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Contents

Editorial	2
Forced Migration: A Challenge for European Solidarity <i>Eugene Quinn and David Moriarty</i>	3
Unemployment and the European Union <i>Rory O'Farrell</i>	10
Elections 2014: A Turning Point for the European Social Model <i>Robin Hanan</i>	16
Interview with James K. Galbraith <i>Jean Merckaert and Solange de Coussemaker</i>	23
The Social Dimension of Europe: Withered on the Vine? <i>Denis Clerc</i>	27
Interview with Pat Cox, Former President of the European Parliament <i>Edmond Grace SJ</i>	31

Forced Migration: A Challenge for European Solidarity

Eugene Quinn and David Moriarty

The carnage of asylum seekers and migrants making the perilous journey to a better life makes frequent headlines; thousands die every year in the Mediterranean alone. Far too little is done to mitigate the risks such migrants face. Poverty, vulnerability and war are rife in our times, but compassion is in short supply.¹

The founding fathers of the European Union envisioned a peaceful Europe underpinned by the core principles of human rights, democracy, social and economic solidarity. Among the many issues currently testing the commitment of the EU and its citizens to these values is the arrival into Europe of significant numbers of people who are fleeing from poverty, lack of opportunity and in many cases political oppression. The response to this forced migration gives rise to fundamental questions about the nature of the European Union, the values it purports to uphold, and whether the commitment to justice and solidarity extends beyond rhetoric to concrete action.

In a Europe beset by fiscal uncertainty, cutbacks in public services, and worrying levels of unemployment, especially among young people, few governments are willing to engage seriously with immigration and asylum issues.² For example, over the past ten years in Ireland there has been a failure to put in place an overarching immigration and protection framework, despite draft legislation passing through multiple iterations during the period in office of several administrations. In the face of ongoing economic upheaval and high unemployment, of the significant costs associated with patrolling external borders and administering asylum and immigration systems, and of the cultural challenges of absorbing large numbers of foreign nationals, it is clear that immigration, voluntary and forced, will continue to be one of the most controversial dynamics among Member States.

The EU has articulated its policy in relation to immigration and asylum in terms of ‘An Area of Justice, Freedom and Security’, based on the Tampere (1999–2004); Hague (2004–2009) and Stockholm (2010–2014) programmes. But what

does EU policy mean in reality for forced migrants and host communities? Has ‘justice’ become subject to ‘security’ in relation to the treatment of immigrants and asylum seekers, especially migrants who have travelled to bordering countries in the hope of crossing into the EU? What type of Europe is emerging: a ‘Fortress Europe’ or an ‘Opportunity Europe’?

Jesuit Refugee Service

The Jesuit Refugee Service is an international non-governmental organisation founded in 1980 whose mission is ‘to accompany, to advocate and to serve the cause of refugees and forcibly displaced persons worldwide’. JRS programmes are found in more than 50 countries, providing assistance to refugees in camps, to people displaced within their own borders, to asylum seekers in cities and forced migrants held in detention. In Europe, JRS is present in 13 EU Member States and works in a number of bordering states including Ukraine, Macedonia and Morocco.

JRS works not only with asylum seekers and refugees as defined under the Geneva Convention but with a wider group of forcibly displaced persons. The mandate of JRS is based on the definition of ‘refugee’ in Catholic social teaching³ and so extends to ‘de facto’ refugees, an expression applied to all ‘persons persecuted because of race, religion, membership of social or political groups’; to ‘the victims of armed conflicts, erroneous economic policy or natural disasters’; and, for ‘humanitarian reasons’, to internally displaced persons, that is, civilians who ‘are forcibly uprooted from their homes by the same type of violence as refugees but who do not cross national frontiers’.⁴

The remainder of this article will focus on three key challenges facing the EU in relation to forced migration: ensuring adequate protection of migrants and asylum seekers at external EU borders; ensuring that consistent and just structures and procedures for processing asylum applications are in place across Member States, and making a real commitment to admitting significant numbers of refugees under resettlement programmes.

Adequate Protection at External EU Borders

In the face of increasing numbers seeking to cross into Europe as migrants or asylum seekers, control of entry has increasingly become the focus of policy for the EU and its Member States. As a result, more and more financial and human resources are being directed at entry-control measures at Europe's borders.

