

# **MIGRATION POLICY IN A EUROPEAN CONTEXT**

## **Fundamentals related to refugees**

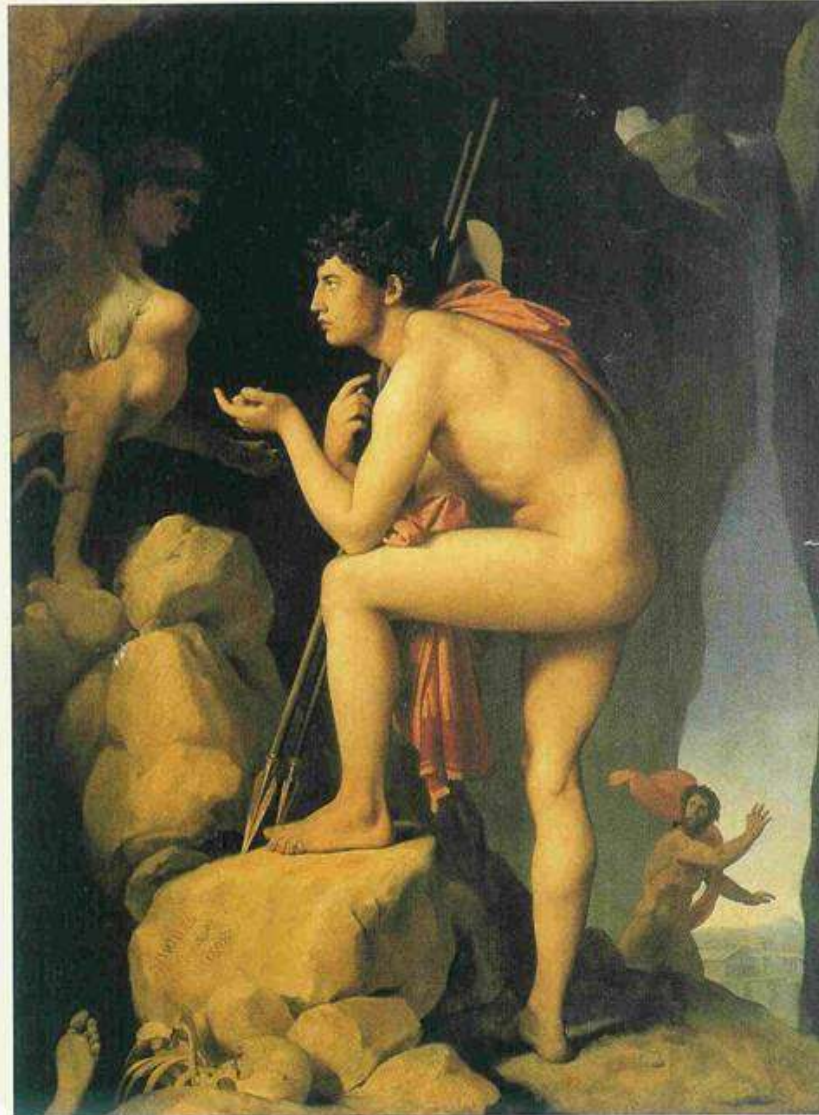
**HISTORY - ORDER OF MAGNITUDES - FUNDAMENTAL  
CONCEPTS**

**Presented by Boldizsár Nagy,  
SPP 2015**

# Forms of international migration (+ internal displacement)

<b>Migration</b>			
<b>International</b>			<b>Domestic</b>
<b>Regular</b>	<b>Irregular</b>		
An absence/presence longer than a year in accordance with the applicable rules	<b>Illegal (undocumented)</b>	<b>Forced migration</b>	
Work, family unification, study, retirement, etc. (Regular migrant)	Departing, /entering and /or staying without meeting the conditions prescribed by the rules (Undocumented foreigner)	<b>Refugee, + Beneficiary of subsidiary (complementary) protection</b>	<b>Internally displaced person, IDP</b>

## The history before 1918



## Great (religious) traditions

Asylum – *A sylao*

Old Testament

cities of refuge

do not vex or oppress the stranger – remember Egypt

The Muslim tradition

The New Testament

„I was a stranger and you took me into your homes  
... In truth I tell you: every time that you did this for  
the least of my brothers , you did it for me”  
(Matthew 25 vv 35-40)

# HISTORY BEFORE 1918

Pre 1918 flights:

Religious

Protestants St Barthelemew's night in France, Revocation of the Edict of Nantes by Louis XIV in 168

Jews: Expulsion from Spain, 1492, Pogroms in Russia, 19th century

Political

French revolution 1789, Revolutions of 1848-49

Ethnic conflicts

Greeks and Armenians persecuted in the Ottoman Empire

As travel and settlement was generally free individual „refugees“ did not need an exemption from the immigration rules (as there were no constraints on free immigration until the end of 19th century (US), or after the I World War (Europe))

## INTERWAR PERIOD

Period	1920	1925	1930	1935
Cause	Russians, revolution, civil war (1-1.5 million) Armenians (1921) Turkish persecution	Assyrians etc. from Iraq	1933 – Germany	1936 – Spain 1938 – Austria
Document	July 1922 Arrangement - Nansen passport May 1924 – extension of Russian arrangement to Armenians	1926 Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees	1928 Arrangement – Dealing with documentation and certifying personal status by local representatives of the High Commissioner	1933 Convention -Nansen certificate - non-refoulement - status issues - welfare (to be treated as foreigners, „most favoured“)  1938 Convention concerning the Status of Refugees coming from Germany (extended to those from Austria in 1939)
Definition	(Only in the 1926 Arrangement, 1928 takes 1926 granted) "Russian: Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality." "Armenian: Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality."		Refers back to 1926,	(a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government.
Organisation	High Commissioner for Refugees of the League of Nations from 1921 August -1931	1928- local representatives International Nansen Office for Refugees 1931-38 High Commissioner for refugees 1938 -1946 (London) High Commissioner for Refugees from Germany 1931-38 Intergovernmental Committee (Evian) 1938		
Approach	Group approach			Social / group

# AFTER WW II

Period	1945	1948	1950	1951
Cause	WW II aftermath		Cold War	
Document	IRO Constitution		UNHCR Statute adopted by the General Assembly on 14 December 1950 as Annex to Resolution 428 (V).	Convention relating to the Status of Refugees, 28 July, 1951
Definition	Valid objection - „who expressed valid objection to return to their country of origin” = persecution because of race, religion, nationality, political opinion = political objection against the system, judged as valid by IRO = compelling family reasons arising from former persecution (+ illness as compelling reason)		See later	
Organisation	UNRRA 1943 – 47	IRO 1947 →	end of 1951 UNRWA 1949/50	UNHCR
Approach	Individualised			

# A VAGUE CHRONOLOGY OF THE FORCED MIGRATORY FLOWS AFTER WWII

## Population exchanges and resettling after WWII

1947 Pakistan – India (15 million!)

1947- 48 Palestine (0,6-0,9 million)

1946 -49 Greek civil war

1950-54 Korea (5 million)

1954 -1962 Algerian war

1956 Hungary (0,2 million)

1960s – decolonisation (and civil wars) in Africa (Rwanda, Burundi, Uganda, Congo – Great lakes region) in 1965 = 0,85 million in total in Africa

1960 - Cuba

1962 Chinese to Hong Kong

1968 Invasion of Czechoslovakia

1971 Separation of Bangladesh (10 million)

1974 Cyprus: Turkish invasion (0,2 million)



# A VAGUE CHRONOLOGY OF THE FORCED MIGRATORY FLOWS AFTER WWII

1975-1979 Vietnam, Laos, Cambodia  
(1,5 million)

Eritrea (0,7 million)

1970-1980 El Salvador, Nicaragua, Guatemala  
(0,5 million)

1975 – 1992 Mozambique  
(1,7 million by 1992)

