

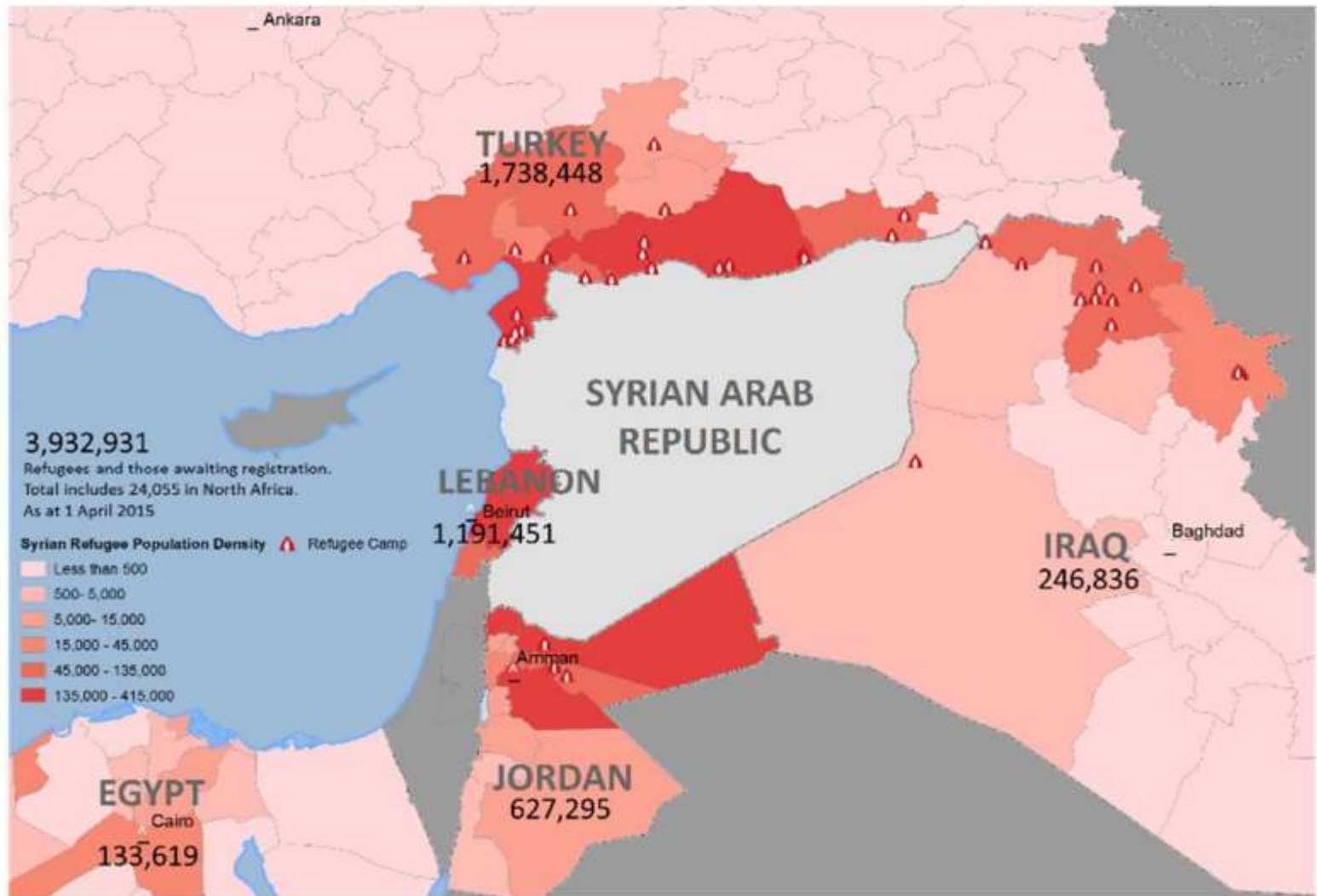
# WHY TO PROTECT REFUGEES?

