democratic borders are particularly porous. We are facing a paradox: in the name of controlling the border, states have lost control of the border. Territorial sovereignty should rather be interpreted as the ability to know who crosses the border; for that, migrants should come to the border guard, not to the smuggler, which means that states should offer the mobility solutions that migrants need – controlled mobility, allowing migrants to obtain visas and buy ferry tickets – and reclaim the mobility market from the smugglers. And security agencies need more than anything else information about individuals, which visa processes can provide.

For refugees such as the Syrians, Europe needs to implement massive resettlement programmes over several years. Migrants will not pay huge sums to smugglers and risk the lives of their children if they can see that safe, legal and cheap mobility will be available to them in the foreseeable future. Enabling organised regular departures and arrivals would considerably reduce the smuggling

market and help fight the stereotypes associating migrants with chaos. It would also support mainstream European politicians in developing a pro-mobility, pro-migration, pro-diversity political discourse, which has been sorely lacking for the past three decades. The 'crisis' in Europe is one of political leadership, not one of capacity. Two million refugees over five years, distributed among all 28 European Union countries, in proportion to their population, amounts to small numbers per year per country.

For other 'survival migrants' – those who need to leave in order to feed their family – Europe needs to bank on mobility over a generation and open the border progressively to people who come to look for work, through developing visa facilitation and liberalisation regimes, and creating smart visa options with incentives to respect the conditions. The objective would be to allow for a regulated open flow back and forth across borders, migrants coming when there are jobs for them and moving on when the jobs disappear. A collateral aim would be to reduce considerably the underground labour markets which attract irregular migration, by having stronger labour inspections and much tougher employer sanctions.

Banking on mobility and building a better controlled mobility regime will allow this extraordinary economic opportunity to be tapped and will protect the rights of all. Doing it over time, even a generation, allows for preparing the ground, experimenting with mechanisms, and establishing confidence that this is not a destructive process but on the contrary an enriching opportunity, both materially and culturally.

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## Migrants, refugees, history and precedents

Colin Bundy

**There is much about earlier migration crises that today's European policymakers might profitably recall.**

It was in the nineteenth century that a recognisably modern form of **mass** migration was made possible by new forms of transport, colonial settlement and the expansion of the United States (US). Between 1846 and 1914, over 30 million migrants left Europe for America. For decades, this migration was largely unimpeded, and the most important paper carried by the immigrant was not a passport or identity document but a steamship ticket.

However, by the late 19th and early 20th century, the US and other countries sought to control immigration, to be more

selective as to who might enter, on what terms and with what rights. This shift to border controls, quotas, literacy tests and the like was accelerated by the First World War and the 1917 Russian Revolution, which created Europe's first refugee crisis. Between 1914 and 1922, perhaps five million refugees were created; and in 1923 the 'unmixing' of peoples between Greece and Turkey saw 1.7 million people moved in both directions. The inter-war years also saw the first norms and institutions developed to manage the phenomenon of stateless migrants: a High Commissioner for Refugees and the issue of



Putnam L.A. (Lt.), War Office official photographer

British troops pass Belgian refugees on the Brussels-Louvain road, 12 May 1940. (From the collections of the Imperial War Museum.)

Nansen passports. But that earlier human tide was dwarfed by the flood of misery created during and immediately after the Second World War. In the first four years of the war Germany and the USSR “uprooted, transplanted, expelled, deported and dispersed”<sup>1</sup> some 30 million people. By May 1945 there were well over 40 million refugees in Europe, homeless, uprooted and in flight.

In 1918, borders were invented while people on the whole were left where they lived (with the major exception of the Greek/Turkish population exchanges). At the end of the second war, the reverse took place. With the exception of Poland, boundaries remained largely intact, and people were moved instead – all across central and eastern Europe. The term ‘ethnic cleansing’ did not yet exist but this is what took place as politicians engineered more ethnically homogeneous nation states.

Two aspects of this crisis are noteworthy. First, an extraordinary exercise was carried out by the Allied Command and the United Nations Relief and Rehabilitation Administration (UNRRA). By 1947, UNRRA was running nearly 800 resettlement camps, housing seven million people. Through herculean efforts, by 1951 only 177,000 displaced persons remained in the camps. Millions had been resettled; even more were repatriated; and significant numbers emigrated. Secondly, by 1951, a new legal and institutional framework existed in order to respond to the phenomenon of refugees, with the creation of the UN High Commissioner for Refugees (UNHCR) to succeed UNRRA and the passage of the Convention relating to the Status of Refugees.

At that time there was a collective political will in the face of emergency, and a sense of humanitarian responsibilities in the wake of the horrors of war and the Holocaust. These delivered solutions. Sadly, political will and humanitarian impulses are in short supply today.

From about 1950 to 1973, European nation states prospered during the longest sustained boom that global capitalism has ever experienced. Up to this point, for about 300 years, European states were sources of

mass emigration – conquering, colonising and settling swathes of the less developed world. But now West and Northern European nations hungrily welcomed foreign workers; they became countries of immigration and settlement, their immigrant populations growing at the same rate as in the US during its years as a classic immigrant nation.

Although by the 1980s asylum seekers from Africa, Asia and Latin America were entering Europe, European states remained – comparatively speaking – largely insulated from events in those continents. But in the 1990s, Europe was suddenly precipitated into its third refugee crisis. It had a number of components: firstly, the break-up of the Soviet bloc and the wars in what had been Yugoslavia; secondly, wars by Western powers in Iraq and Afghanistan which made those two countries the largest sources of refugees; and thirdly, 9/11 and the ‘war on terror’ which triggered a wave of new attempts to restrict, control and deny entry. As night follows day, the new apparatus of control led to efforts by migrants and refugees to find other ways to enter; harsher border controls, desperate migrants and opportunistic smugglers are intimately linked.

Finally, we can identify a fourth refugee crisis in Europe, dating from about 2011, with a spike in 2014-15. Its components include war in Syria; failed or fragile states in Libya, Afghanistan, Iraq, Somalia, Sudan and the Democratic Republic of Congo; a growing inability of states in the Global South to handle their refugee populations; and the rapid establishment of new routes for mass migration through the Balkans and Eastern Europe towards favoured destinations like Germany, Sweden, Denmark and the UK.

A European crisis, indeed: but still, of the 18 million refugees and the 27 million IDPs in the world, 80% are located not in Europe but in poor countries in Africa, Asia, the Middle East and Latin America.

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# Refugee protection in Europe: time for a major overhaul?

Maria Stavropoulou

**A number of myths surrounding refugee protection may obscure our understanding and complicate the search for solutions but there are also clear and realistic possibilities for change in the EU's body of law to enable better outcomes for states and for refugees.**

Hundreds of thousands of refugees, and smaller numbers of economic migrants, are arriving on the shores of south and south-eastern Europe. Most of those arriving in Greece and Italy have no interest in staying in either of these two countries. Given the situation in Syria, Iraq, Afghanistan and Libya, and the lack of prospects for many refugees in countries of first asylum, Europe must expect much larger refugee flows. Can Europe continue for much longer with its 'business as usual' approach?

Here are a few myths that clog our understanding of the situation:

**'Protection-sensitive border control is possible':** The external borders of the European Union (EU), especially the sea borders, cannot be controlled in a legal and protection-sensitive way. The only means to control a sea border in practice is by extensive monitoring, rapid interception of boats suspected of carrying 'human cargo', and turning, pushing or towing them back to where one thinks they came from. However, such practices – especially towards countries not considered 'safe third countries' – are illegal, either according to the EU's body of law in relation to asylum or because these countries themselves are refugee-producing countries, and the practices may amount to *refoulement* or arbitrary return. These practices are also very dangerous for the lives of those being intercepted. Unfortunately, however, advocates and states alike prefer to maintain the narrative that it is possible to conduct protection-sensitive border control.

**'Individual refugee status determination in EU law is the responsibility of Member States and is feasible (if states dedicate**

**sufficient resources to it) irrespective of the number of asylum seekers':** Under the recast directives on asylum procedures and qualification, refugee status determination has become a very complex and expensive endeavour, because it provides for no alternative to an individual approach. It requires each asylum seeker to be registered and interviewed, and individual decisions to be taken, accompanied by many safeguards, possibilities for appeals and re-examination, different procedures for different types of cases mostly geared towards minimising abuse of the asylum system, and so forth.

Quality requirements mean that caseworkers can reasonably be expected to issue no more than a few dozen decisions a month. In addition, the individual concerned is required actually to 'apply' for asylum in order to be registered and considered as an asylum seeker, and in such a case formal registration must take place more or less immediately. On top of all this, backlogs are to be avoided at all costs. In a situation, however, where thousands of people arrive every day in a country, most of them from major refugee-producing countries like Syria, these requirements are simply impossible to meet.

For instance, Greece's Asylum Service can currently process at most 1,500 applications a month if it wishes to respect all these requirements – which is less than half of the average daily inflow of refugees on the Greek islands at the time of writing this article. Even financially powerful countries are struggling to process over a few thousand asylum applications a day.

**'The Dublin system is a basic pillar of the EU law on asylum, to be defended at all costs':** According to the Dublin III

Regulation, the most important criteria for the allocation of the responsibility to examine an asylum claim are the country where asylum was first sought and the country where the asylum seeker first set foot in the EU. Despite the abundant evidence that its precursor, the Dublin II Regulation, was not working well, the Dublin III Regulation maintained these basic premises, although it did introduce certain improvements by making family reunification easier.

A quick reality check, however, shows that none of the countries at the external borders of the EU could possibly process all the asylum claims each is supposedly responsible for according to the Dublin system. For instance, in 2015 Greece will receive more than 600,000 refugees coming from countries including Syria, Afghanistan and Iraq through Turkey. In addition, it has a large residual population of third-country nationals who have applied for asylum in the past and want to do so again, or never applied for asylum in the past but wish to do so now. Yet Greece could never manage to process two or three hundred thousand asylum applications per year, nor realistically integrate all those who would be granted international protection with the current eligibility rate hovering at 50%.

**‘Asylum seekers must remain in the countries responsible for examining their asylum claims’:** According to the Dublin III Regulation, asylum seekers are expected to remain where the EU tells them. Yet asylum seekers, like all human beings, have their own desires, their own understanding of the factors governing their lives, and their own plans. At the time of writing this article, the great majority of newcomers – Syrians, Afghans and others – refused to apply for asylum in Greece, despite the information provided to them about the Dublin system (including the family reunification clauses), and despite the risks of irregular onward travel, the fees charged by smugglers and the significant chance of obtaining protection in Greece. Instead, most are keen to move on to Sweden and Germany, hoping to make it across the next border before it is closed off. In fact, one of the reasons explaining the

very high influx to Greece during mid-2015 may have been the rush to make it across the Serbia-Hungary border in time before the border fence there was completed.

Language, family ties, the existence of diaspora communities, social benefits or simply the myth surrounding the integration possibilities in some countries create the web of factors that asylum seekers consider when deciding which country they want to reach. Even in countries like Austria and France some asylum seekers will refuse to apply for asylum, and will do what they can to avoid the mechanisms in place that would oblige them to remain in a country not of their choosing. And even if they cannot avoid them, they know that the chances that their transfer will be enforced are minimal, as the rate of actual transfers under Dublin is very low.

As a result of insisting that the above are realities rather than myths, tensions arise between Member States, with some insisting on enforcing what should be done rather than what realistically can be done. Continuing to insist that the way things were planned years ago continues to be the right way in the face of rapidly changing circumstances is obstructing rational and realistic planning.

### What might be done?

Here are a few ideas that may be worth exploring. None of them are new, yet they continue to be disregarded because of their implications for governments and societies:

**Build a working hypothesis around an annual ‘refugee quota’ for Europe as a whole** that would take into account the number of refugees in the world and Europe’s comparative strengths in receiving them. Since actual quotas for refugees are prohibited under international refugee law, the Europe-wide quota would serve as a planning tool rather than an actual ceiling to the number of refugees to be allowed to enter Europe in a given year. That would help the continent make plans in terms of reception and processing capacity; without minimal planning, systems simply collapse and then the blame game begins.

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**Regularise secondary movements of asylum seekers and refugees** through the adoption of massive resettlement and relocation schemes from first countries of asylum such as Turkey, Jordan and Lebanon, and from EU Member States at the borders. The objective would obviously be for European governments to undertake the role that smugglers currently play and which serves the smugglers financially yet which is very dangerous and often fatal for the refugees. Massive resettlement and relocation schemes, as advocated by UNHCR in particular, would require going much further than the 120,000 relocation and especially the 20,000 resettlement places over a period of two years pledged by EU Member States after lengthy deliberations.

If, however, it is taken as a given that Europe is to accept on its territory a certain number in a given year, it would be much easier to incorporate these higher resettlement and relocation quotas in the planning and in public debate. It would also allow the EU to conduct a more convincing dialogue with countries of first asylum, such as Turkey, which in principle are safe for millions of refugees, and to enforce readmission agreements.

**Adopt quotas for each EU member state:** All Member States must engage in some way in solidarity, not only solidarity among themselves but also with countries of first asylum in regions of origin. Political leaders should engage in a protection-oriented narrative that explains Europe's obligations towards refugees and the necessity for all countries to participate equally in refugee protection efforts. The European Commission has adopted a number of creative proposals in recent months, despite heavy opposition by many EU States. The current arguments put up by several Member States – that are neither countries of first entry nor desirable destinations for the majority of refugees – serve only to shrink protection space in countries that receive refugees in numbers much larger than they can realistically cope with.

**Adapt the EU body of law on asylum in a manner that will allow *prima facie***

**recognition of protection status**, at least for persons coming from major refugee-producing countries. Such a simplified mechanism is provided for in the Temporary Protection Directive which, however, has never been enacted. The Temporary Protection Directive is currently being evaluated, and should possibly be re-drafted so that it becomes an effective protection tool in situations where the influx into the EU vastly exceeds the existing capacity of asylum systems. However, the whole EU body of law on asylum should also be reviewed, so that individual Member States are allowed to adopt *prima facie* recognition of protection status so as not to require the cumbersome, lengthy, expensive and ultimately unrealistic individual status determination procedure currently prescribed.

**Create meaningful management plans and budgets for refugee protection in the EU as a whole**, rather than expecting individual Member States to do so on their own. It makes little sense to harmonise laws but not budgets, on the assumption that all countries have the same resources for receiving asylum seekers, processing asylum claims, integrating refugees and effecting return of those not granted refugee status. The EU financial instruments need to be connected to this broader exercise, rather than be perceived by the Commission and Member States as separate tools to enable implementation of policy. While transfer of know-how through Frontex and the European Asylum Support Office is an important tool of solidarity as well, it cannot make up for a fair distribution of financial and human resources.

Ultimately, the EU's Member States must start to perceive Europe as a single asylum space with a common European asylum status and work towards these goals. Until then the dominant attitude will continue to be 'not in my back yard', forcing states and refugees alike to adopt irregular practices.

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## Simplifying refugee status determination

There is a persuasive case to be made for simplifying refugee status determination in the European Union at this juncture. International law maintains that status determination is declaratory, which means that status determination does not make one a refugee but declares one to be a refugee. It means that many of those now on the move are refugees, in spite of our non-recognition of them. However, recognition of a person as a refugee is vital to their protection and status.

There is precedent elsewhere in the world for dealing with mass influx via *prima facie* status determination; in fact, the vast majority of refugees in the world attain their status in this way. This is a pragmatic response for when a host state's

refugee status determination infrastructure has been overwhelmed – the situation in which Europe currently finds itself. It allows for a lower standard of proof and could be used, for example, to accept Syrian nationality as evidence of being a refugee. Germany has been reported as implementing such a strategy unilaterally.

The Temporary Protection Directive was designed for just such a purpose, at least as a stop-gap, but has not been implemented. Europe must find a way to fairly and effectively implement status determination procedures appropriate to a situation of mass influx.

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## Arrivals on the island of Lesbos, summer 2015

Fotini Rantsiou

**Lesbos, population 85,000, received more than 85,000 refugees and migrants in 2015 up to the end of August.**

By the end of August 2015, improvised camps had been set up all over Mytiline, the capital of Lesbos, and outside the two designated areas. This created a huge pressure for the local population and authorities, already low on resources due to the economic crisis. But there was an outpouring of volunteers from the villages together with foreign tourists who helped people when they disembarked, disoriented from the trip and traumatised from their experiences.

The people arrive here from the Turkish seaside town of Ayvalik and surrounding remote beaches. Syrians in the great majority, recent refugees most of them. Among them, many Kurds and Palestinians but also Iraqis who have passed through Jordan, and by the time they get to Lesbos some of them register as Syrians hoping for 'priority' treatment. From Afghanistan, through Iran, walking and taking buses. A few Africans, from Eritrea and Somalia, through complicated smuggler

routes. Pakistanis – and some Syrians – who often were originally smuggled into Greece, worked here for several years, left and are now returning, speaking the language.

You will hardly hear the words Al-Qaeda or ISIS, so popular in European and American analyses of the situation, when Syrians and Iraqis speak about what has driven them to undertake the perilous journey. There are people who have tried legal channels to reach the wealthier countries of Europe and North America, and failed. There are Palestinians from the West Bank, who cannot get visas to anywhere. There are people who can afford to book hotels through the internet to stay after they get their papers and while they wait for the ferry to leave, and there are those who barely have enough money to get to Athens.

They land at the north and east coasts of Lesbos, the closest point to Turkey. They then have to walk the 45-60 kilometres to town where registration takes place. It was

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Lining up for registration in the camp for Syrians on Lesbos.

initially prohibited for private vehicles to give them a lift before they receive their registration papers but even then many locals were giving lifts to the old, the injured, families with babies and pregnant women, at the risk of arrest for violation of anti-trafficking laws. And there are taxi drivers that charge hundreds of Euros to bring the refugees and migrants into town.

The road is lined with people – families, elderly, sick and disabled, young and strong. They arrive in the camps with blisters on their feet, dehydrated, having stepped on sea urchins while landing on the shore, some with chronic diseases, pregnant women, small babies.

At the small village of Sikamnia, one of the main entry points, a dinghy arrived in front of us. People disembarked, all Syrians. Most spent some time on the beach to get their bearings. Smiling, hugging, taking selfies with the Turkish coast in the background. They had had a smooth crossing, less than two hours. Many refugees are not sure where they are landing in Greece and do not trust what the smugglers tell them. Three young men came up to us with huge smiles. They were grateful to reach this

country, even under the most stressful of circumstances. They were adventurers on the road, they had found their safety.

We met a family from Aleppo: the father a teacher of music, missing all the instruments he had left behind; his daughter of 12, whose school was bombed but who was still longing for home; the son of 16, trying to behave like a grown man; and the mother, with tears telling us that they had tried for four years to fight it out but in the end there was no life left in the city. They didn't know where they were heading, maybe Sweden, they had heard asylum is given there, but the girl wanted to stay in Greece, relatively close to Syria.

The refugee and migrant arrivals have placed a huge strain on Lesbos in 2015. Greece has been under this pressure for at least five years but it is only in the summer of 2015, when the numbers of refugees and migrants increased exponentially and they moved on to reach Hungary, Austria and Germany, that the issue became a significant debate.

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## It need not be like this

Cathryn Costello

**Creating space for smugglers and failing to provide humanitarian assistance are European failures. Opening legal routes to Europe could deal with both.**

That war creates refugees is nothing new. The Bosnian war of 1992-95 forced 2.2 million people to flee. What is new since then is European Union (EU) enlargement and the development of the Common European Asylum System (CEAS). This imposes legally binding standards on procedures, status and living conditions while refugee status is being determined. The CEAS requires individuals to be on the territory, not of the EU, but of the state in question, in order to claim asylum. However, EU law makes it virtually impossible to get to that country safely and legally.

For decades, this deep contradiction at the heart of European refugee protection has been evident. Without visas, passage on regular flights and ferries is blocked. Some land borders are safe to cross irregularly but others are fortified and the site of shootings by European border guards. But in spite of these barriers, 2015 saw over 900,000 irregular arrivals by boat alone. Measures to keep people out clearly do not work but their financial, human and political costs are huge.

### Irregular journeys

Unsurprisingly, in the face of great demand come those willing to facilitate the irregular journey. Irregular journeys do not have to be deadly but an illicit market for a one-way trip has few safeguards against callous exploitation or profiteers. Instead of a normally short and cheap flight or ferry journey that might bring refugees to the EU, there is much further suffering and clandestinity, after which asylum in Western Europe may await. The legal measures to stop smuggling are part of the problem – in many instances, they would also suppress those who would wish to offer safe passage for good reasons.

By handing the keys to the EU to smugglers, the EU and its Member States lose

all control over who comes. The alternative – issuing humanitarian or other short-term visas to allow refugees to travel normally – is the most obvious way to disrupt the smugglers' business model, by taking out some of the demand. And, self-evidently, travelling with a visa through an airport is much safer and more secure. That no moves have been made to open up some regular travel routes is shocking, not only for the journey from Turkey to Greece but also for that from Greece across the Balkans. Instead, the United Nations High Commissioner for Refugees (UNHCR) repeatedly issues alarm calls about the dangers of that route, including the danger of extreme exploitation. When the money runs out, those travelling, including the many unaccompanied children and young people, have little to sell but themselves.

A crude estimate would put smugglers' revenues in Turkey at as much as 800 million Euros this year. To put that figure in context, the EU-Turkey deal of 29 November 2015 involves an initial EU aid budget of 3 billion Euros, whilst noting that Turkey has already spent US\$8 billion hosting 2.2 million Syrians under its temporary protection system; the entire EU Asylum, Migration and Integration Fund is 3.137 billion Euros for seven years. As for the refugees – many of whom will end up staying in Europe – they often deplete their life savings, sell all their assets, or leave behind family members in deep and dangerous debt to smugglers, not to mention the countless injuries and traumas suffered on the way.

The EU response has focused on the Libya-Italy route, where different drivers have created a smuggling bonanza. The instability in Libya has left brutal smugglers to offer passage in mainly unseaworthy craft. It appears most would not make it across without the intensive search and

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rescue operations, which are now militarised under a UN Security Council Resolution.<sup>1</sup>

On arrival in Italy and Greece, there is little prospect of asylum in decent living conditions for most. So people move on, irregularly. People are relocating themselves, and the human rights violations suffered on the remaining journey are another catalogue of horrors.

The EU-Turkey deal seems, thus far, to be about containment. Responsibility sharing by offering resettlement is alluded to but no new commitments are made. The prize for the EU is not just stopping refugees from leaving Turkey but also being able to return the unwanted back there. The EU-Turkey readmission agreement (agreed but not yet in force) promises to facilitate returns to Turkey if the conditions are suitable. Of course, there would also be significant legal barriers to any returns but the signals are clear.

### Safe passage

One part of an appropriate response to the crisis is not to ask refugees to wait patiently in camps for the rare chance of resettlement (the UK approach) but to open up visa channels and make clear strong commitments to allocating large numbers of humanitarian visas to allow those who are in great need to travel legally. Safe passage would mean issuing humanitarian visas so that asylum seekers can travel to a country to claim asylum. These are provided for in

the Schengen Borders Code, and some states already issue them (Brazil, for instance).

Resettlement often depends on refugees' willingness to wait for years in a neighbouring country for their status to be determined. It offers a new life but only for a tiny minority deemed deserving or 'vulnerable'. But resettlement could become a tool to offer protection quickly and to many. We have seen newly elected Canadian Prime Minister Trudeau use resettlement to offer swift safe passage to thousands of Syrian refugees. (Restoring Canada's justly proud tradition of refugee protection was an issue in his election.) However, resettlement alone can serve as a containment strategy, at its worst offering false hope and inducing refugees to stay in camps. We have already seen that newly displaced Syrians cannot find protection in Lebanon and Jordan, and their fate in Turkey is less certain than it was for those who fled at the start of the war. For them, the 'wait patiently for resettlement' option is pure fantasy.

The failures of the international humanitarian safety net need careful examination too. Even in a struggling state like Greece, the government has primary responsibility for those on its territory. In its support, the EU's humanitarian and civil defence mechanisms have not been triggered, and UNHCR has limited presence. When the EU opened a 'hot-spot' reception process to enhance registration on the Greek island of Lesbos, the opening was portrayed by the EU as a success. Yet within days thousands of people were sleeping outside it in the rain. Did no one ask, "Where will people sleep?" when the decision was taken about the location of the new registration system? In the complex multi-level system of the EU, the buck is passed and refugees suffer. The sheer disregard for basic human needs continues to shock. Daily calls for basic shelter, medical care and food supplies through volunteer networks are testament to many institutional and political failures, but also to much local effort and dynamism.

Levels of xenophobia and Islamophobia seem sure to rise unless a larger international effort is harnessed to link the groundswell of



Refugees from Iraq and Syria arriving on Lesbos having crossed by boat from Turkey.

support for refugee protection with leadership and institutional efforts. Who knows how different things would have been had refugee departures been by regular means of travel, tapping into the public support that is obviously also part of this crisis? The extraordinary volunteer efforts across Europe – offering the bulk of the humanitarian support – suggest a new European civil society is being forged in those efforts.

Nurturing new transnational civil society could include a role for private sponsorship for refugee admissions and matching newly arrived refugees with locals for integration support. It could also involve issuing large numbers of humanitarian visas to refugees whose protection needs cannot be met in the

region of origin. Both of these moves would be win-win approaches for refugees and host communities. Thirdly, resettlement, at the appropriate scale, demands an international effort. An international conference on refugees from Syria and other countries caught up in the regional conflict is long overdue. Current deficits in leadership and cooperation undermine all three moves.

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1. UNSC Resolution 2240 of 9 October 2015  
<http://unscr.com/en/resolutions/doc/2240>

## The Mediterranean challenge within a world of humanitarian crises

William Lacy Swing

**While the high number of migrants and refugees arriving in Europe in 2015 has increased pressures and tensions, this is not a crisis beyond the capability of Europe to manage together as a Union. We need bold, collective thinking and action to develop a truly comprehensive approach.**

There are currently some 60 million people in the world who have been displaced by persecution, war, conflict or disaster – the most we have seen in the post-World War II era. However, whereas at that time weary and war-torn Europe was a place to turn away from and leave behind, it is now at the receiving end of displacement.

Europe's neighbours to the south and the east are experiencing unprecedented levels of instability, conflict, economic collapse and, increasingly, the effects of a changing climate. The war in Syria and attendant impacts on the region continue with no end in sight. Turkey, Lebanon and Jordan are host to most of the four million

According to IOM data, more than 900,000 migrants, refugees and asylum seekers arrived in the European Union through the Mediterranean in 2015, almost entirely via the Eastern and Central Mediterranean routes to Greece and Italy. The number of deaths – more than 3,500 in 2015 – exceeds 2014's record death toll. And it is not known how many additional deaths go unreported. Even when estimates of the missing are available following shipwrecks in the Mediterranean, bodies are often not found. We should also not forget that many migrants die en route to Europe in Africa and the Middle East. In mid-June, the bodies of 48

migrants were found decaying in the desert between Niger and Algeria.

A neglected dimension of the situation in the Mediterranean is the ramifications for the families of those who die, particularly when the body is never found or there is no identification of the dead. Not only do families experience what has been called 'ambiguous loss' but a person going missing can affect family dynamics and social relations, the family's economic situation, and processes like inheritance, remarriage and guardianship of children.

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Syrians who have fled their homelands. They deserve to be strongly commended for it but, with limited prospects in the region, inevitably many displaced people are now making their way to Europe through Turkey and Greece via the Eastern Mediterranean route. Political instability in Libya has not decreased, and so it continues to be both a source and a channel of irregular flows to Italy via the Central Mediterranean route.

### Policy challenges

While the numbers arriving in Europe increased in 2015 and pressures in some spots have ignited tensions and drawn media attention, this is not a crisis beyond the capability of Europe to manage together as a Union, provided it has a clear-eyed understanding of the policy challenges that must be tackled.

First, Europe owes it to itself to set aside the current migration narrative. It is toxic at present and it hints at a denial of both European history and European values. We need to get back to a more balanced dialogue. We need to refute misleading myths and stereotypes and recall that historically migration has been overwhelmingly positive. Through open dialogue and examination of evidence, we can re-discover that well-managed migration is consistent with development.

The second challenge is learning to manage diversity. Demographics indicate that most countries of the world will in future become more multi-ethnic, multi-cultural and multi-religious. This is a recipe for social well-being and economic prosperity. But to achieve these goals we will need a lot of political courage and imagination, and investments in public information, awareness and dialogue. To begin with, we need to move the debate from its focus on identity to a focus on common values. We need to grasp the essential fact that others may not look like me or speak like me but can share common commitments and ideas.

Thirdly, it is integral to good migration governance that we marry sovereign rights and obligations with the rights, obligations and dreams of migrants, reconcile national

security and human security, and balance sovereignty and individual freedom.

### Priorities for action

The first priority is to save lives. In the short term, rescue at sea needs to remain robust and well resourced.

The second priority is to provide effective responses to the mass humanitarian flows reaching Europe. The broad lines of action have already been identified and they are consonant with the operational modalities that have been used to deal successfully with such emergency situations in the past.

Effective reception arrangements must be set up. The International Organization of Migration (IOM) welcomes the commitment to solidarity through increasing European Union (EU) support to front-line Member States which are receiving high numbers of migrant arrivals, and stands ready to contribute to the efforts of the involved EU agencies and Member States.

