

Refugees Magazine Issue 101 (Asylum in Europe) - Asylum under threat

It was in Europe, the land of asylum, that the 1951 Convention - the legal bible of refugee rights - was born, and along with it UNHCR, the organization tasked with ensuring it is respected.

Last year, the European Union was the second largest contributor to UNHCR's annual budget, falling just short of the United States. In 1993 alone, Western European governments spent a total of \$11.6 billion on the processing and reception of asylum-seekers.

European countries are, unquestionably, generous to refugees. But the fall of the Berlin Wall and the collapse of communism have dramatically altered the asylum landscape across the continent - to the extent that some observers fear that the basic concept of asylum is in jeopardy. Increasingly, countries are pulling in the welcome mat that has been in place for refugees since the end of World War II.

At the end of the war, everything was different. The war had wrought considerable damage and manpower was needed for rebuilding. Moreover, during the heyday of the Cold War, many European nations had strong ideological reasons for welcoming refugees.

Today, the political and socio-economic climate has changed. It has been years since growth was taken for granted. The emphasis now is on conserving what Europe has.

Today's high unemployment - 12 million people jobless in Western Europe - exacerbates a growing tendency toward xenophobia. The European continent sees one racist attack every three minutes - and reception centers for asylum-seekers are all too often the target.

Meanwhile, Europe is once again producing refugees. With the Yugoslav crisis and the dramas unreeling across the Caucasus - in Georgia, Armenia, Azerbaijan, Chechnya - the continent of Europe now counts more than 6.5 million refugees.

"In 1990, if we had said to the Europeans that a few years later they would be sheltering more than 500,000 refugees from former Yugoslavia, no-one would have believed it," says John Horekens, director of UNHCR's Regional Bureau for Europe.

Although dire forecasts of a flood of millions of people from the former Soviet Union into Western Europe have not materialized, there was until recently a sharp rise in asylum requests. In the 1970s, for example, Europe counted about 30,000 asylum-seekers a year. At the end of the 1980s, the figure had climbed to 300,000. By 1992, it was up to 700,000.

Submission of Asylum Applications in Europe - 1987-1994

Country of Asylum Application	1987	1988	1989	1990	1991	1992	1993	1994
Austria	11,400	15,800	21,900	22,800	27,300	16,200	4,800	5,100
Belgium	6,000	5,100	8,100	13,000	15,200	17,700	26,900	14,400
Denmark	2,800	4,700	4,600	5,300	4,600	13,900	14,400	6,700
Finland	100	100	200	2,700	2,100	3,600	2,000	800
France	24,800	31,600	61,400	53,100	46,500	26,900	27,600	26,000
Germany	57,400	103,100	121,300	193,100	256,100	438,200	322,600	127,200
Greece	7,000	8,400	3,000	6,200	2,700	1,900	800	1,300
Italy	11,100	1,300	2,300	3,200	23,300	2,500	1,500	1,400
Netherlands	13,500	7,500	13,900	21,200	21,600	17,500	35,400	52,600
Norway	8,600	6,600	4,400	4,000	4,600	5,200	12,900	3,400
Portugal	500	400	200	100	200	700	2,100	700
Spain	2,500	3,300	2,900	8,600	8,100	11,700	12,300	12,000
Sweden	18,100	19,600	30,300	29,400	27,400	84,000	37,600	18,600
Switzerland	10,900	16,800	24,400	35,800	41,600	18,100	24,100	16,100
United Kingdom	5,900	5,700	16,800	38,200	73,400	32,300	28,000	42,200
Total	180,600	230,000	315,700	436,700	554,700	690,400	553,000	328,500

Notes:

All figures refer to persons.

Annual figures are rounded to the nearest 100.

The statistics for France include resettled Indo-Chinese refugees.

The 1994 statistics for the United Kingdom are provisional.

The Belgian statistics of 1990 and before refer to adults only.

Figures are subject to retrospective changes by certain countries.