1979 Afghanistan  
(3,2 million to Iran and Pakistan growing  
to over 5 million by 1989)

1989 Liberia (0,8 million)

1989 CIS states (Georgia, Azerbaijan/Armenia)

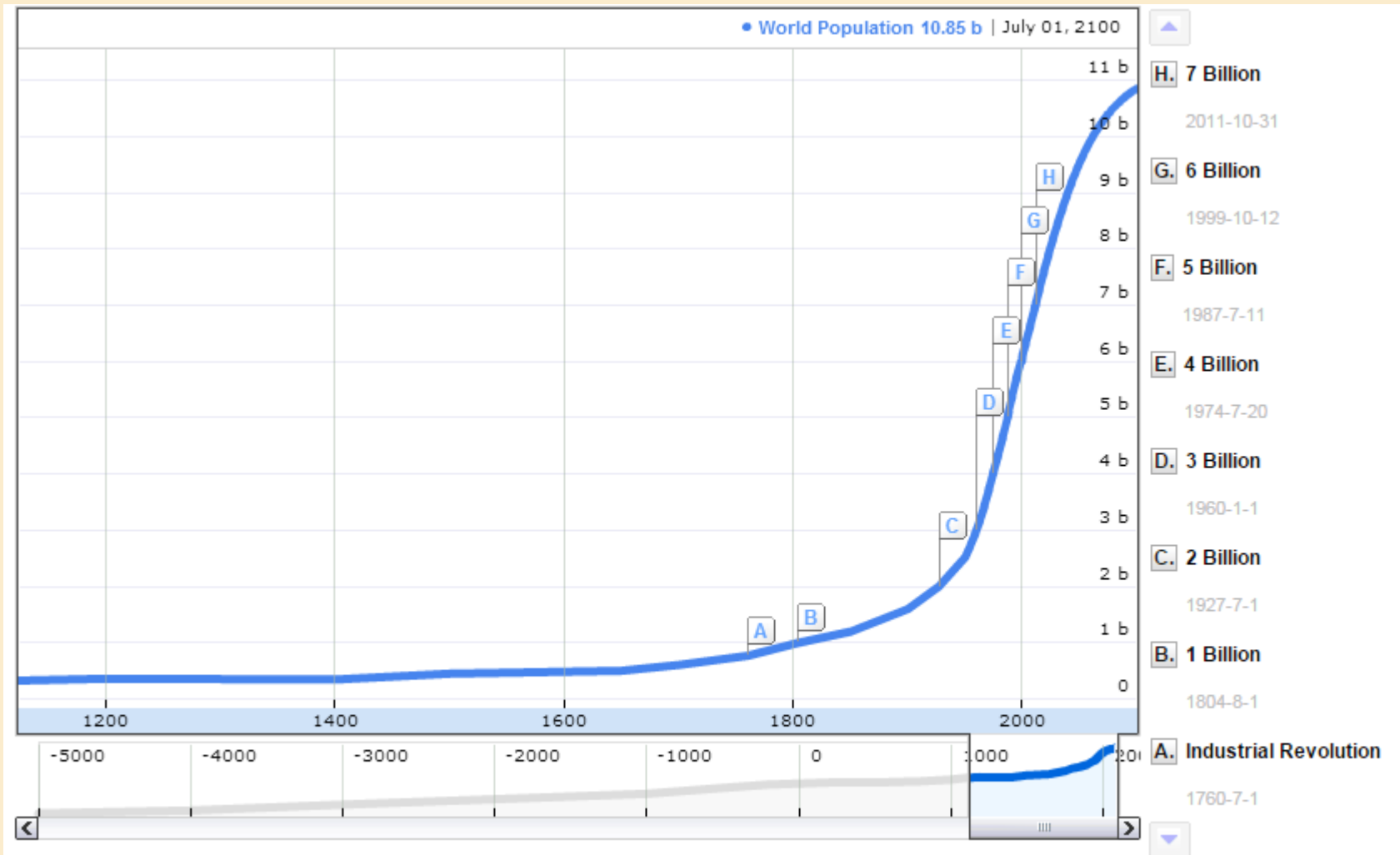
# A VAGUE CHRONOLOGY OF THE FORCED MIGRATORY FLOWS AFTER WWII

- 1991/1992 Croatia, Bosnia-Herzegovina (0,7 million)
- 1994 Rwanda (2,3 million)
- 1994 Liberia (0,1 million)
- 1995 Croatia (0,15 retaking Knin)
- 1996-97 Burundi (0,3 million)
- 1998-99 Kosovo (FRY) (0,9 million)
- 1999 East Timor (0,3 million)
- 2003 - Sudan (Darfur) (0,2 million in Chad )
- 2006 Iraq (1,2 million)
- 2008 Zimbabwe (0,45 million)
- 2010 Somalia (0,15 million)
- 2012-2015 Syria, (3,9 million)
- 2013 – 2014 South Sudan (0,6)

# ORDERS OF MAGNITUDE (STATISTICS)

# THE DEMOGRAPHIC PRESSURE

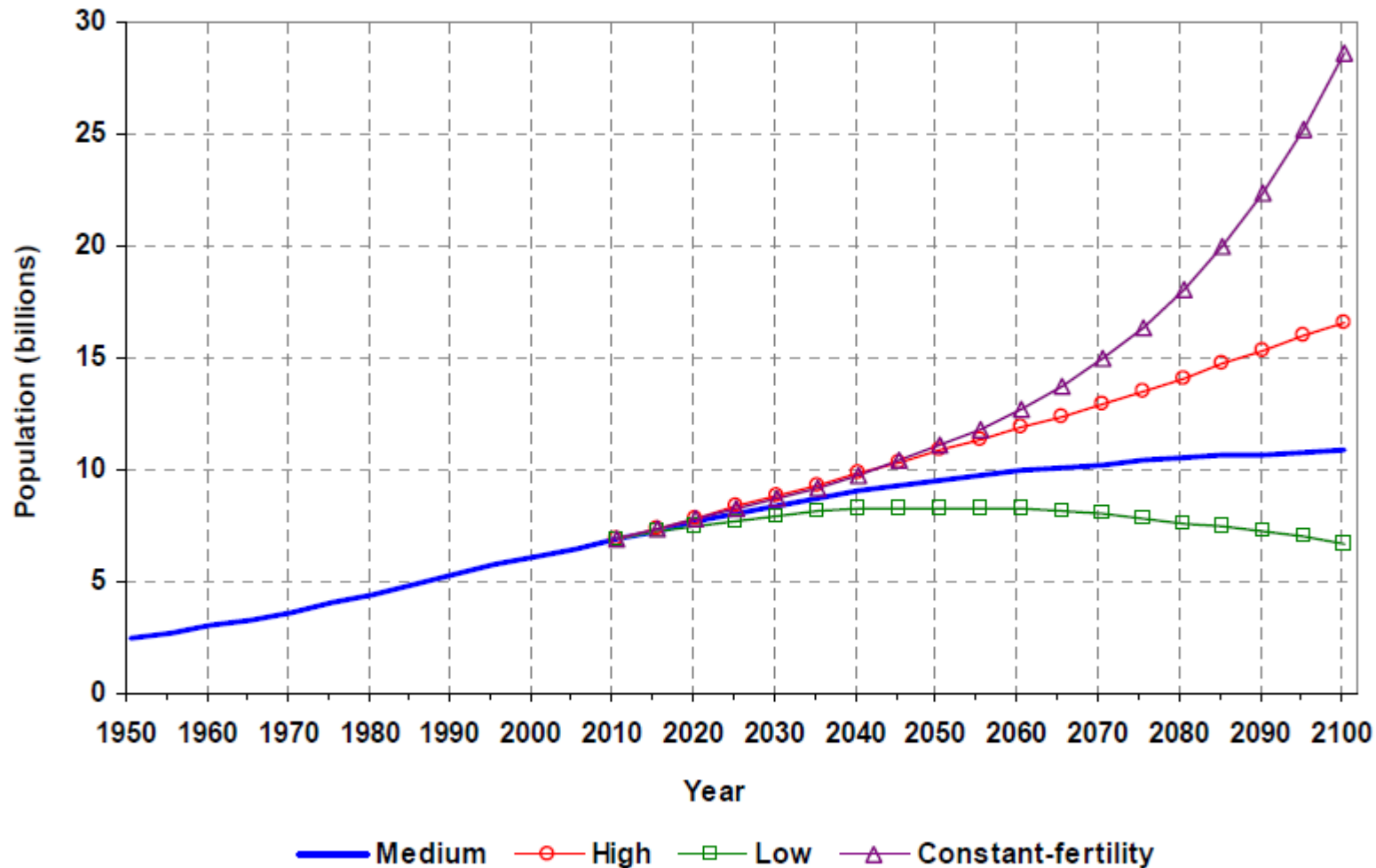
# World population until 2011



The chart above illustrates how world population has changed in history.

# Population growth projections

Figure 1. Population of the world, 1950-2100, according to different projections and variants



Source: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat (2013). *World Population Prospects: The 2012 Revision*. New York: United Nations.

# The most recent UN projection

TABLE I.1. POPULATION OF THE WORLD, DEVELOPMENT GROUPS AND MAJOR AREAS, 1950, 1980, 2013, 2050 AND 2100, ACCORDING TO DIFFERENT VARIANTS

Development group or major area	Population (millions)			Population in 2050 (millions)				Population in 2100 (millions)			
	1950	1980	2013	Low	Medium	High	Constant-fertility	Low	Medium	High	Constant-fertility
World.....	2 526	4 449	7 162	8 342	9 551	10 868	11 089	6 750	10 854	16 641	28 646
More developed regions.....	813	1 083	1 253	1 149	1 303	1 470	1 268	801	1 284	1 960	1 152
Less developed regions.....	1 713	3 366	5 909	7 193	8 248	9 398	9 821	5 949	9 570	14 682	27 494
Least developed countries.....	195	393	898	1 594	1 811	2 043	2 552	1 944	2 928	4 266	13 590
Other less developed countries.....	1 518	2 973	5 011	5 599	6 437	7 355	7 269	4 005	6 642	10 416	13 904
Africa.....	229	478	1 111	2 119	2 393	2 686	3 210	2 826	4 185	6 007	17 221
Asia.....	1 396	2 634	4 299	4 482	5 164	5 912	5 805	2 739	4 712	7 558	8 971
Europe.....	549	695	742	622	709	804	673	383	639	1 005	508
Latin America and the Caribbean.....	168	364	617	674	782	902	885	420	736	1 215	1 298
Northern America.....	172	255	355	395	446	500	453	335	513	754	535
Oceania.....	13	23	38	50	57	64	62	46	70	102	114

Source: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat (2013). *World Population Prospects: The 2012 Revision*. New York: United Nations.

TABLE I.2. PERCENTAGE DISTRIBUTION OF THE WORLD POPULATION BY DEVELOPMENT GROUP AND MAJOR AREA, ESTIMATES AND PROJECTIONS ACCORDING TO DIFFERENT VARIANTS, 1950-2100

Development group or major area	1950	1980	2013	2050				2100			
				Low	Medium	High	Constant-fertility	Low	Medium	High	Constant-fertility
World.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
More developed regions.....	32.2	24.3	17.5	13.8	13.6	13.5	11.4	11.9	11.8	11.8	4.0
Less developed regions.....	67.8	75.7	82.5	86.2	86.4	86.5	88.6	88.1	88.2	88.2	96.0
Least developed countries.....	7.7	8.8	12.5	19.1	19.0	18.8	23.0	28.8	27.0	25.6	47.4
Other less developed countries.....	60.1	66.8	70.0	67.1	67.4	67.7	65.6	59.3	61.2	62.6	48.5
Africa.....	9.1	10.8	15.5	25.4	25.1	24.7	29.0	41.9	38.6	36.1	60.1
Asia.....	55.3	59.2	60.0	53.7	54.1	54.4	52.3	40.6	43.4	45.4	31.3
Europe.....	21.7	15.6	10.4	7.5	7.4	7.4	6.1	5.7	5.9	6.0	1.8
Latin America and the Caribbean.....	6.6	8.2	8.6	8.1	8.2	8.3	8.0	6.2	6.8	7.3	4.5
Northern America.....	6.8	5.7	5.0	4.7	4.7	4.6	4.1	5.0	4.7	4.5	1.9
Oceania.....	0.5	0.5	0.5	0.6	0.6	0.6	0.6	0.7	0.6	0.6	0.4

Source: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat (2013). *World Population Prospects: The 2012 Revision*. New York: United Nations.