We also welcome and strongly support the European Commission's proposal for an expanded relocation scheme to better achieve the impact that is needed given significant pressures on frontline EU States as well as in neighbouring countries currently hosting millions of displaced people. Equitable sharing of relocation among EU Member States and increased resettlement within and beyond the EU must be part of the solution.

Experience has taught us that in order to protect the integrity of the international protection framework, status determination systems must be put into place to distinguish between people who have a genuine need for protection and those whose claims for asylum cannot be established. For the latter, voluntary return to their country of origin will be the most appropriate solution but careful planning and implementation are necessary for this to be successful and sustainable. Looking ahead, it will be necessary to invest in reintegration programmes that will enable returnees to rejoin their communities of origin.

Some interventions may be desirable before migrants reach Europe. IOM is planning a test in Niger of its Migration



Frida Björneseth

Response and Resource Mechanism (MRRM). Its aim is to provide operational support to government authorities to address complex migratory flows, as well as facilitating the identification and registration of migrants and supporting data collection to feed into evidence-based policy and programming. IOM is also planning to establish an MRRM pilot facility in Libya, stability permitting, and is exploring the feasibility of MRRMs in Turkey and the Former Yugoslav Republic of Macedonia.

Finally, a robust international response must rapidly be put into place to end trafficking and smuggling operations as well as measures aimed at undercutting their business on both shores of the Mediterranean, recognising that criminal networks operate across regions.

The third priority is nothing less than a paradigm shift in the governance of migration. However pressing the current humanitarian crisis, a response that focuses solely on immediate humanitarian and security needs without addressing the broader picture – the underlying drivers of irregular migration, the demand for labour migration at all skill levels and the impact of communication networks – will be neither effective nor sustainable in the longer term. Without a long-term vision to guide policy and practice and to respond

to community apprehensions we will be trapped in a crisis-mode intervention time warp. The current humanitarian crisis should be for us all a reminder of the importance that mobility has acquired in today's world. We cannot wish this away. We can only accept it as part of our contemporary reality and manage it for the benefit of all.

We need bold, collective thinking and action to develop a truly comprehensive approach to the governance of migration. That will in turn ensure provision of the precious commodity of protection for refugees, and create channels for safe and regular migration for high- and low-skilled workers and those in need of family reunification. Such an approach would also need to offer community stabilisation and development programmes in countries of origin for migrants as well as countries of first refuge for refugees to reduce migratory pressures.

Regular dialogue with countries of origin and transit is critical to achieving consensus on these important matters, addressing the root causes and the immediate challenges that the migrant flows represent.

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## A network of camps on the way to Europe

Irit Katz

**While makeshift camps, such as those that have proliferated around Europe, may form spaces of resourcefulness and agency which cannot be accommodated in state-run detention camps, none of these temporary spaces is a definitive solution.**

“No camp! No camp!” shouted the refugees who were on their way to Austria, refusing to get off the train after it was stopped by the Hungarian police at the town of Bicske, where one of the country’s main refugee camps is located.

Over the last decade, an increasing number of refugees and asylum seekers are being held in closed European refugee camps and detention centres; ‘processing centres’ for displaced populations have also opened in transit countries outside Europe. These facilities within Europe and beyond are often appalling and damaging to the physical and the mental health of the detainees. As many of the camps are run by private companies, they are mostly closed to the media and social activists, leaving the people who are detained in them abandoned beyond the reach of civic oversight.

Similar to refugee camps in the regions of origin, the detention camps in Europe are located in isolated places, remote from other built environments and from urban centres, keeping people out of sight, separated from the rest of the population. Thus, the refugees call “No camp!” – and their resistance to being transferred to such a closed facility – is an active refusal to be separated from the rest of the world, suspended for an unknown period in an arbitrary location.

### Makeshift camps

Forced migrants demand free movement, insisting on continuing the journey to their preferred destination and refusing to stay in camps which are opened by the authorities to assist them but also to control them. At the same time, however, they create their own makeshift camps as part of their way through Europe. These provisional spaces have become common in European cities such as Berlin, Paris, Calais and Patras over

the last decade, as part of the movements of displaced populations who are both their residents and their constructors. These camps are often evacuated and demolished after a short period of time, sometimes only to be erected again in a different form or location.

As part of the increased movement of refugees through Hungary, a makeshift camp was created in the heart of Budapest at Keleti train station where more than 2,000 migrants waited for trains to take them to the Austrian border. Makeshift camps have sprung up on the Greek island of Lesbos, where thousands of refugees wait for documents which will enable them to move on. Makeshift camps were erected in Paris, such as those under Pont Charles-de-Gaulle and under La Chapelle railway bridge, the latter camp being demolished by the police after a few weeks.

Other similar camps have been erected and destroyed in other places around Europe over the last decade. The camp in the Greek port city of Patras, which sheltered more than 1,000 refugees from Afghanistan and existed for several years, was demolished in July 2009. The camp in the French port city of Calais, now called the ‘new jungle’, where more than 5,000 migrants from the Middle East, Central Asia and Africa wait for documents or for an opportunity to cross the border to the UK, is probably the best known makeshift camp in Europe. Whilst the previous ‘jungle’ camp which existed for a few years was bulldozed in 2009, the appearance of the new camp in the same area shows that the pressing needs of the displaced populations are stronger than state policies.

While these makeshift camps differ in the duration of time they exist, in their location, in the displaced populations which create them and in the way they are constructed and function, they are all spaces created by people



on the move, where men, women and children find temporary refuge on their journeys across Europe. The people in these camps are often supported by NGO activists and by volunteers from neighbouring communities, citizens who assist the refugees through various acts of solidarity and support.

### Isolation and movement

Rather than being hidden from the general public, makeshift camps are often erected not far from or within existing built environments, nestled in urban centres or in the outskirts of cities. These camps are squalid spaces of inadequate shelters and deplorable sanitary conditions, forming miserable sites which cannot be praised. However, unlike the closed 'detention' or 'reception' state facilities which impose isolation on those detained in them while denying them freedom, these makeshift camps are made by their own residents in resourceful acts of survival, and sometimes become sites where displaced people recover their agency through producing their own spaces. These camps also become part of urban environments that create encounters with the local population.

Thus, instead of hiding the 'problem' by locking people away in remote places, these spaces make the situation visible and by doing so turn it into a political issue.

Whereas state-created camps usually endure for long periods of times, makeshift camps often exist for only short periods. The creation of these built spaces seems to be completely arbitrary, since they are constituted in unexpected times and places in relation to various social, economic and political conditions. But where there is an enforced restriction of movement, camps will form. These camps, where people wait pending their departure for their next destination, often grow rapidly, becoming visible when a bottleneck forms due to border policies which temporarily or permanently block certain migration routes.

Forcibly displaced people are often socially, culturally and linguistically isolated in these camp spaces. The call "No camp!" reflects the refugees' personal and political demand not to be stopped and suspended in dreadful conditions for unknown periods of time in places they did not wish to come to. While the makeshift camps may be symptomatic of the resourcefulness

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Pont Charles-de-Gaulle, Paris, June 2015.

of these people, they are nevertheless inadequate places for people to live in.

Europe must change its perspective. If camps are needed to host migrants temporarily, they should not be in remote places but part of the civic environment. Most importantly, these vulnerable people need to be able to move forward instead of being trapped in temporary

spaces of coercion, within Europe yet only suspended on its threshold.

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## Trickery in Dublin's shadow

Marco Funk

**Border practices at the Italy-Austria border are part of a wider trend of questionable practices used by EU Member States which render irrelevant both the Schengen Agreement and the Dublin Regulation.**

The Brenner Pass on the border between Italy and Austria is the northernmost limit that migrants who cross the Mediterranean Sea to Italy are allowed to go, according to the Dublin Regulation. This is also an internal border of the Schengen Area which allows the free movement of people without border controls, regardless of nationality – in theory. In practice, migrants

who try to cross it face the consequences of conflicting national interests and the dishonest implementation of European laws.

Thousands of refugees have attempted to reach northern Europe via the Brenner in recent years, and the Austrian and German authorities have taken notice. Austrian police increasingly boarded international trains (from Verona in Italy to Munich in Germany)

at the Brenner in 2014 to check passengers' documents and identify irregular migrants, making them get off in Innsbruck, the next city along the route. Under a bilateral agreement with Italy dating back to 1997, Austria is authorised to return travellers coming from Italy who cannot provide documentation valid for a legal stay in Austria. According to the Italian police, over 5,000 returns of this sort were carried out by the Austrian police in 2014. Police checks intensified in November 2014, when daily joint patrols with Austrian, German and Italian officers on international trains began.

Austria and Germany have attempted to isolate themselves from the refugee crisis in the Mediterranean by increasingly monitoring their borders and putting pressure on Italy to help them keep migrants out. The Italians reluctantly cooperate but also try to limit the responsibility imposed on them because of Italy's location. Many refugees cross the Brenner Pass only days after arriving in Sicily, where they should have been registered and entered into the EURODAC database to prove Italy's responsibility for them under the Dublin Regulation. Authorities at reception centres, however, do not hinder new arrivals from leaving before they are fingerprinted and registered, and implicitly encourage the departure of those most likely to obtain asylum elsewhere.

### Dublin versus Schengen

Italy has drawn criticism from northern European countries for its lax approach towards Dublin rules. At the same time, the three-nation patrols on Munich-bound trains probably violate the Schengen Borders Code, which regulates how Europe's internal borders are to be managed. According to the Code, police activities that "do not have an effect equivalent to border checks" are permitted as long as they "do not have border control as an objective ... and are carried out on the basis of spot-checks".<sup>1</sup> Police officers' daily presence on trains heading north amounts to more than spot-checks but one train per day is usually left unchecked, leaving room for a creative interpretation of Schengen rules.

Another example of how southern and northern European countries work against each other using (or ignoring) mechanisms designed to foster cooperation is the way in which 'Dublin transfers' are handled. Migrants who can be proven to have first arrived in a different country can be returned there as a 'Dublin case'; to do so, a request must be submitted to and accepted by the asylum authorities of the receiving country within a certain period. However, Dublin cases whom Austria decides to return to Italy are periodically let off unmarked Austrian police buses at the Brenner, at a roundabout right by the border at the edge of the town, completely bypassing the formal return procedure.

The fact that EU member states try to outsmart each other and the regulations they have agreed on together is the ultimate proof that the current asylum system does not and cannot work. Making matters worse is the fundamental incompatibility of the Dublin Regulation with the Schengen Agreement. Full implementation of one does not allow full implementation of the other. In practice, both are being circumvented as the number of irregular migrants arriving in Europe has rapidly increased.

Immigration hardliners throughout Europe have called for the reintroduction of pre-Schengen border controls in order to keep migrants out of their own countries. It is assumed that closed borders will deter migrants, convincing them to stay in the southern European countries they want to leave. However, to those who have crossed deserts and seas to flee conflict and deprivation, border patrols are merely another obstacle to overcome en route to a better future. Making life difficult for them at the Brenner or elsewhere will only delay their arrival, making it more costly and more dangerous, but will not prevent it.

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1. <http://tinyurl.com/SchengenBordersCode>

## Abuses at Europe's borders

Duncan Breen

**Refugees and migrants have been regularly subjected to widespread rights violations by officials at some European borders. The EU needs to allow more legal avenues for people seeking protection to reach Europe safely.**

In the absence of a consistent policy response implemented across all European Union (EU) Member States, the burden has largely fallen on states at Europe's external borders to receive, screen and process the thousands of people arriving as well as to reduce irregular migration. In response, some Member States at those borders have developed a series of measures to try to reduce the numbers crossing irregularly. These measures range from the formal – such as the construction of fences and deployment of additional police along the borders – to the informal – including the use of violence and push-backs into neighbouring states. Despite ample evidence of these abuses taking place at various points over at least the past three years, few concrete steps have been taken by the European Commission to hold EU Member States accountable. In spite of calls for investigations by the United Nations High Commissioner for Refugees (UNHCR), human rights groups and Council of Europe Human Rights Commissioner Nils Muižnieks, these practices have continued largely unabated, in violation of international and European law.

### Push-backs

Push-backs constitute irregular returns of refugees or migrants to neighbouring states from within a state's territory without any form of individual screening, or rejection at the border of people seeking international protection. In addition to potentially resulting in direct or indirect *refoulement*, push-backs also violate the European Convention on Human Rights' prohibition on collective expulsions of non-nationals. In a consistent pattern,<sup>1</sup> from October 2012 onwards refugees and migrants attempting to cross from Turkey to Greek islands reported that their boats were intercepted and disabled by boats carrying Greek officials, and were towed back

to Turkish waters. Some say they were beaten and robbed by men in masks during these interceptions, while others were removed from the Greek island they had managed to reach and were taken back and left in Turkish waters. At the land border, people frequently reported being taken by Greek police back to Turkey across the Evros River after having earlier crossed the river in small boats. In 2014, UNHCR's Greek office reported that it had documented credible allegations of 152 separate push-backs in 2013 and 2014. In the same period, UNHCR made nine written representations to Greek authorities on the subject but only received one response, which simply denied the allegations.<sup>2</sup> Reports of push-backs at sea appeared to stop for several months in 2015 but have again resumed since late July, while push-backs at the land border continued to be reported in 2015.<sup>3</sup>

In Bulgaria, following a rise in numbers of people crossing irregularly in September and October 2013, multiple push-backs by Bulgarian authorities at the border with Turkey were documented.<sup>4</sup> Some of those who were forcibly returned to Turkey alleged that they were beaten and that their money and phones were stolen. In March 2015, UNHCR called for an investigation after two Iraqi men died following an alleged push-back from Bulgaria.

In Spain, NGOs have filmed Spanish officials beating people off the fence at Melilla and subsequently pushing them back to Morocco. In October 2014, Spanish officials were filmed beating and pulling a Cameroonian national to the ground from the fence.<sup>5</sup> The apparently unconscious man was then carried back to Moroccan territory through a gate in the fence and left there. In August 2015, a Spanish court dropped charges against the eight policemen involved, citing lack of evidence. Spanish authorities were

also accused of contributing to the deaths of at least 13 people in February 2014 by firing rubber bullets and tear gas at them as they swam from a Moroccan beach to Ceuta.

As people move onwards from Greece to other EU destinations, human rights groups have also documented push-backs from the Former Yugoslav Republic (FYR) of Macedonia to Greece and from Serbia to FYR Macedonia.<sup>6</sup> In July and again in August 2015, FYR Macedonia temporarily sealed its border with Greece. In August 2015, as numbers at the border swelled to around 3,000 people, authorities there tried to disperse them by firing stun grenades and tear gas into the group, which included many small children, injuring several. Police and military were also filmed lashing out at refugees with batons. In September, similar scenes were repeated as Hungarian police clashed with refugees and migrants after Hungary closed its border with Serbia.

In addition to restrictions at European borders, EU Member States have also put in place other measures such as agreements with countries of origin and transit to prevent departures, the use of detention as a deterrent, and readmission agreements to facilitate returns of irregular migrants to neighbouring countries. However, despite efforts to restrict entries at particular points, people continue to try to enter Europe and routes simply shift accordingly, sometimes to other EU states. For example, following measures to restrict entries at the Turkey-Greece land border in August 2012, more people began to cross to Greece by sea and rising numbers began to enter Bulgaria; and following Hungary's closure of its border with Serbia, people diverted to Croatia.

### Legal access

Despite widespread evidence of violations at these borders, EU institutions and Member States have not taken effective steps to halt the abuses. At the same time, the countries concerned continue to receive annual allocations of millions of Euros from the Internal Security Fund Borders and Visa instrument to strengthen border control without any conditional requirement to

develop accountability mechanisms to address abuses at borders. Instead, redress has been sought through the European Court of Human Rights, which has proved an effective but belated mechanism to bring an end to push-back policies.

From a refugee protection perspective, greater access to ways to legally enter Europe would prevent people who have fled persecution and conflict from undertaking risky journeys, enduring abuses by smugglers en route and by government officials at borders, and would significantly reduce the loss of life each year. Creating more legal entry channels including for Syrians – currently the majority of those entering Europe and a group widely recognised in Europe as refugees – could alleviate much of the current crisis. It could also enable better management of entry and movement and could serve as a pilot for other nationalities.

This can be done in multiple ways, including by ensuring that protection-sensitive entry systems are in place – measures whereby officials protecting EU borders are able to identify people who may be in need of international protection and grant them entry in order to access the asylum system. Greater use could also be made of embassy processing in countries such as Turkey, Lebanon and Jordan to issue humanitarian visas or visas for family reunification to permit Syrians to travel to specific EU countries and seek protection there (although embassies would require extra capacity to process larger numbers).

Precedents for both exist. For example, both Ireland and Switzerland launched family reunification programmes for Syrians in 2013 with Ireland's short-term programme granting visas to 111 people, while the Swiss programme has granted nearly 4,700 visas as of November 2015. Improved access to family reunification mechanisms for other nationalities is also needed. Precedents also exist for the granting of humanitarian visas in 15 other EU states, including in France, which has granted 1,880 asylum visas for Syrians since 2012. Germany has also pledged 18,500 places through an individual

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sponsorship programme in addition to 20,000 humanitarian admission places.

Other proposals to enable greater legal access to protection in Europe for those seeking asylum include the removal of mandatory visa (and transit visa) requirements for Syrian nationals (as was previously done by some EU states for refugees fleeing war in the former Yugoslavia), medical evacuations and academic scholarships, and increased use of humanitarian admission and resettlement in which UNHCR – rather than an embassy – is responsible for the initial processing. The EU could also implement its Temporary Protection Directive for the first time, especially when the numbers arriving are overwhelming the capacity to process asylum applications in a reasonable timeframe.

At the same time, it is critical that the capacity of Member States at the EU's external borders is boosted to enable them to provide adequate reception, undertake appropriate asylum procedures, and develop a realistic

possibility of integration for refugees. Better funding support for asylum systems will reduce states' incentive to resort to irregular and illegal practices at borders to keep asylum seekers out. What is perhaps missing most is political leadership and frank dialogue among European leaders about how best to respond to the needs of desperate people who will not be deterred by more fences or abuses at borders.

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1. Documented by Pro Asyl and Amnesty International <http://tinyurl.com/ProAsyl-PushedBack> and [www.amnesty.org/en/documents/EUR25/004/2014/en/](http://www.amnesty.org/en/documents/EUR25/004/2014/en/).
2. [www.refworld.org/docid/54cb3af34.html](http://www.refworld.org/docid/54cb3af34.html)
3. [www.hrw.org/news/2015/10/22/greece-attacks-boats-risk-migrant-lives](http://www.hrw.org/news/2015/10/22/greece-attacks-boats-risk-migrant-lives) and [www.amnesty.org/download/Documents/EUR0325442015ENGLISH.PDF](http://www.amnesty.org/download/Documents/EUR0325442015ENGLISH.PDF)
4. <http://tinyurl.com/HRW-ContainmentPlan>
5. <https://vimeo.com/109091397>
6. [www.amnesty.eu/content/assets/Reports/Europes\\_Borderlands\\_Balkans.pdf](http://www.amnesty.eu/content/assets/Reports/Europes_Borderlands_Balkans.pdf) and [www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers](http://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers)

## Melilla: mirage en route to Europe

Frida Bjørneseth

**Among those who have reached Melilla, there seems to be no consensus as to whether they see themselves as being in transit in Europe or still in Africa.**

The exclave of Melilla, a 12-km<sup>2</sup> piece of Spanish territory located on the Mediterranean coastline of north Africa, has a border with Morocco. For some, this Europe-outside-Europe represents a way to pass through the walls of Europe.

Due to a large number of unauthorised entries, the border is now heavily fortified with three fences, six metre-high constructions with barbed wire on top and guards patrolling at the bottom. The increased reinforcement of the borders has not stopped migrants from crossing it, however. The majority of those who do cross into Melilla stay in a state-run centre known as the Centro de Estancia Temporal de Inmigrantes (CETI), a temporary stay centre

for migrants in transit run by the Spanish Ministry of Employment and Social Security. It is usually there that their cases will first be processed, regardless of whether their case is one of asylum or possible deportation.

The demographics of the centre are diverse. The two largest groups are sub-Saharan Africans and Syrians, with a broad range of inter- and intra-group differences. In spite of this diversity, the major factor we found that bound them all together was their waiting and the consequent all-pervasive uncertainty. No one could tell how long they would have to wait at the CETI, and few knew what would greet them when they left for mainland Spain – a voyage and concept referred to as the *salida*, the exit.

### The effect of uncertainty

A result of this uncertainty was the creation of explanations discussed among the migrants. With little transparency as to the processing of cases, theories were common – and occasionally quite elaborate, stories or rumours that allowed our informants to snatch back some degree of awareness of what was happening to them and why. Lack of transparency and information does not leave an empty space without knowledge but rather creates a pool of theories and explanations to fill in the holes in the logic of uncertainty.

While it was agreed that one could do little to speed up the process of waiting, there was a widely shared belief that misbehaviour would prolong the stay. One informant said: “As soon as you misbehave, the authorities will punish you. They can expel you from the CETI, for days or for hours. They take your card so that you are denied access. Making trouble might postpone your *salida*.” Regardless of whether this sanctioning was carried out by the Spanish authorities or not, it was nonetheless a fact in the eyes of the CETI residents, shaping their behaviour in ways which they hoped would lead to a swift *salida*.

Another factor shaping the perception of transit was, not surprisingly, the amount of information they possessed. Those who seemed to have the biggest advantage in terms of knowledge were those who either had networked with other migrants online, or who had families who had already been through the journey to Europe.

While Sub-Saharan informants, excluding those with higher education, expressed that they were simply on their way to places where they could find work, Syrian informants to a much larger degree could point to specific geographic destinations and how they would get there. In line with the Dublin Regulation, the first country of arrival is the one responsible for the Asylum Determination Process – in this case, Spain. In spite of this, not all planned to spend time in Spain once they reached the mainland. Some informants were convinced that some European countries would not send them back to Spain. As one Syrian put it: “Germany doesn’t care about the fingerprints.” This perception of the system

as not rigid, and the possibility of what a young lawyer from Damascus translated as “breaking the fingerprint”, could be seen as a way of maintaining the picture of mobility.

One of our informants admitted that: “It is the pictures we see that make us dream.” All our informants had an idea of the ‘Europe’ they were on their way to. However, Melilla did not represent the Europe they were going to. They were in Africa because they were not in Europe; but Melilla is a part of Spain, not Morocco.

Rejecting Melilla as a European town can be seen as an articulation of hope, as illustrated in an interview we conducted with a Syrian Kurd. He had left his family in Iraqi Kurdistan and travelled alone to enter Europe. His initial attempts to enter through the Bulgarian border had resulted in Bulgarian police officers taking all his belongings and pushing him back. He then flew to Algeria and walked the rest of the way to the Moroccan city of Nador. Crossing the Spanish-Moroccan border took four attempts. As he arrived at the CETI, he described being disappointed by the conditions he faced: “There is no peace. I am treated like a dog by the CETI staff.” However, instead of then being disillusioned by such inhumane treatment in Europe, he explained it by not having reached Europe yet: “Melilla is not Europe.” The hope of ‘Europe’ as a peaceful destination remains as a mirage on the horizon, enabling him to keep looking forward to something which finally might reward him for his struggles.

Adherence to the notion of Melilla as not Europe appeared to serve as an explanation of things not yet being good but holding potential of a better situation once they finally reach the ‘real’ Europe. The demotivating unpredictability of the present can only be endured because of the promise offered by the future.

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## Search and rescue in the central Mediterranean

Hernan del Valle, Rabia Ben Ali and Will Turner

**Although people are aware of the risks of the sea crossing, nothing can really prepare them for the experience.**

In 2015 alone, 140,000 people have made the perilous journey in what is known as the Central Mediterranean route, a stretch of sea that lies between Libya and Sicily. Many of them had written the phone numbers of relatives back home on their clothes, forearms or life vests, in case their boat capsized and their bodies were recovered.

**John**<sup>1</sup> is an Eritrean boy rescued off a small wooden boat packed with 323 Eritreans at the beginning of September 2015. He risked his life at sea along with his mother and little brother, having fled persecution by an oppressive regime back home. John speaks very good English and is mature beyond his years. He has seen too much for his age. He is terrified. He is just nine years old.

**Grace** is from the Democratic Republic of Congo. She was rescued in August from a rubber dinghy packed with 112 sub-Saharan Africans. She left her country after enduring years of conflict which affected her village in the province of North Kivu. She had been sexually assaulted by armed militias. Before getting on the boat she had crossed the Republic of Congo (Brazzaville), Cameroon, Nigeria, Burkina Faso, Niger and Libya. Along her journey she was raped again while in the hands of smugglers. She is 28 years old and travelling alone.

**Ahmed and Amira** are a young couple from Damascus in Syria. They were rescued in May from a wooden boat packed with 563 people of many different nationalities. They were holding their two young children in their arms, as tightly as they could. The family has been through four years of war, from the barrel bombs of the regime to the brutality of the jihadist group that moved in to control the neighbourhood. They travelled to Jordan first, then to Egypt. Neither of those countries offered them opportunities for survival. So they decided

to rely on smugglers to take them into Libya and attempt the sea crossing to Europe.

Between May and September 2015, and only in that area of the Mediterranean, Médecins Sans Frontières (MSF) vessels rescued and provided assistance to over 16,000 people from 20 different countries. John, Grace, Ahmed and Amira were among them.

MSF has long-standing programmes in most of the countries that people are fleeing from, and is often first-hand witness to the conditions that people report as reasons forcing them to flee their homes. While much of the European public debate hinges on a distinction between 'refugees' and 'economic migrants' the distinction is very difficult to sustain in reality. Whatever their backgrounds and places of origin, all of them share one motivation: the hope for a safer and more prosperous future. The motivations that people cite are varied and often multifaceted, from conflict, oppression and political persecution to widespread and crippling poverty. These reasons are often combined together, and are powerful enough to push people to gamble their lives on journeys managed by criminal smuggling networks.

The stories we hear from people from Syria, Afghanistan, Eritrea, Somalia, Yemen, Sudan, Iraq and Pakistan are of having fled violence, armed conflict, fear of forced recruitment, persecution, oppressive regimes or arbitrary imprisonment. Then there are also large numbers of people from Sub-Saharan and West African countries like Nigeria or Mali, who, having been immigrants in Libya, are now fleeing from there because of harassment, violent assault, rape, forced labour, detention and kidnapping for ransom by armed groups and smugglers alike.

### The boat trip

Although people are aware of the risks of the sea crossing, nothing can prepare

them for the experience. Transported to the Libyan coast in trucks, people are loaded into boats in the dead of night, sometimes at gunpoint. Boats are systematically overloaded to maximise profit for the smugglers, often taking ten times more than their actual capacity. For most, there is no lifejacket and they cannot swim. People packed under the deck sometimes do not realise how dangerously overcrowded the boat is until the light of morning. This is when the precariousness of the situation becomes clear, and fear and panic set in.

Once on board, people face several risks. The first and most deadly threat is of capsizing. A large wave or a movement of people from one side to another in a boat so overladen can provoke sudden capsizing and inevitable mass drowning within minutes. When people are packed under the deck, they are exposed to exhaust fumes from the engine and we have seen cases of death by asphyxiation. The majority of deaths, of which over 2,800 have occurred to date in 2015 in the central Mediterranean, are related to these factors.

MSF boats work in coordination with the Maritime Rescue Coordination Centre in Rome to rescue and assist people. Those who are rescued are often found to be suffering from exhaustion, mild to moderate dehydration, general aches and pains, infections, chemical burns from fuel contamination on clothing, scabies and small injuries. Injuries typically relate to violence sustained in Libya and range from gunshot wounds or lacerations to broken bones. Mostly the injuries are weeks old but can also be newly inflicted, requiring more urgent treatment, and many need referral to medical facilities in Italy. There are always women and children, pregnant women, and unaccompanied minors who make incredibly dangerous journeys on their own. We try to provide particular care and support for them and for survivors of sexual violence.

A common issue is the psychological distress that people have developed over a period of time. This is a roller-coaster of emotions, from leaving their home and family, the land journey to Libya, the

abuse and turmoil of Libya, the exposure to smuggling gangs, being moved around like traded animals. When people are brought to the safety of the rescue boat there is often an emotional outburst of relief. People can be totally overcome and overwhelmed. Our immediate focus is to ensure people have their basic needs met: water, food, medical care, dry clothes and reassurance that they are safe and they will be taken to an Italian port.

### What's needed?

The political narrative across many European countries has been about reinforcing policies that are known to exacerbate the crisis rather than about assisting and preventing people from putting themselves through much suffering and risk. For the central Mediterranean, the focus of the response remains only the symptoms – targeting the smuggling networks and the boats – rather than removing the restrictions on asylum and migration which put people into the hands of smugglers in the first place. Provision for safe and legal alternatives for people fleeing to seek safety and protection and more progressive migration regimes have been proposed.<sup>2</sup> Meanwhile a proactive and preventative approach to search and rescue at sea is essential. The longer people are exposed to the terrible conditions on board, the sooner people's health will deteriorate and the higher the risk of death at sea.

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1. Names of individuals mentioned in this article have been changed.

