



## The Refugee Crisis and The Right to Political Asylum

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## EDITORIAL

### The Refugee Crisis and The Right to Political Asylum



The right to asylum is a historic right stretching back to Ancient Egyptian, Hebrew civilizations, and the Greek city states that afforded protection against extradition and an inviolable place of refuge to criminals, and debtors from other countries. By the early Christian era, sanctuary was given to those fleeing from religious persecution with refuge in a consecrated place, generally a church. The right of sanctuary was recognized under the Code of Theodosius (399), and later by Roman law under the

Justinian Code. Papal sanction came with Leo I in 441.<sup>1</sup> King Æthelbert of Kent enacted laws regulating sanctuary in about 600AD in laws that governed licenses of church sanctuaries where the asylum seeker had to surrender himself and confess his sins, and be supervised by the abbot or church father.

The political right to asylum, the granting of refuge to an alien in a sovereign state, evolved from the religious notion of sanctuary. France was the first to recognize the right to asylum in its 1793 constitution. In the section 'Of The Relations Of The French Republic Towards Foreign Nations', the following articles appear:

118. The French nation is the friend and natural ally of free nations.

119. It does not interfere with the affairs of government of other nations. It suffers no interference of other nations with its own.

120. It serves as a place of refuge for all who, on account of liberty, are banished from their native country.

These it refuses to deliver up to tyrants.

121. It concludes no peace with an enemy that holds possession of its territory.<sup>2</sup>

Its expression in the twentieth century was developed by the United Nations in the 1951 Convention Relating to the Status of Refugees, and the 1967 Protocol Relating to the Status of Refugees.<sup>3</sup> The Introductory Note by the Office of the United Nations High Commissioner for Refugees (UNHCR) provides the historical summary of the evolution and scope of the law:

Grounded in Article 14 of the Universal Declaration of human rights 1948, which recognizes the right of persons to seek asylum from persecution in other countries, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the centrepiece of international refugee protection today. The Convention entered into force on 22 April 1954, and it has been subject to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention. The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations and thus gave the Convention universal coverage. It has since been supplemented by refugee and subsidiary protection regimes in several regions, as well as via the progressive development of international human rights law.

According to the definition embraced in Article 1, as the Note suggests:

A refugee ... is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. (p. 3)

As a rights-based instrument, the convention is underwritten by three main fundamental principles: non-discrimination, non-penalization, and *non-refoulement*

(non-expulsion). The convention currently enjoys the supports of some 147 countries around the world.

The original signing of the Convention was attended by some 26 states. Although World War II had ended hundreds of thousands of refugees still wandered Europe or were still confined to refugee camps. Marilyn Achhiron (2001) remarked:

On the 50th anniversary of its adoption, the Convention is coming apart at the seams, according to some of the same capitals which had breathed life into the protection regime a half century ago. Crises such as Kosovo have multiplied, spilling millions of people into headlong flight in search of a safe haven. Intercontinental travel has become easy and a burgeoning business in human trafficking has swelled the number of illegal immigrants. States say their asylum systems are being overwhelmed with this tangled mass of refugees and economic migrants and are urging a legal retrenchment. The Convention, they say, is outdated, unworkable. (p. 6)<sup>4</sup>

Refugee law, as a branch of international law, has developed enormously since the 1938 League of Nations, and come to embrace a set of international and regional legal instruments, including the Bangkok Principles on Status and Treatment of Refugees (1966), OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), Cartagena Declaration on Refugees (1984), the Council of Europe's Situation of de facto Refugees (1976), and the European Council's Directive (2004) on third country nationals and stateless persons as refugees. Refugee law is anchored in an understanding of the history of population movements, the emerging framework of refugee protection, the UNHCR and other international actors, and the political context of statelessness and displacement.<sup>5</sup>

Roger Zetter (2015) in his article, 'Protection in Crisis: Forced Migration and Protection in a Global Era' writes of more than 51 million people worldwide who are forcibly displaced as refugees, asylum seekers or internal displaced persons.<sup>6</sup> He goes on to write:

The contemporary drivers of displacement are complex and multilayered, making protection based on a strict definition of persecution increasingly problematic and challenging to implement. Many forced migrants now fall outside the recognized refugee and asylum apparatus. Much displacement today is driven by a combination of intrastate conflict, poor governance and political instability, environmental change, and resource scarcity. These conditions, while falling outside traditionally defined persecution, leave individuals highly vulnerable to danger and uncertain of the future, compelling them to leave their homes in search of greater security. In addition, the blurring of lines between voluntary and forced migration, as seen in mixed migration flows, together with the expansion of irregular migration, further complicates today's global displacement picture.<sup>7</sup>

What is known as the 'European immigration crisis' erupted in the mid-2000s, and culminated in 2015 with the worst crisis in immigration, and massive increase of displaced persons seeking asylum in Europe since the end of WWII. The sheer numbers

of refugees and migrants flowing across borders involving the Mediterranean to Greece (in particular, to the island of Lesbos) in hazardous conditions risking their lives in small overcrowded boats provided by people smugglers who charge 1200 euros per person. Numerous migration corridors from war-torn states like Syrian, Afghanistan, Eritea, and other Middle East and North African states, as well as the Western Balkans take refugees overland through Turkey, Macedonia, Serbia, and Hungary to preferred destinations in Germany, Britain, or France. The numbers are staggering: Frontex 2015 Annual Risk Analysis estimates some 283,000 illegal border crossings in 2014 alone, with some 114,000 refusals of entry.<sup>8</sup> The executive summary records the major features of the geopolitical context:

As regards the wider geopolitical context, two issues clearly stand out: the conflict in Syria and the continued volatility in North African countries, notably Libya, from where migrants often depart in their attempt to cross the Mediterranean Sea. The large number of displaced Syrians in the Middle East and North Africa suggests that Syria will likely remain the top country of origin for irregular migrants and asylum seekers in the EU for some time to come. In Libya, migrants are in an extremely vulnerable situation, especially those in areas affected by the fighting. Migrants in Libya also face arbitrary detention and very poor conditions of detention, marked by overcrowding, poor sanitation and exploitation. (p. 6)

According to Eurostat statistics, some 626,000 asylum applications were received by EU member states in 2014, highest number of asylum applicants within the EU since the peak in 1992.<sup>9</sup> The major increase has come from Syrian refugees that increased to over 122,000 in 2014, roughly 20% of the EU total, with a huge increase in 2015 although reliable estimates are hard to come by. *The New York Times* (2105) reports 7.6 million displaced persons within Syrian with some 1.9 million refugees in Turkey, 1.1 million in Lebanon, 629,000 in Jordan, 250,000 in Iraq, and 132,000 in Egypt—roughly 12 million Syrians have been displaced, four million abroad, since 2011 which is over half the Syrian population.<sup>10</sup> World refugee hotspots, according to Patrick Boehler and Sergio Peçanha (26 August 2015) include the Balkans, the Middle East, Eastern Europe (Ukraine), and the Mediterranean coast. But the problem is not confined to Europe.

South-East Asia is another hotspot, with thousands of Bangladeshis and Rohingya, an ethnic minority from Myanmar, fleeing by sea from poverty and persecution to Indonesia and Malaysia in the first instance, and risking their lives at sea to make it to Australia.<sup>11</sup> Australia's ex-Prime Minister Tony Abbott had consistently ruled out resettling any of the thousands of refugees stranded at sea amid the South-East Asia asylum seeker crisis arguing that irregular migration should be stemmed at the source.<sup>12</sup> Mexico–US migration is a major issue in the forthcoming US elections with nearly 12 million Mexicans resident in the US up from just over 2 million in 1980.<sup>13</sup> It is one of the defining issues between Republicans and Democrats, and is an issue that has become highly politicized, although there is some evidence that migration patterns have recently changed reversing previous trends.<sup>14</sup>

It is not surprising given this historic upsurge that immigration issues have suddenly gained a great deal of news coverage, and has become one of the dominant issues on political agendas of governments in most countries of the global North, especially the member states of the EU. European Commission President Jean-Claude Juncker on 9 September announced a binding quota system distributing an additional 120,000 asylum seekers among EU nations. While Germany expects to receive 800,000 asylum seekers this year, other EU countries like Hungary have opposed the quota system, and closed its borders.<sup>15</sup>

Estimates are changing almost daily of numbers of refugees making their way overland to Germany with figures of between 800,000 to 1 million being made in news reports.