Presented by Boldizsár Nagy,  
OHCHR - Kazan Federal University -  
2015

# Invocation

# 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>

# FLIGHT ACROSS THE MEDITERRANEAN



An Italian Navy rescue vessel, called the GIS, pulls up next to the first boat in order to transfer its desperate occupants. The GIS will then drive into the belly of the much larger San Giorgio, where people can safely disembark.

© UNHCR/A.D'Amato

„The situation in the Mediterranean is a tragedy.

The European Union will mobilise all efforts at its disposal to prevent further loss of life at sea and to tackle the root causes of the human emergency that we face, in cooperation with the countries of origin and transit. Our immediate priority is to prevent more people from dying at sea.”

Conclusions, [European Council](#), 23 April 2015

# INVOCATION

Year	2012	2013	2014	2015 till 20 April
Loss of life at sea when trying to reach Europe	500	600	3500	1750

Source of data: CENTRAL MEDITERRANEAN SEA INITIATIVE (CMSI <http://www.unhcr.org/531990199.pdf> (20150427))

## A year ago:

„The death of 260 people in less than ten days, in the most horrifying of circumstances, is evidence that the Mediterranean crisis is intensifying," said António Guterres, the UN High Commissioner for Refugees. "Europeans need to take urgent action to stop this catastrophe getting worse in the second half of 2014."

Source: UNHCR calls for urgent European action to end refugee and migrant deaths at sea 24 July 2014 <http://www.unhcr.org/53d0e2d26.html>