2. See report by the Special Rapporteur on the human rights of migrants, François Crépeau, to the UN General Assembly, May 8 2015. *Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants.* [www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/29/36](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/29/36)

## Irregular migration by sea

Irregular migration by sea is not a solely Mediterranean phenomenon; it is also frequent in the Caribbean, where mixed migration – including trafficking and smuggling – among the multitude of island nations and particularly to the United States is an increasing phenomenon; in the Bay of Bengal and the Andaman Sea, in the direction of Indonesia, Malaysia, Thailand and Australia; and in the Red Sea, where it used to be mainly Somalis and Ethiopians going to Yemen, and now is also Yemenis going in the opposite direction. In all of these cases migration at sea tends to involve unseaworthy and overloaded craft, and with refugees and asylum seekers using the same routes, and the same craft, as other migrants.

All of these factors lead to this phenomenon involving a range of different actors with different interests, each viewing it through a different lens. They include state structures like immigration and border protection agencies, private-sector actors such as fishing vessels and commercial shipping, international and humanitarian organisations, regional bodies like Frontex, civil society organisations, and criminal syndicates. At the core are the networks of different kinds of migrants and their families, and communities in countries both of destination and origin.

Complicating rescue at sea is the fact that states must legally implement a process of distinguishing between those who are refugees and those who are not. Rescue must anyway lead to safe disembarkation for all of them, together with appropriate support for refugees and asylum seekers, trafficked persons and unaccompanied or separated children.

### See:

- UNHCR's Global Initiative on Protection at Sea [www.refworld.org/docid/53abd14d4.html](http://www.refworld.org/docid/53abd14d4.html)
- UNHCR (2011) Djibouti Summary Conclusions on distress and rescue at sea, tools for incidents involving asylum seekers and refugees [www.refworld.org/docid/4ede0d392.html](http://www.refworld.org/docid/4ede0d392.html)
- International Maritime Organization (2004) Guidelines on the Treatment of Persons Rescued at Sea [www.refworld.org/docid/432acb464.html](http://www.refworld.org/docid/432acb464.html)

### Articles related to protection at sea previously published in FMR

#### The challenge of mixed migration by sea [2014]

Judith Kumin

*Much more needs to be done to respond to irregular maritime migration in a way which protects fundamental rights and respects human dignity but the political will for this appears to be lacking.*

[www.fmreview.org/crisis/kumin](http://www.fmreview.org/crisis/kumin)

#### Aspects of crisis migration in Algeria [2014]

Mohamed Saïb Musette

*Movements of migrants are only partially covered by international instruments and while the Algerian authorities certainly have opportunities to protect this stream of people, no agreements (bilateral or multilateral) are in force to do so.*

[www.fmreview.org/crisis/musette](http://www.fmreview.org/crisis/musette)

#### Protection challenges of mobility [2014]

Melissa Phillips and Kathrine Starup

*It is easy to say that people fleeing Syria should stay in camps or satellite cities but people move on for a variety of reasons, and programmes and services must adapt to assist them.*

[www.fmreview.org/syria/phillips-starup](http://www.fmreview.org/syria/phillips-starup)

#### From commitment to practice: the EU response [2012]

Madeline Garlick and Joanne van Selm

*Events in North Africa in 2011 transformed the pattern of boat arrivals in Europe. The EU's response indicates that more is needed to translate a commitment to solidarity from limited aid and statements of principle into practical reality.*

[www.fmreview.org/north-africa/garlick-vanselm.html](http://www.fmreview.org/north-africa/garlick-vanselm.html)

**'Identity unknown': migrant deaths at sea [2011]**

Stefanie Grant

*Political unrest in North Africa has led to a resurgence in irregular migration to Europe and an increase in migrant deaths at sea, yet there is still no framework for identifying those who die or recording their numbers.*

[www.fmreview.org/technology/grant.html](http://www.fmreview.org/technology/grant.html)

**Satellite phones help rescue of refugees [2011]**

Virginia Signorini

*The first phone call came at 04.30 in the morning one day in 2006. They were in trouble out at sea in the Mediterranean and were calling for help.*

[www.fmreview.org/technology/signorini.html](http://www.fmreview.org/technology/signorini.html)

## Safety, rescue at sea and legal access

Stefan Kessler

**If it is to live up to its own values, the EU needs to step up search and rescue operations in the Mediterranean and open up legal means for access to protection in Europe in order to avoid the need for risky journeys across the Mediterranean.**

Promoting human rights and protecting human dignity are among the core values of the European Union (EU), whose institutions are legally bound by the Charter of Fundamental Rights where these values are enshrined. That is why saving and protecting the lives of migrants must be a priority for the EU and why the EU needs a comprehensive search and rescue operation. However, despite calls from NGOs to prioritise saving human life, the EU's answer to the Mediterranean tragedies has focused more on preventing migrants from coming to Europe than on saving lives.

Following two incidents in October 2013, Italy deployed the Mare Nostrum operation near the Libyan coast which helped to save tens of thousands of lives. Unfortunately Mare Nostrum was shut down in 2014. It has been replaced by the Frontex Triton operation which covers a smaller geographical area, has much fewer resources and focuses more on border surveillance than on saving lives. Search and rescue is mostly provided by the Maltese and Italian navies and by the commercial ships which regularly answer the emergency calls of boats in distress. NGOs such as Médecins Sans Frontières, the Migrant Offshore Aid Station and the Norwegian Refugee Council also supply their own boats for search and rescue.

However, without a structured European-wide operation, there is a huge risk that at

least some boats in distress will not be helped in time and more migrants will lose their lives while trying to cross the Mediterranean. What is needed is a search and rescue operation similar to the Italian Mare Nostrum, which would cover a wide geographical area and which would benefit from enough resources. Instead, European leaders focus more on fighting smugglers and on possible military action in the Mediterranean to destroy unseaworthy vessels.

### Legal and safe routes

Moreover, in order to avoid more deaths in the Mediterranean, European leaders need to think about opening up more legal and safe routes for forced migrants. There are concrete proposals on the table; in November 2014, several faith-based organisations issued a joint policy paper on safe and legal paths to protection in Europe.<sup>1</sup> This paper calls for the development of a 'toolbox' to meet the specific needs of the different groups of persons who are forced to flee war, indiscriminate violence, political persecution and other human rights violations.

Among the 'tools' is the resettlement of refugees who have already been recognised by UNHCR. More places could be offered as an annual resettlement quota for the EU (such as 20,000 places per year by the year 2020, as proposed by the Resettlement Saves Lives Campaign<sup>2</sup>). Even these would be

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very small numbers for the entire EU. While resettlement and humanitarian admission would remain voluntary for Member States, the EU could offer – in addition to funding – expertise and policy coordination to encourage pledging of higher numbers.

Another tool could be an improved facilitation of family reunification. Family life is of great importance for the well-being of refugees and crucial for their successful integration. The EU Court of Justice has stressed that the aim of the applicable EU laws is to enable family life and that the law must be interpreted and applied in this light. An application of EU law at national level meeting these requirements and refraining from unjustified restrictions would enable a considerable number of persons in need of protection to come to Europe in a safe and organised way and to join relatives already living there (who can support them in building a new life). The concept of ‘family’ should also be interpreted more broadly to include not only the nuclear family but other relatives as well.

In addition to these measures, for some groups of forced migrants the issuing of a humanitarian visa could provide an effective route to protection. Where persons can access an embassy or consulate of a Member

State, be it in their country of origin or in transit countries, they could be provided with a visa authorising them to travel to this State. Upon the applicant’s arrival in the country of destination, the usual asylum procedure would follow. The issuing of humanitarian visas under this model should not need to depend on a positive assessment of the likely outcome of the application.

We also strongly recommend taking into consideration the temporary lifting of visa requirements for certain groups; this would allow persons seeking protection to travel safely and spend their money on ordinary means of travel rather than paying smugglers.

Legal foundations for these proposals can already be found in existing EU legislation and all these existing elements should be further developed and brought together to form a comprehensive set of legal provisions and policies to fit the circumstances. Then the European Union would be living up to its own standards and values.

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[www.jesuiten-fluechtlingsdienst.de](http://www.jesuiten-fluechtlingsdienst.de)

1. [http://jrseurope.org/news\\_detail?TN=NEWS-20141120064619](http://jrseurope.org/news_detail?TN=NEWS-20141120064619)
2. [www.resettlement.eu/page/resettlement-saves-lives-2020-campaign](http://www.resettlement.eu/page/resettlement-saves-lives-2020-campaign)



UNHCR/Achilleas Zavalis

Arriving on Lesbos after crossing by boat from Turkey.

## Migrant arrivals and deaths in the Mediterranean: what do the data really tell us?

Frank Laczko, Ann Singleton, Tara Brian and Marzia Rango

**The policy and media gaze focuses on numbers of migrant arrivals and deaths. There are problems in the data for both categories.**

When looking at numbers of arrivals and deaths in the Mediterranean, it is important to ask how robust the data are and what they represent. If we are to frame and inform more accurately the policy challenges facing Europe, it is crucial that data are of good quality and as complete as possible and that their limitations are fully understood.

### Arrivals data

Headline figures suggesting that over 900,000 migrants arrived on the shores of Mediterranean countries in 2015 have captured the attention of media and policymakers. These arrivals data are calculated from official sources and are usually collected at borders. They can include estimates of illegal border crossings, attempts to cross a border, arrests, refusals of entry, initial registrations of intention to seek asylum, and actual asylum applications. The data are sometimes a mix of flow and stock data, and can refer to different time periods. Furthermore, the use of administrative sources means that data may reflect changes in migration patterns but also changes in border patrol practices. Data may relate to numbers of events, rather than numbers of individuals, thus possibly double-counting when, for example, an individual is apprehended twice. In other instances, under-counting may occur when migrants cross a border undetected. Even in just one country, combining data from different sources produces only an approximation of a measure. When the numbers for different countries are combined, the uncertainties are compounded.

However, the increasing use of the same sources and definitions over the last few years means that there is some consistency and there is no doubting the magnitude of the increase in arrivals compared to recent

years. The figures more than quadrupled from 220,000 in 2014 to nearly 900,000 during the first eleven months of 2015.<sup>1</sup> Regularly collected data on the socio-economic profile of migrants arriving in Europe are necessary to design sensible policies. The arrivals data give us a picture of how many arrive and where they have come from, but there are few media reports on the skills and education of the migrants – which perpetuates the impression that is often given in the media that Europe has to absorb a rising number of people fleeing conflict and poverty, who have relatively little to offer the continent. Without minimising the need for protection, the reality is that many of the migrants are more skilled and educated than is commonly perceived.

### Migrants who die are rarely identified

As in 2014, the Mediterranean crossing has proved extremely dangerous, taking more than 3,550 lives in the first eleven months of 2015, already several hundred higher than the total for 2014.<sup>2</sup> Despite the increase in flows on the Eastern Mediterranean route, the Central Mediterranean route remains by far the more dangerous of the two. In 2015, over 80% of deaths in the Mediterranean occurred on this route, with about two deaths per 100 migrants attempting the crossing.<sup>3</sup> In contrast, at the time of writing, the Eastern Mediterranean has seen over 590 deaths, or around two deaths per 2,500 travellers.<sup>4</sup>

While the data we have show a devastating loss of life, the numbers themselves, and methodologies used in their collection, are riddled with holes and challenges. There are a number of reasons for this; several are inherent to the nature of irregular migration, while others relate to the methods of data collection and sources of information utilised. Those inherent to the

nature of clandestine movement include the lack of detailed passenger lists on migrant boats, the tendency for migrants to dispose of identity documents, and the convoluted journeys migrants take, often through multiple countries. Still other challenges are faced when tracking deaths along migratory routes in other parts of the globe, mainly due to the remoteness of terrain travelled.

Data on deaths are not collected by Frontex nor by national governments in a systematic way, and data collected by coast guards tend to present almost no demographic information. Therefore, a variety of sources must be used to piece together a more complete picture. These can include the media and those international organisations and NGOs involved in receiving survivors. In other areas of the world, data sources on migrant deaths are far scarcer, with almost all information coming from the media, NGOs and, at times, coroners' offices. There is no standard approach to collecting data on deaths, nor a common definition of what constitutes a migration-related or border-related death. Because of all these challenges, figures can differ between organisations like the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees, and also between NGOs in Europe.

What data do exist are highly incomplete, lacking much basic demographic information for each individual, including nationality, age, sex, cause of death, and whether the body is identified or not. This is in part due to the lack of information – the majority of bodies are lost at sea with only rough estimates available concerning where they are from and their genders. The fact that numbers of the missing are usually estimates based on the testimonies of survivors who often do not know how many people were on board a boat also adds to discrepancies between data published by different organisations.

When entire groups die at sea, families back home may not know if their relatives made it to the coast, perished in the sea crossing or lost touch for other reasons. It is not known how many deaths go unreported. Even when estimates of the

missing are available following shipwrecks in the Mediterranean, bodies are more than often not found. Even when considering only the bodies recovered from the sea, a recently launched database tracking deaths in the Mediterranean since 1990 has found that of the bodies brought to southern Europe, almost two thirds had not been identified.<sup>5</sup> There has been little discussion of how to improve identification and little coverage of the implications for the families left behind, who often do not know if their relative is dead or alive.<sup>6</sup>

### In conclusion...

Data on migration are increasingly cited in the media and used to frame migration policy discussions in Europe. Because the way in which these data are presented is likely to have an influence on public perceptions of migration in Europe and on policymakers' responses, it is important that they are presented clearly and accurately.

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1. Data for 2014 are from Frontex; data for 2015 are an IOM estimate based on data from relevant governments.
2. IOM Missing Migrants Project <http://missingmigrants.iom.int>
3. IOM Missing Migrants Project; arrivals data are an IOM estimate based on data from relevant governments.
4. IOM Missing Migrants Project
5. Vrije Universiteit Amsterdam Human Costs of Border Control project [www.borderdeaths.org](http://www.borderdeaths.org)
6. See Grant S (2011) 'Identity unknown': migrant deaths at sea', *Forced Migration Review* issue 38 [www.fmreview.org/technology/grant.html](http://www.fmreview.org/technology/grant.html)

## Afghan and Somali (post-)conflict migration to the EU

Nassim Majidi

**There are insufficiently recognised drivers of migration for Afghans and Somalis to Europe, caused by decades of conflict. Although officially listed as ‘post-conflict’, the reality is very different.**

Somalis and Afghans still figure in the top ten nationalities of asylum-seeker numbers recorded in the European Union (EU). Over one third of asylum seekers from both countries in 2014 were not granted refugee status – but nor were they deemed to have the option of a safe return.<sup>1</sup> The mental health of Afghan asylum seekers in Europe and returnees to Afghanistan is at risk and they require psychosocial assistance, while Somalis are forced into a cycle of irregular migration at a young age. These are the less visible drivers of Afghan and Somali (post-)conflict migration to the EU.

The term ‘post-conflict’ has been used to describe the economies and governments of Afghanistan and Somalia and has been used by EU states to turn down asylum requests lodged by Somalis and Afghans. The UK government’s reasons for refusals include the ‘stability’ and ‘sufficiency of protection’ available in Afghanistan, taking as proof the existence of humanitarian and development aid programmes funded by the EU. Their existence should entail that protection is provided at home – and hence is not required abroad.

The migration reality is different. The United Nations High Commissioner for Refugees recorded 77,731 Afghan asylum claims in Europe in the first six months of 2015, triple the number in 2014. Many of the Somalis and Afghans arriving in the EU are youth, that is, men aged between 15 and 24 years of age. Records from asylum applications, court orders and return surveys show an increasingly vulnerable profile among these people. Afghans lodging asylum claims show signs of Post-Traumatic Stress Disorder (PTSD) and other mental health issues, and express the need for psychosocial assistance that is lacking at home. Somalis interviewed speak of not having a choice,

resorting to *tahreeb* (irregular migration) as their only chance to a safe and dignified life.

### Mental health of Afghans

In 2010, Mustafa arrived in France aged 15 to seek protection and medical care, through an asylum application. He was diagnosed with PTSD and schizophrenia in 2011, for which treatment is unavailable in Afghanistan. In August 2015, his asylum claim was denied and France deported him back to Afghanistan. His supporters pointed out the possible extreme danger to a mentally ill Afghan of returning to a ‘home’ where he had no remaining networks.

In June 2015, another young Afghan, Omed, received a more positive response. His family had sought to get him out of Afghanistan as he was the subject of physical attacks and beatings that could have cost his life. Although he had been in the UK since 2011, he had previously been denied asylum. Upon appeal, showing proof of his mental health disorder and PTSD, his inability to live a life in safety in Afghanistan and the lack of official protection available there to him, he was granted refugee status in the UK.

More and more young Afghans arrive in European countries showing clear signs of mental health issues that put them in life-threatening situations at home. Afghanistan has three trained psychiatrists and ten psychologists for a population of over 30 million people<sup>2</sup> and has no extensive psychosocial programmes to support those who have suffered from conflict. Mental health problems and PTSD – the effects of protracted conflict – go unresolved, and in turn engender more violence: mistreatment of and violence against the mentally ill, and discrimination.

Available research suggests that a large segment of Afghan adolescents and youth

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suffer from untreated mental health issues resulting from trauma and stress relating to conflict, displacement, poverty and continued insecurity. Mental health issues are exacerbated by the trauma of displacement, of forced returns and of migration. An analysis of health and safety indicators, in a sample of 2,000 youth surveyed in Kabul, confirm that the situation of deportees is particularly alarming. Deportees are stigmatised, with potentially fatal consequences, particularly for those without economic or social power.<sup>3</sup>

### Irregular Somali migration to Europe

In hundreds of interviews conducted in Somaliland, Puntland and South Central Somalia, every respondent referred to someone – family or friend – who had left through irregular migration to Europe. Our research shows that a major driver is the overwhelming presence of *magafes*, people smugglers, turning forced migration into irregular migration.

Most Somalis will seek safety and opportunities at home first but the continued effects of war, uncertainty and conflict mean a weak economy and families unable to provide for their children. Repeated cycles of forced migration now lead increasingly to the only remaining choice – irregular migration to Europe.

The World Health Organisation (WHO) states that one in three Somalis has been affected by some kind of mental illness – experiencing “beating, torture, rape or have been injured for life”.<sup>4</sup> In addition, both the WHO and Human Rights Watch report that the mentally ill are often chained up or imprisoned. Only five centres provide mental health care services. The majority does not receive such aid and are marginalised and isolated, becoming easy prey for *magafes* promising a better life in Europe.

*Magafes* are a resource and a threat for those who need to claim asylum. *Magafes* have contributed to the rise of irregular migration by enabling young people to leave without payment. They recruit young people and do not ask for money, but when the young people reach their destination the smugglers call the families

and threaten them for payment. The fact that their methods lead to a physical mixing of legal categories – with asylum seekers, refugees and economic migrants sharing the same journey to Europe – complicates protection at the point of arrival.

### An obstacle to protection

Afghans are the largest group of asylum seekers in Norway, and Somalis in Finland and Denmark and among the largest groups of failed asylum seekers being returned. Until 2013, and renewed international investments in the country’s ‘post-conflict’ status, they had higher chances of being granted asylum or subsidiary protection to stay in destination countries. But returns are now being encouraged. Standards for granting asylum to Somalis have been revised, and the suspension of returns has been revoked. Similarly, in Afghanistan, its categorisation as ‘post-conflict’ has meant that it is deemed safe for returns to take place. Although violence and insecurity have risen steadily (especially since 2007), the post-conflict label prevails over security assessments in the field.

Yet the post-conflict label and international interventions mask key protection needs among asylum seekers and migrants: their psychosocial needs, or their falling prey to smugglers and criminals. It is not enough to call their country post-conflict to erase the effects of protracted crises on Afghans and Somalis who face post-traumatic stress disorders, societal ill-treatment and lack of state protection.

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This article is based on research in Europe, Afghanistan and Somalia led by Samuel Hall.

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## Understanding why Eritreans go to Europe

Mogos O Brhane

**Why do Eritreans risk their lives on perilous journeys to Europe? Why don't they stay in neighbouring countries where they could get safety and protection?**

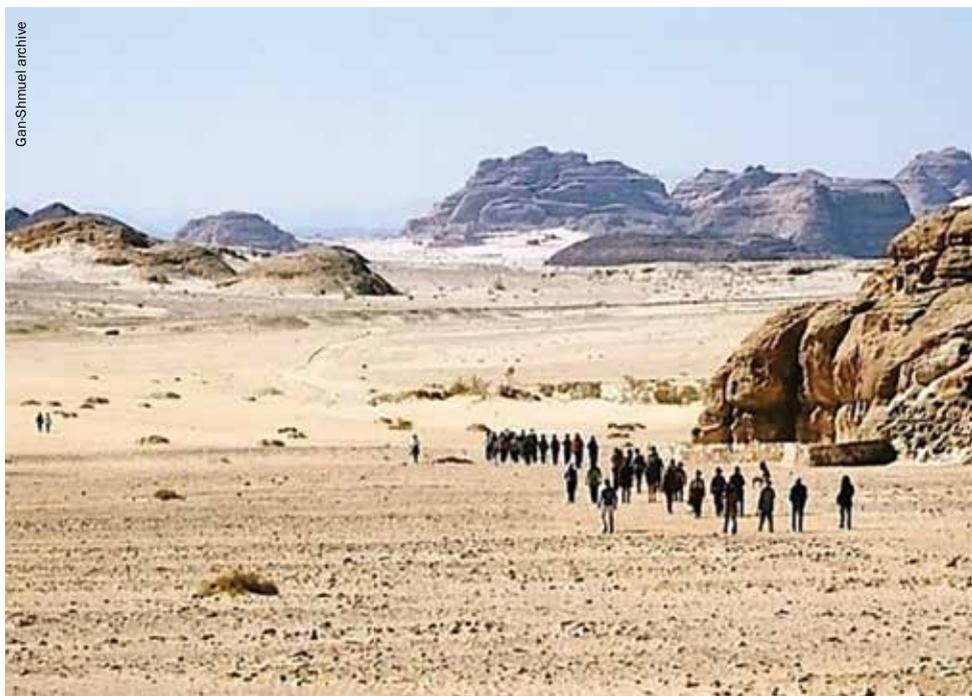
Criticism is growing against EU leaders for failing refugees by neglect at a time of increased number of refugees.

Simultaneously, many questions are being asked as to why people – especially from Sub-Saharan Africa – come to Europe.

Eritreans constitute the second largest group of refugees in Europe and form a significant proportion of those still coming to Europe. Especially since 2001, the human rights situation in Eritrea has shown a rapid and significant deterioration, with the Constitution suspended and no political opinion other than the government's ideology tolerated inside the country. A report issued by the United Nations Human Rights Council details the harsh political

realities in the country and concludes that the country is ruled by fear, not law.<sup>1</sup>

Between 2006 and 2012, Eritreans used to take a route through Sudan (possibly via Ethiopia) and Egypt to reach Israel. However, in 2012 the Israeli government renewed its anti-infiltration law and fenced its border with Egypt in order to deter the flow of African migrants. Egypt was also implementing a shoot-to-kill policy on its borders to prevent African migrants crossing into Israel. These two measures brought about a significant reduction in the number of migrants while leading to a shift to Libya as the main route to Europe. Due to its geographical proximity to Europe and the vacuum created by large-scale violence and political crisis inside



People fleeing Eritrea, crossing the Sinai Peninsula.

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the county, Libya has now become a hub for both migrants and organised criminals who operate in trafficking and smuggling.

### Why Europe?

Interviews conducted with Eritrean refugees in Ethiopia, Sudan and the UK demonstrate that Eritreans are forced to continue their journey because they cannot secure safety and security in Israel, Ethiopia or Sudan. In all three countries, a large number of Eritreans live in refugee camps. Despite the unresolved animosity with Eritrea, Ethiopia hosts 131,660 Eritreans who fled the repressive regime. However, most of the refugees do not wish to stay in the camps, as poor living conditions threaten their survival, or they settle in the cities. The ration distributed to each refugee is below the daily average necessary for any healthy person, leading to malnutrition, especially of children and women. Lack of adequate health facilities and housing and the generally dismal conditions in the camps add to the challenging situation. Eritrean refugees are not allowed to work inside or outside the camps. They spend their time doing nothing but “struggling with boredom and distress”.<sup>2</sup> Even though Eritrean refugees are entitled to resettlement, there are many allegations of corruption by Ethiopian officials undermining this in practice. The inability to provide for the family leaves them with no option but to continue their journey to countries where they think they can ensure their and their families’ survival.

Refugees who flee to Sudan are faced with similar challenges there. As of late 2015, Sudan hosts 125,530 Eritrean refugees, a significant proportion of whom have been settled in various camps and cities for more than three decades. However, since 2006, with a new wave of refugees, Eritreans have begun to be targets of organised criminals who abduct, kidnap and take them hostage in order to extort ransom money from their relatives. Hostages are then trafficked to other criminal groups and the chain of deals extends up to Egypt.

About 41,000 Eritreans and Sudanese nationals live in Israel. However, almost none of them are recognised as refugees. With no

legal status or freedom to move and work, Eritreans are subject to detention by the Israeli authorities following the amendment of the Prevention of Infiltration Law in 2012. Despite opposition by international humanitarian agencies, the authorities have deported around 3,000 Eritrean and Sudanese refugees to Rwanda and Uganda. Once in Rwanda and Uganda they find it difficult to stay as they are subjected to corruption and robbery as a result of the money given to them by the Israeli government to facilitate their removal.<sup>3</sup> Since they cannot return to their country for fear of reprisals, most move on to South Sudan, Sudan and then Libya to enter Europe.

In general, the desperate situation in the above-mentioned countries not only pushes them to move on in the hope of finding better conditions but also aggravates Eritreans’ vulnerability, making them easy prey for smugglers who lure them with false promises of opportunities for leading safe and secure lives in Europe.

Thousands of Eritreans, however, have died while crossing the Mediterranean Sea to reach Europe. To date, there is no legal or safe way to reach Europe. Having landed in Malta and Italy, Eritrean refugees have had once again to escape harsh conditions and border controls and travel on to other parts of Europe. The movement of Eritreans into Europe is just one aspect of their search for a secure and peaceful life, something which was not achievable in the countries neighbouring Eritrea. As long as the reasons for migration are left unaddressed, and their safety and a decent life are unattainable closer to home, desperate migrants will continue to risk treacherous crossings on unseaworthy boats.

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2. Interview with Mehari, Eritrean refugee in Adi Harush camp (true identity withheld)

3. Interview with Teklemariam, Eritrean refugee in UK (true identity withheld)

## No option but Europe

Asylum seekers arriving in Europe are often seen as part of an undifferentiated mass, and the complex stories of how they arrived are often submerged in the effort to control or manage migration. However, many of them are driven to seek protection in Europe only after seeking and failing to find safety elsewhere.

Arriving on the shores of the EU they have crossed a number of countries on their way. Authorities in receiving countries tend to interpret such long journeys as ones in which asylum seekers have had many opportunities to choose, presumably on the grounds that the longer the journey, the more opportunistic and the less justified it becomes.

However, the experiences of the asylum seekers we met, making their way through numerous countries, show that this is not necessarily true; rather than journeys in

which many open doors were passed by and opportunities were forsaken, they were journeys in which asylum seekers were bounced from slammed door to slammed door, with opportunities diminishing at every turn, leaving these individuals increasingly desperate to do anything that they can to find a modicum of safety and stability. Their stories<sup>1</sup> point to the need for effective protection for refugees and to facilitate greater opportunities to access it, both within Europe and beyond.

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## Iraqi refugee households in Jordan: the active search for solutions

Mirjam A Twigt

**For Iraqi refugees in Jordan the decision to leave for Europe is very much influenced by the experience of waiting in the region.**

At the beginning of August 2015, 37 Iraqi refugee families left my neighbourhood in East Amman, Jordan, in order to travel to Europe. After years of waiting for resettlement through the United Nations High Commissioner for Refugees (UNHCR) they decided to take their future into their own hands. Their former neighbours showed me their pictures on Facebook: there they are, their friends on rubber boats, arriving on the shores of Greece. European-mediated representations of refugees find their ways into the refugees' homes. The 'Mediterranean migrant crisis' is their neighbours, friends, sisters and brothers.

The media discourse and the policy responses within and beyond the European Union are warped; building higher fences

will not stop people from searching for a safe future. While Iraqi refugees in Jordan are granted protection, they are denied the right to work, and obtaining Jordanian citizenship is almost impossible. Instead they live in limbo, waiting for something to happen and at the same time actively searching for a solution elsewhere. The overarching idea is that there is no future for them in Jordan and no possibility for peace in (and hence return to) Iraq.

Unable to work, they spend much of their time in front of the television and on their smartphones. What might seem a luxury item for life in displacement is in fact essential since these digital technologies enable them to remain connected as families are dispersed. Iraqi refugee families continuously gather

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UNHCR/Florian Rainer

Iraqi refugee with book still wet from sea crossing from Turkey. Austria, September 2015. Mohammed was a doctor back in Mosul but fled with his family to Aleppo – and from there to Turkey and then to Greece. Now they are living in a volunteer-run shelter in Vienna, Austria, where they hope to seek asylum.

information about refugee policies in Europe from a variety of sources and test ‘facts’ by conversing on a daily basis with people ‘here’ and ‘there’. Iraqi refugees are active in interpreting their situation in Jordan and in strategising about their future.