Events in recent years – including tragic deaths of migrants at sea and the widespread incidence of 'pushback' of people at EU borders, which means that those attempting to gain entry have no opportunity to make a claim for asylum – highlight the need for a critical rethink of the EU's asylum and migration policies and of the management of its borders.

Despite the EU's efforts to rigorously control entry to its territory, the reality is that thousands of migrants continue to congregate in the North African states of Libya, Morocco, Algeria and Tunisia, fleeing poverty and conflict in west and central Africa, and willing to risk life and limb to find a route into Europe. The barbed-wire controlled borders of Ceuta and Melilla, two Spanish-owned enclaves on the North African Mediterranean coast, are seen by potential migrants as offering the best chances of entering the territory of the European Union. In October 2005, around 700 people charged the razor-wire security fences at Ceuta; more than 200 managed to cross the border when the fence collapsed, but several people lost their lives.⁵

In March 2014, a JRS Europe delegation met with migrants in the northern Moroccan city of Nador. Situated just 16km south of Melilla, Nador is a final point of departure for many migrants and protection-seekers who aspire to enter Europe via the Spanish enclave. For the majority, however, the EU borders will remain firmly shut. Meanwhile, significant political pressure is placed by the EU on the Moroccan authorities to keep migrants at bay.

In a policy paper issued following the March 2014 visit, JRS Europe commented:

*The European approach towards border control has shifted responsibility for the protection of those in need to lie solely in the hands of the countries at their borders, countries which at times lack the resources or willingness to provide such protection.*⁶

During its visit to Morocco, JRS Europe visited migrants hiding from the police in the Gougourou mountain forest, situated between Nador and Melilla. There they met with 80 people from Sub-Saharan Africa, including many women as well as children of all ages. These migrants were poorly equipped for living in the forest, having only flip-flops for shoes and lacking warm clothing. Some had been severely injured.

But migrants do not only try to cross highly-controlled border posts such as Ceuta and Melilla. Many choose an even more hazardous alternative – crossing by sea in dangerously overcrowded and often ill-equipped boats. Most are intercepted and turned back by naval patrols on the high seas. Tragically, many do not survive the journey. In the past two decades, almost 20,000 people are recorded as having lost their lives in an effort to reach Europe's southern borders from Africa and the Middle East. During the course of a single year, 2011, at the height of the Arab uprisings, more than 1,500 died. In October 2013, a boat carrying hundreds of migrants sank near the island of Lampedusa, Italy, resulting in the deaths of 360 people.⁷



A boat carrying African asylum seekers and migrants in the Mediterranean Sea between Africa and Italy.

© UNHCR/L. Boldrini

Overall, it can be argued that the EU's pursuit of the legitimate aim of administering systems to control who enters its territory has led to the adoption of measures which adversely affect the human rights of individuals at borders, including those seeking international protection as asylum seekers.

Reflecting on the impact of current policies and practices to control entry, and the obligation to protect fundamental human rights, the European NGO Platform on Asylum and Migration (EPAM), has stated: 'Borders are not zones of exclusion or

exception for human rights obligations'.⁸ EPAM says that 'the priority should be saving lives' and, accordingly argues: 'Clearer and more transparent rules for protection at borders and search and rescue at sea need to be adopted'.⁹

The Platform also calls for the immediate establishment of mechanisms to provide 'systematic monitoring and permanent evaluation' of what is going on at Europe's borders and says that such mechanisms should involve NGOs.¹⁰

A Fair and Just Common European Asylum System

In 2013, the EU approved the creation of a Common European Asylum System (CEAS). The process of developing CEAS had been underway since 1999, and the system is due to come into effect in 2015. The overall objective is to lay down rules which will harmonise standards across Member States. The creation of CEAS has been achieved through the development and recasting of a series of EU Directives and Regulations including:

- Asylum Procedures Directive
- Reception Conditions Directive
- Return Directive
- Qualification Directive
- Dublin Regulation
- Eurodac Regulation.