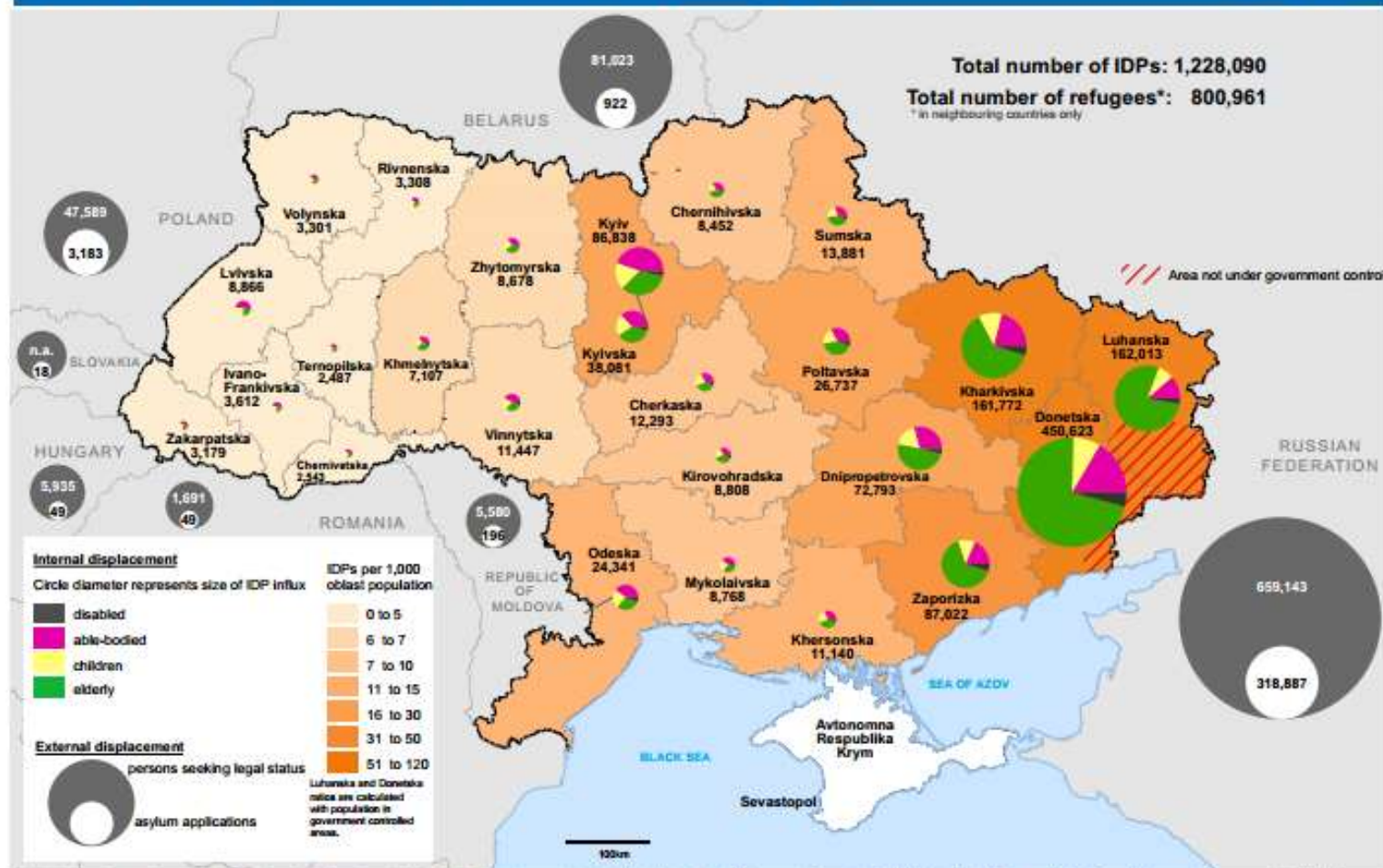
# UKRAINE

Ukraine: Overview of population displacement (as of 17 Apr 2015)



Total number of IDPs: 1,228,090

Total number of refugees\*: 800,961  
\* in neighbouring countries only



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. **Internal Displacement:** Data provided by the Ministry of Social Policy, as of 15 Apr. **External Displacement:** Figures reported to UNHCR by Government Asylum Authorities as of 5 April for Hungary, 14 April for Poland, 18 April for Moldova, 16 April for Romania, 31 December 2014 for Slovakia, and as reported by the Russian Federal Migration Service as of 10 April for the Russian Federation. | Feedback: shulima@un.org | Document: ukr\_displacement\_15\_April\_2015 | Creation date: 17/04/2015