The recent media attention on refugees has only heated the debate among Iraqi refugees in Jordan on whether and how to go to Europe. What is shown on news channels like Al-Jazeera is double-checked on social media. Facebook is used to check up on friends and family members who have decided to travel, but also to compare possible routes and destinations and to remain informed on shifting immigration policies of Western nation states. Issues of safety and the risks involved are considered, as pictures of people drowning are widely shared. But they also see in televised media many people successfully reaching Greece and travelling onwards.

People who were earlier discussing online how changes in UNHCR’s policy in Jordan would affect them now post to the same groups on how they managed to get to Europe by themselves after years of waiting in vain. The experience of those Iraqis who have travelled to Europe therefore feeds into the experience of those waiting for resettlement in Jordan. Among others, including the new arrivals, it creates a determination to leave

Jordan before they run out of money to travel. Because even if there are legal options to travel, waiting for the paperwork costs money, and without the right to work this proves problematic. Depending on how long they have been in Jordan, most Iraqis have depleted their savings and rely on financial support through social networks or informal employment, which can be risky.

The lack of future options in the region and the on-going strain on the UNHCR system make people feel the need to take their lives into their own hands. This might not be as orderly and smooth as European governments would like it to be but it demonstrates the capacity of displaced persons. The increase in those people arriving ‘unannounced’ in Europe is a direct result of too few resettlement slots and of a region struggling with the intake of refugees.

Forced migrants therefore feel the need to find a future elsewhere by themselves. This does not happen in isolation. Refugees in Jordan are part of a globalised world; they know what is going on in their home country and in the world and process the big media stories into their personal and intimate lives. Waiting in Jordan creates desperation which is contrasted with the images of the journey from Turkey to Greece and onwards from there. Going to Europe is regarded as dangerous but quick and relatively easy. It is a measure taken out of a lack of alternatives; the system meant to support the refugees is broken and will not be fixed by building walls.

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## Tragedy on the way to Europe: a perspective from Africa

J O Moses Okello

**As Europe grapples with the challenges of responding to the arrival of large numbers of migrants, it is vital to keep in mind that the people involved have not left their homes and countries for no reason.**

The current migration from Africa to Europe is a symptom of deeply rooted problems that exist on the continent. While there is some truth to the narrative that some progress has been made and that the economies of some of the countries in Africa are registering growth, the overall picture among the grassroots populations across Africa is rather different. The majority continue to live in abject poverty, cannot access good health care, do not have clean water, are not able to send their children to decent schools, and are unable to pay corrupt government officials to receive services to which they are entitled. The sense of desperation that drives them also to move to Europe can mistakenly appear to be scarcely different from that of those who come from relatively stable countries.

Apart from war and persecution, the current migration to Europe from Africa is driven largely by the huge unemployment that exists on the continent, with an ever expanding human resource-base that subsists in dismal conditions, without hope of improvement. Many young people find themselves with little option but to move to urban centres with the hope that they would find work and live a decent life. They spend years walking the streets in search of employment that does not exist. Without work, and a worthwhile future ahead of them, a sense of hopelessness sets in. This leads them to think that the solution is to be found elsewhere. The rural-urban migration to non-existent urban employment in turn leads to emigration elsewhere. In their perception, Europe offers all the answers to their state of hopelessness. That is, until they reach there and then the harsh reality unfolds before them, with nowhere to sleep, no food, no health care, cold and lonely.

Predominantly young, the people who are on the move are largely of the social media generation. They are 'connected' – they are

ardent watchers of television and listen to international radio broadcasts, all of which come to them nowadays via their mobile phones. When they hear of the economic conditions in Europe as being far better than they are in their own countries, there is a strong temptation for them to leave. This is exacerbated by their compatriots who may have gone earlier and managed to find some work and are remitting some money, however little. To the desperate would-be migrant, this is a measure of success and hence the stream of them who, understandably, are ready to take the trip to also seek employment abroad. The migrants are willing to gamble their lives to get to Europe to seek safety and a better life.

### Some of the solutions needed

Boutros Boutros Ghali, the former Secretary General of the United Nations, once said that "...uprooted people are the product of failure – the failure to resolve ... underlying causes."<sup>1</sup>

First and foremost, the governments of the countries of origin need to look at their own systems and behaviours and own up to the problem, as the long-term solution lies with them. There has to be a paradigm shift in the way business is done. Jobs must be created, corruption rooted out and governance reformed. Likewise, the receiving countries need to recognise that the problem is not just one that affects countries in Europe but that there are also real issues in the countries of origin that give rise to the migration and that need addressing. This calls for partnership between the countries of migration and those of origin in tackling the problems.

Governments in Africa need also to take greater interest in the aspirations of their citizens who wish to travel abroad to seek work and support them in an orderly search

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and placement where the need exists. It is difficult to deny that migration to Europe is robbing Africa not only of its young but also its future. Some of the migrants are a highly skilled labour resource that has been trained at a tremendous cost to the countries of origin.

Meanwhile, the reason why people get on rickety boats and enter Europe clandestinely is that they have been barred from travelling lawfully.

"We made it so difficult to get in [to Europe], we created a market for smuggling... it all started with the introduction of visas ... in 1991, ... before that there were more or less open borders .... Many migrants would come and earn money and then go back to their countries."

Hein de Haas, former Co-Director, International Migration Institute, University of Oxford

Europe thus needs to revisit its migration policies. The outcome of such a review should include a policy that allows for safe and easier entry and permission to work in Europe, with incentives to leave Europe freely when the visa expires. It is difficult to think of solutions for 'economic migrants' who have little chance of being granted asylum without thinking of return to their countries of origin as one of the solutions. This is a position that would be supported by many as long as the safeguards for ensuring the safety of refugees and asylum seekers are observed and no person is returned to a place where his or her life is threatened.

It has been suggested that the high visibility of the arrival of large numbers of migrants, refugees and asylum seekers in Europe may cause fear and consequently damage the institution of asylum in Europe. There should, therefore, be a concerted effort to identify refugees and asylum seekers and have their cases handled differently from the rest. As with all situations of population displacements, at the heart of the response is protection. While for some migrants the solution may well be returning, or being returned, home, including refugees among them would be disastrous. It is important that immigration-control measures are matched with adequate protection safeguards so that refugees and asylum seekers can

be distinguished from persons who are not in need of international protection. It should not be forgotten or ignored, however, that irrespective of the cause of their movement, all the people involved need their human rights to be respected.

## Conclusions

For many, migrating to Europe was not their first choice. Migration from Africa is only a symptom of deeply rooted problems, among them poverty in the midst of reports of progress and growth. Others are refugees seeking protection from wars, persecution and human rights violations. From the media, they have grown to understand that Europe stands for human rights and that once they get there they would be protected from their governments but also have a better quality of asylum. In its response Europe should assume its responsibility to help those seeking protection from war, persecution and human rights violations.

Governments in Africa need to look at their own systems and policies to identify why it is that their nationals are leaving in such high numbers and taking unspeakable risks to get away. To stem the temptation to migrate, governments in Africa also need to take greater interest in the aspirations of their citizens and better manage migration while tackling the criminal element in migratory movements. In this endeavour, Europe too should do more to facilitate legal migration.

In the end, the rescue efforts and attempts to disrupt smuggling networks with a short-term military campaign will probably not have a long-lasting effect unless the phenomenon of migration is approached comprehensively and measures adopted to address not only the overly restrictive migration policies in Europe but also the causes and the push factors in the countries of origin.

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## EU cooperation with third countries: rethinking concepts and investments

Elizabeth Collett

**Despite 'externalising' its immigration agenda, the EU has largely failed to develop a coherent and effective overall strategy, to the detriment of migrants and would-be asylum seekers.**

Over the past decade, a range of dialogue initiatives and policy frameworks has been launched with 'third countries', that is, non-European Union (EU) countries, loosely gathered under the rubric of the EU's Global Approach to Mobility.<sup>1</sup> They include the creation of mobility partnerships with privileged third countries, the maintenance of a long-standing (yet largely stationary) dialogue within the Euro-Mediterranean region (the Rabat Process), and considerable political capital expended on the development of EU readmission agreements with key sending and transit countries.

Despite the plethora of frameworks and initiatives with differing ambitions, target countries and resources,<sup>2</sup> their overall scope remains limited, consisting mostly of financial support with the occasional visa-related incentive. However, budgets have been relatively small and insignificant compared to mainstream financial support offered through EU multilateral engagement, notably development and 'neighbourhood' policy.

Historically, bilateral and multilateral relationships with third countries have tended to focus more concretely on migration and border management, with the greatest political capital expended on return and readmission while policy on protection has remained largely rhetorical. Over the past year, there has been renewed focus on the EU's role in addressing refugee crises themselves, with a plethora of regional and thematic initiatives designed to ameliorate the situation for refugees as well as reduce the flow towards Europe. In reinvigorating these efforts, the EU has deployed a new set of initiatives, from a high-level dialogue involving countries in the Horn of Africa (the Khartoum Process) through to funding

mechanisms such as the 1.8-billion-Euro Emergency Trust Fund for Africa. Meanwhile, EU Member States have taken the lead on a series of Regional Development and Protection Programmes in the Middle East, North Africa and the Horn of Africa.

The intensifying dialogue between the EU and Turkey highlights the tenuous nature of this new balancing act in addressing refugee crises; while the EU has agreed large-scale financial support for Syrian refugees in Turkey in return for promises of increased management of the Turkish-EU border, it has yet to agree upon the sustainable protection of other nationalities now passing through Turkey – notably from Afghanistan and Iraq – or large-scale managed resettlement of displaced populations in the region.

### Unclear goals and uncertain outcomes

The range of relevant EU funding sources is dizzying, resulting in administrative inefficiency and a lack of coherence vis-à-vis priorities and goals. The fact that EU-level funding is also complemented by frequently disparate bilateral budgeting from various interested EU Member States can compound this incoherence further. Since the onset of the refugee crisis – in effect, since the beginning of significantly increased numbers of arrivals in early 2015 – the European Commission has made an effort to create economies of scale through the use of Trust Fund mechanisms, allowing Member States to pool resources alongside the Commission for particular goals. However, the absence of clearly defined goals may be off-putting for national funders.

For example, a review of the core goals of the EU Regional Fund in Response to the Syria Crisis (Madad)<sup>3</sup> reveals significant

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overlap with the core goals of the Regional Development and Protection Programme in the Middle East.<sup>4</sup> Both programmes envisage a strong focus on establishing sustainable livelihoods for refugee populations in the Syria region, yet are administered separately and with different key actors. Meanwhile, the UN-led Regional Refugee and Resilience Plan (3RP) for the Syria region remains severely underfunded in the same area of sustainable livelihoods.<sup>5</sup>

Similarly, the goals articulated for the Emergency Trust Fund for Africa<sup>6</sup> are broader than simply protection and incorporate many of the same objectives that have been set out for the Regional Development and Protection Programmes (RDPP) for the Horn of Africa and North Africa. The 1.8 billion Euros earmarked for the Trust Fund eclipses the 30 million Euros so far set aside for the two African RDPPs. Conversely, the 1.8-billion-Euro Trust Fund pales in comparison with the broader development funding that the European Commission and the EU Member States collectively apply to the Africa region. Yet overall the language of development actors on migration differs starkly from the language of the Emergency Trust Fund and the priorities set out during the November 2015 Valletta conference between the heads of state of the European and African Unions.

EU Member States are faced with a variety of demands on their budgets: humanitarian aid, development support, newly established migration management programmes, and increased spending needs within domestic asylum systems. With asylum costs spiralling at home, several governments have diverted overseas aid to domestic protection support, including stalwart donors such as Sweden and Norway. The need for efficient and effective deployment of resources has never been more critical for cash-strapped Member States.

Although the numbers seem large – 1.8 billion Euros in Africa, 3 billion Euros for Turkey – this is unlikely to be of sufficient scale. A robust assessment, based on needs rather than availability of funds, may be more useful if the goal of establishing sustainable livelihoods for significant refugee populations

at a level sufficient to minimise the desire for onward movement is to be realised.

Secondly, the EU has invested significant amounts in capacity building for protection and the development of asylum systems outside the EU, including in states that are now experiencing significant pressure on their asylum systems, such as Serbia. Thus far, however, the EU has failed to put in place defined benchmarks for progress in third countries where such support is provided. Output indicators are typically used – measuring, for example, the number of officials trained and the amount of information disseminated – rather than a substantive assessment of whether protection for those seeking asylum has improved.

### A new era?

In the absence of strong outcomes, and ambivalence on the part of third country partners, the EU is beginning to consider more aggressive approaches to third-country cooperation.

In its original form, conditionality of foreign aid was focused on the promotion of human rights protection, good governance and rule of law. The new wave of conditionality that has been discussed in recent years – entitled ‘more for more’ – is more transactional, and focused on effecting specific donor policy outcomes. The offer is of greater financial support to those countries willing to cooperate more deeply, giving an incentive for behaviour on a broad range of migration issues from border management to counter-trafficking activities and accepting returns. To date, there has been little emphasis on applying conditionality towards improved protection outcomes, though the idea is gaining ground, even from exasperated NGOs working in third countries.

Conditionality will be hard for the EU to apply in practice, as it depends on the donor being the most significant player around; the idea that all EU Member States as well as the EU institutions will be able to maintain a unified position is far from clear in a context of strong bilateral national relationships and competing policy priorities.

Conditionality also gets in the way of a key element to successful cooperation: an in-depth appraisal of what third countries themselves actually need in order to improve outcomes for both their national and refugee populations. Frameworks and projects have typically been designed top down by donor countries and international organisations. Efforts to develop a more collaborative approach – as with the Mobility Partnership framework – have tended to become collections of small-scale projects with little coherent overview.

The EU and its Member States must consider the bigger picture. Global solidarity for protection – and the continued readiness on the part of states to admit and host refugees – demands a grand unspoken bargain that overcomes geography and proximity to instability. And if Europe is

unwilling to address the real outcomes of the Syrian crisis and share them equitably (whether through financial support or hosting populations), then a message is sent to other regions that refusing to support displaced populations is permissible. The long-term implications of this are far bigger than the short-term, though shocking, experience of the Syria crisis.

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1. Formerly known as the Global Approach to Migration.
2. European Commission (2015) *Addressing the Refugee Crisis in Europe: The Role of EU External Action*  
[http://ec.europa.eu/priorities/migration/docs/com-2015-40\\_en.pdf](http://ec.europa.eu/priorities/migration/docs/com-2015-40_en.pdf)
3. <http://tinyurl.com/EU-Syria-Madad>
4. <http://tinyurl.com/RDPP-MiddleEast>
5. [www.3rpsyriacrisis.org](http://www.3rpsyriacrisis.org)
6. <http://tinyurl.com/EmergencyTrustFund4Africa>

## The road more travelled? Onward movement of asylum seekers and refugees

Madeline Garlick

**The phenomenon of onward movement creates formidable challenges for states, asylum seekers and refugees, and the international protection system as a whole.**

Most asylum seekers arriving in the European Union (EU) in 2015 have come by irregular means via land or sea, transiting several other countries along the way. In at least some of these transit countries they might have had the opportunity to stay in relative safety. Such onward movement throws into sharp relief the question of where responsibility should lie among states for assessing a claim and providing protection where needed. But this does not, and should not, necessarily mean the first country to which refugees flee.

Only a limited proportion of refugees move onward from states near their countries of origin. Where they do so, it is often because of the unavailability or low standards of protection in the states to which they flee initially, limited access to assistance or other means of survival, separation from family members, or a lack of long-term solutions. In some cases, the

risk they perceive in undertaking further irregular travel may be less than the risk in remaining in a previous state.

The 1951 Refugee Convention and other international refugee law instruments do not stipulate precisely how responsibilities for protection should be divided or shared between states. Despite efforts over many years, multilateral processes have not succeeded to date in developing a global legal framework which defines a generally accepted means of allocating responsibility clearly and fairly, and which could obviate the need for people to move on in search of protection and solutions.<sup>1</sup>

In Europe, the Dublin system was developed in the 1990s in order to clarify which European Member State would be responsible for examining the claim of an asylum seeker. It thereby sought to prevent secondary movement and what is

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referred to by some as ‘asylum shopping’ by people who had already claimed protection in another European State.

The hierarchy of criteria in the Dublin system should, in theory, operate firstly to bring families together. If it did so, this would address one of the most powerful reasons why they move onwards within Europe.

In practice, however, responsibility is attributed most frequently to the Member State through which the person first irregularly entered the EU. Failure to apply Dublin in a way that ensures adequate treatment and fair and effective asylum determinations has led courts to suspend transfers to other would-be responsible States in several cases, including in the leading cases of *MSS v Belgium and Greece*<sup>2</sup> from the European Court of Human Rights, and *NS & ME*<sup>3</sup> before the Court of Justice of the EU. Amendments in 2013 to the Dublin Regulation have not sufficed to prevent continuing onward movement in the EU nor to safeguard the rights of asylum seekers.

Recent proposals from the European Commission to relocate asylum seekers within the EU seek to redistribute responsibilities among the Member States for asylum seekers through an ‘emergency relocation’ measure,

as well as establishing a permanent relocation scheme for use in future ‘crisis’ situations. In addition to supporting affected Member States, these proposals aim to reduce the compulsion for asylum seekers to move on irregularly. The proposed legislation does not require the process to take account of the intentions or preferences of asylum seekers as regards the Member States in which they wish to seek protection, based on close connections to the country, integration prospects or otherwise. As such, it fails to have sufficient regard to the rights, agency and legitimate interests of individuals, thereby increasing the risk that people will subvert the system and move onwards regardless.

### Safe third country

EU law also establishes the concept of the ‘safe third country’, which permits Member States to refuse to admit claims from applicants who have come through a country which satisfies specified legal criteria for their safety. These include ratification and observance of international refugee law instruments and a functioning asylum system, legislation and institutions. However, the EU Asylum Procedures Directive acknowledges that the presumption of



Syrian Kurdish refugees cross into Turkey from Syria, near the town of Kobani.

safety can be tenuous, and asylum seekers must be given an opportunity to show that they might be at risk in an otherwise safe third country. The fact that most Member States do not apply this concept in practice today indicates their tacit acceptance that the Union's neighbours do not have sufficiently well-functioning asylum systems to meet the benchmarks for a 'safe third country' to which asylum seekers could be returned without a substantive examination of their claims.

Recent EU discussions have focused on how to strengthen cooperation with Western Balkan countries and Turkey, among others, around asylum and migration. Yet the examples of Turkey and Serbia demonstrate the difficulty of expanding the application of the 'safe third country' rule even to the EU's near neighbours. Since 2011 Turkey has become one of the foremost refugee-hosting countries in the world and is in the process of developing a fully-fledged asylum system. However, implementation of new Turkish laws – and assumption of full responsibility for refugee protection in the country – remains incomplete. Moreover, Turkey maintains a geographic limitation on its ratification of the 1951 Convention, meaning that as a matter of international law it continues to refrain from accepting full responsibility for non-European refugees. Meanwhile, Hungary has adopted legislation naming the countries of the Western Balkans, including notably Serbia, as safe third countries. This is an even more questionable designation, given the limited capacity of and significant gaps in the Serbian asylum system, acknowledged even by the Hungarian Supreme Court.

## Conclusion

Reducing the incentives for or drivers of onward movement can only occur if significantly greater efforts are made at the international level to improve asylum standards and secure the cooperation of all countries along main routes for asylum seekers and refugees in ensuring access to protection. The EU often emphasises its strong interest in cooperation with third countries on asylum and migration. But a greater share of the resources and political

capital invested in that cooperation could and should be devoted to strengthening protection capacity, in order to counterbalance the high priority currently accorded to management of borders and migration.

Three areas of potential activity warrant particular attention. Firstly, there needs to be an enhanced focus among states on working in genuine partnership, including between countries in regions of 'destination' and those of origin and transit, to establish and reinforce protection capacity, and to encourage all states to take full ownership of responsibility for ensuring their asylum laws and institutions are effective.

Secondly, a stronger commitment is needed at the international level to ensuring access to durable solutions. Refugees languishing in protracted displacement are likely to resort to increasing numbers to irregular onward movement.

Finally, additional legal channels must be developed and expanded for those people who cannot find protection and solutions where they are. If the compulsion to move on is not addressed in more proactive and positive ways, Europe will continue to see desperate people prepared to take any risk to move onwards irregularly. Far-sighted collective approaches to onward movement and the protection needs of those who move are urgently needed in order to reinforce the effective operation and ongoing viability of the international protection system as a whole.

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This article is based on the views of the author, and does not represent the position of UNHCR or the United Nations.

1. See, for example, UNHCR (2005) *Convention Plus Core Group on Addressing Irregular Secondary Movements of Refugees and Asylum-Seekers: Joint Statement by the Co-Chairs FORUM/2005/7* [www.refworld.org/docid/46b6ee6a2.html](http://www.refworld.org/docid/46b6ee6a2.html).
2. Application no. 30696/09; judgment of 21 January 2011 [www.refworld.org/docid/4d39bc7f2.html](http://www.refworld.org/docid/4d39bc7f2.html)
3. Joined cases C-411/10 and C-439/10, 21 December 2011 [www.refworld.org/docid/4ef1ed702.html](http://www.refworld.org/docid/4ef1ed702.html)

# European Union readmission agreements

Mehdi Rais

**The use of readmission agreements has prompted a debate on their compliance with international law, in particular the provisions on protection for refugees and asylum seekers.**

European Union (EU) readmission agreements allow for the readmission by states into their territory of both their own nationals and nationals of other countries – ‘aliens’ – in transit who have been found in an illegal situation in the territory of another state.<sup>1</sup> These agreements have quickly become a major issue for the EU in its relationships with neighbouring countries.

For European leaders, readmission agreements derive their legitimacy from the fact that they are specifically designed to facilitate returns of undesirable aliens to their country of origin in accord with the principle of state sovereignty. However, legal authorities and some researchers believe that readmission agreements, whether they are bilateral or across the EU, infringe the rules of international law on asylum, in particular the principle of *non-refoulement* which is recognised in both the Refugee Convention of 1951 and the European Convention on Human Rights.

## Identification of status

The first criticism relates to the definition of the concept of ‘illegal immigrant’ found in all readmission agreements; according to these, the requested state must readmit **any person** who does not, or who no longer, fulfils the entry or residence conditions applicable in the territory of the requesting state.

The notion of ‘any person’ is problematic insofar as it makes no distinction among immigrants who find themselves in an unlawful situation in the host country, with the potential for fundamentally undermining the principle of *non-refoulement* that is supposed to protect refugees and asylum seekers. The European readmission policy does not distinguish between aliens who are in an unlawful situation whose legal position should be protected, and those who are not.

Furthermore, the ambiguity that characterises the readmission legislation is illegal in respect of international asylum law, insofar as it leaves the ‘suspected’ person no opportunity to explain themselves properly in the absence of an individual or case-by-case review of their situation.

The structure of the EU readmission agreement requires the requesting state to send a readmission request to the state of whom the request is made so that the person concerned can be returned. However, there is no information in the request that clearly identifies the reasons why someone is being returned. As a result, it is impossible to know whether an asylum seeker has had the chance to go through a fair identification procedure, that is, to have their situation reviewed on an individual basis. In fact, several EU Member States have removed asylum seekers using a readmission procedure that involved refusing access to an individual review of their case, in violation of international law. This is a dangerous situation insofar as it helps to legalise the removal of asylum seekers in spite of the principle of *non-refoulement*.

## Risk of the domino effect

Conversely, failing to review the situation of individual asylum seekers on a case-by-case basis opens the way to serial onwards return to another country. This means that EU readmission agreements create the conditions for cases of removal where a country then returns people to places where human rights are not guaranteed. This is known as the ‘domino effect’.

Preventing the domino effect is considered to be a standard in customary international law and must also be prevented in implementing readmission agreements. In this respect, the Committee of Ministers of the Council of Europe confirms that: “If

the state of return is not the state of origin, the removal (readmission) order should only be issued if the authorities of the host state are satisfied, as far as can reasonably be expected, that the state to which the person is returned will not expel him or her to a third state where he or she would be exposed to a real risk.<sup>2</sup> The text of the EU readmission agreement, however, takes no account of the requirement to prevent the domino effect. On the contrary, it opens the way – by means of the ‘safe third country’ clause – to any individual being returned to their country of origin or to transit states, with the risk of their being exposed to inhuman and degrading treatment.

Let us take the example of the readmission agreement between the EU and Turkey, signed in December 2013. This provides for “the readmission [to Turkey] of illegal immigrants who have entered its territory in transit to Europe”. The agreement requires the Turkish authorities to take back not only their own nationals but also illegal aliens who have transited through their territory. The latter will then be sent back to their country of origin.

This is a highly dangerous provision given that the majority of foreigners who transit through Turkey are Afghan, Syrian or Iraqi asylum seekers fleeing persecution in their country of origin. According to Oktay Durukan, director of the NGO Refugee Rights Turkey: “A significant number of the people returned [under the EU-Turkey readmission agreement] will be refugees who need international protection, which they are not being given by EU countries. ... Turkey risks deporting the migrants in turn.”<sup>3</sup>

## Readmission

The EU-Turkey readmission agreement is not an isolated case. The example of Turkey can be equally applied to all countries that are negotiating and/or have entered into readmission agreements with the EU.

Furthermore, the EU encourages the domino effect when it invites its partners who are bound by EU readmission agreements to enter into these same agreements with other countries of origin, creating

a readmission network that may help to broaden the scope of forced returns of ‘illegal immigrants’, including asylum seekers, who risk being returned to persecution.

Turkey is a revealing example in this respect, since it has entered into bilateral agreements, similar to its readmission agreement with the EU, with several states such as Syria, Russia, Uzbekistan, Egypt and Nigeria, and is negotiating others with China, India, Iran, Iraq, Morocco and Pakistan. Some states on this list are known for their indifference to the fundamental rights of migrants whose situation is unlawful.

Faced with this situation, the Council of Europe’s Human Rights Commissioner has stated that this type of agreement, when “presented as part of a policy of migration management”, is a method that “corrodes established principles of international law”.<sup>4</sup> The European Parliament supports this approach, stating that “there is a risk that readmission agreements constitute a direct or indirect threat to the human rights of asylum seekers or migrants whose situation is unlawful”.<sup>5</sup>

This legal vacuum in respect of human rights that characterises the structure of readmission agreements reflects the increased focus on the security aspects of managing illegal migration, to the detriment of a broad approach based on the principle of shared responsibility, characterised by greater emphasis on the humanitarian aspect of regulating this highly complex phenomenon.

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1. [http://europa.eu/rapid/press-release\\_MEMO-05-351\\_fr.htm?locale=EN](http://europa.eu/rapid/press-release_MEMO-05-351_fr.htm?locale=EN)

2. Committee of Ministers of the Council of Europe (2005) *Twenty guidelines on forced return* [www.refworld.org/docid/42ef32984.html](http://www.refworld.org/docid/42ef32984.html)

3. <http://tinyurl.com/LeFigaro-Durukan-statement>

4. Council of Europe (2010) *Criminalisation of Migration in Europe: Human Rights Implications* <http://tinyurl.com/CoE-CriminalisationMigration>

5. Cassarino J-P (2010) *La politique de réadmission dans l’Union européenne*, Directorate-General for the Internal Affairs of the Union [www.europarl.europa.eu/RegData/etudes/etudes/join/2010/425632/IPOL-LIBE\\_ET%282010%29425632\\_FR.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/425632/IPOL-LIBE_ET%282010%29425632_FR.pdf)

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## A coast-guard officer's perspective: reinforcing migration through legal channels

Konstantinos Karagatsos

**Given that we cannot always rescue refugees or economic migrants in danger at the EU's maritime borders, efforts are needed to reinforce legal channels for migration to Europe and to prevent refugees and migrants being exploited by organised criminal networks.**

As far back as 1994 when I was inducted as an Ensign of the Hellenic Coast Guard, we were dealing with both refugees and economic migrants on Lesbos Island, which lies only ten nautical miles from the Turkish coast. At that time the vast majority of the mixed migratory flows were of economic migrants but there were also refugees in fewer numbers. More recently there has been a sharp increase in the number of refugees coming to Europe, so that refugees have become the majority of the mixed migratory flows.

The real problem for Europe nowadays is not migration – which has been happening for many years and cannot be expected to end – but migration done in an illegal way, illegal migration. The Schengen Area of Europe constitutes an area of freedom of movement, security and justice for European citizens and other nationals who enter it legally. But other third-country nationals are being helped by organised criminal

networks to enter the Schengen area illegally, networks which are not based in Europe but in the migrants' countries of origin. While we cannot make illegal migration legal, we could reinforce migration through legal channels, turning it into regulated migration.

### A legal solution

I have worked as a practitioner on the issue of migration and sea borders for 22 years, and have dealt with refugees and economic migrants on the 'front line'; I have been Director at the Sea Borders Protection Directorate of the Greek Ministry of Shipping and Maritime Affairs; I have worked as an operational analyst in Frontex; and I have witnessed the problems associated with migration in Europe for decades. I have one proposal for this problem: that is, to isolate refugees and economic migrants from the organised criminal networks by setting up procedures for asylum status (for refugees)



UNHCR/A. D'Amato

After being rescued from an overcrowded smuggler's boat, some 186 people from Nigeria, Pakistan, Nepal, Ethiopia, Sudan, Malaysia and Syria are transferred to an Italian navy ship as part of the Mare Nostrum operation, March 2014.

and residence permits (for economic migrants) in EU embassies in certain third countries.