United Nations Department of Economic and Social Affairs/Population Division  
World Population Prospects: The 2012 Revision, Highlights and Advance Tables

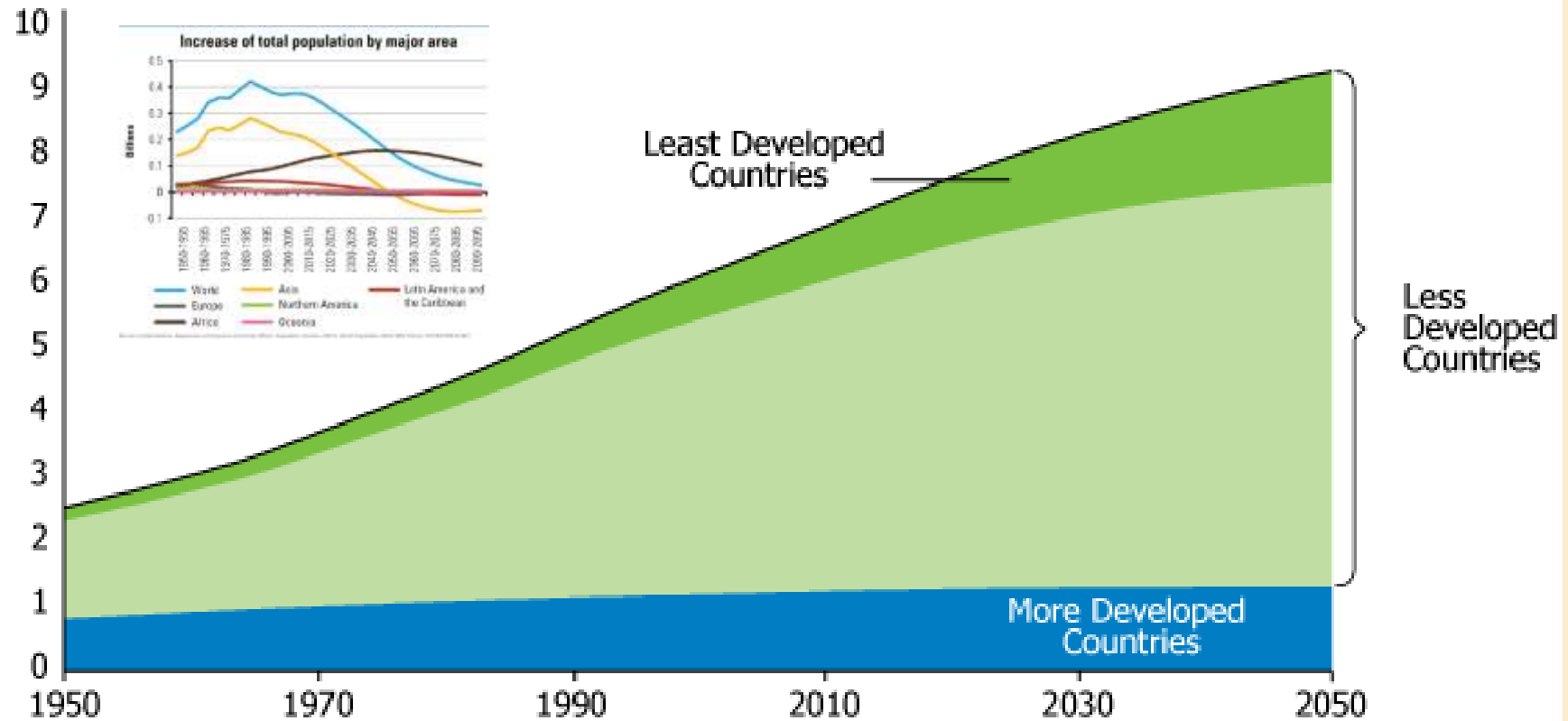


Source: excellenet interactive chart: <http://www.prb.org/wpds/2014/> (20141127)

# THE DISTRIBUTION OF THE POPULATION BETWEEN THE DEVELOPED AND THE LESS DEVELOPED WORLD

Nearly All Future Population Growth Will Be in the World's Less Developed Countries.

Population (billions)



Source: United Nations Population Division, *World Population Prospects: The 2010 Revision*, medium variant (2011).



# THE SOURCE OF THE MIGRATION PRESSURE

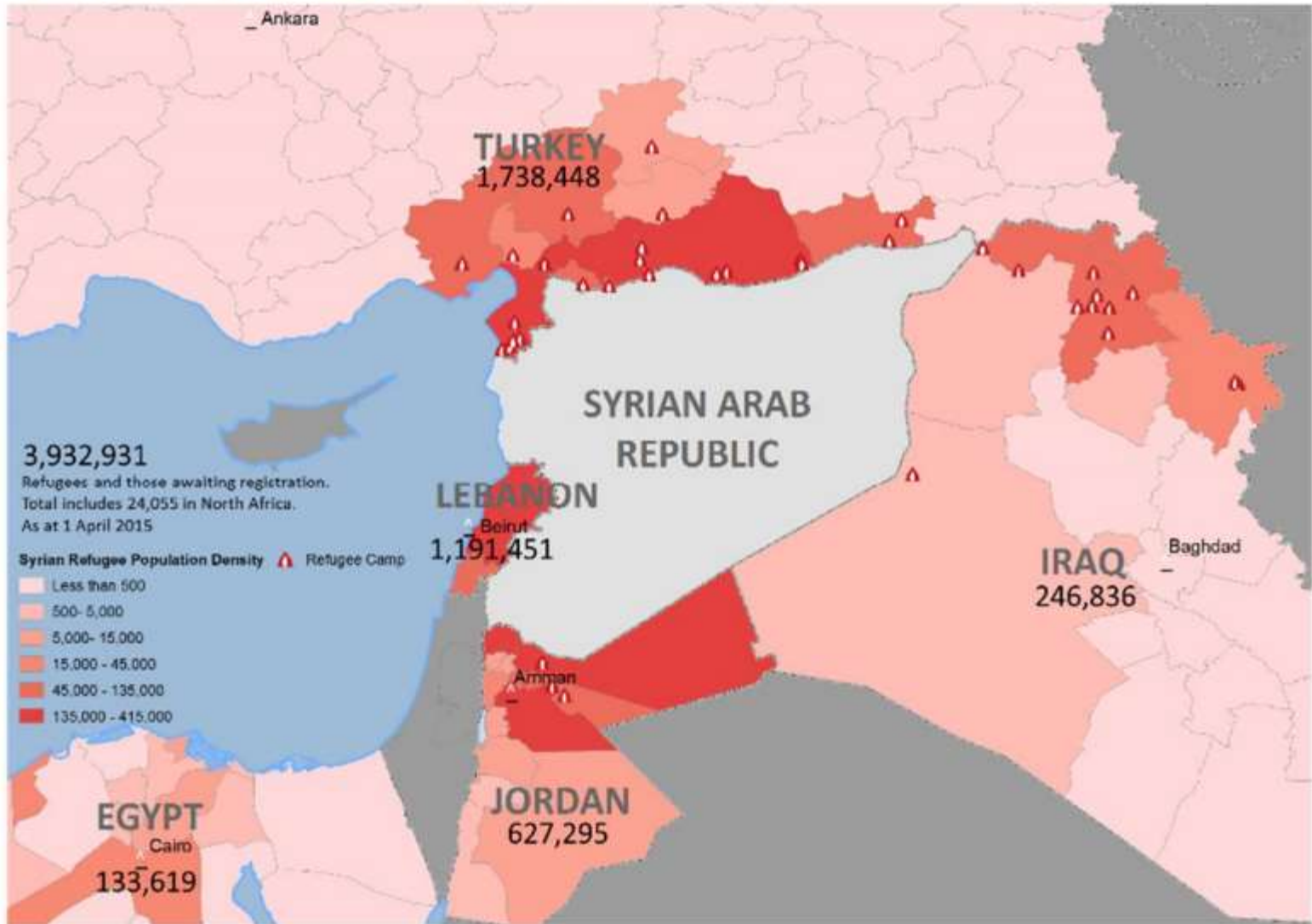
Source: Population Reference  
Bureau,  
<http://www.prb.org/Publications/Data-sheets/2014/2014-world-population-data-sheet/population-clock.aspx>  
(20141127)

	World	More Developed Countries	Less Developed Countries
Population:	<b>7,238,184,000</b>	<b>1,248,958,000</b>	<b>5,989,225,000</b>
<b>Births per:</b>			
Year	143,341,000	13,794,000	129,547,000
Month	11,945,083	1,149,500	10,795,583
Week	2,756,558	265,269	2,491,288
Day	392,715	37,792	354,923
Hour	16,363	1,575	14,788
Minute	273	26	246
Second	4.5	0.4	4.1
<b>Deaths per:</b>			
Year	56,759,000	12,328,000	44,432,000
Month	4,729,917	1,027,333	3,702,667
Week	1,091,519	237,077	854,462
Day	155,504	33,775	121,732
Hour	6,479	1,407	5,072
Minute	108	23	85
Second	1.8	0.4	1.4
<b>Natural Increase per:</b>			
Year	86,582,000	1,466,000	85,115,000
Month	7,215,167	122,167	7,092,917
Week	1,665,038	28,192	1,636,827
Day	237,211	4,016	233,192
Hour	9,884	167	9,716
Minute	165	3	162
Second	2.7	0.0	2.7

# ASYLUM SEEKERS, REFUGEES

# NOTHING COMPARES: SYRIA

A total of **3.9 million** people of concern



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Sources: <http://data.unhcr.org>