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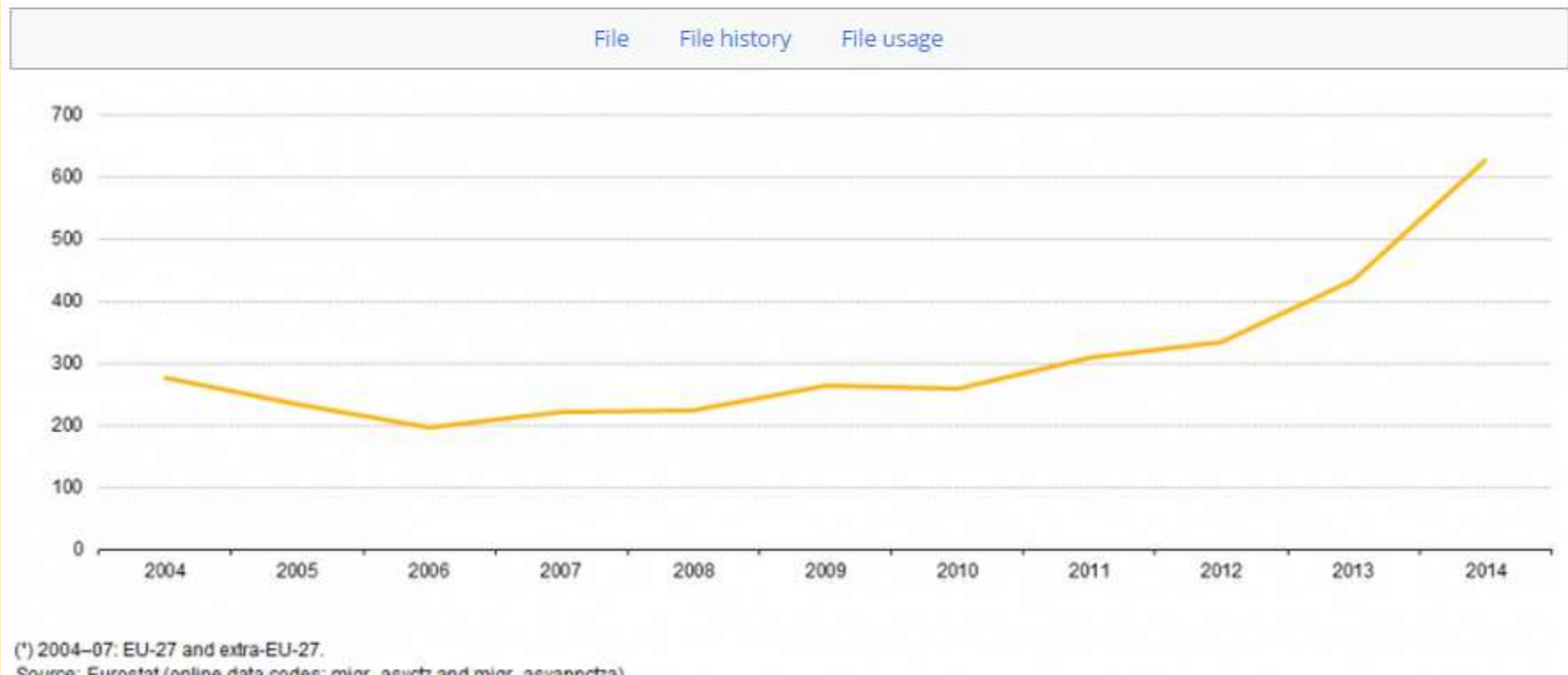
Source: OCHA [http://reliefweb.int/sites/reliefweb.int/files/resources/ukr%20displacement\\_17%20April%202015\\_0.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/ukr%20displacement_17%20April%202015_0.pdf) (20150424)



# Statistics

# 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



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\\_\(%C2%B9\)\\_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%9314_(%C2%B9)_thousands_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		
EU-28	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	80	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	380	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. 4

KAZAN

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# FORCED MIGRANTS, GLOBAL END OF YEAR DATA

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

# **Why to protect refugees?**

# ISSUES ADDRESSED AND IGNORED

What is dealt with

- alternative arguments leading to the conclusion that refugees have to be protected

The types of the arguments are manifold:

- Political philosophical
- Ethical
- Anthropological
- Sociological

What is not discussed

State policy (the politics of the refugee problem)

The details of the law: what the law (national, European and international prescribes)

# THE AIM OF THE TALK

- To test the strength/scope of the offered arguments (have them challenged and - hopefully – defended)
- Solicit answers to open questions

**It is not the aim**

*To find the „right” argument, the final word*

Arguments *against* the protection duty are *welcome* – if consequences accepted

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



# 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

## *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, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence 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**

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

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

„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, or in the case of a stateless person, to his or her country of former habitual residence, **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**”

# THE DRIVING FORCE BEHIND THE TALK

States and politicians increasingly refer to the duty of protecting refugees as a burden, created by a legal obligation.

The goal is to show, that **even if there was no legal duty**, after appropriate considerations one would – almost inevitably – **conclude** that asylum seekers **must/should be protected**.