At a first glance, this would seem risky, with possibly unforeseen dangers and challenges for implementation – for example, the challenge of deciding who is a refugee and who is an economic migrant. But we are doing it already in the EU, with the help of screeners, debriefers, interpreters and so on. We would need to arrange for appropriate infrastructure and procedures in the embassies too, as well as staff with appropriate experience for this task.

Given the fear that such a policy might create a ‘pull factor’ for many more refugees and economic migrants to come to Europe, certain criteria would have to be laid down, such as those described in the European Agenda on Migration 2015.<sup>1</sup> There are of course difficulties to be overcome but migrants in all categories are anyway coming to Europe illegally and in their thousands, maybe risking their lives at sea and being exploited by organised criminal networks in order to reach their destination.

But if a refugee could go to a European State’s embassy nearer to home and apply for asylum there, and if that was granted, they would have the possibility of being legally escorted to that European State. In this way the refugee would avoid the hazards

of the long journey to Europe, would not be exploited by the criminal networks outside or inside Europe, and would not risk their life on the Mediterranean or at the land borders.

Refugees are the main priority for Europe now; nevertheless, the same policy (strengthening of legal channels for migration) could be applied to economic migrants but with one basic difference, that is, the reinforcement of the EU return mechanism for those migrants whose visas expire or who have entered the EU illegally. This action should not give the impression that Europe ‘is closing the doors’ for economic migrants but rather send the message that migration has to become regulated for economic migrants too, so that they can enjoy the privileges of freedom, security and justice, like Europeans do.

This policy cannot bring immediate results; it will take time. But, thus far, exclusive use of suppression and law-enforcement measures have not dealt with the migration problem and cannot be expected to.

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1. <http://tinyurl.com/EuropeanAgendaMigration>

## The extra-territorial processing of asylum claims

Sarah Léonard and Christian Kaunert

**Calls for the creation of asylum-processing centres outside the EU are being renewed – but significant objections and obstacles remain.**

In November 2014, German Interior Minister Thomas de Maizière floated the idea of establishing ‘welcome and departure centres’ in major transit countries in North Africa, where applications for asylum would be processed. By removing the obligation to be on European soil in order to apply for asylum, the external processing of asylum claims would remove the necessity for asylum seekers to embark on perilous and costly journeys across the Mediterranean to Europe.

The extra-territorial processing of asylum claims is not a new idea. As long ago as 1986, Denmark tabled a draft resolution in the United Nations (UN) General Assembly to create UN centres where asylum claims would be processed and the resettlement of refugees would be coordinated among all states. A few years later, the idea of establishing European processing centres was considered at the Intergovernmental Consultations on Migration, Asylum and Refugees following

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a Dutch initiative. The Danish government also advocated the idea of 'reception in the region' during the Danish Presidency of the Council of the European Union (EU) in 2001.

In 2003, the British government tabled the most elaborate proposal on extra-territorial processing to date as part of a 'new vision for refugees'. Among various measures aiming to better manage asylum on a global scale, it suggested establishing 'transit processing centres' for asylum seekers, notably on migration transit routes to the EU. It was suggested that these centres could be financed by the participating states, possibly with some financial support from the EU budget. Those granted refugee status would be resettled in the EU on a quota basis, whereas those whose applications were rejected would normally be returned to their country of origin. Various countries were named in media reports as potential hosts for the transit processing centres, including Albania, Romania, Croatia, Russia, Turkey, Ukraine, Iran, Somalia and Morocco.

The proposal was discussed at several EU meetings in early 2003 and the governments of some EU Member States expressed some interest in the proposal but others were more sceptical or even critical, in particular the governments of Germany and Sweden. Several reports by journalists and non-governmental organisations also highlighted legal, moral and financial issues. In the face of such criticisms, in June 2003 the British government dropped its plan for the extra-territorial processing of asylum claims.

Nevertheless, it was not long before the idea of extra-territorial asylum processing resurfaced. Following a much criticised incident in mid-2004,<sup>1</sup> the then German Interior Minister Otto Schily, who had been critical of the British proposal one year earlier, proposed creating EU-funded 'safe zones' in North Africa. His ideas were further detailed in a paper entitled 'Effective protection for refugees: fighting effectively against illegal migration'. It suggested that asylum seekers and migrants should be intercepted in the Mediterranean and returned to extra-territorial processing centres where pre-screening would be conducted to determine

which asylum seekers should be transferred to either the EU or 'safe countries in the region of origin' for full refugee status determination.

### **An idea tested outside Europe**

The 'transit centres' or 'processing centres' that have been discussed over the years have differed with regard to their proposed location and functions. Nevertheless, in practice, there has not yet been any extra-territorial processing of asylum claims by the EU or any of its Member States. In contrast, some countries outside Europe have had practical experience of the extra-territorial processing of asylum claims, in particular the United States (US) and Australia.

The US implemented a system of extra-territorial processing of asylum claims for dealing with flows of asylum seekers from Haiti in the 1980s and 1990s. From 1981 onwards, US border guards intercepted boats carrying asylum seekers from Haiti and interviewed them on board its coastguard vessels to assess the merits of their claim. From 1994, intercepted Haitian asylum seekers were transported to a temporary holding centre on the US naval base at Guantanamo Bay for a preliminary hearing of their refugee claim. In the same year, the US Administration concluded agreements with Jamaica and the Turks and Caicos Islands to conduct full refugee status determination on their territories of asylum seekers fleeing from Haiti. The hearings were monitored by UNHCR. The policy was ended once the political situation in Haiti changed in the mid-1990s.

Australia launched the so-called Pacific Solution (later also known as the Pacific Strategy) in 2001 by which asylum seekers intercepted at sea on unauthorised vessels were transferred to offshore processing centres on Nauru and Manus Island in Papua New Guinea. The offshore facilities were managed by the International Organization for Migration (IOM) with the support of a private security company. Although the Australian government ended the Pacific Solution in 2008, a return to the offshore processing of asylum applications was announced in August

2012. It has proved very controversial and has been challenged in court.<sup>2</sup>

### Advantages, problems and challenges

Those advocating for extra-territorial processing of asylum claims argue that it has several advantages over the processing of spontaneous asylum claims in Europe. First of all, it would reduce the need for asylum seekers to embark on long and perilous journeys to reach Europe. This would save lives, as well as reducing the profits made by the organised crime groups that smuggle asylum seekers and migrants into European countries. In addition, it would offer asylum seekers protection closer to their region or country of origin. This would be particularly advantageous to those who aim to ultimately return home. Establishing an EU-wide joint system for the extra-territorial processing of asylum claims is seen as entailing even more benefits, including a more efficient use of resources such as expertise, staff and infrastructure, as well as a more harmonised system to determine asylum claims across the EU.

However, extra-territorial processing – depending on what form it takes – gives rise to a wide range of challenges and problems, some of which are very significant. First of all are the numerous legal issues. The first problem concerns a possible violation of the right enshrined in the Universal Declaration of Human Rights to seek and enjoy in other countries asylum from persecution. Another important problem concerns the possible violation of the principle of *non-refoulement*, that is, the right not to be returned to a country where life or freedom would come under threat. Given the human rights records of many of the countries in which transit processing centres might be established, it is not clear how it could be guaranteed that no *refoulement* would take place, since it is not only direct *refoulement* but also indirect or ‘chain’ *refoulement* that is prohibited by the Refugee Convention. Finally, there are very significant procedural issues, such as which procedural rules would apply as there are still differences amongst Member States in respect of asylum

procedures. The same can be said about reception conditions for asylum seekers.

Secondly, the extra-territorial processing of asylum claims raises a crucial moral question. There is no denying that extra-territorial processing has generally been of particular interest to governments seeking to limit the numbers of migrants and asylum seekers arriving on their territories. Further, measures that seek to ensure that asylum seekers either stay in or are returned to countries outside the EU for the processing of their asylum claim can also be seen as an attempt to shift responsibility onto other states, especially for persons whose asylum claim will be turned down. This is particularly problematic considering the less favourable socio-economic conditions and the relative lack of asylum expertise and reception capacities that characterise the countries where asylum processing centres could be established.

Finally, there are many practical challenges inherent in extra-territorial processing. It is very likely to be costly and resource-intensive, for example requiring that reception facilities meet adequate standards with regard to sanitation, water, electricity, etc.

Although a looser interpretation of external processing via the creation of EU-sponsored refugee camps in Turkey combined with large-scale resettlement has also been proposed, offshore centres for the extra-territorial processing of EU asylum claims as previously conceived of are unlikely to become reality in the near future, given the numerous problems inherent in the concept.

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1. The ‘Cap Anamur’ boat incident in which a group of asylum seekers rescued from the Mediterranean were then expelled from Italy. [www.unhcr.org/4101252e4.html](http://www.unhcr.org/4101252e4.html)

2. See McKay F ‘A return to the ‘Pacific Solution’’, *Forced Migration Review*, issue 44 [www.fmreview.org/detention/mckay](http://www.fmreview.org/detention/mckay)

## Passing through Greece

Until the partial opening of the borders through the Balkans in summer 2015, Patras – Greece's third city and harbour – used to be the main transit port for irregular migrants heading to Italy and the rest of Europe. In 2011, relocation of the port in the southern part of the city prompted hundreds of refugees and migrants to move into an abandoned industrial area just in front of the new port. Mostly Afghans and Sudanese populate these empty factories facing the port, waiting for a chance to sneak under a lorry and embark onto a ferryboat towards Italy.

Among the newcomers, most (mainly of Afghan nationality) chose not to apply for asylum; their only hope is to illegally leave the country before the expiry date of their paper, valid for thirty days, without leaving any trace (or fingerprint). After that term, they would become illegal and possibly face detention. In the Greek asylum system different procedures

apply according to the applicant's nationality and to the period in which the asylum application was lodged. Since December 2014, Syrians have been able to benefit from a fast-track examination procedure that lets them have an answer within the same day. Unsurprisingly, this generates resentment among those seeking asylum.

The eagerness of refugees and migrants to leave Greece and travel to other European countries is quite evident. Whether recent arrivals, or waiting for a response to asylum claims submitted some time before, or facing detention, or even having fallen into irregularity and thus being unable to leave legally, one thing unites them: the unrelenting longing to leave Greece.

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## Refugees in Serbia: on the way to a better life

Maša Vukčević, Jelena Momirović and Danka Purić

**More than 450,000 people passed through Serbia from the beginning of 2015 until the middle of November. However, even in 2014 the numbers were large, and growing.**

There were three shelters for refugees who were just passing through Belgrade, the Serbian capital, in 2014, and five asylum centres for those who wished to apply for asylum. However, the capacities were insufficient, as more than 2,500 people were entering Serbia daily. Up to 600 people, including families with little children, were sleeping in a park by the main bus station. The Belgrade City Council was providing them with water and tents as well as some basic hygiene supplies. Serbian NGOs and citizens of Belgrade brought food and clothes for them every day. The majority stayed in Serbia for no more than a few days.

From a 2014 study<sup>1</sup> it appeared that the typical refugee in Serbia is a 27-year-old man. He is likely to be unmarried, to be travelling alone, to have 12 years of schooling

and to have left his family in his country of origin. He has probably spent over a year in transit in his attempt to reach a better life. Men comprise almost 90% of refugees in Serbia and fewer than a third of them are married. The women who seek refuge in Europe, on the other hand, are married in two thirds of cases. Widows or widowers and divorcees are not very common. Half of the refugees are under the age of 26. Many of them are highly educated and their professions vary considerably. One may as easily come across doctors, engineers, teachers and students as mechanics and manual workers. The variability, however, only exists among the males, whereas women are predominantly housewives or teachers and students. Women are equally as educated as men but there does not seem to

be a similar gender balance in employment opportunities in their countries of origin.

The refugees arriving in Serbia mostly originate from Syria (nearly 50%), followed closely by Somalia and Afghanistan. However, there are also people from other countries, such as Eritrea, Sudan, Algeria, Iraq, Iran, Nigeria, Pakistan, Egypt, Ghana, Bangladesh, Palestine and Ethiopia. Ethnically, they are very heterogeneous. Almost all refugees are of an Islamic religious denomination. The number of Christian, whether Orthodox, Catholic or Protestant, and atheist refugees is marginal.

### The journey

The typical transit route to Serbia goes through Turkey, Greece and the Republic of Macedonia. In transit, refugees have to pay money to smugglers and are often taken advantage of. They get robbed, beaten up and humiliated by the local population. Often, they get unlawfully arrested or put in prison in very bad conditions. The police often fail to provide them with valid information as to why they are in detention or how long they will be there. Illegal deportations frequently take them a step back.

The majority of refugees undertake this journey alone. However, families with children and elderly family members are also a common sight. Most of them still have immediate family in the countries of origin (almost 90%). About one in eight of the refugees who arrive in Serbia has been separated from a family member during transit, usually a sibling or a parent. Most of those still have not been able to track down their lost family members.

Faced with deliberate obstacles to their further progress such as the wall being built on the Hungarian border, they feel they are victims of injustice and lack of understanding. Reminded of persecution, they are overwhelmed with an increased fear for their future. This causes panic, making them rush into deals with smugglers, placing themselves at great risk. Smugglers are often involved with human traffickers and this panic is a golden

opportunity for them so that the refugees are at increased risk of becoming victims of human trafficking. Our study showed that most refugees have a low understanding of what human trafficking is, although a significant proportion of them have experienced human trafficking themselves. They have little understanding that they can be used and pushed into slavery and the fact that they depend on people smugglers to cross borders and reach Western Europe makes the situation even more dangerous.

Bearing in mind the multiple traumatic events they have experienced and the uncertain future ahead of them, the psychological state of the refugees is just as would be expected. Many are suffering from post-traumatic stress disorder, anxiety and depression. They feel lonely, abandoned and rejected. They experience guilt, hopelessness, excessive worry, thinking about why all this has happened to them, repeated thoughts about the most difficult events, exhaustion, loss of appetite and sleep, and sudden emotional or physical reactions when reminded of traumatic events.

In line with the results of this study, new programmes of psychological support have been developed and existing ones have been adjusted to better respond to the needs of the refugee population. The questions the refugees ask the most often: Who can we ask for help? Who will take responsibility for what is and what is not happening? Who is making the final decision about whether we will get our chance for a normal life? Will there be anyone prepared to listen and react when we reach our destination?

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Refugees in Hungary, November 2015.

Photographer István Németh says: "I followed the refugees for months, capturing both painful and humorous moments. I wanted to show the human side - and to make a lasting record of their journey rather than just fleeting photos for the media."

[www.facebook.com/FaceToFaceFoto](http://www.facebook.com/FaceToFaceFoto)



## Bulgaria's struggle at the frontline

Eleanor E Roberts

**Bulgaria has struggled to deal appropriately with mass irregular migration. It has also failed to address integration.**

Bulgaria is one among many European countries dealing with insufficient capacity and unhelpful nationalist politics in the recent 'migration crisis'. The response to the increase in irregular entries across the Bulgarian-Turkish border since 2013 has been one of crisis management; less prevalent have been strategies to invest in long-term solutions. The current state of asylum procedure and border control in Bulgaria also offers an exemplary case of the difficulty in providing acceptable humanitarian protection once the international intervention that comes with the recognition of short-term crises has withdrawn. The current focus on tightening border control is motivated by fear and political interest, encouraged by the growing clamour of nationalistic, anti-immigration, right-wing groups.

In January 2014, the United Nations High Commissioner for Refugees (UNHCR) called for other European countries to halt transfers to Bulgaria under the Dublin Regulation,<sup>1</sup> as the overwhelmed asylum system was struggling to cope with the 35% annual increase in asylum applications. Working alongside the State Agency for Refugees (SAR), UNHCR oversaw a substantial improvement in the Bulgarian conditions of registration, admission, accommodation and border detention. The capacity of SAR was increased to facilitate administrative reforms and improve the process of registering claims, issuing temporary papers and evaluating asylum applications. At the same time, major reconstruction and repairs were undertaken in the dilapidated transit, registration and reception centres.

This international direction saw the achievement of minimal international standards by May 2014, when UNCHR withdrew from its operational role and removed the suspension of Dublin transfers to Bulgaria. The agenda, speed

and priority of the implementation of long-term solutions to forced migration and refugee and asylum rights was once again the responsibility of the Bulgarian state.

In the following year, the number of asylum applications to Bulgaria did not stabilise or reduce. Between January 2013 and late 2015, over 25,000 applications have been made, equal to the total over the previous two decades. In 2015 alone, more than 13,000 asylum seekers have entered the country, the latest increase being attributed to a growing number of people seeking routes into Europe that avoid crossing the Mediterranean. However, there is a significant lack of impetus within the Bulgarian administration to develop a long-term, durable capacity to handle these vulnerable people, with their focus instead on short-term border control and territorial integrity.

### Borders and barriers

The entire length of the Bulgarian-Turkish border is now equipped with advanced surveillance technology, including sophisticated motion sensors, thermal imaging and night vision cameras able to penetrate several kilometres into Turkish territory. The border is manned by over 1,500 armed police stationed every 200 metres, and 33 kilometres of it is lined by a three-metre-high barbed-wire fence due to be extended a further 130 kilometres after the Council of Ministers received the required parliamentary support for the project in June 2015.

UNHCR recommends that Bulgaria adopt a protection-sensitive border management policy supplemented by a humanitarian admissions programme that would allow for the more efficient and sensitive handling of asylum seekers. However, there continue to be credible reports of push-backs, intimidation, physical abuse and refusal of entry at the border.

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Meanwhile, those who succeed in lodging claims await determination of their status in one of six reception centres, often without access to flushing toilets or separate washing and cooking facilities. The centres are refurbishments of previously abandoned buildings never intended for long-term habitation. The largest, Voenna Rampa, was once a school but now houses 600 asylum seekers for months at a time, providing just two basic meals a day to adults and children alike. The months it takes to wait for status determination strain the resources of any individuals who wish to supplement this pitiful provision. Officially unable to get a job or undertake any sort of training, an asylum seeker who has been there for over three months says that each day he takes the bus into the city, just to leave the reception centre. "What am I supposed to do? I cannot sit around forever. I am a human being. Don't they get that?"

Unfortunately, as difficult as life is in the reception centres, it is unlikely to get easier for those who receive their status and plan to remain in Bulgaria. Since 2013 there has been

no integration policy at all. Once they receive their approval, refugees have 14 days to leave the reception centres but the state offers no assistance in their transition into Bulgarian society – no language classes, no training to develop or recognise marketable skills and qualifications, no access to housing, employment and social networks.

Nevertheless improvement in the treatment of asylum seekers

and the success of long-term integration cannot simply be solved by more directives. The efficacy of international law and EU directives is limited by racially charged domestic political rhetoric that fails to recognise that there is more to human rights than the minimum standards set down in international law.

The lack of a clear integration policy not only robs vulnerable individuals of justice and dignity but also sees Bulgarian society lose the productive capacity and potential of those refugees who wish to live and work in Bulgaria. Integration will not be successful while the policies of government and the official language of migration, refuge and asylum are too often permeated by hate speech and the humanitarian crisis reduced to one of border integrity and social cohesion. This leaves the difficult role of changing attitudes and providing integration support to independent, often under-funded, NGOs.

The Refugee Project is one such organisation in operation in Sofia.<sup>2</sup> The project recruits volunteers from Bulgarian society, and more recently from abroad, to provide informal teaching and educational support within the Sofia reception centres. Coordinator Katerina Stoyanova said:

"We need a space for integration, to make connections and meet people. People in the centres have no opportunity to meet local people, to socialise, and are subject to discrimination from all political parties."

However, it is not clear where the future of formal integration and long-term solutions lie. The first difficulty in establishing a national framework is with the specification of departmental responsibility: the State Agency for Refugees or the Department of Labour and Social Policy, in Bulgaria's case. Meanwhile, programmes like the Refugee Project cannot be responsible for formal and durable integration measures.

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UNHCR/ G. Matsushy

## Protecting asylum seekers in mixed flows: lessons from Bulgaria

Mariya Shisheva

**In the context of a large number of arrivals, states may introduce blanket measures aimed at preventing irregular migration. These, however, may curtail the rights of asylum seekers.**

In countries where irregular entry is a criminal offence, persons in need of international protection arriving as part of mixed flows are at risk of being prosecuted. Under Bulgarian law, foreigners may be sanctioned for crossing the border illegally by imprisonment for up to five years plus a fine. The possibility of criminalisation for irregular border crossing underscores the need to identify asylum seekers in order to ensure that they benefit from their right not to be penalised.

In November 2013, in the face of increasing migratory flows, Bulgaria introduced measures aimed at strengthening border control. Such measures have the effect of preventing persons in need of international protection from reaching Bulgarian territory and requesting asylum. Reports have also documented allegations about persons in need of international protection being physically prevented from entering Bulgarian territory, including being subjected to ill-treatment and being summarily expelled from Bulgaria without having the opportunity to apply for asylum.

Bulgaria has an ordinance which stipulates, in accordance with amendments introduced in 2011, that persons who apply for asylum with the Border Police after their arrest following an irregular entry should have their request recorded and should be referred to the State Agency for Refugees (SAR); they should then be accommodated in open reception centres. Despite this, persons applying for asylum with the Border Police after crossing the border irregularly are transferred to a detention centre set up in 2013 as part of the measures to deal with increased number of arrivals. Such detention – a

consequence of the asylum seekers being treated as irregular migrants – is unlawful under both EU and Bulgarian law.

Over the past five years Bulgaria has made significant efforts to improve access to the territory and its procedures. For example, information brochures about the asylum procedure in various languages are now provided at all border crossing points. At the same time, one of the most significant problems facing the Border Police in identifying persons in need of international protection and recording their requests is the lack of interpreters, which detracts from the impact of other positive developments.

While Bulgarian legislation specifies that an asylum request can be expressed in oral, written or “any other form”, a reluctance to assume a more active role in identifying asylum requests is especially problematic in the case of vulnerable asylum seekers. For reasons relating to age, gender, sexual orientation or disability or as a consequence of torture or sexual violence, they may be unable to articulate their need to apply for international protection. Training on identifying asylum applicants, including those with special needs, would help. Additional guidance specifying the Border Police’s obligation to inform people – those arriving at the border or detained following an irregular entry – of the possibility to apply for asylum and how and where to do so would facilitate access to the procedure for asylum seekers arriving in mixed flows. This would also help mitigate the risk that they may be removed before being able to make an asylum claim or before their claim has been examined.

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# Envisioning a Common European Asylum System

Volker Türk

**A bolder approach is needed if the European Union is to overcome fragmentation and manage refugee movements effectively and in accordance with international obligations. Imaginative moves in this direction could also advance the global refugee protection regime.**

Europe continues to attract people facing persecution but the responsibility for receiving them is not shared equally amongst Member States. While Germany and Sweden together host nearly half of all asylum seekers in the European Union (EU), the countries on Europe's borders receive the highest number of arrivals, who then move onward.<sup>1</sup> Fragmented and inconsistent responses to this situation by individual States and the absence of a common response have resulted in tremendous suffering. The daily plight of those who try to reach the EU's southern borders, frequently via treacherous journeys, with thousands drowning in the attempt, has captured the public's attention in a way that the situation of many others who have sought protection in the EU in less dramatic circumstances has not.

An often heated public debate about asylum and migration has painted the current situation in popular and political rhetoric as a crisis of numbers, when what is really at stake is a crisis of accountability and solidarity. We have witnessed an incredible outpouring of public sympathy and concrete people-to-people solidarity for those on the move but what has often been missing is a calm space for reasonable debate.

Serious thought should now be given to the development of a supranational arrangement exercised by EU rather than individual state institutions as a means of overcoming fragmentation in approaches to managing these movements effectively and in accordance with international obligations. There is room for this kind of creative and forward-looking thinking. Europe did this before on a much larger scale in the formation of the EU. Within the EU there remains a widely held political consensus on the importance of preserving the institution of asylum. This is not only

a result of history but also part of the very nature of the EU, which was founded on the value of respect for fundamental rights, as well as the principles of responsibility, solidarity and trust between Member States.

The EU has been at the forefront of developments in refugee law in its quest to harmonise the asylum laws and practices of its Member States. The particular nature of EU regional law-making and codification has been of great value in strengthening standards for the treatment of refugees. As a result, the Union has over the last twenty-five years developed what is in effect a regional asylum system. This has been bolstered by the establishment of a European Asylum Support Office, as well as visible progress towards greater EU engagement in resettlement schemes which enhance the EU's role globally in providing essential comprehensive solutions for refugees.

## Gaps and shortcomings

The implementation of the agreed standards varies widely, however, and current intra-EU solidarity mechanisms do not have enough teeth. They have not created the necessary trust and willingness for the system as a whole to function properly. In dialogue between the United Nations High Commissioner for Refugees (UNHCR) and the EU over many years, we have shared our observations and concerns related, in particular, to a tendency towards exceptions and even derogations from established standards, as well as the considerable room allowed for discretion leading to varying interpretations. Likewise, the quality of implementation of the agreed standards varies widely, with differing recognition rates between different States for people of the same nationality.

Another area of concern has been the tendency by some States to resort to granting 'subsidiary protection' rather than refugee status. In doing so, States recognise that a need for international protection exists for certain claimants, but they are unwilling, for a variety of reasons, to extend refugee status to them. This may be justified in some instances but not in others under the 1951 Convention, its 1967 Protocol and the broader international protection regime which govern such matters.

Today's situation has more than ever painfully revealed the shortcomings and dysfunctionality of the current system. Temporary protection, for example, was adopted in the EU as a provisional protection response to situations of mass influx when individual refugee status determination becomes impracticable. Yet the EU's Temporary Protection Directive has not been activated for the thousands of refugees we see arriving on a daily basis.

### Redressing the shortcomings

In view of today's exceptional situation, exceptional measures and a new vision are urgently needed in order to develop a larger, more effective, coherent and comprehensive approach. It should, for example, address the pressure placed on certain individual States' asylum systems. It should help address irregular onward movements within the EU and thus limit its scope. Its implementation should also resolve the vast divergence in practices that currently exists and that is accompanied by a host of problems in terms of inadequate regional cooperation, onward movements, protection issues, and situations such as those in Calais. The following ideas could underpin the building blocks of the future.

First, the future lies in developing a supranational institutional arrangement that guarantees the equitable sharing of responsibilities within the EU. For an EU-wide asylum system to be really effective, it would require giving up some aspects of sovereign power. This would mean the creation of an EU Asylum Authority that would act throughout the territory of the EU. This would include the establishment

of an independent EU Asylum Appeals Court, as well as one EU Asylum Code that would cover issues related to substantive and procedural rights and standards of treatment. It would also require an equitable distribution and compensation system across the EU, as currently exists within some States (Germany, for example) for the reception of asylum seekers based on absorption capacity and protection criteria.

This is of course sensitive for governments, at least for now. But if we look at how far we have come since the mid-1980s, there has been an impressive increase in cooperation and harmonisation. This is promising for the recognition that asylum and migration issues demand a truly cooperative regional response.

In the interim, more effective responsibility-sharing schemes within the EU could be achieved through the pooling of resources to provide for reception, decision making and solutions for asylum seekers and refugees. This could mean the processing of certain categories of asylum claims within EU, rather than national, reception centres. Those who are found to be in need of international protection in this process would be settled in participating EU Member States in accordance with agreed sharing of responsibilities, and distribution and protection criteria. Those found not to be in need of international protection and without other options for legal immigration would be returned promptly to their countries of origin under joint EU operations. These arrangements could be established in an incremental manner and eventually form part of a genuinely supranational system.

Second, the future lies in ensuring protection-sensitive entry and border procedures. This issue has raised its head in the context of arrivals by sea in Greece and Italy, as well as along the EU's eastern borders. Of course States have a legitimate interest in controlling irregular migration but how do we ensure that adequate safeguards are properly included in whatever measures States take or envisage in the broad area of freedom of movement? Making it virtually impossible for refugees and asylum

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seekers to reach countries of asylum or to effect family reunion through regular means has led to stigmatising them as people trying to circumvent the law, and has provided a market for smugglers and traffickers.

Therefore, expanding regular channels for migration for refugees is essential to ensuring their protection. Such avenues could include increased opportunities for resettlement or humanitarian admission, humanitarian visas, and 'refugee-friendly' student and labour migration schemes. In parallel, family reunification procedures need to be streamlined, and access to them along the migratory routes currently being used needs to be ensured. This may require an amendment of the EU Family Reunification Directive<sup>2</sup> to include a broader range of family members. With more regular possibilities to reach safety in Europe, fewer people in need of international protection will feel compelled to resort to smugglers and dangerous irregular movements. Also, pressures on asylum procedures would be lessened and the procedures strengthened by diverting migratory pressures into other regular migration channels.

Third, actions need to be informed by a better understanding of the broader migration context, particularly the reasons behind migratory movements. The importance of sharing responsibility with States outside the EU needs to be stressed again and again. These States often have significantly less capacity yet host greater numbers of refugees than those in the EU: 86% of the world's refugees are hosted in developing regions.<sup>3</sup> In UNHCR's experience, refugees often move on because their basic survival and safety are threatened, and their fundamental protection and assistance needs, including educational aspirations and primary health care, are not met. If they are not allowed, or not given, the means to become self-reliant, they will move on.

