

Paper and Speaker at

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Understanding Migration and Asylum in Europe

To understand issues of migration and asylum in the EU the following key studies, documents, terms and facts should be known.

I. European Refugee crisis

The European migrant crisis or refugee crisis is a term given to a period beginning in 2015 characterized by rising numbers of people arriving to the European Union (EU) from across the Mediterranean Sea or overland through South-East Europe.

Immigrants from outside Europe include asylum seekers and economic migrants.

The term “immigrant” is used by the European Commission to describe a person from a non-EU country establishing his or her usual residence in the territory of an EU country for a period that is, or is expected to be, at least twelve months.

Most of the immigrants came from Muslim-majority countries in regions South and East of Europe, including the Greater Middle East and Africa. The number of deaths at sea, rose to record levels in April 2015, when five boats carrying almost 2,000 migrants to Europe sank in the Mediterranean Sea. Now it is lower!

The situation of refugees has become more desperate in recent years. Between 2014 and 2016 over 1 million people sought asylum in the European Union. In 2017 655.000 persons applied for asylum in the EU for the first time. In 2018 581.000 did so. <https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum.statistics>

According to the UN High Commissioner for Refugees the top three nationalities of entrants of the over one million Mediterranean Sea arrivals between January 2015 and March 2016 were Syrian (46,7%), Afghan (20,9%) and Iraqi (9,4%) .

Refugee crises in several Asian and African countries increased **the total number of forcible displaced persons worldwide at the end of 2014 to almost 60 million, the highest level since World War II.**

II. European Agenda on Migration

The latest response from the EU to the situation is the European Agenda on Migration, which aims to strengthen the common migration and asylum policy by implementing various measures helping refugees in difficulty during their travel to Europe locating them in the EU, supporting Member States available to receive refugees and coordinating national operations. EU operations in 2016 were funded to approximately € 176 million. The EU was also relocating refugees from Italy and Greece to other EU Member States and provided further financial support to countries willing to take in refugees from camps in Syria and those that had set up first-aid centers for refugees on their territory. **The European Parliament** has expressed its concern about EU financial support in the field of asylum and has asked the Commission to evaluate the real needs until 2020. The European Parliament by its policy departments provided many supporting analyses for the respective Parliament committees. **EU external cooperation** in migration and asylum has increased considerably in terms of instruments of cooperation with third partner countries and of funds committed. With the current refugee crisis, it is set to increase even further. EU funding regarding the objectives of migration policy lacks evidence of efficiency through lack of coordination of external coordination.

Migration is one of the great challenges of the globalized world. Refugees will always move across borders to seek safety for themselves and their families in the face of war, persecution and conflict. People who face poverty in their home country will always move in search of a better life for themselves and their families. In the European Union, the Member States seek to support those who work to protect the legal rights of migrants and refugees, and to ease the challenges of integration. They support the development of realistic policy solutions to the **human challenges** involved. In line with the focus on policy and institutional responses, the important humanitarian relief response of NGOs, funding is needed such as the operation of search and rescue vessels in the Mediterranean.

III. Is there a difference between a migrant and a refugee?

A **migrant** is a person who leaves home to seek a new life in another region or country. This includes all those who move across borders, including those doing so with government permission, i.e., with a visa or a work permit, as well as those doing so without it, i.e., irregular or undocumented migrants. The Member States of the European Union agree that EU citizens and their families have **freedom of movement** within the EU and the European Economic Area—these citizens are privileged migrants because they do not require individual permission from officials as other migrants do. These citizens enjoy the rights

of the **Schengen Convention of 14 June 1985**, in which 26 European countries (22 of the EU Member States and four EFTA States) joined together to form an area where border checks on internal Schengen borders (between member states) are abolished and instead checks are restricted to external Schengen borders. Countries may reinstate internal border controls for a maximum of two months for public policy or national security reasons.

A **refugee** is someone fleeing war, persecution, or natural disaster. Refugee status is defined in international law, which requires states to protect refugees and not send anyone to a place where they risk being persecuted or seriously harmed. States hold primary responsibility for the protection of refugees. The UN counted 21.3 million refugees worldwide at the end of 2015.