The huge influx led the countries of the European Union to reconsider their open-door policies. In 1993, Belgium, France, Germany, the Netherlands, Portugal and Britain began taking measures to stem the flow - followed in 1994 by Denmark, Italy and Austria. Over time, these measures have become increasingly restrictive, to the point where critics say government efforts to bar economic migrants - no matter how justified - are eroding the very foundations of asylum.

Europe does not, in fact, suffer from an asylum problem. It has an immigration problem - and refugees, unhappily, pay the price. In recent years, 80 percent of the world's refugees have fled from one poor country to another poor country. Very few have actually ended up on the doorstep of the richer nations of Europe.

UNCHR's Horekens compares the influx of refugees and of immigrants to two streams which for a long time flowed side by side, without problems. But when one stream was dammed - the immigrant stream - it overflowed into the refugee channel. The result was a flood. Since the 1970s, Western Europe's doors have progressively closed to immigration. The only entryway for people in search of better economic conditions - but who are not necessarily fleeing persecution - is to request asylum.

These economic migrants make a clever bet: that they will be able to work for as long as it takes to examine their asylum request - often, several years. At worst, after rejection they will return home with a purse full of money and, perhaps, new skills. At best, they will be allowed to remain for humanitarian reasons. About a quarter of the 80 percent of asylum-seekers who are refused formal refugee status are given such humanitarian status, in part because it is extremely difficult to deport them. After years of deliberation, asylum-seeker families have built new lives, developed roots, and their children have firmly integrated into the culture. "On average, the refugee status-determination procedure lasts three years," explained Jean-Francois Durieux, of UNHCR's Division of International Protection. "In the meantime, the person may have found work, a sponsor, may even have gotten married. It is not easy to deport such a person."

Adjudication of Asylum Applications in Europe - 1990-1994

Country of Asylum Application	1990			1991			1992			1993			1994		
	Acc.	Rej.	Allow.	Acc.	Rej.	Allow.	Acc.	Rej.	Allow.	Acc.	Rej.	Allow.	Acc.	Rej.	Allow.
Belgium	900	11,800	-	2,500	17,200	-	2,300	21,200	-	1,200	14,200	-	700	8,300	-
Denmark	700	1,200	-	600	1,700	-	800	2,000	-	1,000	2,500	-	1,500	3,300	-
Finland	700	-	1,400	1,000	-	2,000	800	-	2,000	700	-	2,100	500	-	1,400
France	20	300	100	20	600	1,700	10	1,300	600	10	1,400	2,100	20	500	300
Germany	13,500	74,500	-	16,000	65,800	-	10,800	27,600	-	9,900	25,600	-	6,200	23,800	-
Greece	6,500	116,300	-	11,600	128,800	-	9,200	163,600	-	16,400	348,000	-	25,600	238,400	-
Italy	200	2,300	-	120	5,200	-	100	1,700	-	40	700	-	90	700	-
Netherlands	800	600	-	800	15,700	-	300	6,600	-	100	1,300	-	300	1,400	-
Norway	700	9,000	900	800	14,500	1,900	4,900	20,300	6,900	10,300	15,800	4,700	6,700	32,200	12,700
Portugal	100	2,100	1,200	100	2,300	1,700	60	2,900	1,000	50	4,700	500	20	3,000	1,800
Spain	40	50	-	10	50	-	20	0	-	40	600	-	10	1,700	40
Sweden	400	3,000	-	200	5,500	-	500	10,600	-	1,300	16,300	-	600	12,200	-
Switzerland	2,200	4,500	9,200	1,400	4,300	15,500	600	8,200	8,800	1,100	41,400	34,700	800	10,300	36,600
United Kingdom	600	11,200	-	900	28,500	-	1,500	30,100	-	3,800	18,700	-	2,900	18,800	-
Total	1,600	900	3,600	800	5,400	3,000	1,900	35,500	21,700	2,900	18,600	15,500	1,400	20,900	5,400

Notes:

- Not applicable / not available

Acc. Accepted as Convention refugee

Rej. Rejected

Allow. Allowed to stay for humanitarian or similar reasons.