Therefore, the future also lies in support for improved protection and solutions in regions of origin. Many of the measures proposed and planned in response to these identified needs would go some way towards addressing the reasons behind onward movements of refugees. Funding is needed to strengthen protection capacities in refugee-receiving countries in regions



UNHCR/Norges Kvernitis

of origin. The EU has done a lot of work on the external dimension of asylum and refugee protection in responding to forced displacement over the years. The EU and its Member States have contributed generously to humanitarian assistance for refugees in displacement emergencies, and are increasingly taking migration and refugee needs into account in development programmes. EU Member States' donations combined comprise the second largest funding contribution to UNHCR. In addition, EU funding for resettlement has the potential to be an important contribution in this area.

The next phase of crafting a Common European Asylum System provides the heartening prospect of advancing the global refugee protection regime, while benefiting from the EU's fundamental orientations

and deep human values. At this critical juncture, it is time for the EU to rise to the occasion, on a collective basis, and call upon its history of providing refuge in times of mass displacement, to ensure that those risking everything to find safety in Europe have meaningful, safe and realistic options for doing so.

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## Are asylum and immigration really a European Union issue?

Joanne van Selm

**Attempts to find an EU-wide solution to asylum may be preventing the finding of workable solutions at the bilateral or national level.**

It is redundant to say that the European Union (EU) is failing itself, failing refugees and failing humanity with its current policy towards immigration and asylum. The daily reports of more deaths at sea and on land, of battles between border police and people seeking safety or a better life, and of camps, fences and desperation are testament enough to that.

Exhortations for a cooperative approach in Europe and engagement with countries of origin, calls to stop people smugglers, and condemnation of the failings and abuses of the current asylum system have been standard in the migration field in Europe from policymakers since the earliest days of inter-governmental cooperation in the 1992 Treaty on European Union and during the Bosnia crisis.

While there is a great deal of truth underlying many of these and similar ideas,

some of them are, or should be, open to question. For example, it might be appropriate at this point to ask whether this really is a European problem, which can only be solved with EU-wide answers. We cannot continue to take this as a given in the light of two decades of failure to reach agreements on policy and implementation that are satisfactory to all twenty-eight Member States or that realistically address the real needs for refugee protection, as well as allow sufficient legal migration to meet Europe's labour needs.

### **This is a European problem...**

Since those early days of European cooperation, the underlying premise has been that in an area with free travel, without frontiers, and where the external border (land, sea or air) of any single Member State is effectively the border of the entire EU (or at least of the Schengen area), the entire

policy area of asylum and immigration can best be handled at the European level. In essence, what this means is that in creating a frontier-free space for European goods, services and citizens, the EU Member States have acknowledged the (almost) unintended consequence of creating a frontier-free space for people from all over the world. They have tried subsequently to compensate for that consequence by creating an EU approach to asylum and immigration, most notably in the form of the Common European Asylum System (CEAS), which is well developed on paper but poorly implemented.

In the more bureaucratic terms of the EU, the principle of subsidiarity – deciding whether a policy area can best be handled at the local, national or EU level – has been applied and it has been found that in the policy area of asylum and immigration, the appropriate level is the EU level.

Yet, the EU-level agreements that have been reached (beyond the basic principle that agreement ought to be sought at the EU level) have always been hard-fought, usually lowest-level compromises, which have rarely been found to have great impact in practice. Over the past twenty years, the same essential sub-issues of defining a refugee; assigning responsibility for dealing with asylum claims; reception conditions; temporary protection; and matters such as long-term residence status, family unity, seasonal work and others have been the subject of repeated efforts to intensify cooperation, with the agreements reviewed and re-negotiated under each subsequent work programme or treaty.

#### .... or is it?

While leaders continue to espouse the view that the project of a frontier-free Europe means immigration and asylum are by definition a European issue, actual policy and practice continue to be national in every way, including the migration decisions of those individuals arriving in the EU whether legally, irregularly or as asylum seekers or resettled refugees.

Few, if any, of the migrants setting out on boats across the Mediterranean have 'reaching the EU' as a goal – if they did then

they would stop in Greece, Italy, Malta and even France, rather than try to continue to Germany, Sweden or the UK. Perhaps if the EU were a more coherent whole, people would not have a particular nation state in mind as their destination – or if they found the situation in whichever place they arrived in the EU to be accommodating and to offer safety and protection then they might change their minds about their destination. Furthermore, efforts to 'spread the burden' and relocate people within the EU could only become a solution if protection were the same in any member state.

The EU's principle of 'subsidiarity' says that there are three criteria for determining that EU-level intervention is desirable:

- Does the action have transnational aspects that cannot be resolved by Member States?
- Would national action or an absence of action be contrary to the requirements of the Treaty?
- Does action at European level have clear advantages?

European leaders' insistence that the 'migrant crisis' is a European problem requiring a European solution could in part be a result of the pre-determination that a 'frontier-free' Europe requires an EU-level, rather than national- or local-level, approach. It seems that it is not based on a careful assessment of whether national policies and bilateral agreements in fact could address the problems or of whether seeking the EU-level approach is, in fact, creating barriers to effective management of the situation at hand.

Logically, migration has transnational aspects, including most obviously the simple fact that third-country nationals (that is, non-EU citizens) cross multiple EU Member State frontiers to reach their destination, whether seeking asylum or for irregular work. Could Member States resolve those transnational aspects? The constant push towards a European solution suggests that the Member States believe they cannot solve them alone, although the basic necessities for a European solution have not been there for the past two decades and seem unlikely to appear now.

Realistically, the conditions for EU-level action on asylum to even be agreed upon, let alone implemented in such a way that those advantages can be realised, are clearly lacking.

If basic elements were in place such as, at the broadest level, political will, and more directly a re-assessment of sovereignty to mean that there is less attachment to the principle of deciding for oneself who will cross ones border or be permitted to stay, then perhaps an EU-level solution could be found. Yet the insistence on the need for a European solution might be the most significant barrier to straightforward bilateral or multilateral agreements between Member States and their neighbours on border control. It might also be one of the barriers to the more humanitarian protection policies for which the same politicians who consistently enact more draconian rules are calling.

Agreement to achieve a Common European Asylum system is part of the Treaty, so to some extent national action would be contrary to its requirements – but in the absence of a strong CEAS, all Member States have their own asylum policies and systems, within the framework of minimum standards.

An EU-level agreement to manage the current scale of asylum seekers and irregular flows seems very unlikely, partly because

there is no machinery in place to elevate asylum and migration to the European level in terms of genuine, full-scale implementation. Nor is there leadership to guide Member States through the current crisis in the absence of an EU-wide ethos of protection, and with the differing immigration needs of member states relative to their demographic and socio-economic situation.

The French Foreign Minister, Laurent Fabius, has said of the fence erected by Hungary to keep out immigrants, “Europe has values and these values are not respected by putting up wire fences.”<sup>1</sup> A solution to the migrant crisis which respects those values might see each Member State enacting short- or long-term policies on asylum, protection, resettlement, management of irregular migration or prosecution of traffickers and smugglers. Sometimes they would act unilaterally to address their needs, sometimes bilaterally where such agreements will strengthen protection, build capacity and address the humanitarian crisis. This would be a more useful step than insisting on EU-level agreement while thousands suffer.

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1. <http://tinyurl.com/Fabius-on-Hungary-s-fence>

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## Social protection: a fourth durable solution?

Carolina Montenegro

**Although asylum seekers and refugees in Europe and in Latin America are very different in terms of numbers, a solution being implemented by Brazil and Ecuador may show the European Union a way forward on sharing the responsibility within a regional bloc.**

A pilot project called ‘Regional Mobility and Socioeconomic Integration of Refugees’ was proposed in 2014 as part of the Brazil Declaration and Plan of Action.<sup>1</sup> In practical terms it consists of a project to bring Colombian refugees in Ecuador to Brazil. Over a period of two years, 200 persons would come to Paraná in the south of Brazil to work, under employment agreements assured by the Brazilian government. Besides their salaries, extra financial assistance from

UNHCR would be granted for a short period of three months to Colombian families (one to five persons) living in Ecuador and with at least one family member of working age (18 to 45 years old). Through partnerships with local private actors, jobs were identified in the service sector, construction, agro-industry, textiles and supermarkets.

These families would be recognised as refugees by the Brazilian government and would have their protection assured but

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UNHCR/Mark Verwey

Colombian refugees arriving in Chical, Ecuador.

they also would be able to request residency in the country. This is possible because since 2013 Brazil and Ecuador have been part of the Mercosur visa agreement by which residents of the regional bloc member countries<sup>2</sup> are eligible for residency inside any of the signatory countries, without reference to their migration status.

This pilot project is above all about labour mobility and it clearly extends refugee protection beyond the legal level towards social protection. In the beginning the pilot project was framed as a fourth solution but later became known as a special modality of resettlement. It is different from traditional resettlement since the beneficiaries would be entrepreneurs or people who are available to work and not vulnerable groups or persons with their security under threat.

But it can also point a way forward as an innovative addition to the three traditional durable solutions of local integration, repatriation and resettlement. Criticism around those three solutions has been mounting due to an unprecedented high number of both new and protracted refugee crises. Levels of repatriation are at a record low, financial crises are damaging integration efforts, and resettlement still only has the support of a limited small group of host countries.

The Brazilian government initially proposed the pilot project, and a bilateral agreement was presented to the government of Ecuador in December 2014. Implementation of the programme was initially expected by

October 2015 but remains pending acceptance from Ecuador. An important legal debate is still taking place over whether Colombian refugees from Ecuador should keep their refugee status in both Brazil and Ecuador during the initial three months of adaptation or not, with arguments focusing on the guarantee of protection in case refugees do not adapt to life in Brazil and want to go back to Ecuador.

Replicating a labour mobility pilot like this in other regions of the world would necessarily demand adaptation to each region's

reality but it is certainly an initiative that suggests how to improve coordination of regional asylum mechanisms through social protection. While traditionally protection for refugees has been centred around a legal understanding, increasingly the issue is also being addressed through the lens of social protection,<sup>3</sup> including welfare policies of labour market interventions, social insurance and social assistance. This implies a pragmatic acknowledgement of the reality that refugees fleeing persecution need protection not only through documents and rights but also through access to the job market, to food and to social services. This kind of labour mobility project can help to spread the effect of a regional influx of refugees, especially in contexts where small or poor countries are the first and most affected; Italy and Greece come to mind.

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2. Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela, Guyana and Suriname.

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## In search of fairness in responsibility sharing

Philippe De Bruycker and Evangelia (Lilian) Tsourdi

**The cycle of mutual mistrust between EU Member States that prevents solidarity can only be broken if responsibility is assessed fairly on the basis of objective indicators.**

The European Union's (EU's) asylum system is riddled with factors that hold back its development. First of all, the responsibility-determination mechanism (the Dublin system) fails to share responsibility fairly between the Member States, and in addition largely disregards the realities faced by those seeking protection and their preferences or their links to specific Member States.

No objective discussion of what is a 'fair share' of responsibility has ever taken place. This creates a disincentive for Member States to implement the obligations they have undertaken legislatively. The different levels of economic development of Member States and the varying levels of investment in their asylum reception and processing systems have led to widely divergent reception conditions, knowing that there are still differences in the recognition rates among the EU Member States. Nor, for example, is any account taken of the investment of some frontline Member States in controlling the EU's external borders and in saving lives at sea.

The principle of solidarity and fair sharing of responsibility is clearly established in the EU treaties. Until recently, however, EU institutions in different policy declarations have avoided committing themselves on this issue and instead have adopted a 'toolbox' approach, listing different measures that operationalise solidarity. The majority of such measures are of an operational, technical or financial nature, representing an extremely limited degree of actual solidarity between Member States.

That said, the European Asylum Support Office, a dedicated EU agency tasked with coordinating operational cooperation between Member States, would have a significant part to play in achieving more solidarity. For this to become a reality, its financing and resources should become commensurate

with the level of ambition and expectations placed upon it. At the same time, its mandate should be strengthened in order to ensure the agency has greater operational capacity.

### Solidarity between EU Member States

Given that no objective assessment of responsibility sharing has ever taken place, any claim by a Member State for solidarity because it is 'overburdened' cannot be objectively substantiated, and raises the suspicion among other Member States that it does not want to carry out its responsibility. An objective assessment of the asylum capacity of each Member State would allow 'inability to comply' with one's obligations to be clearly distinguished from 'unwillingness to comply', thus addressing the current tensions between Member States when it comes to distributing responsibilities.

In pursuit of solidarity, Member States should agree on a system of evaluation of their individual share of responsibility on the basis of objective indicators. A commonly agreed framework would make objective assessment of calls for solidarity possible; it would also reveal to what extent Member States are under-performing and should be investing more in building up their systems in terms of both human and financial resources.

Finally, intra-EU transfer of asylum seekers or protected persons (called 'relocation' in EU jargon) should be further operationalised. Recent initiatives for temporary relocation schemes from Greece and Italy as an exceptional measure within the Dublin system are a breakthrough in putting the issue of fair sharing of responsibility at the forefront of the political debate for the first time. However, they have some flaws.

Firstly, the number of asylum seekers to be relocated is the arbitrary result of a political choice, rather than the result of an

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objective evaluation of the number of persons that should be relocated in consideration of a fair sharing of responsibilities. The fact that the mechanisms are static, with a numerical cap on persons to be relocated, rather than dynamic, means they are unable to respond to changes or variations in the flows of persons.

Secondly, the decision over relocation is imposed on asylum seekers without taking into consideration their preferences. Finally, their exceptional, rather than permanent, nature creates the same disincentives for effective implementation that were observed in the normal working of the Dublin system. These factors significantly undermine the mechanisms that the EU and its Member

States have tried with some difficulty to put into place since late September 2015.

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## Volunteers and asylum seekers

Serhat Karakayali and J Olaf Kleist

**People in communities where asylum seekers and refugees have appeared offered various forms of support to the new arrivals as states failed to provide even the essentials.**

Amid rising numbers of asylum seekers arriving at European shores over recent years, reception and processing facilities – especially in countries of first arrival – were often overburdened. Asylum seekers faced insufficient infrastructure for their reception and integration, leading in many cases to secondary migration. For years, in the streets of Athens and on the islands of Lampedusa and Sicily, in the train station of Milan and the ‘Jungle’ of Calais, they often took matters into their own hands.

The public and political perception was generally one of failure of those countries’ migration policies, of the Common European Asylum System and of the Dublin Agreement. The focus in Brussels, Strasbourg and many capital cities was not on local situations but on rules and principles to re-establish an orderly asylum system, either by forcing countries to abide by existing standards or by creating a new system.

Meanwhile local people in Sicily helped with onward travel by giving directions, buying train tickets or even by giving lifts to asylum seekers.

Volunteers at transit hotspots like Milan, Athens and Calais provided support by distributing clothing and food, and offering legal advice or medical assistance.

These engagements by volunteers – citizens and non-citizens alike – took place in the shadows; the beneficiaries were, after all, widely considered to be irregular migrants. Yet increasingly, locals who witnessed the despair and needs of asylum seekers in their communities joined traditional activists. This was the case in particular where asylum seekers and refugees were distributed to towns that had not received any contingents previously and had little infrastructure and resources beyond housing available. Locals would come forward to donate essentials but also to get to know the new residents. Thus volunteers inadvertently become a force of integration.

### Taking on state duties

The engagement of locals with asylum seekers in their neighbourhoods became a widespread phenomenon across Germany, as increasing numbers of asylum applicants



British volunteer Katie Griggs holds weekly cycling sessions in central Berlin where Syrian asylum seekers can learn to ride bikes. But the meet-ups are not just about cycling; for asylum seekers and volunteers alike, it is also about forging connections and lasting friendships.

meant that housing had to be found for them in new and sometimes remote locations. Established organisations working with refugees in Germany estimated an average increase of 70% of interest in volunteering for refugees over a period of three years and more than a third of volunteers were active in self-organised groups and initiatives rather than in established NGOs.<sup>1</sup> This is unlike any other volunteering. Volunteers with refugees are, our study shows, predominantly female, in their twenties or over sixty, and more often with a migrant background and non-religious than the societal average. For them their engagement is not about volunteering itself but specifically about helping refugees. What we documented in our study was a mainstream movement of volunteering for refugees being established across society.

Over the summer of 2015, thousands of people in German cities rallied round to help asylum seekers as bureaucracies failed to register, house and feed the new arrivals. Previously, the main tasks of volunteers had consisted of facilitating visits and communication with officials, translation and language lessons, advice and support related to integration. Now

volunteers donated and distributed food, clothing and other essentials. The solidarity and hospitality that people offered brought a dimension of welcome to the reception of refugees that state institutions cannot provide. The delicate balance between helping refugees and relieving the state of its core roles swung towards volunteers picking up where bureaucracies failed. At times, state institutions intentionally relied on volunteers.

Critics have warned about neo-liberal policies to out-source to volunteers the state's obligations to refugees. In the long run, the role of volunteers has to be defined more precisely. It is important that volunteers do not substitute state obligations but engage in welcoming refugees to their new society. In their shared actions they create a civil society that is open to and accepting of new members. In fact, many of the tasks that volunteers fulfil cover core elements of refugees' integration processes.

In 2015, civil engagement for refugees has sprung up across Europe. Europeans have practised solidarity with refugees irrespective of national borders in ways that European politicians have long failed to do. The challenge that arises from this grassroots

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activism is to prolong the solidarity shown beyond the emergency that was created by failed top-down policies. Many volunteers point out that the ad hoc support they provide lacks efficient organisation. Effective and sustainable structures for volunteers have to be built up. NGOs and businesses can add experience and know-how not only to grow and strengthen volunteering capacities and effectiveness but also to manage the expectations of everybody involved.

Ultimately, the European Union may benefit from the volunteering movement as much as refugees. It should provide funds for organisational structures but not take control of the civil society engagement. Governments have long underestimated the widespread potential for receiving, integrating and protecting refugees in European society. European states should follow the volunteers'

example by orientating refugee policies to the needs of asylum seekers in order to make a European 'society of welcome' possible.

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## A welcoming policy in post-socialist East Germany

Anna Steigemann, Frank Eckardt and Franziska Werner

**Apparently, East European countries are less willing to accept refugees than other European countries. Their experience of ethnic and cultural diversity is weak and a genuine welcome has still to be developed.**

As former East Germany is now receiving refugees as part of the national distribution scheme, towns there need to adapt to accommodating refugees. There is a range of different attitudes in the East-German context – from the highly defensive to the very open. Only the state of Thuringia has an outspokenly cosmopolitan and liberal approach, which has resulted in a high-profile 'welcoming policy'.

There has long existed a high level of xenophobia in Thuringia, as in most of East Germany. The 'welcoming policies' introduced by the new state government in late 2014 nevertheless were intended to create a turnaround in the general attitude towards refugees. A new Ministry of Migration adopted the principle of decentralised housing for accommodating refugees in order to enable the refugees to move into their own apartments as soon as possible.

Although these government policies have made life easier for many refugees, most importantly Ministers have used the narrative of a welcoming policy to call for more understanding from the local population and a rejection of xenophobic resistance to hosting refugees. This represents a clear difference from politicians in neighbouring Saxony who largely use language that implies a certain sympathy for protests against refugees being housed there and who are calling for more forced returns. Despite still high levels of xenophobia, Thuringia's new 'welcoming policies' also initiated innovative forms of communication at the local and regional level.

### Mühlhausen

The city of Mühlhausen is in a not very densely populated district in Thuringia. Two so-called group accommodations (more precisely, refugee camps) have been opened

in small villages approximately 20 km from the city. Public transport barely connects the camps with the city where a small number of refugees also live. The government proposed using former military barracks in Mühlhausen to create one temporary camp for 1,000 refugees and one longer-term camp to host a further 1,000 refugees in single apartments or in 'group accommodation'. After the public announcement of these plans, neighbours of the barracks organised a protest against the opening of the reception centre for these camps.

The district commissioner, who is primarily responsible for the refugees' accommodation, reacted by establishing a 'round table' of all persons concerned with refugees. He asked senior citizens from the local church community to organise this round table, because they enjoy broad respect in the city and have substantial experience with people of different ethnic backgrounds from their previous community work. After three meetings, the round table gradually became more a place of reflection on experiences – and complaints – and less an organisational or administrative institution. The residents of Mühlhausen now have a forum for expressing these experiences and to seek more understanding and support for the long process of mutual adaptation, which is still at the very beginning.

### Meiningen

In Meiningen, an outlying and somewhat marginalised city that has lost many residents in the last decades, the accommodation of refugees is mainly confined to Jerusalem, a high-rise estate from the pre-unification period on the outskirts of the city, which is part of an area with high and above average unemployment and poverty rates. The neighbourhood is clearly stigmatised and receives high media coverage whenever undesirable living conditions in pre-unification high-rise settlements are to the fore. There have been frictions between the established, mostly elderly residents and the newly arrived refugees, and some indications of xenophobic reaction. It seems that the authorities are afraid of further

reinforcement of the existing stereotypes about the neighbourhood and want to avoid any further negative media coverage. The official political discourse on the reception of refugees has been part of the 'welcoming culture' and the commissioner responsible has set up four working groups to address various matters. These working groups mainly involve experts from the local administration and there is little integration of civil society. However, citizens have also become active through the engagement of two social workers who work permanently in Jerusalem. Being already overloaded with caretaking for the area's older residents, the social workers have little capacity themselves for social work geared to the refugees' needs and their integration into the neighbourhood. Civil society's voluntary work therefore focuses on this social work and has produced a number of offers of assistance for the refugees.

### Conclusion

The newly introduced discourse on 'welcoming' in Thuringia is only the first step not only in encouraging a more friendly tone towards the refugees and migrants, but also embracing cultural diversity and showing sympathy with otherness. It is necessary to bear in mind the very recent emergence of these developments, as well as the hard work needed and the inevitable clashes that will occur before compassion becomes a lived reality. For the refugees, the experience of being accepted will require long-term use of the word 'welcome'.

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## Migration terminology matters

Paola Pace and Kristi Severance

**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.<sup>1</sup>

### 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.<sup>2</sup>



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.<sup>3</sup>

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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# Ukrainian asylum seekers and a Polish immigration paradox

Marta Szczepanik and Ewelina Tylec

**The recognition rate for Ukrainian asylum seekers in Poland remains at an extremely low level, with the concept of ‘internal flight alternative’ serving as the legal basis for rejection of many asylum applications.**

In 2014 the total number of applications for asylum in Poland by nationals of all countries reached just over 8,000.<sup>1</sup> Compared to 428,000 in Hungary or 646,000 in Italy (two other states situated at the EU’s external border), the Polish statistics are surprisingly low, especially since they include the period following the outbreak of the conflict in Ukraine.

While the majority of refugees fleeing military conflict in Ukraine have sought asylum in Russia, a much smaller number applied for international protection in the EU, including Poland. The number of Ukrainian asylum seekers in Poland increased significantly as compared to previous years but remains small in absolute numbers: 46 applications in 2013, 2,253 in 2014 and 2,061 by mid-November 2015.<sup>2</sup> Nevertheless, the recognition rate is extremely low, as it was in 2014 in most of the other main countries where Ukrainians sought refuge. Germany made 20 grants of refugee or subsidiary protection status out of 2,705 applications; Italy 45 grants of refugee or subsidiary protection status out of 2,080 applications; Sweden 10 grants of refugee status out of 1,320 applications; and France 30 grants of refugee status out of 1,425 applications. Interestingly, the Czech Republic received 515 applications and granted refugee or subsidiary protection status to 145 of them.

In Poland, up until 15 November 2015 only two persons were granted refugee status and 24 were granted subsidiary protection, which in turn may deter some Ukrainians from seeking asylum in Poland. At the same time, the number of Ukrainians in residence legalisation procedures in Poland almost doubled, both

with regard to the number of applications and the number of positive decisions.

What is problematic is that Poland, while accepting Ukrainian students and economic migrants, does not recognise refugees, even if they come from war-torn Eastern Ukraine. At the beginning of the conflict in Ukraine, Poland’s political elite publicly expressed support for potential asylum seekers from Ukraine arriving in Polish territory. But the current Polish approach seems to consist of limiting the inflow of asylum seekers while the procedure for legalisation of residence is very accessible. However, many Ukrainians lack this information and still apply for asylum. This often puts them in a complicated legal position; they cannot work in Poland and if their claims are rejected they are forced to leave the country.

## The legal paradox

The reason behind the low asylum recognition rate for Ukrainians is the application of the concept of ‘internal flight alternative’ (IFA) by the Polish authorities. While neither the 1951 Refugee Convention nor its 1967 Protocol expressly refers to this concept, it has over time been developed in state practice and legislation. It exists, for example, in Article 8 of the recast EU Qualification Directive of 2011 which introduced the condition that the possibility of securing protection elsewhere within one’s own country should serve as part of the assessment of an application for international protection. The practice in this regard is highly divergent even among EU Member States.

In Polish law,<sup>3</sup> an asylum seeker has to prove lack of the possibility of safely relocating and settling in any other part of their country of origin. The application

of this concept to Ukrainian asylum seekers, the majority of whom come from the eastern rebel-held areas and have a possibility (at least theoretically) of resettling to the western parts of the country, leads to the situation where it is almost impossible for Ukrainian asylum seekers to obtain protection in Poland.

As stipulated by the United Nations High Commissioner for Refugees Guidelines on International Protection,<sup>4</sup> the 'internal flight alternative' is neither a stand-alone principle nor an independent test allowing for refugee status determination. It should therefore be considered as a part of a holistic approach to making a decision on provision of international protection. In Poland, however, IFA seems to be a key determinant for decisions on international protection in relation to Ukrainian asylum seekers.

According to the European Court of Human Rights,<sup>5</sup> in order to apply IFA specific guarantees have to be in place – namely, the person must be able to travel to the area concerned, gain admittance and settle there. Accordingly, the policy applied by a receiving state should not lead to a possibility of a person being expelled and ending up in a part of the country of origin where he or she may be subjected to ill-treatment. International

reports and on-site accounts point out that, with over 1.4 million internally displaced persons (IDPs) and insufficient resources, the situation facing IDPs in Ukraine is extremely difficult. There are problems with registration procedures, securing adequate housing, medical assistance, and jobs and pensions. In addition, there are increased tensions between IDPs and host communities who often blame the former for social problems and for the conflict itself.

Apart from applying for international protection, Ukrainians have the option of legalising their stay on Polish territory with temporary or permanent residence permits. In this regard, Poland possesses very liberal regulations. An average of 80% of applications for legalisation of residence are recognised, offering a tangible opportunity of obtaining legal status. Consequently, in 2014 the number of applications for temporary residence permits rose by 60% and by 104% for permanent residence permits as compared to 2013. Nevertheless, lack of clear information regarding both legalisation and international protection procedures leads to a situation where many Ukrainians, while fulfilling the requirements for legalisation of residence, still decide to file asylum applications.

Many of them are not aware of the legal consequences of entering the procedure, such as the general lack of permission to work during the first six months of the process. This is mostly due to the fact that they do not receive timely and reliable information either from the Ukrainian or the Polish authorities. This policy has affected in particular those coming from the Eastern Ukraine who were already residing and working legally in Poland but who were



Destroyed school building in Nikishino, Ukraine, March 2015.

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advised to apply for international protection when the conflict broke out. As the work permit is automatically cancelled at the moment of lodging an asylum application, they could no longer stay employed. More importantly, the refusal to grant protection – which was the outcome of the vast majority of applications – meant that they had to leave Poland and, in many cases, received a temporary re-entry ban. Similarly, Ukrainian students from the Donbas region studying at Polish universities who hoped to be granted international protection and had therefore lodged an asylum application instead of prolonging their residence permit eventually lost their right to stay in the country. As a consequence, those two groups of migrants have been faced with the choice of either returning to Ukraine or staying in Poland on an irregular basis.

The on-going conflict in the Eastern Ukraine raised high expectations among Ukrainians coming from the region of being granted international protection in Poland. But the Polish authorities' application of

IFA as an independent test puts Ukrainian asylum seekers in a very vulnerable position. The repeated application by the Polish authorities of this concept requires some liberalisation in the light of the absence of a real possibility for Ukrainian asylum seekers of such relocation inside Ukraine.

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## Separated and unaccompanied children in the EU

Rebecca O'Donnell and Jyothi Kanics

**A growing body of EU law, policy and practical measures address the situation of separated and unaccompanied children who arrive in the EU. However, in the current sensitive political climate, there is a risk of attention and resources being diverted from building on progress.**

An increasing number of children are migrating to Europe on their own in order to escape persecution, conflict, violence and poverty or seeking family reunification, educational or economic opportunities. Many are making very dangerous voyages, across land and sea, and once in Europe they may then move, or be moved by traffickers or smugglers, from one country to another. Many have claims for international protection,<sup>1</sup> and many are at risk of discrimination and exploitation.

According to Eurostat, the number of separated and unaccompanied children<sup>2</sup> seeking asylum in the European Union

(EU) has been on the increase since 2010. Between January and October 2015, the number of unaccompanied child asylum seekers in Sweden alone (23,349) exceeds the total EU figure in 2014. There are no complete statistics regarding unaccompanied children who do not apply for asylum but the figure is likely to be significant.