“**Asylum**” refers to the legal permission to stay somewhere as a refugee, which brings rights and benefits. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum seeker.

Article 26 of the “Schengen Convention” says that **carriers which transport** people into Schengen area who are refused entry into the Schengen area, be responsible for the return of the refused people and pay penalties.

IV. European Union’s asylum policy and the Dublin regulation?

The **Dublin Regulation** (Regulation No.604/2013): sometimes the **Dublin III Regulation**; previously the **Dublin II Regulation and Dublin Convention**) is a European Union (EU) law that determines which EU Member State is responsible for the examination of the application, submitted by persons seeking international protection under the Geneva Convention. The cornerstone of the Dublin System consists of the Dublin Regulation No.604/2013 and the **EURODAC** Regulation (Regulation No 603/2013), which establishes a Europe wide fingerprinting database for unauthorized entrants to the EU.

The **Common European Asylum System (CEAS)** sets out the Criteria governing the distribution, as between Member States, of responsibilities in asylum cases under Regulation No. 343/2003. Under that regulation only one Member State is in principle , responsible for dealing with an asylum application submitted within the EU. In this regulation are established the **criteria and mechanisms** for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.

The Common European Asylum System (CEAS) is a set of EU laws. They are intended to ensure that all EU Member States protect the rights of asylum seekers and refugees. The CEAS sets out minimum standards and procedures

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for processing and deciding asylum applications, and for the treatment of both asylum seekers and those who are recognized as refugees.

Implementation of CEAS varies throughout the European Union. A number of EU Member States still do not operate fair, effective systems of asylum decision-making and support. This leads to a patchwork of 28 asylum systems producing uneven results. Asylum seekers have no legal duty to claim asylum in the first EU State they reach, and many move on, seeking to join relatives or friends for support, or to reach a country with a functioning asylum system. However, the **“Dublin Regulation”** stipulates that EU Member States can choose to return asylum seekers to their **country of first entry** to process their asylum claim, so long as that country has an effective asylum system. The **“Dublin Regulation”** determines the EU Member State responsible to examine an asylum-application to prevent asylum applicants in the EU from **“asylum shopping”**, where applicants send their application for asylum to numerous EU Member States to get the best deal instead. EU countries in the **north**, the desired destination of many refugees, have sought to use this Dublin system to their advantage, at the expense of the **south**, where most refugees first arrive. Yet these efforts have been obstructed by failures of asylum systems in the **south**. Domestic and European courts have ruled against asylum seekers being returned to Greece, notably in a landmark case in 2011 (C-411/10 N.S and C-493/10 M.E). The Advocate General of the ECJ concluded that the transferring Member State must before it transfers an asylum seeker, determine whether that asylum seeker will be exposed (in the Member State which is primarily responsible) to a **serious risk that the rights guaranteed under the Charter of Fundamental Rights will not be violated. Transfer to Greece, which country is overloaded with asylum applications, risks that the treatment of asylum requests is not well done in time and effectively.**

To address the uneven application of CEAS and to avoid the problems of the Dublin system, a reform of the CEAS was proposed in 2016. Among the proposed reforms is one that risks endangering the right to asylum in the EU, with an obligation to verify first if asylum seekers could find protection outside the EU. Some EU countries have already voiced opposition to some of the reforms, notably the obligation to take refugees from other EU countries. They started cases at the CJEU against the re-distribution and at the same time the EU Commission instigated cases against Poland, Hungary and Czech Republic (Vise grad Countries”) for refusing to abide by the redistribution quota.

The **European Parliament** in a study in 2015 examined the reasons why the Dublin system of allocation of responsibility for asylum seekers does not work effectively. The study gave recommendations for resolving current practical,

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legal and policy problems and to create a burden sharing system through several mechanisms. The European Parliament and the Council proposed a “**reference key**”, based on a Member State’s GNP (Gross national product) and population size, to determine its absorption capacity.

