

# **Permanent humanitarian emergency: refugees and others at Europe's gate**

**Boldizsár Nagy**

Awareness Raising Seminar on Contemporary Humanitarian Issues:

Humanitarian Action and Foreign Policy

Hungary's Role in the Context of European and International Humanitarian  
Action

10 May 2011

Budapest, ELTE, Aula Magna

## Guardian, reporting on 8 May 2011

- **A boat carrying 72 passengers**, including several women, young children and political refugees, ran into trouble in late March after leaving Tripoli for the Italian island of Lampedusa. Despite alarms being raised with the Italian coastguard and the boat making contact with a military helicopter and a warship, no rescue effort was attempted.
- **All but 11 of those on board died from thirst and hunger after their vessel was left to drift in open waters for 16 days.** "Every morning we would wake up and find more bodies, which we would leave for 24 hours and then throw overboard," said Abu Kurke, one of only nine survivors. "By the final days, we didn't know ourselves ... everyone was either praying, or dying."

Source\_ <http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>, visited 9 May 2011

# Figures: by 27 April **634,835** persons left Libya

## Population Movements

By 27 April, a total of 634,835 people had crossed from Libya into neighbouring countries, including 254,705 third country nationals.

*Breakdown as of 26 April 2011*

Tunisia		Egypt		Niger		Algeria		Sudan		Chad	
Tunisians	27,593	Egyptians	87,912	Nigeriens	52,689	Algerians	1,078	not available		Chadians	17,148
Libyans*	89,525	Libyans*	84,851	Others	3,450	Libyans	3,599			Others	238
Others	173,749	Others	66,928			Others	9,449				
<b>TOTAL</b>	<b>290,867</b>	<b>TOTAL</b>	<b>239,691</b>	<b>TOTAL</b>	<b>56,139</b>	<b>TOTAL</b>	<b>14,126</b>	<b>TOTAL</b>	<b>2,800</b>	<b>TOTAL</b>	<b>17,386</b>

*Source: IOM in cooperation with national authorities  
\* Includes usual border crossings of commuters, traders etc.*

## And the „flooding” of Europe?!

**To Italy** since mid-January: **27,922**. Among them are 23,002 Tunisians and 4,920 other nationalities, including 783 Eritreans, 393 Ivorians, 293 Somalis, 254 Nigerians, 246 Ghanaians, 209 Ethiopians, 125 Pakistanis, 123 Malians, 96 Bangladeshis and **19 Libyans**

**To Malta** **1,132** people, including 411 Somalis, 272 Eritreans, 100 Ethiopians, 50 Ivorians, 28 Malians, 14 Pakistanis.

- Source: UNHCR: Update no 22 Humanitarian Situation in Libya and the Neighbouring Countries 28 April 2011  
<http://www.unhcr.org/pages/4d7755246.html> - visited 9 may 2011

# The Berlin Wall 1961 – 1989 and the frontier around Europe

During the Wall's existence there were around 5,000 successful escapes into West Berlin. Varying reports claim that either 192 or 239 people were killed trying to cross and many more injured.

[http://en.wikipedia.org/wiki/Berlin\\_Wall](http://en.wikipedia.org/wiki/Berlin_Wall) visited 25 February 2006

## List of 15181 documented refugee deaths through Fortress Europe

04/05/2011

Documentation on 04-05-2011 by UNITED

UNITED for Inter-cultural Action, European network against nationalism, racism, fascism and in support of migrants and refugees

Postbus 413 NL-1000 AK Amsterdam phone +31-20-6834778, fax 31-20-6834582, info@unitedagainstracism.org, www.unitedagainstracism.org