The influx of Syrian refugees has divided member states with those like Germany temporarily abandoning border controls and EU protocols to accept asylum seekers, and others like Hungary closing and policing their borders.<sup>16</sup> This leads to the emergence of very different philosophies of immigration within the EU with very different positions taken on the moral status of refugees, their rights to asylum and the obligations of host countries—issues that standardly raise questions of closed or open borders and of the ‘open society’ per se (see Wellman, 2010).<sup>17</sup> The refugee crisis has also exacerbated the internal politics of EU member states and consolidated the rise of the radical right across Europe based on an anti-immigration platform with immigration emerging as one of the defining issues of the next round of elections.<sup>18</sup>

As Ambrosini and Van Der Leun (2015) write in their introduction to a special issue on civil society and migration policies that while public discourse has mobilized outspoken moral positions, state migration policies have become increasingly restrictive aiming to control unwanted migration to protect labor markets, to fence off state-funded social provisions, and expelling undocumented and unwanted persons (p. 103). They write:

Despite globalization and the development of an international human rights regime, legal residence and citizenship are still to a large extent dependent on the nation-state. State authorities therefore play a significant role in granting or refusing certain social rights (Bloch & Chimienti, 2012). This power of the nation-state may have diminished in other spheres but only to a lesser extent in the definition and implementation of citizenship (Mora & Handmaker, 2014). Over the years, many states and federal governments have developed fine-grained policies to select immigrants to regulate who can reside in the territory and who is eligible for certain social rights (Engbersen & Broeders, 2009; Torpey, 2000). The concept of ‘mobility regimes’ (Faist, 2013) highlights the social and political stratification of people moving beyond national borders. (p. 106)

The truism that planet Earth is one interconnected functioning whole—a self-regulating complex system—has various environmental, cybernetic, and political readings. Earth system science provides some evidence for the regulation of the biosphere to support the conditions for life. The ‘global brain’ is another such metaphor for an interconnected ICT network connecting human collective or distributive intelligence as a kind

of planetary nervous system that emerges as self-organized dynamic semiotic networks in which everything speaks. The political reading adds another dimension that we might call cosmopolitanism with its philosophical roots in Ancient Greece and its juridical notion of a single community based on a shared morality and cosmopolitan law or right anchored in an extended hospitality.

One part of this shared understanding among these different systems is the notion of equilibrium and equalization that operates on the principle that changes in one part of the system causing related changes in other parts. This rudimentary notion of equilibrium or homeostasis is a way of charting the dynamic nature of systems that evolve in unpredictable ways. Liberal internationalism provides an account of an evolving globalization that is based on universal values of *free movement*—the free movement of capital, of trade, and of people where asylum is granted to refugees fleeing persecution. Asylum is seen as a fundamental right philosophically linked to the notion of free movement and also to notions of security and justice pointing to the control of external borders. While in the past, freedom of movement and residence for persons in the EU has been the cornerstone of Union citizenship established by the Treaty of Maastricht in 1992, its practical implementation in EU law is now at a critical pressure point and there are cracks in the policy and in its implementation that threaten the right to asylum.

The ‘European migrant crisis,’ more aptly named ‘refugee crisis,’ is one of historic proportions and with over million migrants represents the largest movements of people since the establishment of the EU and one that will no doubt change European society in the future. Angela Merkel’s welcome to Syrian refugees and her refusal to contemplate an upper limit increasingly has come under criticism from within Germany and from Germany’s neighborhood states with the danger of splitting the coalition over her plans to build ‘transit camps.’ Meanwhile, the EU has backed an action plan by Turkey to stem the influx promising to re-energize talks on joining the EU. Many of the EU member states have started to raise the issue of increased welfare costs by incoming refugees, especially in areas of education, health, and housing even though these are only a fraction of the cost borne by Syria’s neighboring states of Jordan and Lebanon that have taken most of the 4 million plus refugees. A recent Save The Children report (2015) estimates almost 3 million Syrian children are out of school, commenting:

Education can have a transformative effect on the futures of Syria’s children, on economic growth and on stability in Syria and the wider region. Going to school equips children with the skills they need for life and it protects them: when they are in school they are less vulnerable to recruitment into armed groups, early marriage and child labour. Without substantial investment in, and support for, education, the prospects of a generation of Syrian children, and Syria’s chance at a prosperous and peaceful future, are bleak (n.p.).