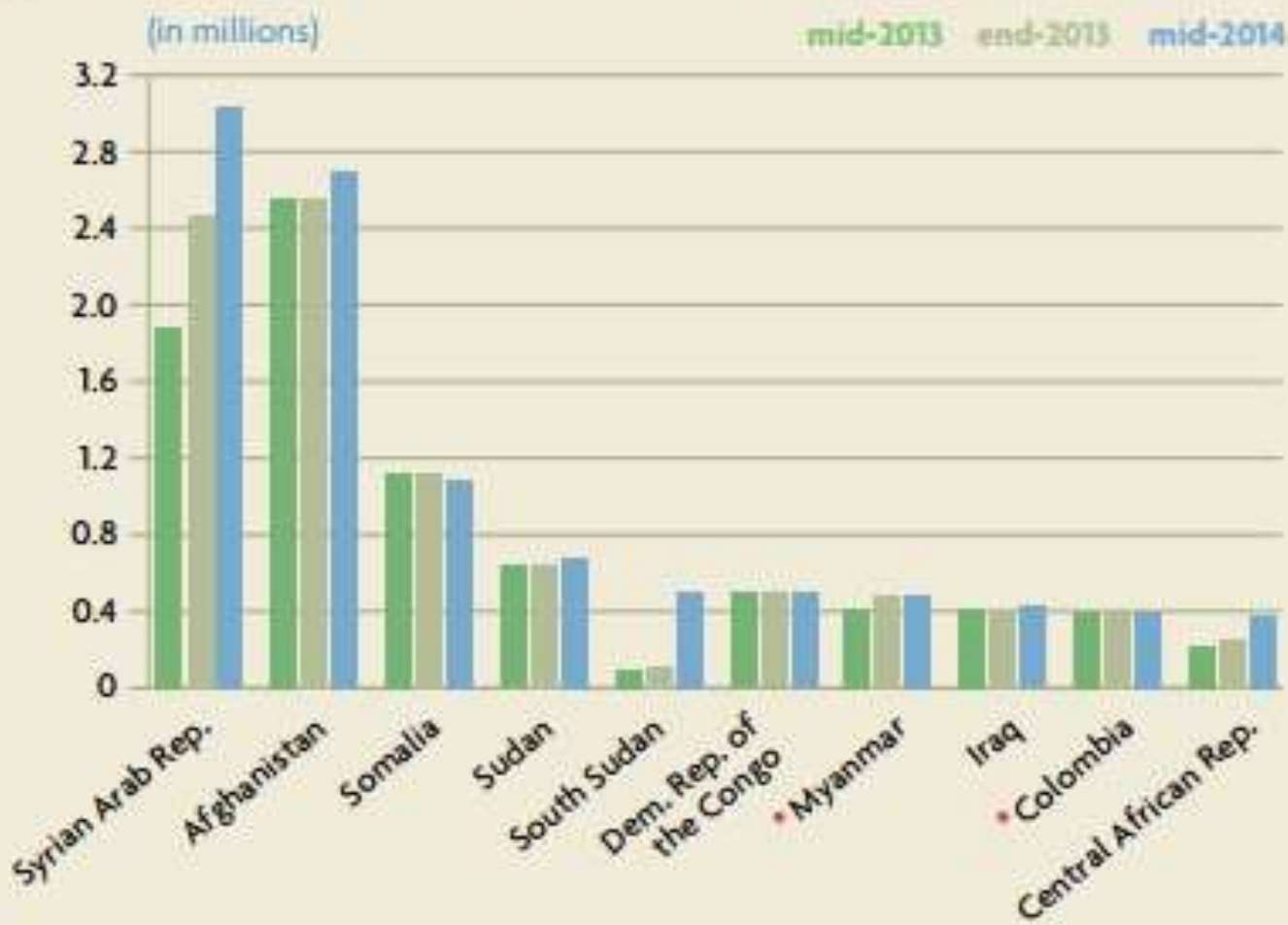
# FORCED MIGRANTS, STOCK DATA, END OF YEAR

Forced migrant	2008	2009	2010	2011	2012	2013
Refugees (under UNHCR mandate)	10,5	10,4	10,5	10,4	10,5	11,0
Palestinian refugees( UNWRA)	4,7	4,8	5,0	5,1	5,3	5,4
Individual applicants	0,8	1,0	0,8	0,9	0,9	1,1
IDPs fleeing conflict	26,0	27,1	27,5	26,4	28,8	33,0

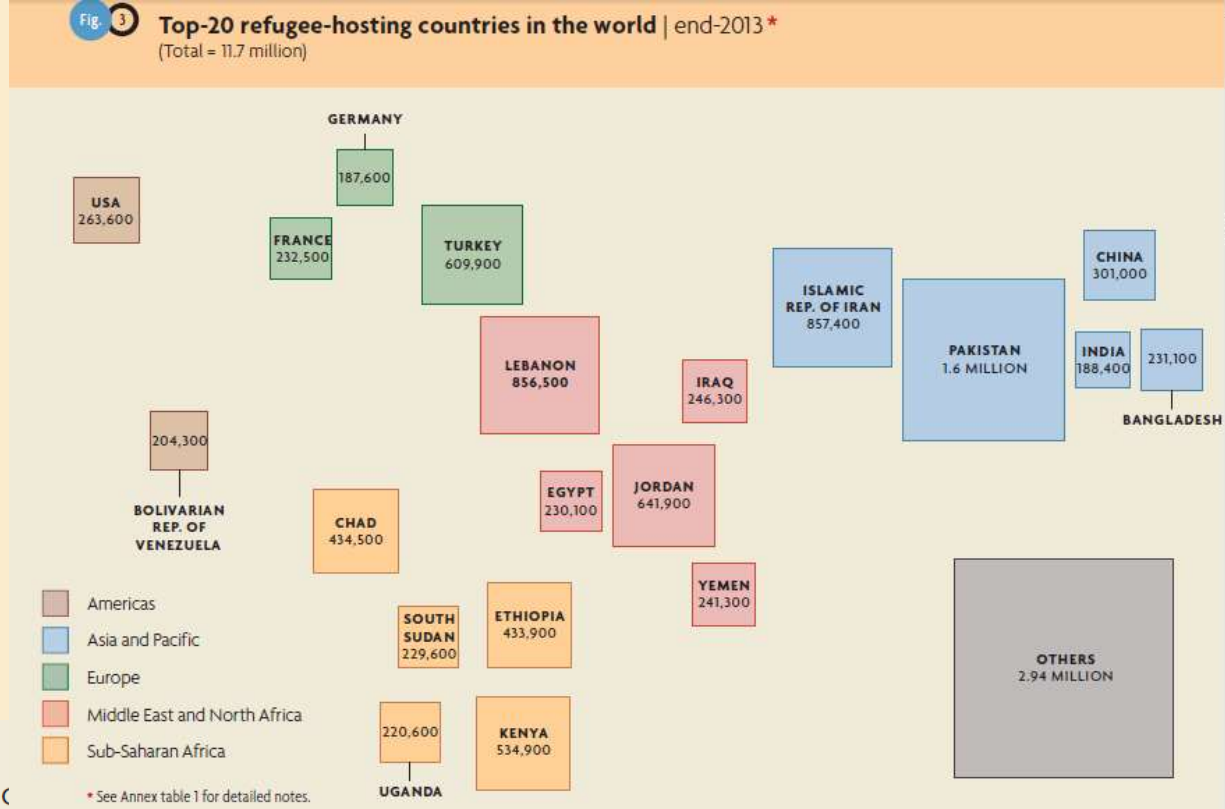
Source UNHCR: Global Trends Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons különböző évek (statistical annex) [http://www.unrwa.org/sites/default/files/2014\\_01\\_uif\\_-\\_english.pdf](http://www.unrwa.org/sites/default/files/2014_01_uif_-_english.pdf) és <http://www.internal-displacement.org/>  
Vaccessed: 2014 szept. 24

# Countries of origin

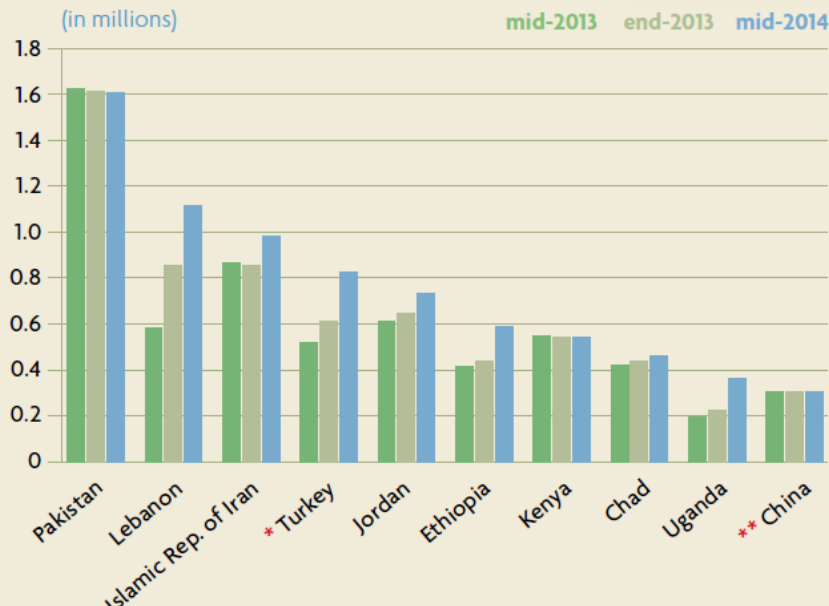
FIG. 2 Where do the world's refugees come from? | mid-2014



# Major receiving countries, end 2013 and mid 2014



**Fig. 3 Major refugee-hosting countries | mic**



Source UNHCR Global Trends 2013 War's Human Cost, p. 13 and UNHCR Midyear I Trends 2014 UNHCR, geneva, 2015, p. 5.



