

Backgrounder on the Current European Migration Crisis
The Jacob Blaustein Institute for the Advancement of Human Rights
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Dimensions of the Crisis

The world is presently experiencing a wave of migration of a size unseen since World War II. Western European governments are facing a surge in asylum seekers and refugees unparalleled since the collapse of the Soviet Union and the war in the former Yugoslavia.^[i] The International Organization on Migration reports that 350,000 migrants have reached Europe in 2015 as of September 1, and many more have likely entered undetected.^[iv] This figure represents 40% more migrants^[ii] than those to have reached Europe in all of 2014.^[iii] More than 264,000 people have sought asylum in 28 European countries in 2015, with Germany, France, Sweden, and Italy receiving the majority of applications.^[v] The crisis is far from over, as migrants and refugees continue to enter Europe, primarily from Greece and Italy, and to transit through countries including Macedonia, Serbia, Austria and Hungary in search of protection. For example, UNHCR has projected that Macedonia alone can expect that 3,000 new migrants will arrive each day over the coming months.^[vii]

Migrant Casualties

The death toll of migrants in or seeking to reach Europe has surpassed 2,500 this year alone.^[viii] Migrants have perished from drowning, exposure to the elements, dehydration, asphyxiation, and other causes.^[ix] The IOM estimates that over the past year, an average of 10 migrants have died each day.^[x] That figure is likely an underestimate, as the total number of those who have perished at EU land borders is still unknown.^[xi] Accounts of passage-related deaths continue to stream in on a near-daily basis, with recent reports including the discovery of 71 suffocated migrants in an abandoned truck in Austria, 117 drowned migrants when two boats traversing the Mediterranean from Libya capsized, and the 51 dead migrants whose bodies were found in the hull of a ship off of Libya's northern coast. These staggering numbers will likely increase with the onset of deteriorating weather conditions, leading to greater dangers on the journey both by sea and on land. The IOM has warned of a likely spike in deaths to come, projecting that 2,000 or more additional migrants will perish by the end of the year.^[xii]

Who are the Migrants

The refugees and migrants making the treacherous journey to Europe are primarily coming from Syria, Iraq, Afghanistan, and Eritrea.ⁱ Nigerians and Roma from Kosovo comprise a significant portion of the migrants as well.ⁱⁱ The refugees and migrants trying to enter Europe are fleeing civil wars and other conflicts, human rights abuses, and extreme poverty. While not all those who are fleeing meet the threshold definition of an asylum seeker or refugee, they all must be properly screened to make that determination.

Reasons for the Migration Surge

While the numbers of migrants in Europe have risen steadily and continue to climb, there has been an even greater influx in the recent warmer months. The unrelenting conflict in Syria, the oppressive regime in Eritrea, ongoing tumult in Afghanistan, and civil war in Libya have all fueled the outpouring of migrants fleeing to Europe in droves. Migrants attempting the journey by sea have mostly been found using rubber dinghies and wooden boats, many of which are

unseaworthy.ⁱⁱⁱ Others have resorted to smugglers and are often subjected to exploitation and horrific conditions that have contributed to the overall migrant death toll.^{iv}

Applicable Asylum and Refugee Law

Article 14 of the Universal Declaration for Human Rights indicates that all people have the right to seek asylum,^v and the 1951 Convention Relating to the Status of Refugees and 1967 Protocol (to which all EU Member States are signatories) stipulate that any refugee outside his country due to a well-founded fear of persecution based on his race, nationality, religion, political opinion, or membership in a particular social group may not be returned to a place where his life or freedom would be in jeopardy on account of at least one of those factors.^{vi} If they meet the articulated refugee threshold, migrants coming to Europe cannot be returned to their home countries. Screening processes are used to determine whether migrants meet that threshold, and those who do not qualify as refugees are migrants who may be returned home.