In Lebanon, the number of Syrian school-aged children is reported to be greater than the number of Lebanese children enrolled in the public system. Even with the ‘double system’ – two shifts of schooling in one day – most Syrian children are missing out on

schooling or have dropped out even in the refugee–host countries and now constitute the ‘lost generation.’

In response to this bleak situation, we asked a number of prominent scholars and specialists in education to provide a brief response to this editorial: Nesta Devine, Sonja Arndt, Gert Biesta, George Lazaroiu, and Maarten Simons and Jan Masschelein, who organized the moot on this topic at the ECER conference in Budapest (7–11 September, 2015).

## Notes

1. See <http://www.newadvent.org/cathen/13430a.htm>.
2. See <http://oll.libertyfund.org/pages/1793-french-republic-constitution-of-1793>.
3. See <http://www.unhcr.org/pages/49da0e466.html>.
4. See <http://www.unhcr.org/3b5e90ea0.html>.
5. See for instance some the current research papers from the Refugee Studies Center at Oxford University at <http://www.rsc.ox.ac.uk/publications>.
6. According to the UNHCR, the number of displaced people worldwide reached 59.6 million at the end of 2014, of which some 14.4 million were refugees. See [http://www.nytimes.com/interactive/2015/06/09/world/migrants-global-refugee-crisis-mediterranean-ukraine-syria-rohingya-malaysia-iraq.html?\\_r=0](http://www.nytimes.com/interactive/2015/06/09/world/migrants-global-refugee-crisis-mediterranean-ukraine-syria-rohingya-malaysia-iraq.html?_r=0).
7. See <http://www.rsc.ox.ac.uk/publications>.
8. Frontex is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. See its annual report at [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annual\\_Risk\\_Analysis\\_2015.pdf#page=59](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf#page=59).
9. See [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics). This report also recorded the four major legal instruments that the EU has developed since 1999 to work toward creating a common legal framework including: the Qualification Directive 2011/95/EU on standards for the qualification of non-EU nationals and stateless persons; the Procedures Directive 2013/32/EU on common procedures for granting and withdrawing international protection; the Conditions Directive 2013/33/EU laying down standards for the reception of applicants for international protection; the Dublin Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining Member State responsibility for examining an application for international protection lodged in one of the Member States by a third-country national (national of a non-member country) or stateless person.
10. See Patrick Boehler and Sergio Peçanha (26 August 2015), ‘The Global Refugee Crisis, Region by Region’, [http://www.nytimes.com/interactive/2015/06/09/world/migrants-global-refugee-crisis-mediterranean-ukraine-syria-rohingya-malaysia-iraq.html?\\_r=0](http://www.nytimes.com/interactive/2015/06/09/world/migrants-global-refugee-crisis-mediterranean-ukraine-syria-rohingya-malaysia-iraq.html?_r=0).
11. The UNHRC report: ‘Since 2014, approximately 94,000 refugees and migrants are estimated to have departed by sea from Bangladesh or Myanmar, including 31,000 departures in the first half of 2015’. See also, the timeline of events detailing those abandoned at sea <http://www.unhcr.org/554c6a746.html>.
12. See Taylor’s (2015) account at <http://thediplomat.com/2015/07/australia-and-the-southeast-asia-refugee-crisis/>.
13. See <http://www.migrationpolicy.org/article/mexican-immigrants-united-states>.
14. See <http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/>.
15. Victor Orban, Hungary’s PM has erected a fence along it Serbian border, employed the army to police it and gone on record to say Hungary’s Christian heritage is at risk. See Chris Morris’ blog <http://www.bbc.com/news/blogs-eu-34,144,554>.

16. See <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&date=2015-07-15&cat=Europe>; see also the so-called Schengen Area, that is 26 countries of the EU that have abolished passport and internal border controls for international travel purposes.
17. See also 'Philosophies of Migration' at <https://www.opendemocracy.net/5050/jennifer-all-sopp/philosophies-of-migration>.
18. See Guiberau's (2010) paper at [http://www.policy-network.net/publications\\_list.aspx?Page=9](http://www.policy-network.net/publications_list.aspx?Page=9). See also 'Islam and the End of European Multiculturalism', Michael Peters & Tina Besley (2014), Special Issue in Policy Futures in Education, Editorial at <http://pfe.sagepub.com/content/12/1/1.full.pdf+html>, and Besley and Peters (2012).

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