Annual combined totals of all listed countries have been rounded to the nearest 1,000

All other figures have been rounded to the nearest 100, except for figures under 100 which have been rounded to the nearest 10.

The figures for Denmark and France include resettled refugees.

The 1991 figures for Italy are provisional:

they concern mostly Albanians.

Figures are subject to retrospective changes by certain countries.

Thus, people are ready to pay huge sums and take big risks to attain their dream of a better life, including job opportunities and the possibility of a decent education for their children. Television and modern communications have transcended international borders, giving rise to new frustrations, desires and anger among the have-nots. One result is human smuggling, an enterprise that has attracted organized crime networks and generated untold misery and tragedy. Smuggling rings operate in and through several regions: Albania is the preferred route for Macedonians, Kurds, Pakistanis and Chinese; Hungary for Kosovars; the Baltic countries for Iraqis, Afghans and Sri Lankans. Some migrants are financially ruined. Others risk - and even lose - their lives in pursuit of their dream.

There is no doubt that Europe has in recent years witnessed a sizeable wave of false asylum claims and that governments needed to do something to stem the flow.

"We can sympathize with people who flee disastrous economic conditions in an attempt to find a better future for their children," says Horekens. "Industrialized countries should be investing more in the poorer nations so these people find what they are looking for in their own countries. But in the meantime, we need to recognize that people looking for economic security do not fall under UNHCR's mandate. We should have the courage to do this, and to agree that it is up to the countries concerned whether to send illegal immigrants back."

But for many governments, ever mindful of public opinion, such action is easier said than done.

Says Horekens, "The greatest danger to asylum in Europe is the increase in the number of asylum requests from people who are not refugees, and whom governments dare not deport because of public sympathy or fear of a backlash from the press, public opinion, or non-governmental organizations."

Attempts to deport rejected asylum-seekers are often in vain. A decision in July by French authorities to deport a group of 51 Romanians, after agreement with Romanian authorities, raised a flurry of protest from non-governmental organizations. There was a similar reaction when France, Belgium, Germany and the Netherlands deported a total of 60 Zairians during the same period. Like the Romanians, the Zairians had never requested asylum. No refugee was among them. But the conditions of their departure raised indignation.

"Though it may be painful, it is our job, among other things, to support governments who decide to deport people who claim to be refugees but who are not," Horekens said. "But only if certain conditions are fulfilled - including that these people must have had full access to internationally accepted asylum procedures. This is far from being the case everywhere."

"We need to be absolutely sure that they are not refugees," he continued. "If governments are ready to put a real effort into improving the quality and impartiality of their status-determination procedures, then we are ready to make an effort to support them concerning the other cases. Our responsibility is to ensure that there are doors open to permit refugees to get in."

Several of the measures adopted by various European countries have contributed to clarifying a murky situation. But in places, they are applied with such severity that they may violate the right of every individual to seek refuge and protection in another country when life or freedom are in danger at home.

To reduce the often long delay between the actual asylum claim and the response of state authorities, an increasing number of European countries are adopting accelerated status-determination procedures. However, in certain cases these procedures are so accelerated that an asylum-seeker does not get an adequate hearing. And those who must adjudicate the case don't always have the necessary qualifications.

Accelerated procedures have allowed Belgium to considerably reduce its flow of illegal migrants: 90 percent of asylum requests are now rejected at the border. Barely three years ago, Belgian transit centers overflowed with asylum-seekers and new ones had to be opened constantly. Today, they are closing, one after the other. But access to the eligibility procedure has become so difficult in Belgium that it is discouraging even true refugees. They feel they have no chance for success - and prefer to enter the country

clandestinely.

France has the highest refugee recognition rate in Europe - 25 percent compared to an average of 10 percent elsewhere. But the problem is getting across the border in the first place. French police have the reputation of being the deafest in the European Union. Two-thirds of asylum-seekers never make it across the frontier.

In addition, the creation of the European Union has pushed member states to harmonize their asylum procedures. While few can argue about the need to harmonize, the resulting policies have tended toward the lowest common denominator.