found dead	number	name	country of origin	cause of death	source
06/04/2011	1	Kambiz Roustayi (36. man)	Iran	suicide, failed asylum seeker set himself on fire in Amsterdam (NL), feared deportation	NBK/VK/Eindhoven's Dagblad/IMA
06/04/2011	208	N.N.	Bangladesh/Chad/Ivory Coast	missing, part of 321 migrants on LY-I boat, sank 39 miles from Lampedusa in Maltese waters	LR/ANSA/Reu/Migreurop/Raz/Mail Online/Iris
06/04/2011	37	N.N. (women)	Bangladesh/Chad/Ivory Coast	missing, part of 321 migrants on LY-I boat, sank 39 miles from Lampedusa in Maltese waters	LR/ANSA/Reu/Migreurop/Raz/Mail Online/Iris
06/04/2011	1	N.N. (24, woman)	unknown	missing, part of 321 migrants on LY-I boat, sank 39 miles from Lampedusa in Maltese waters	LR/ANSA/Reu/Migreurop/Raz/Mail Online/Iris
06/04/2011	3	N.N. (minors)	Bangladesh/Chad/Ivory Coast	missing, part of 321 migrants on LY-I boat, sank 39 miles from Lampedusa in Maltese waters	LR/ANSA/Reu/Migreurop/Raz/Mail Online/Iris
06/04/2011	1	N.N. (3, boy)	unknown	missing, part of 321 migrants on LY-I boat, sank 39 miles from Lampedusa in Maltese waters	LR/ANSA/Reu/Migreurop/Raz/Mail Online/Iris
06/04/2011	1	N.N. (1, boy)	unknown	missing, part of 321 migrants on LY-I boat, sank 39 miles from Lampedusa in Maltese waters	LR/ANSA/Reu/Migreurop/Raz/Mail Online/Iris
02/04/2011	1	N.N. (23, man)	Afghanistan	stowaway, asphyxiation, body found in van at Ancona port (I) on ferry coming from GR	PICUM/FE/ANSA/ClandestineE
02/04/2011	1	N.N. (20, man)	unknown	drowned when disembarking boat of 500 migrants in Modica (I), body found by Punta Replioni	FE/PICUM
01/04/2011	1	N.N. (23, man)	Eritrea	drowned whilst disembarking boat with 500 migrants in Modica (I)	PICUM/FE
01/04/2011	27	N.N.	Tunisia	drowned, reportedly from missing boat to Italy on 27/03, bodies found off Kerkennah (TN)	FE/PICUM
31/03/2011	70	N.N.	Somalia/Eritrea	bodies washed ashore, buried in Tripoli coast (LY), may include those from 2 missing boats to I	Quotidiano/LR/Migeurop/Kaoseniared/RAI/PI
28/03/2011	10	N.N.	Sub-Saharan Africa	drowned, boat sank on way to Lampedusa (I) from LY, 6 rescued by Egyptian fishing boats	Guardian Un./PerCat/AdnK
28/03/2011	23	N.N.	unknown	drowned, found when 2 boats travelling together from Sidi Bilal (LY) sank on way to Italy	PUB/Reu/TunisieSoir/GuardianUn
28/03/2011	241	N.N.	Libya	feared drowned, 2 boats travelling together from Sidi Bilal (LY) sank on way to Italy	PUB/Reu/TunisieSoir/GuardianUn
28/03/2011	10	N.N.	Egypt	feared drowned, 2 boats travelling together from Sidi Bilal (LY) sank on way to Italy	PUB/Reu/TunisieSoir/GuardianUn
28/03/2011	1	N.N. (1, baby)	Sub-Saharan Africa	drowned, boat capsized on way to Lampedusa (I) from LY, 6 rescued by Egyptian fishing boats	Guardian Un./PerCat/AdnK
27/03/2011	308	N.N.	unknown	feared drowned, boat of 335 left Libya for Italy has been missing for 2 weeks	Quotidiano/LR/Migeurop/Kaoseniared/RAI
26/03/2011	1	Sevdina Moh. Mbaye (5. boy)	Senegal	pulmonary embolism on flight to emergency surgery in Strasbourg (F), consulate delayed visa	Seneweb/Nouvel Obs
22/03/2011	3	N.N.	unknown	missing, sent distress signal near Paxoi island (GR) way to I, lumped into sea during rescue	ORF
18/03/2011	3	N.N. (25-30, men)	unknown	drowned, patrols found bodies in Petalo area of river Evros (GR)	clandestineE
14/03/2011	40	N.N.	Tunisia	drowned: 17 found, 23 missing, boat sank near Kerkennah (TN) on way to Lampedusa (I)	LR/AFP/Le Figaro/EP/Diario de Noticias/Tuni
06/03/2011	19	N.N.	Bangladesh	drowned: 3 found, 16 missing, lumped from LY-GR ferry in Soude (GR) to avoid authorities	KI
04/03/2011	2	N.N.	Tunisia	drowned, boat capsized in a storm off Lampedusa (I), 28 people were rescued	AFP/Le Monde/Migreurop/Romandie
04/03/2011	2	N.N. (boys)	Tunisia	drowned, fell into sea during boat rescue of 22 migrants from Tunisia 50km from Marsala (I)	FE/GRR
02/03/2011	1	N.N. (±27, man)	Sub-Saharan Africa	drowned, decomposed body found floating opposite La Carihuela beach, Torremolinos (E)	SUR/MUGAK
in Mar 11	3	N.N.	unknown	burned to death in a shack in Melilla (E) as they waited for a chance to cross to mainland	ABC/MUGAK
in Mar 11	2	N.N.	unknown	drowned, bodies found in advanced state of decomposition near Lampedusa (I)	LR
01/03/2011	1	Shambu Lama (40, man)	Nepal	suicide, laid under train in Gifhorn (D) in fear of deportation, lived 16yrs in D where he had son	Karawane/taz/iW/waz