In the EU, freedom of movement is a fundamental principle of the Treaty on the Functioning of the European Union and the Treaty on the European Union. However, only EU citizens have the right to move freely throughout the bloc. The Dublin Regulation (formerly the Dublin Convention), states that countries of first instance (i.e. where a migrant first enters the EU) are required to screen migrants and determine whether an individual is a legitimate refugee or asylum seeker, or whether they may be returned to their home countries.^{vii} If migrants have reached other EU countries, they may return those migrants to their country of first instance.

The EU also has specific minimum standards in place regarding reception centers for migrants. Regardless of where asylum seekers enter, the Reception Centers Directive establishes that they have the right to food, first aid, and shelter in a reception center. It is up to Member States to implement those rules.^{viii}

European Migrant Crisis in Practice

In the current crisis, the primary countries of first instance are Italy and Greece, both of which are becoming overwhelmed at their ports by the continuous surge of migrants. In a 2011 decision, the European Court of Human Rights declared that the detention conditions in Greece to which many migrants had been subjected amount to inhuman and degrading treatment, and that the applicant asylum seeker could not be returned there.^{ix} Asylum seekers cannot be returned to any country where they may be subjected to such treatment, even a fellow European country.

Several EU countries are now ignoring the Dublin Regulation and allowing migrants to pass through their territory without trying to ascertain their refugee status at all.^x Germany was the first EU country to officially suspend the Dublin Regulation, agreeing to take responsibility for processing the claims of all Syrian refugees that cross its borders.^{xi} However, these countries are looking to other EU countries to take similar steps toward burden sharing.^{xii} Germany has taken about 40% of asylum seekers whereas France has taken 8% and the UK has taken 4%.^{xiii}

In sharp contrast to Germany, other countries such as Britain opposed a European Commission proposal in June for mandatory resettlement quotas that would spread the burden of the migrants more evenly.^{xiv} In May 2015, the European Commission proposed a mandatory program that would relocate 40,000 refugees from Italy and Greece over a two year period; the majority of EU countries, including Hungary, Slovakia, and other eastern and central European countries,^{xv} demanded that the program be voluntary.^{xvi} Other countries like Slovakia, the Czech Republic, and Poland have demonstrated interest in helping Christian refugees only.^{xvii}

Hungary has responded particularly negatively to the surge of migrants attempting to transit through the country, with Prime Minister Viktor Orban calling the migrant crisis “a German problem” because that is where the migrants want to go.^{xxviii} In late June, Hungary unilaterally opted out of its Dublin Regulation responsibilities, refusing to accept and process asylum seekers who were returned there by other EU states, claiming that their asylum system was overburdened.^{xxix} On September 1, Hungary closed Budapest’s main train station to refugees after groups of migrants rushed onto Germany and Austria-bound trains without visa checks.^{xxx} Although the station was reopened two days later, the police have stopped and surrounded one of the trains, waiting out the migrants who are refusing to disembark for fear of being relocated further from their desired destination.^{xxxi} Hungary has also constructed a razor wire fence^{xxxii} and closed its border with Serbia in an effort to keep migrants out.^{xxxiii}

The incongruent responses by EU Member States has led to overtaxed resources in states of first instance and those making proactive efforts to affirm their responsibilities toward the migrant population. At the same time, others shirk their responsibilities and ignore the rights owed to the refugees and asylum seekers desperately seeking assistance and safe haven. This divide maps clearly onto the southern and eastern countries where migrants are arriving, and the northern EU countries often seen as preferred destinations.^{xxxiv}

Responses to the Crisis

In the European Union, there is no universal standard for asylum. There is no agreed upon list of countries in conflict, and there are no EU collective centers where asylum seekers can be housed, fed, and screened to determine eligibility.^{xxxv} Asylum systems in many European countries still fail to meet international standards, with poor reception conditions and status determination procedures, low recognition rates, and lack of access to durable solutions for refugees.^{xxxvi} The number of resettlement places remains limited and quotas, reception, and integration capacities vary widely.