Conclusion

Common asylum and migration policies are not yet realized because of the different attitudes of the “Vise grad Countries” and “Old Europe” EU Member States in respect of disputed migration policies. Therefore, is our final question: **Is the migration challenge not the ultimate threat to European Unity and Solidarity?**

V. How are EU Member States regulating/managing/supporting migration?

The EU Member States have worked on global migration issues for many years. This has included 1) supporting efforts to improve the treatment of labor migrants in Central Asia, Latin America, South Asia, and the Gulf; 2) advocating a better, common asylum policy in Europe; 3) challenging conditions of detention for migrants in many countries; and 4) defending migrant communities against a wide array of xenophobic attacks in Africa, Asia, Europe, and the United States.

Examples of support to migration by States and NGO’s.

In **Italy**, organizations that work to reform Italy’s asylum system are supported. Medici per i Diritti Umani advocates for better conditions in Italy’s asylum reception centers; Italy promotes housing refugees and asylum seekers in private accommodation as an alternative to state facilities; they work to ensure that international, European, and national laws are honored during asylum procedures, that reception conditions are dignified, and that no one is deprived of their liberty without judicial oversight and procedural safeguards. The Italian Civil Liberties Coalition and its platform Open Migration provides data, fact checking, and stories to inform the migration debate.

In **Greece**, organizations like the Greek Council for Refugees, which monitors rights violations at border areas, assists in reception facilities, and in detention centers; the Hellenic League of Human Rights, which provides asylum seekers with reliable information about their rights and obligations; and the Greek Forum of Refugees, a refugee- and migrant-led organization that seeks to support migrants’ integration in the country. Solidarity Now, set up in 2013 by the **Open Society Foundations**—and today a grant—provides housing, basic medical care, and other relief services to newcomers and Greeks.

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In **Spain**, NGOs are supported which provide legal aid to refugees and seek to improve the national asylum system, such as the Spanish Commission for Refugees and Coordinadora de Barrios.

In **Western Europe**, this work extends from the **United Kingdom to Finland**. The **Migrants' Rights Network** reports and challenges the rise in racism and xenophobia in Britain, **Migrant Voice** amplifies migrants' perspectives through its newspaper, the Raul Wallenberg Institute in **Sweden** builds the capacity of grassroots groups to advocate for themselves, and Mediendienst-Integration in **Germany** serves as a reliable source of information and data for media reporting on migration.

In **Britain**, **NGO's** have worked with the UK government on the development of a community sponsorship scheme, the Global Refugee Sponsorship Initiative, based on a successful Canadian model for supporting the integration of newly arrived refugee families. In **Central and Eastern Europe**, NGO's support local organizations which work to ensure newcomers are treated with dignity and assist with their integration into the society. Menedék organizes training courses for professionals including social workers, teachers and police officers working in immigration detention centers in **Hungary** and the Association for Migration and Integration in the **Czech Republic** is working on ensuring that the rights of EU nationals working in the country are protected.

VI. How has the European Union responded to the refugee crisis?

On 20 March 2016 an **agreement between the European Union and Turkey**, aiming to discourage migrants from making the dangerous sea journey from Turkey to Greece, came into effect. The deal outlines that migrants arriving in Greece will be sent back to Turkey if they do not apply for asylum or their claim is rejected. To assist in the implementation of this deal the EU would send around 2.300 experts, including security and migration officials and translators to Greece. After 20 March 2016 any irregular immigrant from Syria who is returned to Turkey, will be replaced by a Syrian resettled from Turkey to the EU. The talks were aiming at accession of Turkey to EU and Turkey will receive from the EU €3,3 billion aid for the assistance. In the March deal of 2016, the EU announced that Turkey would try to stop people from moving onward into Europe; in return, Turkey was promised financial assistance, visa-free travel to the EU for Turkish citizens, and faster negotiations for EU accession. But the EU-Turkey deal failed to close the border, and thousands of migrants continued to travel irregularly using smugglers. Since the deal, only 750 asylum seekers have been sent back from Greece to Turkey, because Greek officials and courts consider Turkey to be an unsafe country

There has been a **Decision from the European Court of Justice of 28 February 2017**, that the Court has no competence to judge the legality of the March 2016 EU-Turkey deal on migrants and refugees as “neither the European Council nor any other institution of the EU” decided to conclude an agreement with the Turkish Government on the subject of the migration crisis. The General Court of the ECJ declared that it lacks jurisdiction to hear and determine the actions brought by three asylum seekers against the EU-Turkey statement which seeks to resolve the migration crisis. In other words Article 263 of the Treaty on the Functioning of the EU, regarding the powers of the court, is not applicable in this case. (The orders issued by the court. NF (T-192/16, NG (T-193/16, NM (T-257/16 And the EU –Turkey statement 18 March 2016).