Country/ region of asylum	2010	2011	2012	2013	2014	Total	Annual change 14-15	Share		Rank		Per 1,000 inhabitants				Per 1 USD/GDP per capita			
								2014		2014		2014		2014		2014		2014	
								10-14	10-14	10-14	10-14	10-14	10-14	10-14	10-14	10-14	10-14	10-14	10-14
Albania	30	30	20	230	430	710	87%	0%	0%	35	40	0.1	0.2	32	40	0.0	0.1	29	34
Australia	12,640	11,510	15,790	11,740	8,960	60,640	-34%	1%	2%	19	14	0.4	2.6	25	22	0.2	1.3	19	17
Austria	11,010	14,420	17,410	17,500	28,060	88,400	60%	3%	3%	9	11	3.3	10.4	4	8	0.6	1.9	11	12
Belgium	27,660	26,000	18,530	12,500	13,870	92,660	11%	2%	3%	14	10	1.2	8.3	16	10	0.3	2.2	16	10
Bosnia and Herzegovina	50	40	50	100	50	290	-50%	0%	0%	45	45	0.0	0.1	44	44	0.0	0.0	42	41
Bulgaria	1,050	890	1,230	6,980	10,790	20,920	53%	1%	1%	17	20	1.5	2.9	13	19	0.6	1.2	10	18
Canada	23,160	25,350	20,500	10,380	11,450	92,840	30%	2%	3%	15	9	0.4	2.6	26	20	0.1	2.1	17	11
Croatia	290	80	1,300	1,090	450	3,830	-59%	0%	0%	33	32	0.1	0.9	36	30	0.0	0.2	33	30
Cyprus	3,160	1,770	1,630	1,350	1,730	9,640	28%	0%	0%	26	24	1.5	8.4	14	9	0.3	0.4	28	24
Czech Rep.	490	490	510	490	920	2,900	88%	0%	0%	32	33	0.1	0.3	37	39	0.0	0.1	31	32
Denmark	4,970	3,810	6,790	7,560	14,820	37,350	96%	2%	1%	13	18	2.6	6.6	7	12	0.3	0.8	15	19
Estonia	30	70	80	100	150	430	50%	0%	0%	42	43	0.1	0.3	35	38	0.0	0.0	41	42
Finland	4,020	3,090	2,920	3,020	3,520	16,370	17%	0%	1%	23	22	0.6	3.0	21	17	0.1	0.4	26	25
France	48,070	52,150	55,070	60,230	59,030	274,550	-2%	7%	10%	6	3	0.9	4.2	19	15	1.5	6.9	8	4
Germany	41,330	45,740	64,340	109,580	173,070	434,260	58%	20%	16%	1	1	2.1	5.3	9	13	4.0	9.9	2	1
Greece	10,270	9,310	9,580	8,220	9,450	46,830	15%	1%	2%	18	16	0.8	4.2	20	16	0.4	1.8	14	14
Hungary	2,100	1,690	2,160	18,570	41,370	65,890	123%	5%	2%	7	13	4.2	6.6	2	11	1.2	2.7	6	9
Iceland	50	80	70	170	160	570	-6%	0%	0%	41	42	0.5	1.7	24	26	0.0	0.0	43	43
Ireland	1,940	1,290	940	950	1,440	6,560	52%	0%	0%	28	30	0.5	1.4	28	27	0.0	0.1	32	31
Italy	10,050	40,360	17,350	25,720	63,680	157,140	148%	7%	6%	5	6	1.0	2.6	18	21	1.9	4.6	4	6
Japan	1,200	1,870	2,550	3,260	5,000	11,880	53%	1%	1%	22	23	0.0	0.1	43	43	0.1	0.4	23	26
Latvia	60	340	190	190	360	1,340	89%	0%	0%	37	39	0.2	0.6	30	33	0.0	0.0	35	39
Liechtenstein	70	80	70	100	70	430	-30%	0%	0%	44	43	1.9	11.6	10	6	-	-	-	-
Lithuania	370	410	530	280	390	1,980	39%	0%	0%	36	34	0.1	0.7	33	32	0.0	0.1	36	33
Luxembourg	740	2,080	2,000	990	970	6,780	-2%	0%	0%	31	29	1.8	12.6	11	3	0.0	0.1	38	35
Malta	140	1,860	2,060	2,200	1,280	7,540	-42%	0%	0%	29	27	3.0	17.5	5	2	0.0	0.2	30	28
Montenegro	70	340	1,530	3,550	2,310	7,640	-35%	0%	0%	25	26	3.7	12.3	3	5	0.2	0.5	22	22
Netherlands	11,330	11,190	9,660	14,400	23,850	72,830	66%	3%	3%	10	12	1.4	4.3	15	14	0.5	1.5	12	16
New Zealand	340	310	320	290	290	1,550	0%	0%	0%	39	37	0.1	0.3	39	37	0.0	0.0	40	40
Norway	9,220	8,680	10,690	11,280	12,640	54,510	-5%	1%	2%	16	15	2.5	10.7	8	7	0.2	0.8	20	20
Poland	6,530	5,090	9,170	13,760	6,810	41,360	51%	1%	2%	20	17	0.2	1.1	29	29	0.3	1.7	18	15
Portugal	160	280	300	510	440	1,690	-14%	0%	0%	34	36	0.0	0.2	42	41	0.0	0.1	34	37
Rep. of Korea	400	1,010	1,140	1,570	2,900	7,050	85%	0%	0%	24	28	0.1	0.1	40	42	0.3	0.2	27	29
Romania	860	1,720	2,510	1,500	1,550	8,140	3%	0%	0%	27	25	0.1	0.4	38	35	0.1	0.3	25	23
Serbia and Kosovo (S/RES/1244 (1999))	790	3,320	2,770	5,100	16,590	28,600	223%	2%	1%	12	19	1.8	3.0	12	18	1.7	3.0	5	8
- of which Kosovo	270	190	50	60	100	670	67%	0%	0%	-	-	-	-	-	-	-	-	-	-
Slovakia	540	320	550	280	230	1,920	-18%	0%	0%	40	35	0.0	0.4	41	36	0.0	0.1	39	36
Slovenia	250	310	260	240	360	1,420	50%	0%	0%	37	38	0.2	0.7	31	31	0.0	0.0	37	38
Spain	2,740	3,490	2,580	4,510	5,900	19,140	31%	1%	1%	21	21	0.1	0.4	34	34	0.2	0.6	21	21
Sweden	31,820	29,650	43,890	54,260	75,090	234,710	38%	9%	9%	4	4	7.8	24.4	1	1	1.7	5.2	7	5
Switzerland	13,520	19,440	25,950	19,440	22,110	100,480	14%	3%	4%	11	8	2.7	12.3	6	4	0.4	1.8	13	13
The former Yugoslav Rep. of Macedonia	180	740	640	1,350	1,260	4,170	-7%	0%	0%	30	31	0.6	2.0	22	25	0.1	0.3	24	27
Turkey	9,230	16,020	26,470	44,810	87,820	184,350	96%	10%	7%	3	5	1.2	2.4	17	23	4.4	9.2	1	2
United Kingdom	22,640	25,900	27,980	29,880	31,260	176,660	5%	4%	5%	8	7	0.5	2.2	23	24	0.8	3.6	9	7
United States	49,370	70,030	78,410	84,400	121,160	403,370	44%	14%	15%	2	2	0.4	1.3	27	28	2.2	7.5	3	3
EU-Total (28)	240,700	284,850	301,010	396,860	570,820	1,794,240	44%	66%	65%			1.1	3.5						
Nordic countries (5)	50,080	46,310	63,800	78,290	106,230	343,710	36%	12%	12%			4.1	13.1						
Southern Europe (8)	35,760	73,030	59,990	87,550	170,710	427,040	95%	20%	15%			0.8	2.0						
Former Yugoslavia (6)	1,300	5,270	6,190	11,400	20,920	45,280	84%	2%	2%			0.9	2.0						
Total Europe (38)	273,870	333,510	369,310	485,020	714,260	2,175,970	47%	82%	79%			1.2	3.5						
Canada/USA	72,470	95,380	96,910	94,780	134,610	496,150	42%	16%	18%			0.4	1.4						
Australia/New Zealand	12,980	11,820	16,710	12,050	9,250	62,790	-23%	1%	2%			0.3	2.2						
Japan/Rep. of Korea	1,630	2,880	1,690	4,830	7,900	20,930	64%	1%	1%			0.0	0.1						
<b>Total (44)</b>	<b>360,950</b>	<b>445,590</b>	<b>488,020</b>	<b>596,660</b>	<b>866,910</b>	<b>2,755,240</b>	<b>45%</b>					<b>0.7</b>	<b>2.3</b>						

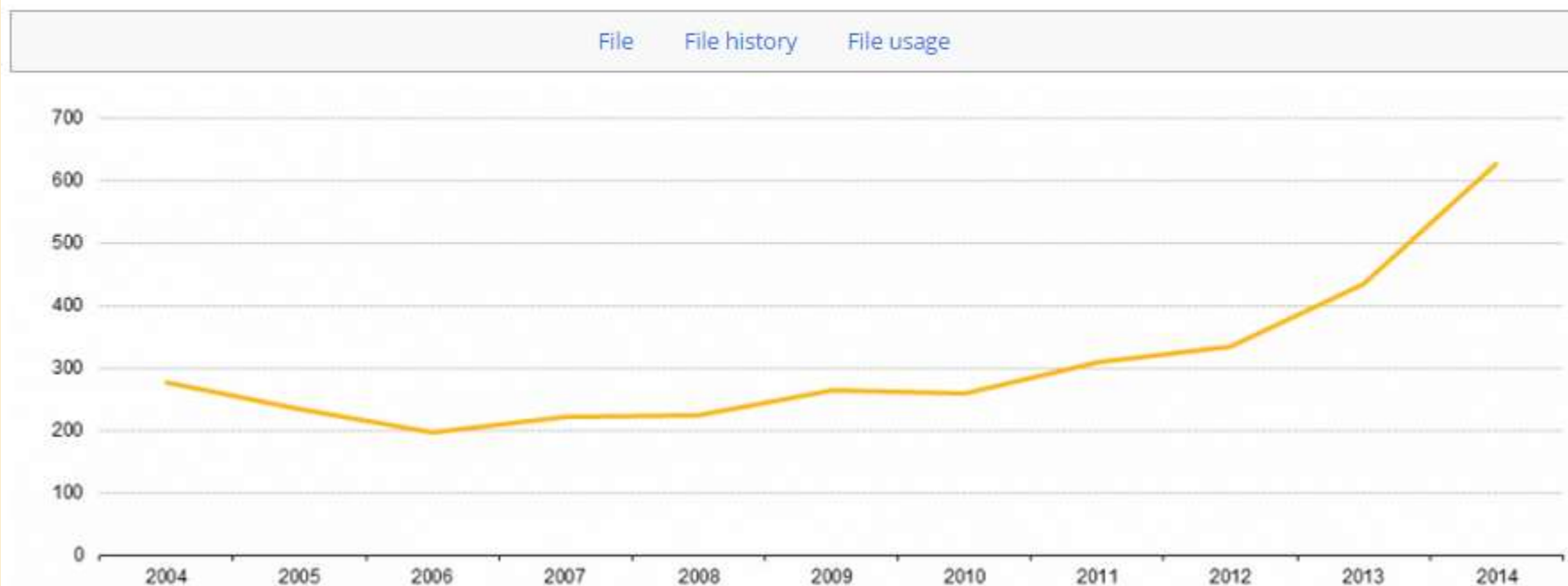
Individual applications in 44 developed states 2009 - 2014

Source: Asylum Trends 2014 Asylum levels and trends in industrialized countries

UNHCR, Geneva, 26 March 2015

# INDIVIDUAL APPLICATIONS IN THE EU, 2004 - 2014

File:Asylum applications (non-EU) in the EU-28 Member States, 2004–14 (1) (thousands) YB15 II.png



(\*) 2004–07: EU-27 and extra-EU-27.