Top UN officials have expressed deep concern with forcible returns of migrants and the creation of barriers to prevent entry into countries in Europe. Antonio Guterres, the UN High Commissioner on Refugees, has emphasized the EU’s responsibility to asylum seekers and refugees stating that “to deny that responsibility is to threaten the very building blocks of the humanitarian system Europe worked so hard to build.”^{xxxvii} Secretary General Ban Ki-moon has implored “all governments involved to provide comprehensive responses, expand safe and legal channels of migration and act with humanity, compassion and in accordance with their international obligations.”^{xxxviii} In addition, the UN Security Council is discussing a draft resolution that would authorize an EU mission to inspect suspected migrant ships found on the Mediterranean after departing from Libya. However, the response under consideration raises questions such as what will happen to any migrants found aboard inspected ships.

The gravity of the crisis and public concern have mounted to such levels that Germany, France, and Britain called for an emergency meeting of EU interior and justice ministers to identify and adopt concrete responses.^{xxxix} The top priorities for this emergency meeting, which will take place on September 14 in Brussels, are the creation of a list of “safe countries of origin” to which migrants can be safely returned, and an attempt to agree to establishing additional “welcome centers” in Greece and Italy where migrants can be housed, fed, and screened. If the EU Member States are unable to come to an agreement on concrete measures to implement to

ease the burden on already exhausted countries and to provide the proper protection owed refugees and asylum seekers, the migrant death toll is sure to continue increasing.

Consequences of Europe's Inadequate Response to the Migration Crisis

Civil society groups have reacted with outrage to European governments' inadequate response to the crisis. Moreover, migrants themselves have begun to take increasingly desperate measures to reach their desired destinations, bringing them into conflict with the authorities. In June, migrants attempted to board trucks in Calais that were queued for entry into the UK and clashed with French police officers who tried to stop them.^{xxx} Several Eurostar trains had to turn back from the Channel Tunnel after migrants blocked the tracks and climbed on top of trains.^{xxxi} Migrants in Greece rushed the border with Macedonia, clashing with the police as they attempted to cross with their families.^{xxxii}

Other Responses

Many observers have encouraged the EU to take a more active role in protecting asylum seekers and refugees and preserving the rights and dignity of all migrants in the region. For example, Germany's Chancellor Angela Merkel and France's President Hollande have recommended that, as a matter of urgency, EU countries should agree to take in a fair number of refugees proportional to their population. These leaders have called for a new, binding European agreement that will share the burden of refugees equally throughout the region, relieve the burden on those countries which received the bulk of migrants due to their geographic proximity to the source countries, and make asylum seekers less likely to resort to smuggling by enhancing the possibility for them to seek refuge legally. To accomplish this goal, EU members may seek to reform the Dublin Regulation. In the interim, following Germany's example, some may seek to implement their own legislation suspending the Dublin Regulation in favor of contributing to the region-wide resettlement efforts.

States could jointly provide greater oversight and resources to existing reception centers to ensure the full respect for the rights of asylum seekers. All EU Member States could support UNHCR's capacity-building initiatives for judges and other legal practitioners to help screen and adjudicate asylum cases to allow for quicker resettlement. The United Nations High Commissioner for Refugees (UNHCR) recommended that they could also incorporate the EU asylum acquis into their national laws. UNHCR has also called upon the EU to continue sending search and rescue missions into the Mediterranean to assist distressed refugees.

Foreign ministers from all over the world will attend the UN General Assembly in September 2015, which provides an opportunity to establish an international standard regarding treatment of asylum seekers. While the conflicts that contribute to the current migrant crisis must be addressed in the long-term, it is clear that immediate action is needed to allow Europe to better meet the challenges it is facing. European and international law as well as humanitarian and democratic values call for humane treatment of those fleeing persecution. It is our hope that this principle will remain central to all States' response to the crisis.

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ENDNOTES

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