Source: <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf> visited 9

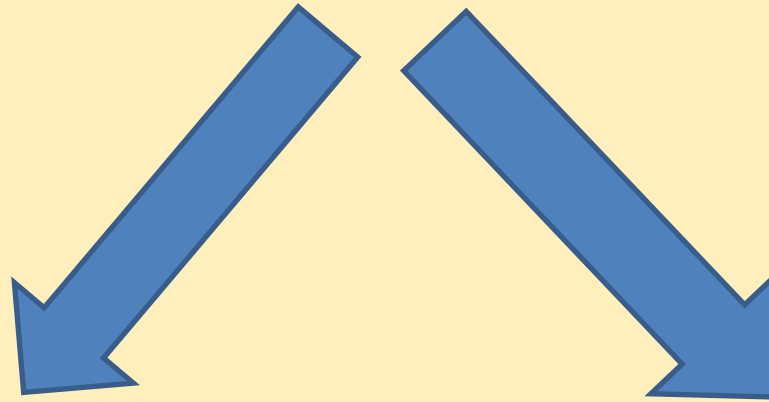
May 2011

# **Do we create a permanent emergency?**

**Why can people simply not leave zones of armed conflict or other disasters and move to safe areas?**

# **Borders!!!!**

# Two alternative argumentative routes to overcome borders as barriers



<b>A right to enter for everyone including asylum seekers and refugees</b>		<b>An exceptional right - against the general ban to enter if entry conditions not met</b>
Migration without borders (or: open borders) scenario		The right to exclude foreigners curtailed by the right of the asylum seeker/refugee to enter even if general immigration criteria not met

## The migration without borders (open borders) scenario

Meaning: a right to enter and settle on the territory of a state irrespective of the nationality of the migrant and without the requirement to meet any specific condition

Adjustments/refinements

Conditionality/graduality/exceptions (suspension)

Historic view: freedom of movement was the rule until the First World War (with few exceptions)

Arguments in favour and against (see next slide)

## MWB / Open borders

- Carens, 1987:
- **"Borders have guards and guards have guns"**
- "on what moral grounds can ...people be kept out? What gives anyone the right to point a gun at *them*?"
- "Liberal theories focus attention on the need to justify the use of force by the state. Questions about the exclusion of aliens arise naturally from that context."
-



## MWB /Open borders

### In favour

- Fundamental human liberty
- Intra-state analogy (free movement in federal states)
- Citizenship/domicile privileges not justifiable
- Duty to alleviate poverty
- Cultural differences and bounded communities may be preserved even in a free movement scenario
- Would (greatly) increase world economic output

### Against

- Priority for fellow nationals/countrymen
- Public order (chaos in large scale influx)
- Protection of democracy (from its opponents)
- Solidarity in social services – different standards in different countries
- Preservation of ethno-national culture
- Preventing brain drain

**ARGUMENTS SUPPORTING THE  
VIEW THAT REFUGEES ARE  
(SHOULD BE) ENTITLED TO  
PROTECTION EVEN IN TIMES OF  
IMMIGRATION CONTROL**

## 1. Shared identity (imagined community)

- global: altruism – member of human race (liberal egalitarian arguments)
- ethnically/culturally determined „one of us” (communitarian, ethno-nationalist)
- repaying historic debt accumulated by own community (remembering predecessor refugees who found asylum – communitarian)