"With the gradual removal of formalities within the European Union, it was quite natural for them to harmonize their asylum policies," Horekens said. "It's normal that an open Europe should want to exercise control over its external borders. As such, harmonization measures pose no problem - just like accelerated status-determination procedures - but on the condition that they be harmonized at a level that is acceptable. This is not necessarily the case."

The crux of the problem is that each E.U. country is trying to be stricter than its neighbor, to receive as few false asylum requests as possible. The example of the Netherlands is particularly significant. For years, the Netherlands, like Scandinavia, was considered a model of liberty, generosity and flexibility. But how can a country remain generous when its neighbors persist in closing their doors? In the tight little world of asylum-seekers, word of mouth functions very well. News of government measures spreads quickly - as do ways to bypass them. Asylum-seekers know which countries have the most liberal policies, and they gravitate toward them. In the Netherlands, for example, asylum requests doubled between 1992 and 1993 as other European countries began erecting barriers. Requests rose again by 51 percent in 1994. Unwilling to welcome all the asylum-seekers who were now being refused elsewhere, Holland finally adopted its own new legislation in January 1995.

Little by little, the countries of Europe have raised the walls of their fortress, and they continue to seek new ways of keeping false asylum-seekers away from their borders. Unfortunately, these same measures could also deny access to genuine refugees.

First came the imposition of visa requirements for people from countries likely to produce refugees, including former Yugoslavia, Romania, Iraq or Sri Lanka. One can only imagine the obstacles someone from war-torn Bosnia-Herzegovina must overcome to obtain a visa to anywhere.

Then came sanctions and fines imposed on airlines that accept passengers without the proper travel documents. Airline employees lack the proper qualifications to determine who does, or does not, need international protection. In some countries, particularly in the Third World, European immigration officers are posted at airports to check the identity and documents of travelers before they even board Europe-bound planes.

Then came the notion of the so-called "safe third country," in which governments refuse even to examine the asylum request of someone who has previously transited a country considered to be "safe". The asylum-seeker is simply returned to the "safe" transit country. "For this concept to work, from UNHCR's perspective, you have to be able to prove that this person would indeed have access to proper asylum procedures and protection in the country to which he or she is being returned," said Michael Petersen, UNHCR's regional legal adviser for Europe. "Unfortunately, this is not always the case."

In Germany, for example, any person who has transited through a country considered safe has no right to asylum. He or she is sent back to that country. The list of these "safe countries" includes all of those bordering Germany. Some of them are East European nations that have only recently signed the 1951 Convention and which are still learning - and making mistakes - about refugee rights. The German list also includes the countries of the European Union - including Greece and Austria, despite UNHCR's reservations. And the concept of a safe third country is applied even to people who have only briefly transited a foreign airport.

Greece admits only asylum-seekers who arrive directly from their countries of origin. Those who have transited through another country are sent back. This can mean disaster for some asylum-seekers who pass through Turkey, for example. Although Turkey ratified the 1951 Convention, it did so with a geographic reservation, stipulating that only refugees from European countries can claim asylum. Others need not apply.

"A number of Iranian refugees who cannot flee by plane - Iranian airports are particularly well-patrolled - cross illegally into Turkey," said Henrik Nordentoft, of UNHCR's Division of International Protection. "Many seek to move onwards to Western European countries fearing that the Turkish authorities will not guarantee their protection. Those who approach the authorities in Greece are refused asylum because they have not come directly from Iran. Greece may seek to deport them back to Turkey, which, however, has no obligations toward Iranian refugees under the 1951 Convention. Such situations, where there is no agreement among the countries about who should be responsible for the protection of the refugees, pose a serious threat to the safety of refugees."

In the same spirit, European countries have established the notion of "safe country of origin" - an idea which also presents dangers when applied blindly, without discretion. France recently classified Romania as a safe country of origin, but added that - given concerns about minority rights in the country - Romanian asylum-seekers would not necessarily be deprived of the right to be

recognized as refugees.

