

CARNEGIE COUNCIL *for Ethics in International Affairs*

Asylum in the EU: Between Ideals and Reality Zornitsa Stoyanova-Yerburgh



UNHCR / A. Di Loreto / July 2007. Refugees Risk Their Lives Traveling from Africa to Europe

Those who question the moral significance of borders often invoke the European Union as an admirable model of post-national belonging: EU member states have abolished borders among themselves. European citizenship has released itself from the narrow bonds of ethnicity and nationality; instead it is based on common civic values such as democracy, the rule of law, and human rights. The EU's motto, "unity in diversity," reflects a commitment to transnational solidarity combined with respect for national differences.

Yet for those who arrive in the EU as outsiders, the old label "Fortress Europe" represents a more accurate description. Among them are a vulnerable group of asylum seekers who often undertake long, costly, and dangerous journeys to escape persecution, war, and other life-threatening situations in their home states. Many of them are given the chance to build a new life in Europe. Yet many arrivals find hostile attitudes, prolonged detentions, and labyrinthine laws. Some are expelled on fast-track procedures; still others may be prevented from ever reaching a European country to lodge an application.

The end of the Cold War eliminated the ideological basis for granting asylum to political exiles from the East. Several refugee "crises" later, once generous Western liberal democracies (and now Southern and Eastern as well) struggle to redefine their response to asylum in the context of increased international migration and "mixed flows," which include irregular migrants and people fleeing genuine persecution. The issue is on top of the political agenda with a steady flow of proposals, directives, and conclusions devoted to it. EU leaders are currently poring over [Nicolas Sarkozy's](#) "European Pact on Immigration and Asylum," a proposal for toughening up migration policy during the 2008 French presidency, which will require asylum-seekers to apply for refugee status in advance. On May 21, Italy announced migration reforms as part of a new "security package," which will criminalize illegal immigration and will have grave consequences for asylum seekers.

As many human rights advocates have argued, it is security and immigration management, rather than the principle of refugee protection, that are driving EU asylum policy. One aspect of this approach is that the EU is tightening asylum laws and shifting responsibility for asylum protection beyond its borders. In addition, EU members have shown little willingness to cooperate on resettlement programs, establish common procedures, or rally around humanitarian goals. The results are wrangling over responsibilities, risks of *refoulement* [the expulsion of persons to places where their lives or liberties will be at risk], unfair procedures, and erosion of the rights of asylum-seekers.

Outsourcing of Asylum Protections

The EU treats migration and asylum as a "global" issue and a security matter whose management requires joint solutions with outside partners. It is a part of a larger security agenda based on the recognition of interdependence among states and the search for collective responses to global problems. This approach takes the form of readmission agreements and cooperative projects to migration control. In effect the result is a shifting of responsibility away from EU jurisdiction—an "outsourcing of asylum." As part of a "circle of friends" (in [Romano Prodi's](#) phrase), which stretches the area of control beyond the current borders of the Union, neighbors and other partners play an important role.

Since the early 1990s EU members have concluded a number of bilateral and EU-wide agreements, initially with candidate countries in East and Central Europe, and most recently with more distant partners. Readmission agreements, which allow for fast-track procedures on return of irregular migrants and failed asylum seekers (but may also affect asylum seekers whose claims have not been adequately addressed), are negotiated as part of cooperation and trade agreements and have both an element of coercion and incentives to them. Visa concessions, for example, may be tied to the signing of a readmission agreement. The EU has signed such agreements with all the Balkan countries, Russia, Ukraine, Moldova, Hong Kong, Macao, and Sri Lanka, and is negotiating with others, including Turkey, Algeria, and Morocco.

Beyond readmission agreements, "creative" thinking on asylum has produced some questionable new policies. Taking a cue from Australia, in 2003 the UK proposed the establishment of regional "safe havens" and offshore transit processing centers, where asylum-seekers would be returned for the processing of their claims. The proposals were roundly condemned by human rights advocates and were quickly shelved; however, similar plans have since been floated by Germany and Italy. Among the proposed host countries were EU neighbors such as Ukraine, Libya, and Morocco, whose human rights record is hardly exemplary, and whose refugee laws, if any at all, fall below international standards.

The EU Commission is now experimenting with two Pilot Regional Protection Programs (RPPs), one in Eastern Europe and one in the Lakes Region in East Africa, which provide aid and technical assistance to strengthen the refugee protection capacity of countries in the two regions. Whether RPPs are simply "safe havens" in a new guise or an ethically motivated and genuine offer of assistance is a matter of debate. According to some views, RPPs are a sign of a welcome switch from the logic of control to a preventive strategy, which fosters a "more liberal, humanitarian approach outside."¹ Although there is a case to be made for a preventive, development-based approach, which deals with the root causes of refugee flows and works in mutually beneficial ways with partners, there are reasons to be cautious when the aims of protection, migration control, and development intermesh.²

The Concept of Safe Countries

A related, controversial innovation introduced by the EU is the concept of "safe countries." This is based on the understanding that governments of such states do not engage in human rights abuses and therefore applications by their citizens are unfounded. The concept of "safe third countries," on

the other hand, refers to transit countries where it is presumed an asylum seeker could find adequate refuge. The logic of "safe country" may mean that a refugee can be sent back to places along his journey, and even back to his country of origin. Human rights organizations have criticized the concept because it does not distinguish among individual cases and because it is incapable of recognizing rapidly deteriorating situations.