In an official statement of the aims of CEAS it is claimed that:

*The CEAS will provide better access to the asylum procedure for those who seek protection; will lead to fairer, quicker and better quality asylum decisions; will ensure that people in fear of persecution will not be returned to danger; and will provide dignified and decent conditions both for those who apply for asylum and those who are granted international protection within the EU.*¹¹

However, the reality on the ground for asylum seekers highlights the considerable distance which has to be travelled if EU Member States are to put in place the type of processes and institutions necessary to give effect to these high aspirations.

Protection Gaps: Dublin Regulation

The 'Dublin Regulation' determines which EU Member State is responsible for hearing an asylum-applicant's claim for protection and it provides for the transfer of the applicant to that State. Usually,

it is the Member State through which the applicant first enters the EU which is responsible for processing their claim.

Significant concerns have been raised about how this Regulation operates in practice. For example, arising from concerns in regard to the operation of the protection system in Greece, several Member States, including Germany, Denmark and Iceland, suspended 'Dublin transfers' to Greece. In addition, as a result of judgments handed down in national courts in Austria, France, Hungary, Italy, and Romania transfers to Greece under the Dublin Regulation for individual applicants have been suspended.¹²

In its judgment in the *M.S.S. v. Belgium and Greece* case of 21 January 2011, the European Court of Human Rights found that the transfer of an Afghan asylum-seeker from Belgium to Greece violated Article 3 of the European Convention on Human Rights due to systematic deficiencies in the Greek asylum system. It also found that an EU Member State may not assume that asylum seekers will be treated in conformity with European Convention standards in other Member States.¹³

In June 2013, JRS Europe published *Protection Interrupted*, a report based on interviews with 257 asylum seekers (in nine EU countries), who had experience of the Dublin Regulation in practice. The report showed that many applicants do not understand the system or know their rights. They are often subjected to multiple transfers and may be moved to EU Members States which provide only poor housing and basic services, leaving many homeless and destitute. People are often detained for months while states decide where to send them.¹⁴

The Dublin III Regulation, which came into force in January 2014 and is intended to improve the efficiency of the Dublin system and enhance standards, will potentially remedy some of the protection gaps identified. However, the European NGO Platform on Asylum and Migration (EPAM) has pointed out that concerns remain that '... as long as there is limited convergence in asylum policies and practice across Europe, asylum seekers subject to the Dublin system are at risk of having their rights violated'.¹⁵

Diverse Asylum Policy and Practice

The EU Commissioner for Home Affairs, Cecilia Malmström, whose area of responsibility

includes asylum issues, has stated that the greatest challenge to the CEAS is a consistent and uniform implementation at Member State level.¹⁶ JRS in Europe has found that the experience of asylum seekers across Member States differs widely in respect of border controls, reception conditions, asylum procedures, quality of decision-making, detention and return policies.

A look at the reality for asylum seekers in Ireland, Croatia and Malta illustrates the gap between the aspirations of overall EU policy and national asylum systems on the ground.

Ireland: In Ireland, more than a quarter of asylum seekers have been waiting at least five years since they first applied for asylum in the state. Their lives have been put on hold; they have not committed a crime, but many endure what they experience as an ‘indefinite sentence’ in direct provision accommodation.¹⁷

Residing for prolonged periods of time in direct provision entails significant human costs, with negative impacts on physical and mental health, family relationships and opportunities to participate in society. Of particular concern is the fact that one-third of those seeking asylum are children, many of whom will spend a substantial part of their childhood in the institutionalised environment of direct provision accommodation, with the risk of both short and long-term detrimental effects on their development.

Croatia: Asylum applicants seeking to access protection in states which have recently joined the European Union may experience particularly difficult conditions. In June 2013, JRS Europe released a report based on interviews with migrants and asylum seekers in Croatia, which became a Member State on 1 July 2013, and Macedonia, which has applied for membership. Conditions in Croatian asylum centres were found to be poor; people lacked information and waited indefinitely for a decision on their application. In Macedonia, too, applicants were living in poor conditions and had little access to legal advice. Both countries were clearly experiencing a strain on their asylum systems. In its report, JRS Europe recommended that the EU provide immediate support to bolster and improve the protection system in these two countries.