Source: Eurostat (online data codes: migr\_asutz and migr\_asvanortz)

Source:

Eurostat, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Asylum\\_applications\\_\(non-EU\)\\_in\\_the\\_EU-28\\_Member\\_States,\\_2004%E2%80%9314\\_\(%C2%B9\)\\_%28thousands%29\\_YB15\\_II.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Asylum_applications_(non-EU)_in_the_EU-28_Member_States,_2004%E2%80%9314_(%C2%B9)_%28thousands%29_YB15_II.png)



# ASYLUM APPLICATIONS BY EU COUNTRY, 2013 4Q – 2014 4Q

Table 1: Asylum applicants (including first time asylum applicants), Q4 2013 – Q4 2014

	Q4 2013			Q1 2014			Q2 2014			Q3 2014			Q4 2014			Q4 2014	Change in %		Applicants per million population (1) 2014	Last 12 months
	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.		between Q3 2014 and Q4 2014	between Q4 2013 and Q4 2014		
<b>EU-28</b>	47 195	41 045	35 085	40 735	35 515	37 515	39 475	42 875	46 235	58 395	55 020	67 335	69 070	64 790	69 105	202 960	12	65	1 235	626 065
Belgium	1 780	1 445	1 375	1 885	1 605	1 575	1 630	1 335	1 805	2 005	2 085	2 410	2 275	1 895	2 205	6 370	-2	39	2 025	22 710
Bulgaria	1 255	1 280	650	820	775	435	320	545	645	910	1 105	1 220	1 430	1 380	1 500	4 305	33	36	1 530	11 080
Czech Republic	60	45	60	60	50	90	85	100	70	105	100	140	120	90	130	340	-2	107	110	1 145
Denmark	710	635	520	570	440	505	610	720	1 005	1 710	2 295	3 085	1 855	1 115	765	3 735	-47	100	2 610	14 680
Germany	15 625	14 425	11 005	14 920	11 655	11 700	11 890	12 965	14 655	20 930	18 705	20 100	22 250	22 500	20 370	65 125	9	59	2 510	202 645
Estonia	5	15	5	10	5	5	10	10	15	15	20	15	30	10	10	50	-2	117	120	155
Ireland	80	110	70	100	85	110	95	105	105	130	125	140	130	155	170	455	15	76	315	1 450
Greece	835	780	630	760	885	795	840	845	730	880	510	670	890	670	955	2 515	22	13	860	9 430
Spain	355	315	270	290	345	405	360	350	415	475	450	540	730	640	610	1 980	35	111	120	5 615
France	6 320	5 235	5 385	4 895	5 165	5 825	5 770	4 655	4 955	5 415	4 160	5 095	6 040	4 930	5 835	16 805	15	-1	955	62 735
Croatia	95	55	35	55	30	45	35	35	35	45	45	35	45	30	25	100	-19	-47	105	450
Italy	3 390	3 135	2 260	3 480	3 265	3 955	4 300	5 465	4 615	5 675	5 110	7 265	8 980	6 865	5 660	21 500	19	145	1 065	64 625
Cyprus	140	145	120	120	120	145	155	130	130	140	130	180	205	150	140	495	10	22	2 035	1 745
Latvia	15	10	10	10	20	40	15	20	45	65	35	45	30	15	30	75	-47	117	190	375
Lithuania	40	35	40	35	25	35	10	20	35	20	30	40	35	70	75	185	99	65	150	440
Luxembourg	125	100	60	100	90	75	55	90	70	90	100	140	130	120	85	335	1	17	2 090	1 150
Hungary	785	935	1 035	1 325	725	685	725	765	1 205	1 615	2 200	4 895	5 425	9 130	14 075	28 630	229	940	4 330	42 775
Malta	115	130	65	75	50	75	135	65	205	125	100	185	135	80	120	335	-19	8	3 180	1 350
Netherlands	1 830	1 690	1 515	1 745	1 560	1 515	2 790	3 585	1 985	2 285	2 440	3 150	2 265	1 460	1 440	5 165	-34	3	1 555	26 210
Austria	1 695	1 550	1 520	1 520	1 235	1 330	1 410	1 780	1 765	2 215	2 445	3 290	3 155	3 690	4 200	11 045	39	132	3 295	28 035
Poland	625	445	385	625	465	605	695	635	695	725	620	810	815	680	645	2 140	-1	47	210	8 020
Portugal	45	30	105	20	15	30	30	35	35	45	50	40	40	60	40	140	4	-22	40	440
Romania	135	110	80	115	130	105	80	120	115	145	90	270	195	80	100	375	-26	15	75	1 545
Slovenia	20	5	10	15	35	30	40	35	25	30	30	55	40	15	40	95	-14	179	185	385
Slovakia	40	40	30	20	15	50	20	20	30	15	20	20	30	40	45	115	102	7	60	330
Finland	280	280	255	260	230	235	250	235	255	270	350	405	410	325	405	1 140	11	40	665	3 620
Sweden	7 910	5 530	5 325	4 450	4 100	4 395	4 845	6 010	8 070	9 380	8 855	9 965	8 175	5 995	6 945	21 115	-25	13	8 415	81 180
United Kingdom	2 905	2 585	2 285	2 450	2 395	2 730	2 275	2 200	2 525	2 930	2 815	3 130	3 215	2 595	2 485	8 295	-7	7	495	31 745
Iceland	15	10	10	5	10	5	10	10	15	5	15	20	25	5	35	65	47	97	515	170
Liechtenstein	5	0	0	5	10	5	5	5	5	0	5	15	5	5	10	20	6	260	1 725	65
Norway	1 095	855	760	915	750	850	940	1 455	1 335	1 115	1 225	1 485	1 265	1 000	880	3 145	-17	16	2 585	13 205
Switzerland	1 830	1 950	1 770	1 925	1 450	1 485	1 460	1 665	2 225	2 880	2 510	2 390	2 380	1 675	1 510	5 585	-28	0	2 895	23 555

Source:

Eurostat, Data in Focus 3/2015, p.

# COUNTRY OF ORIGIN OF THE ASYLUM SEEKERS

C  
E  
U  
2  
0  
1  
5

	Total (number)		Change 2013 to 2014		Ranking		
	2013	2014	Absolute (number)	Relative (%)	2013	2014	Change
<b>Non-EU-28 total</b>	435 190	626 065	190 875	43.9	-	-	-
Syria	50 420	122 790	72 370	143.5	1	1	0
Afghanistan	26 235	41 305	15 070	57.4	3	2	1
Kosovo (UNSCR 1244/99)	20 220	37 875	17 655	87.3	6	3	3
Eritrea	14 605	36 990	22 385	153.3	8	4	4
Serbia	22 375	30 810	8 435	37.7	4	5	-1
Pakistan	20 890	22 120	1 230	5.9	5	6	-1
Iraq	11 205	21 330	10 125	90.4	11	7	4
Nigeria	11 660	19 950	8 290	71.1	10	8	2
Russia	41 500	19 685	-21 815	-52.6	2	9	-7
Somalia	18 570	16 910	-1 660	-8.9	7	10	-4
Albania	11 075	16 805	5 730	51.7	12	11	1
Stateless	9 620	15 680	6 060	63.0	14	12	2
Ukraine	1 060	14 040	12 980	1 224.5	47	13	34
Mali	6 635	12 905	6 270	94.5	20	14	6
Bangladesh	9 150	11 650	2 500	27.3	15	15	0
Gambia, The	3 550	11 515	7 965	224.4	29	16	13
Iran	12 785	10 890	-1 895	-14.8	9	17	-8
Bosnia and Herzegovina	7 070	10 675	3 605	51.0	19	18	1
FYR of Macedonia	11 065	10 330	-735	-6.6	13	19	-6
Unknown	4 330	9 590	5 260	121.5	27	20	7
Georgia	9 115	8 555	-560	-6.1	16	21	-5
Dem. Rep. of Congo	8 390	7 085	-1 305	-15.6	17	22	-5
Algeria	7 080	6 700	-380	-5.4	18	23	-5
Senegal	2 965	6 435	3 470	117.0	32	24	8
Guinea	6 515	6 265	-250	-3.8	22	25	-3
Sudan	3 255	6 225	2 970	91.2	31	26	5
Armenia	5 220	5 670	450	8.6	26	27	-1
Sri Lanka	6 600	5 315	-1 285	-19.5	21	28	-7
China (including Hong Kong)	5 320	5 200	-120	-2.3	25	29	-4
Turkey	5 645	5 165	-480	-8.5	23	30	-7
<b>Other non-EU-28</b>	61 065	69 605	8 540	14.0	-	-	-

Source: Eurostat (online data code: migr\_asyappctza)

Source:

Eurostat, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Asylum\\_applications\\_\(non-EU\)\\_in\\_the\\_EU-28\\_Member\\_States,\\_2004%E2%80%932014\\_\(%C2%B9\)\\_thousands\\_YB15\\_II.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Asylum_applications_(non-EU)_in_the_EU-28_Member_States,_2004%E2%80%932014_(%C2%B9)_thousands_YB15_II.png)