# THE ADDRESSEE (BEARER OF OBLIGATION) AND THE TRANSFORMATION PROBLEM

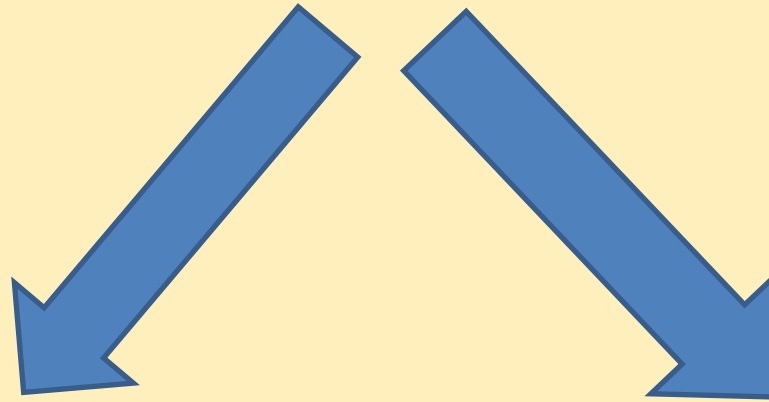
Arguments may be addressed to

- the individual
- community (e.g. municipality, clan, tribe, ethnic group, nation)
- the state
- a group of states (mainly: EU)

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How will the individual moral obligation be transformed into a (legal) rule of the legislative authority?

# TWO ALTERNATIVE ARGUMENTATIVE ROUTES



<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

# WHY NOT EVERYONE WHO IS IN NEED?

- Arguments for excluding non-refugees from the exceptional treatment
  - Refugee law: part of the political struggle – alleviating poverty etc. – not (Price)
  - Centrality of the human right violated (Hathaway)
  - Communitarianism – migration would put qualitatively larger pressure on the community than refugee admission
- But
  - addressing the root causes of forced migration
  - calling for human security,
  - claiming a moral duty of development assistance

are approaches that wish to address poverty and deprivation in general, assuming the existence of a more general moral duty

# 10

## POSSIBLE ARGUMENTS

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

# THE SCHOLARLY CONTEXT OF THE ARGUMENTS FOR REFUGEE PROTECTION

Essentially  
liberal universalism (cosmopolitan, or impartialist approach)  
v.  
communitarian (/ethno/nationalist, partialist) approach

The two most engaged authors (C. Boswell and M Gibney) find the liberal universalist approach practically untenable

Christina Boswell's answer: overcome the dichotomy of liberal and nationalist ethical claims, by „abandoning the universalist foundations of liberalism” and basing the mobilisation on the Western liberal states' own tradition, on the „group's pride in affirming shared liberal values” (Boswell, 2006, p. 676)

# THE SCHOLARLY CONTEXT OF THE ARGUMENTS FOR REFUGEE PROTECTION

Matthew J. Gibney's answer is „humanitarianism” or „humanitarian principle”

„Humanitarianism can be simply stated: the principle holds that states have an obligation to assist refugees when the costs of doing so are low. This responsibility recognises, like impartial theories, the existence of duties that stem from membership in a single human community, However, it is less comprehensive in scope than most impartial theories – specifying obligations only to those in great need” (Gibney, 2004, p. 231)



# IDENTITY

Brubaker and Cooper: Identity: overburdened – three clusters of meaning

A) *Identification and categorization (pp.14-16)*

*External categorisation (e.g. by the state) or self identification*

*Relational (e.g. kinship) categorical (e.g. profession)*

B) *Self-understanding and social location*

„It is a dispositional term...one's sense of who one is, of one's social location, and of how (given the first two) one is prepared to act.” (p. 17)

C) *Commonality, connectedness, groupness (part of self understanding)*

„'Commonality' denotes the sharing of some common attribute, "connectedness" the relational ties that link people. Neither commonality nor connectedness alone engenders "groupness" – the sense of belonging to a distinctive, bounded group involving both a felt solidarity or oneness with fellow group members and a felt difference from or even antipathy to specified outsiders.” (p. 20.)