In **2015**, high numbers of migrants, many of them Syrians fleeing conflict, continued to move. Some European states, led by Germany, recognized that their strategy of seeking to block refugees moving across borders was unrealistic and harmful. Countries worked together to allow migrants to move onwards to the places they wished to reach. This allowed reception countries to focus their resources on supporting asylum seekers and considering claims. By early **2016**, support for this policy began to **decrease**, with increased hostility towards migrants entering the political discourse. Certain countries along the migrant route began to close their borders.

Deals to distribute asylum seekers between EU Member states.

The situation further deteriorated when the **EU’s decision to transfer 160,000 asylum seekers from Greece and Italy to other European member states** was met with widespread resistance. In the end, a small percentage of the needed transfers actually took place. In response to the failure to adequately process asylum claims, the EU set up “**hotspots**” in Greece and Italy. Hotspots identify, register, and fingerprint incoming migrants, and redirect them either towards asylum or return procedures. The Turkey deal is one example of a controversial practice, in which the EU links development aid or economic incentives to commitments by states to stem and manage the movements of people from their territory. Similar deals are being approved with a number of third countries including Libya, Egypt, Sudan, and Nigeria.

In June 2016, the European Commission proposed a new “**New Migration Partnership Framework**” with third countries in the Middle East and Africa, to better manage migration. The full range of EU policies will be brought to bear:

- Focused engagement and enhanced support
- Breaking the business model of people smugglers and creating legal routes
- Working together in EU and Member States financial allocation.

VII. How have the United Nations responded to the Refugee Crisis?

On 19 September 2016 the Members of the United Nations unanimously adopted the **New York Declaration for Refugees and Migrants**. The Declaration recognized the need for more cooperation between nations to manage migration effectively.

On 19 December 2018 these documents were approved by 152 nations as **the Global Compact for Safe, Orderly and Regular Migration (CCM)**, that describes itself as covering all dimensions of international migration in a holistic and comprehensive manner. The Compact was formally endorsed by the United Nations General Assembly on 19 December 2018. As the Compact is not an International treaty, it will not be binding under international law. According to the Opinion of the New Zealand Government, the Compact will be non-binding , but will not be legally irrelevant , and “courts may be willing ..to refer to the Compact and take the Compact into account as an aid in interpreting immigration legislation.”

There was a heated debate in the EU and in some of its Member States about the Global Compact : 20 of 28 EU Member States signed it. Leaked legal opinion of the Council’s Legal Service was used to argument that these lawyers said that the Compact was legally binding. The opinion merely states that the Compact can influence the content of EU legislation. See

[https://www.janiceatkinson.co.uk/wp-content/uploads/2019/03/UN-GCM-EU-LAW-explanation-why-the-leaked-Legal-Service-Opinion-is-a risk.pdf](https://www.janiceatkinson.co.uk/wp-content/uploads/2019/03/UN-GCM-EU-LAW-explanation-why-the-leaked-Legal-Service-Opinion-is-a-risk.pdf)

However the Compact will not be legally binding.

The draft agreement recognizes in its considerations the principles of national sovereignty:

“The Global Compact reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law. Within their sovereign jurisdiction, States may distinguish between regular and irregular migration status, including as they determine their legislative and policy measures for the implementation of the Global Compact, taking into account different national realities, policies, priorities and requirements for entry, residence and work , in accordance with international law.””

Calling the agreement a “historic moment”, the **General Assembly President** Miroslav Lajcak emphasized “it does not encourage migration, nor does it aim to stop it. It is not legally binding. It fully respects the sovereignty of States.

Alfred Kellermann, The Hague, 15 May 2019