# DURABLE SOLUTIONS

# DURABLE SOLUTIONS

Durable  
solutions

```
graph TD; A[Durable solutions] --- B[Voluntary repatriation]; A --- C[Integration]; A --- D[Resettlement];
```

Voluntary  
repatriation

Integration

Resettlement

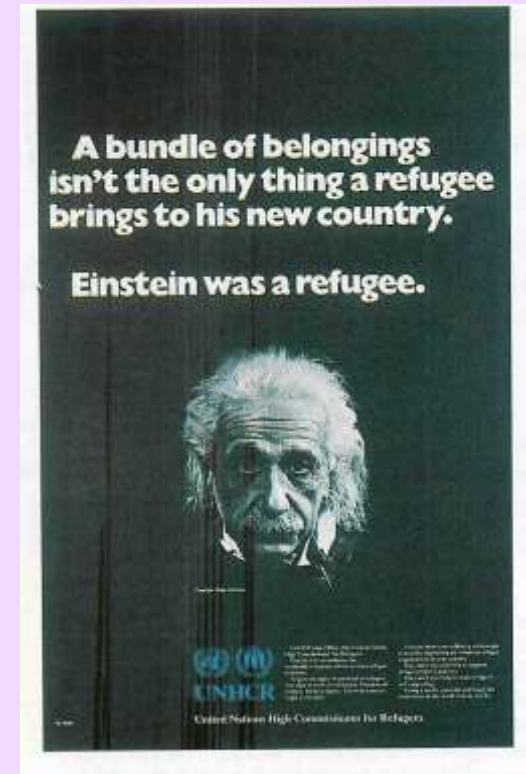
# VOLUNTARY REPATRIATION (RETURN)

- Most preferred solution
  - statist perspective: tool to remove
  - liberal: best for the refugee (is it?)  
(D.Joly: Rubicon/Odysseus – type )
- Questions:
  - relationship to termination of threat of persecution-cessation (see, e.g. Hathaway, *The Rights of refugees under i.l.*, 917-963)
  - individual or organised
- Preconditions:
  - safety and dignity
  - being well-informed
  - chance to re-start life at home
  - re-integration to local community (tensions between those who fled and those who endured)
    - *See also UNHCR, 'Handbook Voluntary Repatriation: International Protection', 1996,*
    - *Handbook for Repatriation and Reintegration Activities, UNHCR, 2004*

# INTEGRATION

- The basic modes of the relationship between the refugees and the host society

Integration	Isolation
Assimilation	Segregation



# RESETTLEMENT

- Long practice, still alive (Canada, US, Australia, New Zealand, Norway, Ireland receive)
- Dual reading: solidarity or burden-shifting
- May be the only alternative (e.g. when states maintain geographic reservations, as Turkey.)
- 1994 – 2003 average: 26 700 persons\*
- EU considering see e.g. May 2015: 20 000/year into the 28 MS
- Dilemma: intra regional or across continents?
  - \*UNHCR : Statistical Yearbook, 2003, Geneva 2005, p. 27



# **TERMS, DEFINITIONS – A CLOSER LOOK**



## TERMS - DEFINITIONS

- Asylum
- Asylum seeker – refugee
- Subsidiary (complementary) protection
- International protection

# DEFINITIONS

## Geneva Convention relating to the status of refugees – 1951

### Article 1.

#### *Definition of the term “refugee”*

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

- (1) Has been considered a refugee ...[according to the interwar arrangements and the IRO constitution]
- (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

# DEFINITIONS

## Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

### *Article 1*

Definition of the term "Refugee"

1. [ Geneva definition]
2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

# DEFINITIONS

- **Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama**
- Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19-22 November 1984.
- The Colloquium adopted the following conclusions:
- .....
- 3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, **it is necessary to consider enlarging the concept of a refugee, ....** the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by **generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.**

# DEFINITIONS

- EU Temporary Protection Directive
  - (Council Directive 2001/55/EC OJ L 212/14)
    - Article 2
- For the purposes of this Directive:
  - (a) 'temporary protection' means a procedure of **exceptional** character to provide, in the event of **a mass influx** or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that **the asylum system will be unable to process** this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;
  - (b) ...
  - (c) '**displaced persons**' means third-country nationals or stateless persons who have **had to leave** their country or region of origin, **or have been evacuated**, in particular in response to an appeal by international organisations, and are **unable to return in safe and durable conditions** because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:
    - (i) persons who have fled areas of **armed conflict or endemic violence**;
    - (ii) persons at serious risk of, or who have been the victims of, **systematic or generalised violations of their human rights**

# DEFINITIONS

## Council Directive

**2004/83/EC** of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304/12 2004 09 30,)

## EU Qualification Directive 2004/2011

DIRECTIVE **2011/95/EU** OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

### Art 2 2004:(e) 2011: (f)

„person eligible for subsidiary protection” [means someone], „who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin..., would face a real risk of suffering serious harm as defined in Article 15, .....is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

### Art 15 (in both)

Serious harm consists of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict”

# CONCEPTS, DEFINITIONS

<i>International standard</i>	<i>National standard</i>
UNHCR statute	Convention status
1951 Geneva Convention and 1967 Protocol	
OAU Regional Convention, 1969	B status, humanitarian or <i>de facto</i> status, In the EU since 2006: subsidiary protection
Cartagena declaration, 1984	
EU: subsidiary protection, 2004	
EU: temporary protection, 2001	Temporary protection
Prohibition of torture and inhuman and degrading treatment (ECHR 3§)	Tolerated (Duldung), exceptional leave to stay, non-refoulement protection

# FUNDAMENTAL PRINCIPLES



# FUNDAMENTAL PRINCIPLES OF REFUGEE LAW

Fundamental  
principles

```
graph TD; A[Fundamental principles] --- B[Family unity]; A --- C[Non-discrimination]; A --- D[Non-refoulement]
```

Family  
unity

Non-  
discrimination

Non-refoulement

# FAMILY UNITY

- Final Act of the 1951 Conference
  - Declarations:
    - B.
- THE CONFERENCE,
- > CONSIDERING that the **unity of the family**, the natural and fundamental group unit of society, **is an essential right of the refugee**, and that such unity is constantly threatened, and
- > NOTING with satisfaction that, according to the official commentary of the ad hoc Committee on Statelessness and Related Problems (E/1618, p. 40) **the rights granted to a refugee are extended to members of his family**,
- > **RECOMMENDS** Governments to take the necessary measures for the protection of the refugee's family, especially with a view to:
  - > (1) **Ensuring that the unity of the refugee's family is maintained** particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country:
  - > (2) The protection of refugees who are **minors, in particular unaccompanied children /sic!/ and girls**, with special reference to guardianship and adoption."

# FAMILY UNITY – GLOBAL CONSULTATIONS CONCLUSION, 2001

- 11. Requests for family reunification should be dealt with in a **positive, humane and expeditious manner**, with particular attention being paid to the best interests of the child. While it is **not considered practical to adopt a formal rule about the duration of acceptable waiting periods**, the effective implementation of obligations of States requires that all reasonable steps be taken in good faith at the national level. In this respect, **States should seek to reunite refugee families as soon as possible, and in any event, without unreasonable delay**. Expedited procedures should be adopted in cases involving **separated and unaccompanied children**, and the applicable age of children for family reunification purposes would need to be determined at the date the sponsoring family member obtains status, not the date of the approval of the reunification application.
- 12. The requirement to provide **documentary evidence of relationships for purposes of family unity and family reunification should be realistic and appropriate to the situation of the refugee** and the conditions in the country of refuge as well as the country of origin. **A flexible approach should be adopted**, as requirements that are too rigid may lead to unintended negative consequences. An example was given where strict documentation requirements had created a market for forged documents in one host country.

# FAMILY UNITY

- Council Directive 2003/86/EC of 22 September 2003
  - on the Right to Family Reunification
    - (OJ L 252/12, 3.10.2003)
- Chapter V. Family Reunification of Refugees
- Only applicable to Convention status refugees (not to asylum seekers, or persons enjoying subsidiary or temporary protection)
  - - may be constrained to pre-existing family
  - - state may admit more remote family members if dependents of the refugee
  - - less stringent requirements on documentation of family bond
  - - if request within 3 month from recognition: no requirement of proving housing, income, sickness insurance

## NON-DISCRIMINATION

- **GC 51, Article 3. *Non-discrimination***
- The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.
- discrimination - reasonable differentiation
- Practice:
  - political preferences (Haitians v Cubans in US in 1980's)
  - ethnic preferences (Hungary early 1990)

**THE PRINCIPLE OF NON-  
REFOULEMENT  
– ARTICLE 33 AND  
BEYOND**

## NON-REFOULEMENT

- The principle of non-refoulement prescribes, broadly, that no refugee should be returned to any country where he or she is likely to face persecution, other ill-treatment, or torture
  - Guy Goodwin-Gill-Jane McAdam: The refugee in international law, 3rd ed. p.201

# NON-REFOULEMENT

Three possible meanings

- (Recognised) refugee

- Within the country

- Asylum seeker + refugee

- At the border or within the territory

- Anyone

- Anywhere

Against persecution

On five grounds

Against torture, inhuman or degrading treatment or punishment

On any ground



# NON-REFOULEMENT

- **Geneva Convention,  
Art 33**

Prohibition of expulsion or return ("refoulement")

- 1. No Contracting State shall **expel or return ("refouler")** a refugee in **any manner whatsoever** at the frontiers of territories where his life or freedom **would be threatened** on account of his race, religion, nationality, membership of a particular social group or political opinion.
- 2. The benefit of the present provision may not, **however**, be claimed by a refugee whom there are **reasonable grounds** for regarding as a **danger to the security of the country** in which he is, **or** who, having been convicted by a **final judgment** of a **particularly serious crime**, constitutes a **danger to the community** of that country.