In recent years, the EU established some specific obligations for Member States as regards unaccompanied children, including in the revision of the Common European Asylum System, the EU Directive on trafficking in human beings<sup>3</sup> and the EU Return Directive.<sup>4</sup> Although there are still



Unaccompanied minors from Afghanistan in Malmö, Sweden, November 2015, on their way to a temporary arrival hall (set up by the municipality to provide toilets, showers, wifi and electricity) before going to the immigration office where they can apply for asylum.

differences in treatment of unaccompanied children depending on the different instruments which apply to them, the EU also made serious efforts to emphasise their common rights first and foremost as children through the implementation of an EU Action Plan on Unaccompanied Minors 2010-2014<sup>5</sup> which also sought to address some of the more difficult issues concerning all unaccompanied children, such as guardianship, age assessment, family tracing and durable solutions.

Currently, the Member States are at an early stage of implementing and applying EU common obligations into national law and practice and there are both good practices and enduring challenges for Member States in identifying, receiving and caring for separated and unaccompanied children in Europe.<sup>6</sup> In the current situation, it is vital to respect the new EU safeguards and involve child protection actors alongside immigration and law enforcement actors to identify risks to children in transit and to work to restore them to safe situations. Particular difficulties also arise for children who are not seeking asylum, or children who are approaching the age of eighteen, when migration and crime control concerns still appear to take precedence over child protection and humanitarian imperatives in some Member States.

A fundamental challenge – common to all separated and unaccompanied children – is how to find a ‘durable solution’ for them, defined as a sustainable solution that ensures that the unaccompanied or separated child is able to develop into adulthood in an environment which will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child and will not put the child at risk of persecution or serious harm.<sup>7</sup> It is an approach which may require Member States to contemplate and implement outcomes

that may not be obvious in the context of migration control but which aim to fulfil the best interests of the child.

For instance, a durable solution may include local integration on humanitarian grounds, even in the absence of a claim for international protection. Ultimately, it may require Member States to cooperate more fully with each other in order to identify the most appropriate care arrangement and location for the child to develop, for example by allowing transfers of children to another Member State through relocation schemes and more generous family reunification provisions. Moreover, putting in place proper measures to find durable solutions is the only appropriate route to achieving an objective which many Member States emphasise, that is, the return of unaccompanied children to their country of origin, when this is determined to be in their best interests.

### Best interests of the child

Several Member States report having Best Interests Determination procedures in place to support their competent authority’s decision making on durable solutions for separated children. There are also ongoing EU-funded projects concerned with the better definition, identification and implementation of durable solutions in line with the child’s

best interests. Equally, the task of ensuring that decision making is well informed about the circumstances which affect children's lives in their countries of origin is crucial. Finally, EU-funded projects have also addressed the return process, including monitoring and evaluating the outcomes for children and families after return.

With the current large numbers of people and the difficult political climate, there is a risk of attention and resources being diverted from building on the progress that has been made in several respects to concentrating resources on emergency frontline measures and activities in third countries to deter migration and fight traffickers. However, the situation also urgently requires the EU and its Member States systematically to build on recent progress, not only in the asylum system and special measures for trafficked children but also in emerging procedures that consider the best interests of other migrant children. A comprehensive EU strategy on children migrating alone or accompanied may be the most effective route forward. Although policymakers may currently be cautious when adopting new policy frameworks, Member States will ultimately gain where the EU plays a prudent and proactive role in supporting

them to protect all children from neglect, violence and exploitation within the region.

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## Removing 'non-removables'

Katharine T Weatherhead

**EU law and policy on non-removable irregular immigrants – such as unsuccessful asylum seekers who cannot be returned to their country of origin – have political and humanitarian consequences.**

In the European Union (EU), regular immigrants receive a residence permit and irregular immigrants receive a return order, an order to leave the country. Irregular immigrants “whose presence in the territory is known to the immigration authorities, but who, for a variety of reasons ... are not removed”<sup>1</sup> are termed non-removables, non-returnables or non-deportables. The barriers to their removal may be related to legal or humanitarian considerations, practical obstacles or policy choices.

**Legal barriers** include the humanitarian situation in the state of origin, humanitarian considerations in cases of serious illness, obligations to protect family and private life, and obligations to protect the best interests of the child.

**Practical barriers** include the lack of identification of the immigrant, the lack of travel documents, or refusal by the state of origin to readmit the individual.

**Policy-based barriers** include safeguarding national interests, such as public

security, or safeguarding values enshrined in national constitutions and policies.

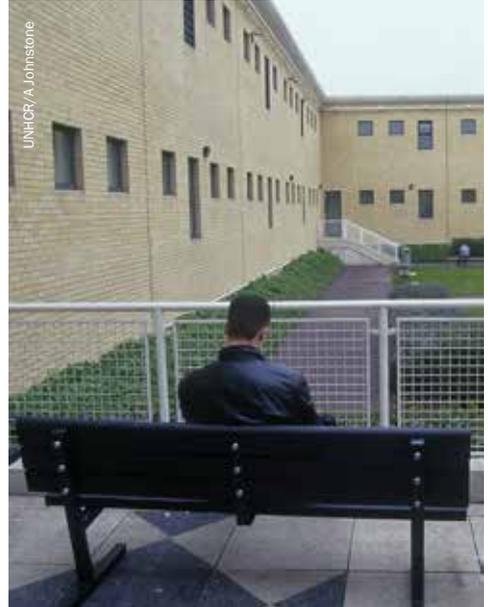
Under the EU's 2008 Return Directive, non-removable persons face the possibility of official postponement of removal.<sup>2</sup> However, the term 'postponed removal' understates just how long individuals may have their removal postponed for. For example, in October 2009, 58,800 irregular immigrants within Germany had been in possession of a 'tolerated stay' status for over six years following postponement of removal.

More importantly, official postponement does not grant these individuals temporary legal residency. Rather, their status remains irregular. This means that Member States still have an obligation to remove them from EU territory, even though EU law recognises them as non-removable.

This problematic legal framework leaves non-removable migrants in a vulnerable situation. In particular, they are susceptible to human rights violations, as the full range of human rights held by irregular migrants is not contained in the Return Directive's provisions for them. The precariousness of their situation is worsened in that several Member States have no specific provision at all governing their presence. This vulnerability is little dealt with by academics and is neglected by policymakers.

When combined with the political emphasis on deportation in managing irregular immigrants, it seems that the EU institutions depict deportation as both possible and necessary, despite the clear barriers to removal. At the same time, the option of regularising immigrants as provided for in the Return Directive begins to appear more apparent than real, especially given the high number of references being made within the EU to potential security threats posed by asylum seekers and irregular immigrants.

There are intermediate policy options, however, between deportation and regularisation. A nominal and/or temporary regular status could provide a basic level of legal security for non-removable immigrants which reduces the risk of human rights violations. The resulting increase in documentation of these individuals



Asylum seeker awaiting deportation from Tinsley House immigration detention centre in the UK.

could also provide more information on their number and situation, upon which a workable policy on non-removability could be developed. Alternatively, encouraging Member States to increase their use of the non-obligatory postponement provisions in the Return Directive could at least further harmonise Member State practice, creating a common basis for future discussion and cooperation on this issue.

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This article is a shortened and amended version of an unpublished dissertation written as part of an MA (Hons) in International Relations and Law at the University of Edinburgh, entitled:

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## Europe, don't copy Australia

Keeya-Lee Ayre

### Praise for Australia's policy of turning away asylum seekers is misguided.

The Australian practice of turning back asylum seekers has been quoted – often favourably – by political leaders in several EU states as an example to be followed in Europe. In fact, in the Australian context the issue of 'boat people' has been utilised as a political device and has featured prominently in the media for decades.

This politicisation can be dated back to 2001 and the highly publicised case in which the *MV Tampa*, a Norwegian cargo ship, rescued 438 people (mostly Afghan asylum seekers) from a distressed fishing boat and was then refused entry into Australian waters. This refusal met with widespread international condemnation but in Australia the public supported the decision and the government's emphasis on international security and 'border protection'. The asylum seekers were portrayed in national media as using cheating means to try to push their way into the country to reap its benefits. They became seen as untrustworthy and a potential security threat.

Since this time, there has been a steady and consistent asylum seeker panic that, at its core, questions the morals of the individuals themselves. In Australia, coming by boat is equated with trying to 'skip the queue' in front of encamped refugees who have been constructed as the morally superior group due to their alleged patience, queuing for resettlement in far-away lands. This kind of rhetoric has been particularly powerful in the Australian context, where 'queue jumping' can be equated to a lack of 'fairness', a value closely associated with the Australian national identity.

In response to the increasing media coverage in Australia of the European treatment of asylum seekers, Prime Minister Tony Abbott took the opportunity to praise his own government's treatment of asylum seekers through the 'turn back the boats' policy, despite its illegality under international law: "If you want to stop the deaths, if you want to stop the drownings, you've got to stop the boats."<sup>1</sup> It is true that asylum seekers are no longer

drowning in Australian waters, at least that we know of. But we also do not know if they are dying somewhere else, out of sight. Many who arrived before the 'turn back the boats' policy are settled on Nauru or in Papua New Guinea. Keeping these asylum seekers offshore is costing Australia billions of dollars. If the goal was to prevent irregular maritime arrivals, then the policy has perhaps succeeded. But not if the goal was to minimise the financial consequences of these asylum seekers arriving. If these people were released into the community while they awaited processing (following security clearance), they would pay taxes and contribute to society. But the government has become so hamstrung by their own anti 'boat people' policies that they cannot even investigate such humane solutions without public backlash.

The ongoing anti-asylum seeker rhetoric is sometimes understood even domestically as a generalised anti-refugee sentiment, which is in effect working to undo a lot of the social cohesion that exists in Australia following years of effective multicultural policies. The public has been convinced that turning the boats away is the best choice socially and morally. Many people believe that the government is doing the right thing by them, the country and even the refugees encamped overseas.

In September 2015 German Chancellor Angela Merkel spoke of "moral obligations" and of putting in place "immigration policies worthy of what [Europe represents]".<sup>2</sup> The EU needs above all to consider asylum seekers as people with rights under international law, not as morally suspect because of their attempts to seek protection.

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## Europe and the future of international refugee policy

El Hassan bin Talal

**There is new thinking – that European leaders should embrace – on how to promote long-term responses to the Syrian refugee crisis that protect and uphold human dignity, and that constitute more sustainable and beneficial solutions in refugee-receiving states in the West Asia-North Africa region.**

The European Union (EU) has long prided itself on being a beacon of regionalism but its paralysis over the question of a common asylum system may represent the most severe failure in the project's history. So far this year more than 800,000 refugees and migrants have arrived to the continent by sea and this figure is expected to exceed one million by early 2016.<sup>1</sup> The EU is struggling to respond to the situation effectively but while the numbers may seem overwhelming, the EU is more than capable of managing the crisis effectively and in a manner that protects the well-being and upholds the dignity of those fleeing conflict and persecution, if the crisis were approached proactively and mechanisms put in place to share the collective responsibility across the 28 Member States of the EU.

This situation pales when compared with the responses of host states in the countries of origin, particularly those neighbouring Syria where the figures dwarf even the largest of quotas that individual European states would receive under a sharing system and yet Europe remains preoccupied with disagreements between Member States over resettlement and border closures. Between 2007 and 2013 the EU allocated almost 2 billion Euros to the security of its external borders; it has also spent significant sums of money on migration-related initiatives, such as reception and detention centres, in non-EU countries to pre-empt as many would-be immigrants as possible. By contrast, only 17% (or 700 million Euros) of spending over the same period was used in relation to the resettlement and integration of refugees. But simply bolting the doors shut will not mean that there is any decrease in the number of refugees journeying to

Europe. The most effective policies that the EU can pursue will need to focus on the underlying causes of migration to its shores and then addressing those causes in the refugees' countries of origin.

### Drivers of onward migration

One of the principal reasons that refugees are willing to take on the severe risks associated with making the journey to Europe is the lack of adequate support being provided by the international community in locations of displacement. As the Syrian refugee crisis illustrates, the more protracted the situation becomes, the less support there is available, leaving host states and refugees to struggle on alone. In my country, the Jordan Response Plan has received approximately 34% of its requested funding, while only 20% of UNHCR's US\$289 million 2015 appeal has been met. The result is that the hardships that many refugees face in their daily lives are worsening and this is the incentive for them to look for better options in Europe and elsewhere.

The EU represents one of the most generous sources of support to the Syrian refugee crisis and the humanitarian emergency within Syria.<sup>2</sup> However, much of this assistance is devoted to emergency relief; and the cuts in World Food Programme assistance in regional host states and the dire impact these have had on families are an indication of inherent unsustainability. If Europe is serious about dealing with its current crisis effectively and in a manner that upholds the core values of the Union, it must be willing to take bold and innovative approaches in the ways in which it provides assistance to refugees and host states away from its own borders.

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## The chance for an enhanced European response

Strategies are needed to move beyond the dominant, top-down models of refugee assistance and towards assistance that encourages autonomy and self-sufficiency for refugees. In this regard, the EU could play a pioneering role in pushing international refugee policy forward and enhancing its relevance for the 21st century. With leadership from the European Commission, new partnerships could be created between international donors, refugees, host states and the private sector. Research conducted by the West Asia-North Africa Institute details at length what such new partnerships might look like, taking Jordan as a model with high potential for success.<sup>3</sup>

In brief, a more sensible policy stance at the EU level would be to divert some of the spending on 'hard' security (such as border enforcement) to support innovative and more sustainable forms of refugee assistance within host states in the region of origin. One policy measure with enormous potential is to encourage large-scale investment in manufacturing and industrial sectors in the host state, employing both refugee and host community labour at pre-established ratios, creating clear advantages for both communities. This would require support from the EU beyond mere financial assistance – including but not limited to trade concessions and tax exemptions as incentives to investment from existing manufacturing companies in-country. Such initiatives would work in complementarity with, as opposed to instead of, resettlement quotas and continued emergency relief.

In order for this model to work, there would need to be Association Agreements between regional host states and the EU. Alongside such agreements, a legal framework that facilitates capital flows and protects all parties involved would be put in place to minimise risks. Importantly, the EU's Rules of Origin requirement needs to be reconsidered in order to allow for refugee labour in production and for exports to be allowed to reach European markets. While the EU's Rules of Origin are global and have been



UNHCR/Christopher Herwig  
Long walk for groceries for Syrian refugees at Azraq Camp, Jordan, June 2015.

in place for a long time, such a concession could be made on a bilateral basis with host states with other conditions in place to ensure the quality of the final product. For example, an Agreement on Conformity Assessment and Acceptance of industrial products would enable products manufactured by Syrian refugees to enter the EU market without additional technical controls. This type of partnership would represent a commitment by the EU to pursuing more sustainable solutions to the challenges of refugee crises and be a way of beginning to address the policy failures vis-à-vis the current spillover into Europe at the source of the problem.

This type of initiative would also correspond to the imperatives laid out in the European Commission's own recent communication *Elements for an EU regional strategy for Syria and Iraq as well as Da'esh threat*.<sup>4</sup> In this document the Commission articulates the need for approaches that "cater to displaced persons' longer-term development needs" and "strengthen local resilience capacities in Syria, Iraq and the affected neighbouring countries".

## Conclusion

While the spotlight is likely to be on Europe for some time, much of the attention to the refugee crisis at Europe's borders continues to emphasise issues around relocation, border enforcement and procedural aspects of EU asylum policy. Although important, these are not the main areas that Europe needs to address to deal with the current

crisis effectively. New types of partnership with host states in so-called refugee-producing regions could begin to address phenomena such as aid dependency and host state fatigue, and steer international refugee policy towards more sustainable and mutually beneficial initiatives. This is the best chance that Europe has of reducing the number of new refugee arrivals on its shores and the loss of life incurred in the process. More importantly, it would represent a transition towards international refugee policies that deliver opportunities for host communities and refugees alike, whilst upholding human dignity.

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## Choices, preferences and priorities in a matching system for refugees

Will Jones and Alexander Teytelboym

**We propose a ‘matching system’ that simultaneously gives refugees some choice over where they seek protection and respects states’ priorities over refugees they can accept.**

Syrians fleeing the current conflict have been repeatedly told that they cannot ‘choose’ the state in which they seek long-term protection. In Australia, the idea that asylum seekers are ‘shopping’ for the best sanctuary forms a persistent part of the rhetoric around keeping them out. In these and other cases, the premise is that it is unjustifiable for refugees to be allowed some choice over where they seek protection. The consequence enshrined in the Dublin Regulation is that refugees may apply for asylum in only one European Union country.

From the perspective of states, refugee flows are chaotic, unpredictable and widely regarded as socially disruptive and destabilising. Everyone recognises that the Dublin Regulation, which seeks to address this by placing the obligation to render asylum on the first EU country an asylum seeker reaches, is not fit for purpose. In parallel, there is an urgent need to design systems to overcome the political deadlock among European states over asylum.

### The ‘Refugee Match’

We propose a system which can both give refugees choices over where they are to be protected and enable states to manage the sharing of responsibility for granting asylum in a way which is equitable and efficient.<sup>1</sup> The way in which we allocate students to schools, junior doctors to hospitals and kidneys from living donors to recipients is by ‘matching’ the two sets. Refugees need to be ‘matched’ to states in precisely the same way in order for them to be protected. Furthermore, we want a system which participants on both sides will want to participate in, which will best satisfy their preferences and desires, and which will do so in a manner that is equitable and transparent. It could even give states currently unwilling to share responsibilities additional incentives to get involved.

Concretely, in our proposal, states and refugees submit their preferences – about which refugees they most wish to host or which state they most wish to be protected in – to a centralised clearing house which matches them according to those preferences.

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Refugees, in principle, could submit their preferences from anywhere, saving them the risk of a dangerous journey and the extortion of people smugglers. This system involves no payment, works where there are quotas or other constraints, and can be made to work so that it is:

1. comprehensive – all refugees within the system are hosted somewhere (with quotas agreed by participating states adding up to the total number of refugees seeking places ‘in the marketplace’)
2. stable – refugees and countries do not end up dissatisfied with their choice and wanting to ‘re-match’ by undertaking secondary movements
3. efficient – no refugee can be made better off without making at least one other refugee worse off.

Finally, it can be made ‘safe’ for states and refugees to honestly reveal their true preferences.

Beyond this, there is a lot to be determined. It would be for the designers of the system to decide which refugees the match would apply to, and what sorts of preferences states and refugees were allowed to express. For example, the system could be designed to allow states to identify priority categories based on skills gaps; this might be useful in persuading states in Eastern Europe with labour shortages to participate. There may be some reason why states would wish to decide in advance that the refugee populations they take must meet some ‘distributional’ requirements. For example, states could collectively pre-commit to taking a diverse population of refugees and this feature can be built into the system. The designers of the system would face many choices in order to meet whatever set of goals was decided upon. Our claim is only that, whatever those goals are, a matching system will deliver these goals better than the current system.

It is very unlikely that all states will have the same preferences. Even if all states ended up ranking refugees in the same way, the clearing house would still be an improvement on the status quo, as the preferences of the

refugees themselves would become the deciding factor in determining who went where.

However, there are a variety of principles which could be used in trying to determine who will be prioritised, given practical and political limits on how many refugees can be taken in. For example, the UK government has stated that its priorities are determined by greatest need and an assessment of where the UK can singly make the greatest difference. On the other hand, the governments of Slovakia, Poland and the Czech Republic have all signalled a willingness to take more refugees but only if they are Christians. Whether these principles are seen as discriminatory or as largely uncontroversial, the point is that different states are already free to rank these principles differently, and other states might rank the same refugees differently; for example, it would be eminently reasonable for Brazil and France to prefer Lusophone and Francophone refugees respectively.

Similarly, refugees will have a variety of preferences. There are abundant reasons to believe that the preferences of refugees are as heterogeneous as they themselves are. Currently, refugees must prioritise reaching the location where they feel they are most likely to be protected. In consequence, we know relatively little about the choices refugees would make if they knew they were guaranteed protection somewhere. We would like to find out.

Using a matching system *per se* does not dictate which principles states are allowed to use in ranking refugees, and the clearing house could permit or forbid the use of any criteria. Just as matching for doctors should not allow hospitals to engage in racist hiring practices, the clearing house would only allow states to rank refugees based on criteria which are compatible with the principles and goals of the 1951 Convention, and maybe other sets of principles.

Of course, in order to actually solve refugee crises, states would have to accept enormous inflows of refugees and find a way to resolve the ongoing conflagration in Syria and elsewhere. Matching systems,

such as the one we propose here, are never the total solution to the various issues they seek to address. They are merely a substantial improvement on the status quo within the constraints of what is politically palatable, and may give states incentives to relax these constraints. Although matching mechanisms cannot make states behave morally, they will nonetheless improve the situation for refugees, whether or not states can be made to act in accordance with their legal and moral obligations. This is therefore a pragmatic proposal in the spirit of those who argue that states will contribute towards efforts to protect refugees when they recognise a relationship between the rights of refugees and their own interests.

The Refugee Match is a realistic, pragmatic, quickly implementable and just improvement on much of the current international refugee regime. A matching system, which respects the preferences

and choices of refugees and the priorities of states, can better protect the human rights of the vulnerable, and increase the likelihood that states will participate in sharing responsibilities for the international protection of refugees. Any system which genuinely upheld the rights of refugees would have to start by respecting their choices. Asylum seekers ought to be able to choose the states where they want to spend their lives. The Refugee Match would be a good start.

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## Legal and practical issues raised by the movement of people across the Mediterranean

Guy S Goodwin-Gill

**The movement of people is a phenomenon we must learn to live with and to manage as best we can in the interests of all. Among other matters, this will require states dealing with each other on a basis of equity and equality, rather than outmoded and unrealistic expectations of sovereign entitlement.**

'Irregular migration' is largely a product of the late twentieth century, reflecting the desire of certain states to impose (their) order on the movement of people across borders. 'Irregular migration' is, currently at least, little represented in international law. The irregular migrant, like the regular migrant, is not defined by international law other than by reference to his or her common humanity. Nor does international law prescribe what states shall do (as opposed to what they may not do), when confronting this product of their own idiosyncratic view of the migrant on the move. More particularly, there is a solid legal framework governing the actions of states in and outside their territory which

is not supplanted by the fact that control of migration – the core decisions about entry, residence and removal – falls within the sovereign competence of the state.

However, traditional unilateralist assumptions regarding state competence have proven inadequate as a basis for dealing with today's humanitarian issues and have closed off thinking about new, urgently needed approaches. Today, there is a new reality, the product of a dynamic in relations between states that has been generated in part by globalisation and in part by inescapable facts – for example, the fact that migration cannot be 'managed' unilaterally, let alone turned

off. The persistent illusion of an absolute, exclusionary state competence remains a matter of concern because it tends to frame and direct national legislation and policies in ways that are inimical to international cooperation and, not infrequently, contemptuous of human rights.

International law is always there, even though some states may seek to displace it, to build the notion of 'irregular' status into some sort of foundational reason or excuse for denying to one particular group the rights to which we are all entitled by virtue of our common humanity. A gap nonetheless remains between acceptance of a human rights-based approach and the reality for today's migrants, and it will need to be bridged by way of effective implementation of the applicable law. The framework of international law and obligation implies more than the passive avoidance of direct harm, and demands an active protection role – one in which responsible states are obliged to ensure that those over whom they do or may be expected to exercise jurisdiction and control are effectively protected as a consequence.

### Rescue at sea

The European States' special legal responsibilities in the Mediterranean – if only because they assert the right to control passage – call for a coherent approach to rescue at sea and interception coupled directly to disembarkation in a place of safety, with appropriate care and assistance premised on the protection of rights. In principle, a starting point for disembarkation could be flag-state responsibility in the case of rescue or interception by a state's naval or equivalent vessels. But although this would be a beginning, that must not be allowed to result in gross disparities between states lest they be disinclined to commit resources to the safety of life at sea. States committed to search and rescue in the Mediterranean fulfil a community responsibility, and a formula for equitable sharing is called for which, while securing prompt disembarkation, then leads on to land-based assistance, processing and solutions. Disembarkation in a place of

safety is essential but it cannot be the end of the story.

Nor can flag-state responsibility be applied to merchant vessels. What is needed here, as experience with the Indo-China refugee crisis demonstrated, is an internationally agreed and administered scheme or pool of disembarkation guarantees, together with provision for compensating ships' owners for at least some of the costs incurred when ships' masters fulfil their international legal duties of rescue.

If those intercepted or rescued at sea are not disembarked in European space, then effective, open and internationally supervised agreements will be essential to ensure their landing and accommodation in a place of safety, their treatment and protection in accordance with applicable international and European standards, and a solution appropriate to individual circumstances, such as asylum, resettlement, facilitated third-country migration or return in safety and dignity to countries of origin. Indefinite detention of refugees, asylum seekers and migrants in sub-optimal conditions ought never to be on Europe's agenda.

The apparently contradictory pull of obligations relating to interception and rescue at sea or combatting smugglers and traffickers on the one hand and of human rights on the other might seem to compromise protection. States' responsibilities are certainly not part of a seamless web of rights and obligations when it comes to seaborne migration but some things are clear. A state minded to take action, as it should, against smuggling and trafficking already has duties towards the victims. A state which elects to intercept boats believed to be carrying irregular migrants likewise has protection obligations, irrespective of the legality of any particular interception.

This means bridging, in law and practice, the migration/refugee protection gap and it means a readiness on the part of the EU and its Member States to integrate their own human rights and fundamental values into truly cooperative relations with transit and other affected states.

## A European Migration and Protection Agency

The EU needs to turn outwards and be prepared to engage with countries of transit on a basis of equality and equity, rather than just instrumentally in pursuit of narrow regional interests and 'sovereign entitlements'. Among other things, what is needed, as a matter of logic and coherence, is a European refugee status built on Member States' international obligations and supplemented with the broad community benefits of EU law, including freedom of movement. A European Protection Agency competent for refugees and migrants in need of protection would be a good start, for many issues are common to both.

All Member States are party to the 1951 Convention and 1967 Protocol relating to the Status of Refugees, and all are bound by the same obligations and the same legal understanding of the refugee. Given that they have all agreed to treat refugees in the same way, to recognise the same rights and to accord the same benefits, national refugee status determination systems are redundant. The EU demands – I am shortening the argument – a simple European response, in which Europe's refugees enjoy a European asylum and European protection, and the rights and benefits accorded by European law. Meanwhile, good policy, if not strictly logic, argues equally for a common obligation-based approach, not just to refugee status determination but also to resettlement, rescue at sea and protection at large.

If the EU can sign treaties, then in theory it could replace individual Member States as party to the regime of protection organised under the 1951 Convention

and the 1967 Protocol; or if it does not replace them, it could exercise their competences by way of delegation.

Current proposals for dealing with irregular migration merely seek to prevent migrants and refugees from reaching Europe, essentially by moving border control further and further outwards, 'fighting' the traffickers, destroying the boats, building fences and, we suppose, 'preventing' illegal migration. In thinking medium- and long-term, attention must also focus on assistance to states of transit, many of which are facing new challenges in the management of migration but without the infrastructural capacity to accommodate, assist, protect and process non-nationals on the move. The EU has taken initiatives with outside states but too often they are oriented to control alone (in the EU's interest), with no regard to the wider, international dimensions.

The linkages between the regional dimensions of this crisis and the refugees now benefiting from asylum in Turkey, Jordan, Lebanon and Egypt are clear, and if coherent effective responses are not forthcoming, further onward movement is inevitable. Only by engaging across the full spectrum of interests can we make a start to what will and must be a generations-long project of protection and opportunity, but also in realising human potential both at home and abroad, in bringing working and workable alternatives to those whom desperation drives to risk all.

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Calais, France, November 2015.

## Economic reintegration of returnees in Liberia

Naohiko Omata and Noriko Takahashi

**Since the early 2000s, the United Nations Industrial Development Organization has been implementing economic recovery programmes for returnees in certain post-conflict countries. It remains uncertain, however, to what extent these training programmes have been instrumental in returnees' economic reintegration.**

Liberia has gradually been recovering from the social and economic damage caused by fourteen years of brutal civil war, between 1989 and 2003, which forcibly displaced about 700,000 Liberians outside the country. A significant number of Liberians repatriated following the final ceasefire agreement in 2003; and in 2012, when the UN High Commissioner for Refugees invoked the Cessation Clause, tens of thousands of the remaining refugees returned.

Liberia's limited infrastructure and weak economic foundation, however, have caused concern about its capacity to successfully integrate the new arrivals. Approximately two thirds of all Liberians live in poverty, especially in rural areas. During the prolonged conflict, many international businesses left, taking away employment and capital. Given such conditions, the large number of returnees from neighbouring countries has placed an enormous burden on the country's budget and scarce resources<sup>1</sup> and there was consequently a strong incentive for the government to consider how to bolster livelihoods opportunities for returnees.

Against this backdrop, between 2013 and 2014 the United Nations Industrial Development Organization (UNIDO) offered two training programmes in Liberia. The first programme, the Entrepreneurship Development Programme (EDP), provided 120 hours of training through two modules: first, Introduction to Entrepreneurship, Work and Life Skills and second, How to Establish and Manage Your Business. From November 2013 to May 2014, EDP trained 685 returnees. Drawing upon the results of UNIDO's assessment of the local employment market, the second programme, the Skills Training Programme (STP), offered a wide

range of vocational skills and techniques such as plumbing, beauty care, catering, computer hardware servicing, car mechanics, baking and hair braiding. From March to July 2014, STP trained 327 beneficiaries.