In addition, the declaration of a territory as "safe" by outsiders is inherently problematic, as the massacre in Srebrenica, a UN safe zone, demonstrated not long ago. The difficulty in determining safety may lead to some paradoxical situations: For example, in the 1990s Roma people from then applicant states in East Central Europe were often labeled "bogus refugees," yet at the same time the European Commission was issuing report after report that called attention to the systematic discrimination that many Roma citizens face in their home countries.

The Burden of Burden-Sharing

Ironically, it may be the very same factors for which Europe is celebrated that explain the restrictive turn in EU migration and asylum policy. Hard external borders compensate for internal freedom of movement, uncertainties related to the finality of the EU's enlargement feed xenophobic attitudes, and loss of sovereignty in certain policy areas is balanced by the reassertion of state control in others. Indeed, like other pillars of state autonomy such as defense or national education, refugee policy is one of the last areas to be "Europeanized." Since the 1999 Tampere Summit, EU members have agreed on the need to design a common asylum system with the principle of refugee protection at its core. Nine years later, the harmonization of refugee law is still far off—it is currently optimistically planned for 2010.

The difficulty in designing a common approach stems from controversies that are normative in nature—they concern the *definition* of a refugee, the *type* of protection that should be offered, and, most important, *the country* which should give protection.³ It has proven harder to achieve consensus on such matters than on cooperative measures to restrict migration into the EU. For asylum seekers, this means that applying for protection in Europe is a kind of lottery: Recognition rates, levels of protection, and opportunities for integration in a new society, which vary widely among EU members, depend on the place where they first land.

So far, European states have exhibited little solidarity among themselves when it comes to the receipt of refugees. Under the so-called Dublin system the obligation for processing a refugee claim usually falls upon the country of entry. This creates uneven pressures based on geographical location and makes states all the more eager to prevent arrival. In one infamous example, Germany, Malta, and Italy quarreled over who should take in 37 people who were rescued in the Mediterranean in 2004. In 2007, African migrants were left hanging on fishing nets for three days while Maltese officials insisted that they be taken in by Libya.

Southern European states such as Malta, Greece and Spain have seen high increases in asylum applications. In the case of Malta and Greece, 2007 saw the highest numbers on historical record. Both of these countries have rightfully been criticized for their treatment of refugees—and Athens' refugee practices are currently challenged by the European Court of Justice—yet their calls for more assistance on part of the EU have gone unheeded. Or take the case of Sweden, which has admitted more Iraqi refugees than all other EU states combined—nearly 49,000 since 2003—and which has now announced that its liberal approach is coming to an end. In the words of George Joseph, a director of a Catholic aid group, as quoted by *The Christian Science Monitor*, "We had hoped to see

other nations rise to Sweden's level. Instead Sweden has stooped to meet them."

"Ethical Power" Europe?

As some authors argue, "the loss of access to sovereign territory... is the most pressing problem and outcome of the externalization of asylum."⁴ Asylum protection cannot in practice be de-territorialized: A refugee will always be on some state's sovereign territory. To think otherwise is to condemn refugees to a state of limbo.

Given that the developing world hosts 70 percent of the world's refugees, there is a compelling case for a greater role on the part of EU members and other industrialized countries in global refugee protection. The first step would be not to slam the door on refugees. An ethical EU asylum policy should also be based on humanitarian values, fair procedures, and solidarity, both within the Union and externally. These principles are evoked in virtually every EU document on migration and asylum.

The challenge is not to let high-minded ideals be dampened by the realities of popular anti-immigrant pressures and intergovernmental bargaining. A human-rights-based approach to asylum will go a long way toward bolstering the EU's self-image as an "ethical power"—one that relies not only on its power of attraction, but also on an active role in addressing humanitarian challenges.

See also:

[The EU's Asylum Policy in a Securitized World](#)

Irene Khan, Amnesty International

[European Council for Exiles and Refugees](#)

[Human Rights Watch: Backgrounder on EU Migration and Asylum](#)

[European Commission Directorate-General for Justice, Freedom and Security](#)

[Statewatch Observatory on EU Asylum and Immigration Policy](#)

[UNHCR](#)

NOTES

1 Emma Haddad, "The External Dimension of EU Refugee Policy: A New Approach to Asylum?" *Government and Opposition* 43, No.2 (2008) pp. 190-205

2 EU development officials have been wary of such preventative approaches. See Christina Boswell, "The 'External Dimension' of EU Immigration and Asylum Policy" *International Affairs* 79, No. 3 (2003), pp. 619-638.

3 Sandra Lavenex, "The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies" *Journal of Common Market Studies* 39, no. 5 (2001), pp. 851-74.

4 Jennifer Hyndman and Alison Mountz, "Another Brick in the Wall? Neo-Refoulement and the Externalization of Asylum by Australia and Europe" *Government and Opposition* 43, no. 2 (2008), pp. 249-69.

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