Malta: Increasingly, some EU Member States are seeking to circumvent the CEAS objective of

raising standards in their protection systems by developing readmission agreements with ‘safe’ countries of transit. In effect, these Member States are attempting to ‘outsource’ their protection obligations to non-EU states which may not have an adequately functioning protection system or a good record in respecting human rights. In July 2013, the Maltese Government planned to deport back to Libya a group of Somali asylum seekers who had arrived by boat. The plan was blocked following an application by an NGO to the European Court of Human Rights, which issued an interim injunction to prevent the deportations.

A report by JRS Malta, *Beyond Imagination* (2013), provides testimonies from asylum seekers who had arrived in Malta having spent time in Libya. While in Libya, many had experienced extreme poverty, exploitation, racist abuse, detention in appalling conditions and even torture. They lived in fear not only of the authorities but of armed militias. In the report, JRS Malta highlights the violence and political instability that now characterise Libya and takes the view that returning asylum seekers to that country would place them at real risk of ‘inhuman, cruel and degrading treatment’ and leave them unable to exercise their right to apply for asylum. It therefore recommends that Malta should not make any compulsory returns to Libya.¹⁸

‘Non-Returnable Migrants’

Of the significant numbers of asylum seekers who arrive in Europe, few are given refugee status or even a subsidiary form of protection (such as ‘leave to remain’). But it is also the case that of those who have been unsuccessful in obtaining any form of protection very few are forced to leave following the rejection of their application.¹⁹ Deportation remains a relatively rare occurrence. Enforcing return is expensive. Tracing individuals who may have gone underground is time-consuming and resource-intensive. Moreover, significant challenges are often encountered in determining the country of origin of applicants who have been unsuccessful and in arranging transfer agreements with immigration counterparts in these states. The phenomenon of non-returnable migrants has been encountered in many EU Member States.

The CEAS does not address the reality that the protection systems across Europe ultimately give rise to large numbers of unsuccessful asylum applicants – most of whom will have spent many years awaiting a final decision – who have no established right to remain but who will not

be returned. Many in this situation have found themselves destitute as they have no entitlements under national laws. The experience of non-returnable migrants living destitute in cities and towns across Europe is captured in two JRS Europe reports, *Dying Silent* (2007)²⁰ and *Living in Limbo* (2010).²¹ JRS Europe has called for the situation of forced destitute migrants to be regularised by national governments.

Election Challenge

Despite undoubted progress with the CEAS legislative process, the contention that applying for asylum in Europe is a ‘lottery’ still remains valid. The 2014 election of a new European Parliament provides an opportunity to focus on the concrete challenges facing the CEAS, among them the length of time which asylum procedures take, the divergent conditions across Member States, serious concerns about the operation of the Dublin Regulation and the risk of return to countries with an totally inadequate protection system and a poor human rights record.

Resettlement

‘Resettlement’ is the assisted transfer of refugees from a state in which they have sought protection to a state which has agreed to admit them as refugees with permanent residence status.²² Resettlement is an act of burden-sharing with the countries which host the majority of the world’s refugees. Most of these countries are extremely poor and often have borders in common with the countries from which refugees have been forced to flee. In situations where local integration is not a practical option and voluntary repatriation back to the person’s country of origin is not feasible, resettlement is a vital tool for offering protection to some of the world’s most vulnerable refugees.

Action by the European Union in the area of resettlement has been relatively recent. However, the adoption in March 2012 of a Joint EU Resettlement Programme²³ marked a turning point and an important step towards a more substantial contribution by the EU to global resettlement efforts. The limited extent of the EU contribution to date is illustrated in the sharp difference between Europe’s role in resettlement by comparison to that of the United States. In 2012, for example, the EU accepted just over 4,400 refugees under the resettlement programme of the UN High Commissioner for Refugees (UNHCR); in the same year, the US accepted over 53,000.²⁴

With the advent of the new Asylum and Migration Fund, which will support such developments from 2014 to 2020, the European Union now faces the challenge of moving beyond the rhetoric and ambition associated with the adoption of the Joint Programme to substantial practical action in regard to resettlement.