By equipping returnees with marketable livelihood techniques and business management skills, the intention was that the returnees would be able to build their own enterprises or find employment to sustain themselves in the fragile Liberian economy. The findings from our research, however, show mixed results for the impact of UNIDO's programmes.

### Mixed outcomes of vocational training

Since the principal objective of these training programmes was to facilitate the economic readjustment of returnees, whether a beneficiary has some form of income sources or not after receiving UNIDO's training is an essential indicator of impact. Therefore, we asked all of the survey participants whether they were currently engaged in any livelihood activities.

Of the 74 randomly selected respondents (37 from EDP, 37 from STP), 44 respondents – 59% – said they were not involved in any income-generating activities as of December 2014, despite having completed UNIDO's training. The vast majority of these 44 individuals attributed the reasons for this either to lack of access to financial capital to start up a business or to the economic downturn caused by the Ebola epidemic.

The absence of lending services has been a long-standing challenge in Liberia and, crucially, UNIDO's training programmes did not include any provision of financial support. Many respondents mentioned this issue, as exemplified in remarks by Greg, a returnee from Ghana and STP participant:

*"I completed the plumbing training course in July 2014. But ... I have never used what I learned. I wanted to start my own business but never had any capital to do so. Yes, after UNIDO's training we have gained the knowledge but it cannot be put into practice."*

The 327 participants in the Skills Training Programme have acquired some new livelihood techniques but, in the absence of access to capital to embark on their own enterprises and with few other employment opportunities, many of them have been unable to use these skills.

Another major reason why they are not working was the impact of the Ebola crisis in 2014 which resulted in significantly reduced or negative economic growth in Liberia and had a particular impact on some attempts at building livelihoods<sup>2</sup>:

*"I received training on baking from UNIDO. I wanted to start a baking business but could not do it. During the Ebola situation people were afraid to eat food from another person because they did not know the status of the next person."*

(Kevin, returnee from Guinea)

For the other 30 people – that is, those who were engaged in some form of income generation – the role played by UNIDO's training remained somewhat ambiguous. According to our survey results, almost all of them are now running the same business activity in which they had been involved before they undertook the UNIDO training. In other words, these returnees had already established reliable and durable income-generating strategies before becoming beneficiaries of UNIDO's reintegration programmes.

However, most of them claimed to highly value the lessons and techniques which they had acquired during UNIDO's training programmes. While continuing with the same livelihood activity, some STP trainees acknowledged improvement in their current vocational skills and many of the EDP trainees had capitalised on the entrepreneurial and business management skills taught by this programme. For example, Martha, a returnee from Guinea and owner of a shop



Automotive Servicing Training at NETLIB Vocational Training Institute.

in Monrovia, described the improvements she had been able to make in her business:

*"My business is improving immensely since I completed the UNIDO training. I am making use of the EDP lessons on stock taking. I am also making use of the lessons on promotion to increase sales revenue."*

### **What does the study tell us?**

Given the multi-faceted nature of economic readjustment, equipping returnees with livelihood techniques alone is demonstrably inadequate for enabling them to build successful economic livelihoods. One important implication to draw from this study may be the need to pair vocational training programmes with subsequent provision of or access to start-up capital. Although many of those receiving training were positive about the overall quality of the training they had



received, they also believed that access to financial capital was the crucial missing piece. Unless they are able to turn their livelihood skills into a viable enterprise, both their own and UNIDO's time and investments in these training programmes will remain latent.

This limitation in turn highlights the importance of partnerships in facilitating returnees' economic readjustment. It is not necessary for financial support for initial capital to be provided directly by UNIDO; micro-finance institutions or local banks or development agencies may be better suited to provide such assistance for returnees.

### Searching for best practice

Although vocational training programmes for refugee returnees are increasing in number, little is known about whether and how these interventions help returnees reintegrate into

national economies. The need to develop a better understanding of the impact of such training is likely to remain high. According to UNHCR, in 2014 more than 10 million refugees were living in protracted refugee situations across the world. As we have witnessed in Liberia, Angola and Sierra Leone, once the political situation in a country of origin is deemed stable by the international community, large-scale repatriation of refugees can happen. Therefore it is essential for development agencies to understand how vocational and entrepreneurial training can facilitate the effective economic reintegration of repatriated refugees.

To achieve meaningful support for the economic integration of returnees in crisis-affected areas, UNIDO aims to strengthen partnerships with a wider range of stakeholders. These partnerships will encompass traditional refugee-supporting agencies such as UNHCR and its implementing partner organisations, as well as partnerships with specialised agencies such as micro-finance institutions. Working closely with these agencies will enable UNIDO to fill identified gaps in its current reintegration modality and to achieve better coordination with other agencies on the ground.

This single-country study is a point of departure for UNIDO, and an important follow-up task for the organisation will be to collect more data in different contexts. Through further research, UNIDO aims to identify examples of best practice in vocational training programmes for returning refugees.

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1. Omata N (2013) 'Repatriation and integration of Liberian refugees from Ghana: the importance of personal networks in the country of origin', *Journal of Refugee Studies*, 26 (2), 265–282.
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# Thirty years of development-induced displacement in China

François Dubé

**To accelerate the process of poverty reduction in its poorer regions, China decided in 2001 to implement a national programme of displacement of populations living in areas considered environmentally fragile. But these programmes were hardly a novelty for China, and the record of previous such attempts has been far from positive.**

In 1984, the Ningxia Hui Autonomous Region in northern China – a sparsely settled, mostly desert region – launched extensive displacement programmes intended to restore a deteriorating ecosystem and eradicate absolute poverty, with the support of the central government and the World Bank. Parts of this mountainous province are the most vulnerable in China in terms of their ecological and environmental capacity to support people and livelihoods. Over the last thirty years, it is estimated that the authorities in Ningxia have displaced about 700,000 peasants living in the extreme south of the region, an area particularly affected by droughts and water scarcity.

Although ostensibly designed to increase the well-being of those displaced, these large-scale displacement policies have instead given rise to serious problems for the people forced to move. In most cases, these projects include a component of 'local economic development', whereby industrial plants with high emissions and high energy consumption were established in areas previously untouched by industrialisation, often with consequences that proved more damaging for the environment than the original situation. It may be that such projects, however, raise the political profile of sponsors and advance individual careers, regardless of environmental impact. The question arises as to why the government policy failed to achieve its desired effects.

## Prioritising modernisation

Our field research, conducted over the course of 2014 with displaced communities in Ningxia, revealed how displacement policies can harm families. This is the case

of the Ma family from the Guyuan district of Ningxia, for example, whose access to education, health care and housing clearly worsened after their displacement to Yinchuan. We believe that one of the problems lies in the fact that the population displacement policies are so deeply steeped in the government's modernising doctrine as to prevent any alternative being considered in the fight against poverty and environmental degradation.

There is a consensus among Chinese policymakers at all levels of government that development and modernisation (usually expressed reductively using a single indicator, namely Gross Domestic Product – GDP) are inherently beneficial processes and to challenge this reflects an anti-productive attitude, or even a lack of patriotism. For Chinese policymakers, the relocation of entire communities from ecologically fragile zones to industrial areas is an inherent part of the modernisation process, and a manifestation of social progress. The institutions responsible for the design and implementation of these displacement projects cannot afford to seek the opinions of those being displaced, despite long-existing international guidelines on this subject.<sup>1</sup> If the people to be displaced were to prove refractory or even hostile, it would call into question the developmentalist premise of the Chinese leadership.

## Challenges remain

Recent field surveys show that many of those who were displaced still face difficulties adjusting to their displacement: smaller living spaces, substantially increased living expenses, different planting methods and techniques to assimilate, and social

January 2016

[www.fmreview.org/destination-europe](http://www.fmreview.org/destination-europe)

discrimination. In view of the negative consequences for those displaced, promoting modernisation by population displacement and forced migration programmes is perhaps the ultimate illusion. Although the rapid development of infrastructure is undeniable, too little attention has been paid to the concerns of the displaced people themselves. In many cases, their traditional way of life has been disrupted.

The interaction between rural communities, development policies and the environment is complex, and it is crucial to ensure the full participation of all stakeholders throughout the process. Local communities affected by proposed development programmes need to be given adequate space and opportunity to express themselves and to choose whether relocation is the best solution to their problems, regardless of whether the government considers the

communities' lifestyle to be contrary to its idea of a fully modernised society.

It is essential to develop other less risky and less disruptive solutions for rural communities suffering from environmental fragility while developing the economy of the regions concerned. By sharing successful adaptation experiments that do not involve forced population displacement, researchers may be able to sensitise political leaders to the existence of alternative models, helping to build their willingness and ability to adopt flexible and participatory approaches in solving environmental problems.

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1. See Cernea M (1988) *Involuntary resettlement in development projects: Policy guidelines in World Bank-financed projects*.

ISBN: 978-0-8213-1036-6

<http://elibrary.worldbank.org/doi/abs/10.1596/0-8213-1036-4>

### Dilemmas of development-induced displacement

FMR 12, January 2002

One of the social costs of development is that dams, roads, ports, railways, mines and logging displace people. In all cases displacement raises important ethical questions. See [www.fmreview.org/development-induced-displacement](http://www.fmreview.org/development-induced-displacement)



## Refugee Status Determination (RSD) in Albania

Xymena Dyduch

**A study of Refugee Status Determination decisions in Albania – a relatively new European country of destination – reveals some shortcomings, despite the country's efforts to develop its procedures in line with international standards.**

In October 2012, the European Commission recommended that Albania be granted European Union (EU) candidate status, subject to the completion of key measures in certain areas, including in asylum. One of the government's objectives was to align Albania's Refugee Status Determination (RSD) procedures with the EU Directives concerning RSD.

Albania acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereafter, Refugee Convention) in August 1992, and the rights of refugees

and other persons seeking asylum in Albania were enshrined in the Albanian Constitution of 1998<sup>1</sup> and in the Albanian Law on Asylum and the Law on Integration.<sup>2</sup>

We studied RSD decisions rendered in Albania between 2006 and 2011 in order to evaluate how far Albania's practice at that stage conformed to the EU legal framework. We analysed 11 RSD decisions: three refusals and eight decisions granting refugee status. Six of the 11 claimants were Chinese, three Kosovar, one Serbian and one Iranian. The analysis of the decisions

was carried out according to criteria listed in the EU Asylum Procedures Directive<sup>3</sup> in force in 2006-11 and in the light of the 1998 Albanian Law on Asylum.

### **Right to be informed and to legal and interpreting assistance**

We found that applicants were informed about their rights and obligations but not about the different stages of the procedure. All applicants should receive the services of an interpreter for submitting their case to the competent authorities whenever necessary and should also be given an opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR). Information about the interpreter and legal assistance was provided in all cases studied and both the interpreters and the legal representatives were present during the hearings. However, the names of the interpreters and legal representatives were not mentioned in eight of the decisions. This impedes the verification of their professional status and therefore impedes verification of the representation. In practice, during this period there was only one legal adviser – someone offered by UNHCR. There is no case of an applicant being represented by a lawyer appointed on the free market; this appears to be due to the applicants not knowing that they can choose a lawyer on their own, to lack of resources to cover lawyers' fees and to a shortage of professional advisers in Albania.

### **Composition and competencies of deciding authorities**

RSD decision-making authorities are required by the EU Directive to have special competencies in refugee matters but this is not provided for in the Albanian Law on Asylum. Moreover, the Albanian Law on Asylum mentions only the number of Directorate for Nationality and Refugees (DfNR) members – who make the RSD decisions – but is silent about the quorum necessary to make a valid decision. In the cases we reviewed the quorum was constantly changing; some decisions were examined by five members and some by only three, potentially undermining fairness of practice. More recently, it was

decided that all members need to be present; however, between mid-2011 and September 2012 the DfNR did not examine any RSD applications because one member of staff was on long-term leave and no substitution had been agreed, thereby paralysing the DfNR's decision-making capacity.

### **Type of evidence gathered**

Both the Asylum Procedure Directive and the Qualification Directive binding at the time provide that the determining authority should take into consideration the individual position and personal circumstances of the applicant. In the decisions studied, although some took into account detailed individual information, in others the recognition of status was based on general facts only – not specific to persecution of the individual – or even solely on country reports. Shockingly, one decision relied primarily on information dating from before Albania became a signatory – in 1992 – to the 1951 Refugee Convention.

### **Due justification and examination of decisions by the authorities**

The Asylum Procedure Directive indicates that the decisions should be taken after appropriate examination, and the Albanian Law on Asylum states that the authorities should verify the facts provided before reaching a decision. Eight of the decisions were based on a thorough examination of the facts gathered in the procedure, with references to external sources of information (although there were no references to UNHCR sources of information, despite this being strongly recommended in Article 8.2 of the Asylum Procedure Directive).

Only three of them, however, analysed separately the RSD requirement to prove persecution of the individual and the lack of state protection. A disturbing finding was that three of the decisions included admitting as true statements that had not been expressed by the applicant. In one, for example, where the applicants makes only general statements about the situation of the Uighurs in China, the deciding authority says that "in the statements of the asylum seeker it is clear that he left Turkestan because of being a victim

of different insults, offences, personality violations and his religious beliefs". If facts have not been stated by the applicant, they cannot be admitted as true in the justification of the decision. Overall, only three out of 11 decisions contained examination of all the requirements of the definition from the Article 1A of the Refugee Convention.

### Conclusions

We consider the most relevant criteria for reaching a competent RSD decision to be a thorough gathering of evidence and its competent assessment, as these directly influence the decision to grant or deny asylum.

To ensure a high standard of protection of refugees in Albania, the deciding authority should use a set of previously elaborated questions in line with the Qualification Directive to obtain sufficient evidence from the applicant. An agreed set of questions will allow for equal treatment of all applicants and will shape the interview to gather only relevant information, thereby improving the efficiency of the procedure.

All of the components of the refugee definition as provided in the article 1/1 of the Albanian Law on Asylum with reference to the Refugee Convention Article 1 A(2) should be examined:

*"...the term "refugee" shall apply to any person who: ...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country;"*  
Article 1A(2)

The assessment of the evidence should be carried out according to the standards set by UNHCR<sup>4</sup> and the Qualification Directive.

Assessment of the evidence should be based on the facts proved as true, should indicate why a specific fact was considered as true and should indicate why a specific fact was not given credibility. Such an analysis should make reference to all the facts stated by the applicant and should never consider as stated a fact which has not been mentioned by the applicant.

Information about the different stages of the procedure should be provided to applicants in a clear manner, preferably in writing in the applicant's language, or in one of the UN official languages, as regulated under Article 23 of the Albanian Law on Asylum. There should be clear reference to the competencies of the members of DfNR and the composition of the body rendering decisions.

Beyond the year 2011, and especially since 2014, the number of RSD applications increased after the reception in Albania of Iranians who had been residents of a temporary transit location camp in Iraq. In the first half of 2015, 50 people (mostly Iranians and Syrians) were granted asylum. Following the granting of EU candidate status to Albania in June 2014, a new law on asylum – approved in September 2014<sup>5</sup> – replaced the provisions of the 1998 law. This new law further develops RSD standards, based on the 2005 EU directive on minimum standards for granting and withdrawing refugee status. However, according to UNHCR and a November 2015 report by the European Commission<sup>6</sup>, despite this new legal framework Albania's procedures for determining international protection status still need improvement. One concern expressed lies in the perceived weakening of the regulation governing the composition of the body that makes asylum decisions; if not addressed, this may yet pose an obstacle to Albania's accession to the European Union.

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## The face of refugees

Jesús Quintanilla Osorio

**Personal contact with refugees helps us not only to see the people behind the need but also to better understand the obstacles they face.**

I first met Melchora, a Guatemalan Mayan Indian refugee in Quintana Roo on Mexico's Yucatán Peninsula, more than 20 years ago. I was visiting the hospital in Chetumal where her son was being treated following an accident two months previously. Melchora told me about her family's plot of land that they cultivate in Kuchumatán, selling the produce at the nearby market in order to support the family.

It was nearly 4:30 pm and she had to leave so as not to miss the bus which ran only once a day between Chetumal and Kuchumatán. I stayed for a while, talking to her son, Victor Manuel. Aged 26, and born in Mexico, the young man was sunburned, with hands calloused by farmwork. Within minutes, Melchora returned, visibly concerned. The bus had left and the nearby hostel – used by people visiting patients in the hospital – was full. What would she do? How would she eat?

Victor had told me how difficult it was for his mother to visit him. The cost, the ever-pressing demands of the farm on which they depended for their livelihood, and the limited public transport were all obstacles to her visiting him more often. Moved by her worry at being stranded, I gave her fifty pesos so she could eat something.

I told them about a trip I had been on a few years ago to Maya Balam B, the site of a former refugee camp and the place where the first allocations of land to Guatemalan refugees took place in 2002 [see box]. Here a doctor from the Presbyterian Church was providing medical services for the refugees, while the team that I was a part of brought biblical teachings and contributions from the brothers. I recalled how on the night I arrived, the villagers greeted us with a dinner of meat and eggs, loaves of bread and hot chocolate. We slept in hammocks among the villagers and although they did not speak Spanish, we were united

by our faith, and there was harmony. The missionary Don Eulogio Carballo taught me to love the missions to people in need, especially those who had fled civil war in Guatemala to take refuge in Mexico.

When I said goodbye to Melchora, I felt much respect for her, and promised to pray for her family. You need to know the faces of the refugees in our countries, to understand all that they have left behind. Let us stand in solidarity with them, understanding that to be displaced means to live in another world. We should recognise their humanity as well as their vulnerability.

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Mexican missionary working in villages with displaced people.

In 2002, the Mexican state of Quintana Roo issued 322 land titles to former Guatemalan refugees who had recently been granted Mexican citizenship – the first time a state government in Mexico had donated land for former refugees.

The approximately 2,800 former refugees living in Quintana Roo at the time were among some 18,000 Guatemalans who arrived in Campeche and Quintana Roo states in late 1984 and early 1985 after fleeing civil war in Guatemala. Although many Guatemalan refugees eventually returned home, others chose to remain in Mexico.

Land titles provided to married couples gave equal rights over the property to both men and women. Widows and orphans received individual land titles.



## Challenges to the right to work in Ecuador

Adeline Sozanski, Karina Sarmiento and Carlos Reyes

**The right to work is important for refugees and asylum seekers – to support themselves, to facilitate local integration and to contribute to the host society. However, they often face obstacles in accessing work in host societies and their experience is frequently characterised by poor working conditions and discriminatory practices.**

Ecuador is one example where refugees' right to work and their potential positive contribution to the host society were recognised with the introduction of universal citizenship in the Constitution of 2008. As a result, refugees and asylum seekers enjoy the same rights as Ecuadorian nationals, including the right to work.<sup>1</sup> In order to assess the labour situation of refugees in various cities within the country, the NGO Asylum Access Ecuador in October 2013 conducted a study<sup>2</sup> of individuals living in Ecuador with various forms of migration status: recognised refugees, asylum seekers, failed asylum seekers, and people with other migratory statuses.

The survey results suggest that there are a number of difficulties that make it challenging for refugees and asylum seekers in Ecuador to achieve fulfilment of their right to access work. The results reveal four main factors restricting their access to work and full enjoyment of their labour rights: official documentation which encourages discrimination; widespread discrimination on the basis of nationality or refugee status; inadequate translation of rights and principles guaranteed in Ecuador's Constitution into effective laws and policies; and, finally, ignorance of refugees' labour rights in public and private institutions, at the workplace and among refugees themselves. On the last point, it is often the administrative obstacles that dissuade employers from hiring refugees and formalising their conditions of employment. Furthermore, there is evidence of institutionalised discrimination due to administrative barriers and widespread unawareness of refugee rights.

Although nearly 60% of the participants report that they are working, only a third are employed on a contract and the majority

work in the most vulnerable sectors of the economy where there is little job stability. Mostly those working in the agricultural sector or as day labourers indicated that their current economic activity matches their previous experience. In contrast, most participants in urban areas indicated that their previous experience did not correspond with the economic activity they pursue in Ecuador. About 47% reported their income to be below Ecuador's minimum wage, and 31% of the participants considered that they had different working conditions from Ecuadorian nationals. Participants reported across all sectors incidents of extended working hours, non-payment of salaries, harassment and intimidation.

Based on the accounts of participants, the study allows for some recommendations to ensure the application of constitutional rights in practice and facilitate the integration of displaced persons in the Ecuadorian labour market. This will require establishing the formal right of refugees to be granted a foreigner's identity card or identity document – which does not show their migratory status but which incorporates an individual identification number corresponding to the systems used in public and private institutions – to be issued for an adequate period of time. Additionally, officials must be trained in how to correctly interpret the law, acknowledging that both asylum seekers and refugees have the right to work. More specifically this includes:

- training of public officials in institutions instructed with guaranteeing and monitoring the right to work (for example, the Ministry of Labour Relations and the Ecuadorian Social Security Institute) on labour rights of refugees, while taking into

consideration the regular turnover rate of staff in these institutions

- supporting access to decent work through government-led strategies, such as the Ministry of Labour Relations' current initiatives to include refugees in its programmes linking employers with job seekers
- targeted dissemination of information to private employers on the labour rights of refugees.

The right to work along with decent work conditions allow refugees and asylum seekers to preserve their dignity and rebuild their lives. In order to achieve this, states need to generate policies and implementation plans that facilitate access

to work and enhance working conditions, while both the public and private sectors need to endorse these conditions and promote greater job stability to facilitate greater integration into the host society.

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1. This does not include political rights. Arnold-Fernández E and Pollock S (2013) 'Refugees' rights to work', *Forced Migration Review* issue 44 [www.fmreview.org/detention/arnoldfernandez-pollock](http://www.fmreview.org/detention/arnoldfernandez-pollock)

2. The study on which this article is based comprised a sample of 119 participants: 60 men and 59 women (110 Colombians, four Nigerians, two Cubans, two Sri Lankans and one Angolan).

## Please will you answer 5 questions to help direct future FMR changes?

We are asking you to help us understand how you access FMR in print and online so that we can continue to adapt the ways in which we provide it for you and others.

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Please visit <http://tinyurl.com/FMR-Survey> to complete our very short survey at – it really will help us if as many of you as possible answer the 5 questions.

We will report back in the next issue of FMR and on the FMR website.

Many thanks!

Marion, Maurice, Andonis and Sharon – the FMR team

## Thank you to all FMR's donors in 2015-16

FMR is wholly dependent on external funding to cover all of the project's costs, including staffing. We are deeply appreciative to all of the following donors for their support and collaboration.

CAFOD • Catholic Relief Services-USCCB • Danish Refugee Council • European Union • Henry Luce Foundation • International Organization for Migration • Islamic Relief Worldwide • Luxembourg Ministry of Foreign Affairs • Mohammed Abu-Risha • Norwegian Ministry of Foreign Affairs • Open Society Foundations • Oxfam • Swiss Federal Department of Foreign Affairs • UNHCR • US Conference of Catholic Bishops • Women's Refugee Commission • World Relief

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January 2016

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## Destination: Europe – RSC Public Seminar Series

January-March 2016, Wednesdays at 17:00, Oxford  
Convenors: Cathryn Costello and Stephanie Motz

Complementing the latest issue of FMR, the RSC's Hilary Term seminar series will examine the causes and consequences of the current 'crisis' for European integration, European values and the global refugee protection regime. Refugees currently making their way to Europe face crises of varying types: humanitarian – at their places of arrival and at border crossings; legal – as some states flout their international and EU obligations; and security – as refugees become associated with fears, both rational and irrational. Speakers will consider the reactions and responsibilities of individual European states, the EU, the wider Council of Europe and the Mediterranean, both to refugees on their shores and to the global refugee protection system. The diverse reactions include aid to assist and contain refugees elsewhere; small-scale offers of relocation and resettlement; military suppression of human smuggling in Libya; border closures; and moves to accommodate large new refugee populations in Germany, Sweden and the other main destination states.

Three of the eight speakers are authors of articles in this FMR: Cathryn Costello, Madeline Garlick and Kelly Staples. Seminars are usually available afterwards as podcasts. For details, see [www.rsc.ox.ac.uk/events](http://www.rsc.ox.ac.uk/events)

## Research in Brief – new from the RSC

The RSC's new Research in Brief series is designed to make its academic research easily accessible to policymakers, practitioners and the general public. The first three in the series are:

- **The Syrian humanitarian disaster: disparities in perceptions, aspirations and behaviour in Lebanon, Jordan and Turkey** by Dawn Chatty
- **Refugee Economies** by Alexander Betts and Naohiko Omata
- **Bottom-up Humanitarian Innovation** by Louise Bloom

A Research in Brief, by Cathryn Costello, on the European refugee and migrant 'crisis' will be published in late January. [www.rsc.ox.ac.uk/publications](http://www.rsc.ox.ac.uk/publications)

## Podcast of 2015 Annual Harrell-Bond Lecture 'We do not want to become refugees': Human mobility in the age of climate change

Professor Walter Kälin (Envoy of the Chairmanship of the Nansen Initiative, and Professor of Constitutional and International Law, University of Bern)

Building on the work of the Nansen Initiative on disaster-induced cross-border displacement, this lecture, given by Professor Kälin in Oxford on 4th November, explored different tools available to address displacement and other forms of disaster-related human mobility.  
[www.rsc.ox.ac.uk/we-do-not-want-to-become-refugees](http://www.rsc.ox.ac.uk/we-do-not-want-to-become-refugees)

## Short course:

### Palestine Refugees and International Law 11-12 March 2016: British Institute, Amman, Jordan

This two-day short course places the Palestinian refugee case study within the broader context of the international human rights regime. It examines, within a human rights framework, the policies and practices of Middle Eastern states as they impinge upon Palestinian refugees. Instructors: Dawn Chatty, Emeritus Professor of Anthropology and Forced Migration, former director Refugee Studies Centre; Susan M Akram, Clinical Professor, Boston University School of Law. Cost: £350.  
[www.rsc.ox.ac.uk/study/short-courses](http://www.rsc.ox.ac.uk/study/short-courses)

## International Summer School in Forced Migration 4-22 July 2016: Oxford

The RSC's annual Summer School offers an intensive, interdisciplinary and participative approach to the study of forced migration. It enables people working with refugees and other forced migrants to reflect critically on the forces and institutions that dominate the world of the displaced. The Summer School is principally designed for practitioners and policymakers working with and for refugees and related issues, normally with several years' work experience.  
Cost: £3,380 (early-bird fee £3,205).  
[www.rsc.ox.ac.uk/study/international-summer-school](http://www.rsc.ox.ac.uk/study/international-summer-school)

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## From Syria to Brazil

Marília Calegari and Rosana Baeninger

**Precisely because of the difficulties Syrians face in entering the EU, Brazil has opened up to them.**

Fewer than half of Syrians seeking asylum in the European Union (EU) manage to get refugee status. In contrast, in 2014 Brazil recognised all of the 1,405 Syrians who applied to Brazil for refugee status. In August 2015, Brazil had 2,077 Syrian refugees in the country. The speedy recognition of refugee status, the eligibility rate of 100% and the minimal bureaucracy for Syrians to obtain a visa to apply for refuge in Brazil are made possible by Normative Resolution No 17 passed on 20th September 2013 by the Brazilian government:

“Article 1: the appropriate visa may be granted, on humanitarian grounds ... to the individuals affected by the armed conflict in the Syrian Arab Republic who wish to seek refuge in Brazil. ... For the purposes of this Resolution, humanitarian reasons are considered to be those resulting from the deterioration of people’s living conditions on Syrian territory or in the border regions as a result of the armed conflict in the Syrian Arab Republic.”

Brazil’s involvement in refugee issues has grown in recent years.<sup>2</sup> The country is party to the main international instruments in relation to refugees and it has a specific law which guarantees international protection.<sup>3</sup> In addition, Brazil has an inter-ministerial body to address the issue, the National Council for Refugees (CONARE).<sup>4</sup>

Syrian refugees living in the city of São Paulo said that Brazil is the only country granting visas to Syrians currently:

*“I did not choose Brazil, Brazil chose me.”*  
(male Syrian refugee, aged 27)

*“Brazil was the only one which said ‘welcome’; everyone else said ‘out, out, out!’”*  
(female Syrian refugee, 33)

One Syrian refugee, aged 28, said:

*“Going to Europe or to America, the First World, is very hard and very expensive. In my situation, I don’t have that much money. And at this time Brazil is open for Syrians to fly to Brazil.”*

And he added that:

*“In the Brazilian embassy in Jordan they said to me, ‘If you go to Brazil, the Brazilian government will just give you the documents, they will not give you work, they will not give you a house, or money like Europe, they will just give you legal status. If you want to go, go’. So I came here. ... People just want a place to be safe, away from the war, they just want a feeling of safety.”*

In September 2015, Brazil agreed to extend the duration of Normative Resolution No 17 for two more years.

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1. Resolução Normativa No17 de 20 de Setembro de 2013. [www.jusbrasil.com.br/diarios/59458269/dou-secac-1-24-09-2013-pg-29](http://www.jusbrasil.com.br/diarios/59458269/dou-secac-1-24-09-2013-pg-29) (unofficial translation)
2. See mini-feature on Brazil in *Forced Migration Review* issue 35 [www.fmreview.org/disability](http://www.fmreview.org/disability)
3. Law No 9474/1997
4. [www.justica.gov.br/seus-direitos/estrangeiros/refugio/conare](http://www.justica.gov.br/seus-direitos/estrangeiros/refugio/conare)