## 2. Difference-based Construction of the self (identity)

### Constructing the self (constructivist approach)

- by helping the refugee (the other)
- or protecting the refugee as one of us escaping the persecutor, which is then „the other”

- indigenous – foreigner (hospitality)
- rich – poor (altruism, solidarity, moral command)
- democratic, law respecting – persecutory, totalitarian (political choice)

### 3. Reciprocity (utility)

- Today's refugee may become tomorrow's asylum provider and vice versa .
- This is a utilitarian, rational choice approach.
- Europe, last 70 years:
  - Spanish, French, Germans, Baltic people, Italians, Polish, Greek, Hungarians, Czechs and Slovaks, Romanians, Russians, Moldavians, Armenians, Azerbaijanians, Georgians, Croats, Bosnians, Serbs, Albanians, (and other nationalities) had to flee

## 4. Political calculation (utility, political choice)

- conflict prevention / domestic political pressure
- window dressing

(utilitarian, state level)

## 5. Purely legal

- Duty only to the extent of
  - undertaken treaty obligations
  - binding customary law
  - European law
  - national rules

## Exclusion of refugees

In order to argue in favour of limiting the arrivals/excluding refugees the actor must:

- be consequently egoist (welfare chauvinist)
- have no historic memory
- blindly trust stability
- be a realist (willing to violate law if it is in the perceived national interest and no sanctions threaten or interests outweigh harm caused by sanctions)



## Logical, but

Is there a room to ignore the above arguments with the

„yes, they are logical, but...” formula?

• **NO!**

**THE FATE OF THE  
EUROPEAN TRADITION  
IN ASYLUM LAW**

**CIVILIZE? BRUTALIZE?**

# Harmonization – key concepts and the impact of the acquis

## Civilize?

- Extended protection categories (subsidiary, temporary)
- Gender and culture sensitive procedural minimum standards
- Substantive requirements and standards on the reception of asylum seekers
- Considerable support through the European Refugee Fund and EASO (from 2011)
- Solidarity with certain vulnerable groups – especially in European context
- Orderly resettlement schemes starting
- Relocation within Europe –genuine solidarity?

## Brutalize?

- A generally restrictive, exclusionist approach, based on the presumption of non-genuine claims
- Restrictive interpretation of the definitions pushing to categories with less rights
- Heavily criticized „minimum standards” of procedure
- Non-access, non-entry techniques (visas, carrier sanctions, interception, border surveillance, detention)
- Efforts to shift responsibility for status determination and care (safe third country rules, readmission agreements, plans for processing in the region of origin)

# EU membership – the impact of the institutions

## Civilize?

- Commission, Council, Parliament: exposure to the international, forging professional allies, ammunition to fight domestic retrogrades
- Court of Justice of the European Union control
- Increased technical cooperation – improved access to COI info, trend-analysis, etc

## Brutalize?

- Intolerable inhuman treatment of asylum seekers, unmanageable burden on states at the external border of the EU (The Dublin regime and the lessons from M.S.S v. Belgium and Greece)
- Routine, remote from field, peer pressure for restrictions, inadequate preparation
- Guaranteed free hand in matters of national security
- The vision of the security continuum – threats to data protection and privacy

# Reaction to the 2011 crisis in the Mediterranean

## The Member States

- French-Italian row over Tunisians given temporary residence permit by Italy
- calls to revise the Schengen system in order to restore border controls
- Hermes operation brought forward from June „with a view to detecting and preventing illegitimate border crossings to the Pelagic Islands, Sicily and the Italian mainland”

## EU and UNHCR

- Cecilia Malmström, the EU's commissioner for home affairs, „The current crisis has confirmed the need for increased solidarity at EU level and a better sharing of the responsibilities”
- „...we must also show continued support towards North Africa, to the people there in need of international protection.”
- Pilot project for relocation from Malta extended
- UNHCR did not call upon the EU MS to apply the temporary protection directive but expects
  - resettlement from the region and
  - respect for the obligations to rescue at sea and access to protection

## Malmström's message

„Europe needs to strengthen the existing rules, and not to undermine them. We need to address this challenging and evolving situation through **long-term measures** based on the values of the **respect for law** and the **respect of international conventions** and, not through a short-term approach limited to border control. We need **leadership** that can **stand up against populist and simplistic solutions**. We need **clarity, responsibility and solidarity**. We need more Europe, not less.”

# Indeed!

# Thanks!

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