Participation in resettlement by EU Member States is on a purely voluntary basis. However, behind the adoption of the Joint Resettlement Programme was an expectation that increased coordination, and the availability of greater financial support for the reception and integration of refugees, would encourage Member States to offer more resettlement places than in the past.²⁵ While the adoption of the Joint Programme was broadly welcomed, the International Catholic Migration Commission joined other leading refugee organisations to call for concerted efforts to be made by Europe to gradually achieve the resettlement of 20,000 refugees annually by 2020 – in other words, a target nearly five times greater than the resettlement level achieved in 2012.

... the contention that applying for asylum in Europe is a ‘lottery’ still remains valid.

However, while the new framework allows the European Union to identify resettlement priorities and target those in greatest need,²⁶ the reality of the sheer size of contemporary migration flows and protection needs cannot but give rise to questions as to the adequacy of current policy and financial commitments in this area. The scale of the challenge is all too clearly illustrated in the demand for protection resulting from the Syrian conflict and the seriously inadequate official response to date.

The situation in Syria is widely recognised as representing the worst refugee crisis in nearly 20 years: more than 6.5 million Syrians are now internally displaced and over 2.4 million asylum seekers have registered in neighbouring countries.

In response to the crisis, many NGOs have been involved in trying to respond to the plight of the adults and children affected. The Jesuit Refugee Service, for example, has been distributing emergency relief to those in greatest need

and running educational activities to promote reconciliation and peaceful co-existence. However, the needs of the growing number of internally displaced persons and refugees cannot be met by NGOs, nor can they be met by the Syrian state and its neighbouring countries alone.

For their part, the European Union and its Member States have provided a total of €2.8 billion in humanitarian aid to Syria and its neighbouring countries.²⁷ However, in response to a UNHCR appeal to resettle 30,000 of the most vulnerable refugees from the region by the end of 2014, only ten EU Member States responded, committing to accept roughly 12,000 refugees.²⁸ Excluding Germany, the remaining 27 EU Member States have effectively pledged fewer than 3,000 resettlement places in 2014. Aside from this initiative, legal channels for accessing protection in Europe are entirely insufficient²⁹ and, as a result, 97 per cent of persons displaced by the Syrian conflict will remain either in Syria itself or in adjoining countries.

With the UNHCR anticipating resettlement needs in respect of an additional 100,000 Syrian refugees in 2015 and 2016, the European Union is now at a crossroads, with one path leading to true burden-sharing and the other to effective burden-shifting.

Conclusion

The forcible displacement of millions of people across the globe is one of the defining challenges of this century. Over recent decades, civil wars, deepening global inequality, environmental degradation and the intensity of natural disasters have forced millions to flee their homeland and seek sanctuary in other countries. In the eye of this storm are children. Forced to flee their homes, they are not just leaving behind their friends, family members and their way of life but all too often their childhood also. Children are forced to grow up too quickly in order to deal with the harsh reality of becoming a refugee.

In a message issued for the World Day of Migrants and Refugees (19 January 2014), Pope Francis emphasises that ‘migrants and refugees are not pawns on the chessboard of humanity’.³⁰ He draws attention to the link between poverty, in its various forms, and forced migration as well the many challenges facing both migrants and host countries. However, he also emphasises that migration reflects the hope among individuals and communities of creating a better future for the human family.

Pope Francis states:

*The reality of migration, given its new dimensions in our age of globalization, needs to be approached and managed in a new, equitable and effective manner; more than anything, this calls for international cooperation and a spirit of profound solidarity and compassion.*³¹

Migration and asylum are issues that inspire strong reactions, both positive and negative, among EU citizens. There is a need for the European Union to connect with its citizens on the issues presented by forced migration. These include the question of balancing security and justice in controlling external borders; the task of creating an asylum system that is fair and reflects common standards across Member States; the challenge of making a proportionate contribution to resettlement programmes. But beyond these issues are other, broader, questions concerning the ‘push’ and ‘pull’ factors driving mass migration and Europe’s role in a globalised economic system characterised by wide disparities in income, wealth and influence.

Voters in the elections to the European Parliament are therefore faced with some stark questions. Does the European Union stay true to its founding value of solidarity by offering protection to asylum seekers and vulnerable migrants and assuming an equitable share of the task of providing refuge, which is currently disproportionately borne by poorer nations? Or does the European Union respond to international refugee crises with open pockets but closed borders?

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