# LEGAL STATUS – CUSTOMARY LAW?

- Yes, both for refugees and those protected by human rights treaties
- (e.g. Lauterpacht - Betlehem, Goodwin-Gill-McAdam, Kälin)
- UNHCR : several ExCom conclusions: non-derogable principle
- States: Declaration of States Parties to The 1951 Convention and or its 1967 Protocol Relating to the Status of Refugees, 2001:
  - Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its **core the principle of *non-refoulement***, whose applicability **is embedded in customary international law**
- Doubting: Hathaway (as an obligation beyond the Convention) (HR treaties protect from different threats + some specifically affected states not parties to GC)
- Real question: what is the role of state practice of refoulement
  - violation of the principle (confirming the rule)
  - evidence of lack of uniform state practice
- (see further mass influx)

# NON-REFOULEMENT –INTERPRETATION

1. Who is bound?  
attribution to the contracting state
2. Who is protected?
3. What is prohibited?
  - return in **any manner**  
whatsoever
4. The place to which refoulement is prohibited
5. Threat to life and freedom

# WHO IS BOUND?

## ATTRIBUTION TO THE CONTRACTING STATE

- Rules of attribution (based on the 2001 UN ILC Draft articles on responsibility of states for internationally wrongful acts,)
  1. state organs at all levels of centralized, federal, or local
  2. individuals acting in an official capacity even if they are exceeding their official authority;
  3. private persons or entities empowered to perform public functions;
  4. person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities (de facto state organs)
  5. actors put at the disposal of the Contracting state by another state or international organisation if they exercise elements of governmental authority
  6. non-State actors in an armed conflict taking place in another state if they are *de facto* agents of the Contracting State (*i.e.* under its control or direction)
  7. private actors whose acts are subsequently acknowledged and accepted by a State as its own;
  8. insurgent groups if, they take over control of the State or manage to create a new one.

# WHO IS BOUND?

## ATTRIBUTION TO THE CONTRACTING STATE

- Territory – border – jurisdiction – control
  - Acts committed outside the territory and beyond the border also are attributable
    - If within jurisdiction
    - If exercising effective (overall) control
      - (Amuur v. France, Loizidou v Turkey, Ilascu and others v Moldova and Russia, 8 July 2004: Moldova: not for Transdnistria, but Russia yes (effective control); Al-Skeini and others v. the United Kingdom (application no. 55721/07) Judgment, Strasbourg 7 July 2011 (State agent + effective control)
- 
- Diplomatic representation: not territory, - asylum seeker is not outside the country – not a refugee
  - Diplomatic asylum – not customary law
- 
- „Excision of territory” (Australia) - irrelevant from the international legal point of view – still responsible

# WHO IS PROTECTED?

- a) Asylum seekers and recognised refugees
  - Convention does not use the term „asylum seeker” – asylum seeker = refugee not yet recognised by the state
  - Simple presence is enough! (not: „lawful”)
  - See also broader (human rights based) meaning - everyone!
- b) Individual procedure on denying / withdrawing the benefit of non-refoulement
  - - individualised procedure (no group refoulement)
  - - procedural guarantees, including effective remedy
-

# WHO IS PROTECTED?

- c) Mass influx situations ExCom conclusion No 100, 2004
- „mass influx situations may, inter alia, have some or all of the following characteristics:
  - (i) **considerable numbers** of people arriving over an international border;
  - (ii) a **rapid rate** of arrival;
  - (iii) **inadequate absorption or response capacity** in host States, particularly during the emergency;
  - (iv) **individual asylum procedures**, where they exist, which are **unable to deal** with the assessment of such large numbers”

# Who is protected? Is mass influx an exception from non-refoulement?

## Exception

- National security or public order arguments at the 1951 Conference
- Some authors (.e.g. Coleman, 2003;)
- „refoulement” –always individual step
- Incidents in state practice (Thailand before 1979, Turkey, 1991, Macedonia, 1999, Pakistan, 2000, Lebanon, 2015?)

## Not an exception

- Convention text does not include reference
- Prevailing doctrinal view: not an exception to non-refoulement (exception as to the rights to be guaranteed)
- 33/2 refers only to individual threats to national security
- EU Temporary protection Directive: duty to admit
- ExCom Conclusion 22 (1981) Non-ref. even in mass influx
- Contradicting state: excuse



## WHO IS PROTECTED? IS MASS INFLUX AN EXCEPTION FROM NON-REFOULEMENT?

- Possible resolution of the dilemma:
- Non-refoulement applies – duty to admit is unconditional, but
  - Legal claim to assistance by the international community
  - Entitlement to withhold certain rights of refugees
  - In cases when the survival of the nation is at stake: arguing state of necessity

# WHAT IS PROHIBITED? RETURN IN ANY MANNER WHATSOEVER

- Extradition
- To potentially persecuting: prohibited (unless GC 33/2 applicable and no absolute prohibition to return)
  - GC *lex specialis* + principles of extradition law
  - *aut dedere aut judicare* helps against non-extraditable criminals
- To third countries - allowed unless danger of *refoulement* from there

# WHAT IS PROHIBITED?

## RETURN IN ANY MANNER WHATSOEVER

- Expulsion – return –refoulement
- Expulsion – formal order to leave territory (and prohibiting return)
- Return – in any form –factual
- Refouler (French and Belgian administrative law – measure of bringing back to the frontier of a neighbouring country)
- Rejection: see next slide on border

# WHAT IS PROHIBITED?

## RETURN IN ANY MANNER WHATSOEVER

- Border
- Grahl-Madsen: not included
- But: an asylum seeker who gets into contact with the border guard is within the jurisdiction of the state to be entered – no longer in the persecuting country
- Turning away = returning to (the frontiers) of a territory
- Duty of letting entry  $\neq$  asylum

# WHAT IS PROHIBITED?

## RETURN IN ANY MANNER WHATSOEVER

- Seas
- Distress or not? (Right to visit: only flag state)
- Prevailing view: **non-refoulement applies even in distress rescue** (Sale v Haitian Council, US Supreme Court: bad decision)
- Question: flag state should conduct RSD or first port of call (Tampa, 2001)!
  - „*The non-refoulement obligations prohibit European border officials from turning back, escorting back, preventing the continuation of a journey, towing back or transferring vessels to non-EU coastal regions in the case of any person in potential need of protection, as long as the administrative and judicial examination of the asylum application has not been completed on European territory. European border officials are bound by this obligation even when operating extritorially. In the case of measures at sea, this applies inside the 12 mile zone, as well as in the contiguous zone, on the high seas and inside the coastal waters of third countries.*”  
A Fischer-Lescano, T Löhr, and T Tohidipur, p. 296

# THE PLACE TO WHICH REFOULEMENT IS PROHIBITED

- Frontier of territory
  - not necessarily a state (Gaza?!)
  - not necessarily country of origin (threat to life or freedom in country of /first/ refuge)
- Debates on the concept of safe third country
  - - not more than rebuttable presumption
  - - European list never adopted

# THREAT TO LIFE OR FREEDOM

- Persecution - threat to life or freedom
  - Same?
- Prevailing view (e.g. Weis, Grahl-Madsen, Kälin) : **yes**  
(otherwise some refugees not protected from refoulement)
- Drafters: not only to refer where well founded fear but anywhere
- Standard of probability – also the same
- Would be threatened = well founded fear of persecution

# NON-REFOULEMENT - BROAD MEANING

- Art. 3 ECHR, Art 3 CAT
- Broader, because
  - Protects every person, **not only refugees**
  - There are **no exceptions** → It can apply even in case GC 33/2 would allow *refoulement*
  - The threatening harm is **not linked to any ground** (race, religion, nationality, political opinion, belonging to a particular social group)
- Question: absolute or not? *Chahal v UK (1996) and Saadi v Italy(2008)*
  - ↔ *Suresh (Supreme Court of Canada) (2002), intervention of UK in Saadi*



# SAADI V. ITALY ECTHR, 2008

- „ Article 3, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment, enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15, even in the event of a public emergency threatening the life of the nation” (para 127)

# SAADI – INHUMAN TREATMENT TORTURE

- Inhuman or degrading treatment or punishment = „the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment”
- Torture: „deliberate inhuman treatment causing very serious and cruel suffering”

• (paras 135-136)

# SAADI V. ITALY, 2008

- „[E]xpulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, **where substantial grounds have been shown** for believing that the person concerned, **if deported**, faces a **real risk of being subjected to treatment contrary to Article 3**. In such a case **Article 3 implies an obligation not to deport** the person in question to that country”
  - Para 125
- No balancing between severity of ill treatment and threat to host country allowed
  - Para 139

# HIRSI JAMAA AND OTHERS V. ITALY

APPL. No. 27765/09

## GRAND CHAMBER JUDGMENT OF 23 FEBRUARY 2012

- **Court, Application of the general principles to the case**
- **Difficulties of states forming the external border** acknowledged, but that **can not absolve** the states of their obligations under **Art 3 as they are absolute obligations**
- **Libya did not comply with the rules on protecting refugees.** Asylum seekers and other irregular migrants were not distinguished
- **Torture, poor hygiene lack of appropriate medical care** and refoulement were reported
- The existence of domestic laws and international treaty obligations are not sufficient to ensure adequate protection where reliable sources have reported practices manifestly contrary to the principles of the Convention
- Italy **can not evade its responsibility** by relying on its **obligations arising out of bilateral agreements** with Libya
- UNHCR's activity in Tripoli did not lead to any safety of the recognised persons

# HIRSI JAMAA AND OTHERS V. ITALY

APPL. No. 27765/09

## GRAND CHAMBER JUDGMENT OF 23 FEBRUARY 2012

- Italian authorities **knew or should have known** that, as irregular migrants, they **would be exposed in Libya to treatment in breach** of the Convention
- The national **authorities have to find out what expects the returnees** – it is immaterial whether they have applied for asylum or not.
- **Neither rescue at sea nor fight against illegal migration justify refoulement**
- The Vice president of the Commission of the EU expressly warned against refoulement in the context of operations at high sea
- The fact that **many were threatened** with ill treatment in **Libya** „does not make the risk any less individual”

# WHY NOT REFOULE

Not only because of the absolute legal  
obligation

but

because **it is part of our moral convictions!**

We protect our chosen values by not  
exposing persons to refoulement, by not  
handing them over to torturers and  
persecutors

# THANKS!

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