# IDENTITY BASED I. SHARED IDENTITY (IMAGINED COMMUNITY)

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

**IDENTITY BASED II.  
CONSTRUCTION OF THE SELF (IDENTITY) BY SEEING THE  
REFUGEE OR HER PERSECUTOR AS „THE OTHER”**

## Constructing the self

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

## IDENTITY BASED II.

### CONSTRUCTION OF THE SELF (IDENTITY) BY SEEING THE REFUGEE OR HER PERSECUTOR AS „THE OTHER”

4. Indigenous – foreigner (hospitality)

5. Rich – poor

6. Democratic, law respecting –  
persecutory, totalitarian

# RECIPROCITY – UTILITARIAN

7. Reciprocity („insurance policy”) 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, Austrians, Baltic people, Italians, Polish, Greek, Hungarians, Czechs and Slovaks, Romanians, Russians, Moldavians, Armenians, Azerbaijanis, Georgians, Croats, Bosnians, Serbs, Albanians, Ukrainians (and other nationalities) had to flee

# POLITICAL CALCULATION – UTILITARIAN, POLITICAL CHOICE

8/a conflict prevention / domestic political  
pressure

8/b window dressing

(utilitarian, state level)

# HISTORICAL – NATIONAL RESPONSIBILITY

9. If persons were persecuted by a given state or because of the acts of a given state, then the state who is responsible for the persecution ought to offer protection

(Germany before and after WWII; US, Australia - South Vietnamese)

## **SEMI LEGAL - NON-REFOULEMENT**

10. A wider conception of non-refoulement based on the prohibition to expose to ill treatment by way of return (Article 3 of the ECHR as interpreted by the EctHR and beyond.)

## **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)

## REMINDER: COUNCIL OF EUROPE (ALL EU MEMBERS ARE MEMBERS OF IT)

Statute, 1950, preamble:

Convinced that the pursuit of **peace based upon justice** and international co-operation is vital for the **preservation of** human society and **civilisation**;

Reaffirming their **devotion to the spiritual and moral values which are the common heritage of their peoples** and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy;

Believing that, **for the maintenance and further realisation of these ideals** and in the interests of economic and social progress, **there is a need of a closer unity between all like-minded countries of Europe**;

# HINTS FOR FURTHER READING

- Bader, Veit: Praktische Philosophie und Zulassung von Flüchtlingen und Migranten in: Märker, Alfredo - Schlothfeld, Stephan (eds.) Was schulden wir Flüchtlingen und Migranten? Grundlagen einer gerechten Zuwanderungspolitik , Westdeutscher Verlag, Wiesbaden, 2002, 143 - 167
- Boswell, Chritina : *The Ethics of refugee Policy, Ahgate, Aldershot, 2005*
- Boswell, Christina: The Liberal Dilemma in the Ethics of Refugee Policy in: Messina, Anthony M. and Lahav, Gallya (eds): *The Migration Reader* Lynne Rienner Publishers, Boulder, Colorado, 2006, pp. 664 – 682.
- Carens, Joseph, H: Aleins and Citizens: The Case for Open Borders *The review of Open Borders*. Vol. 49 (1987) pp 251-273
- Carens Joseph H.: Migration and Morality: a liberal ealitarian perspective in Barry, Brian/ Goodin, Robert E. (eds.): *Free Movement Ethical issues in the Transnational Migration of People and Money* The Pennsylvania State University Press, Pennsylvania, 1992, pp. 25-47
- Gibney, Mathew J.: *The Ethics and Politics of Asylum Liberal Democracy and the Response to Refugees* Cambridge University press, Cambridge, 2004.
- Lister, Matthew: Who are Refugees? (August 13, 2012). Law and Philosophy, Forthcoming; U Denver Legal Studies Research Paper No. 12-40. Available at SSRN: <http://ssrn.com/abstract=2128409>
- Pécoud, Antoine / De Guchtenerie, Paul (eds): *Migration without borders Essays on the free movement of people*, Unesco Publishing , Paris , 2007
- Plaut, Günther W.: *Asylum: A Moral Dilemma* Praeger, Westport, 1995
- Price Matthew M.: *Rethinking Asylum. History, Purpose and Limits*, Cambridge University Press, Cambridge, 2009

# Thanks!

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