There is also the "non-suspensive effect," in which a rejected asylum-seeker who appeals the decision cannot remain in the country pending the appeal. Countries like Austria, France, Sweden and Germany apply this notion in some cases. But where can a refugees go, when their lives are in danger and they cannot return to their country? Often, they choose to remain illegally, waiting for the appeal. But, if detected, they can be imprisoned.

Many countries have opened what they term "transit zones" to receive asylum-seekers. Critics say they are, in reality, detention centers. In Britain and elsewhere, some asylum-seekers have been in detention for more than a year. Some have committed suicide. "Asylum-seekers are not *prima facie* criminals," declared Petersen. "There is no reason to treat them as criminals. Some already experienced enough trauma."

Even more worrisome is a restrictive interpretation by some European countries of the 1951 Convention, in which only those who fear persecution by a state are entitled to refugee status. According to this notion, victims of persecution by *non-state agents* - rebel groups or extremist organizations, for example - have no right to refugee status. For example, people targeted by an Algerian extremist group are not considered to be refugees in certain European countries - France and Switzerland among them. However, members of this same extremist organization may be eligible for refugee status if they fear persecution from state authorities and have not been implicated in any terrorist act.

Elsewhere, the application of the non-state-agent notion to people from former Yugoslavia has meant that Kosovo Albanians can be recognized as refugees, but not Bosnians who flee a far more imminent threat to their lives.

Moreover, victims of generalized violence, civil war and human rights abuse are often refused refugee status on the grounds that they do not face an individual threat from the state. Thus, Liberians fleeing five years of vicious civil war can be denied refugee status. So can Bosnians - who are often considered by UNHCR to be textbook examples of the 1951 Convention definition. Austria is the only country in Western Europe to deport Bosnians - via Hungary, where many manage to escape. Austria deported 43 Bosnians in this way last year, in direct violation of Article 33 of the 1951 Convention, on non-refoulement.

To some observers, European governments appear to want to have it both ways - they are more than willing to provide financial support for programs aiding refugees and displaced within the confines of former Yugoslavia, for example, but are much less receptive when victims of the war manage to turn up on their doorstep. "This position taken by European governments puts UNHCR in a dilemma," Cecil Kpenou, UNHCR Representative to the European Union in Brussels, said. "On the one hand, they're asking UNHCR to give assistance and protection to victims of conflict, with the complete political support of European funding countries. But, on the other hand, when these same victims of conflict attain the territory of the countries of the European Union, the response is completely different: the people under UNHCR protection are all of a sudden no longer recognized as refugees."

To UNHCR, refusing refugee status to people who have been, or who fear to be, persecuted by agents other than their own government is contrary to the 1951 Convention. "Persecution which does not involve state complicity is still persecution," explains Petersen. "The Convention applies when the state is unable to protect such people."

In the defense of those governments who do refuse refugee status to these people - essentially because they fear they will remain indefinitely - various formulae have been found that allow these people to stay until it is safe to go home. These include "temporary protection" for hundreds of thousands of Bosnians, as well as the provision of "humanitarian status," "tolerated status," and "exceptional right to remain."

"UNHCR has no problem with these different legal statuses," noted Horekens, "so long as the beneficiaries are protected against the greatest danger - refoulement to their countries of origin, where their lives would be in danger. But unfortunately, the associated legal and social rights afforded these people vary widely from country to country, and are often far less generous than those given to recognized refugees. That is a gap that needs filling."

European governments are also examining concepts like the "internal flight alternative" and "regionalization." Under the first, someone who fears persecution should first try to find refuge in a safe area of his or her own country. Failing that, the asylum-seeker should remain within the geographical region on the pretext that a more familiar cultural environment is less traumatic. At face value, these alternatives may not appear to pose major problems. But they cannot be applied in every case.

"These solutions may be valid in some cases," says Petersen. "But they cannot be applied systematically for everyone. The security conditions are not always there, nor is the humanitarian assistance available inside some countries. And to find refuge within his borders, a refugee should not have to cross a front line at the risk of being shot. In addition, a refugee is not necessarily safe in a neighboring country."

Dennis McNamara, director of UNHCR's Division of International Protection, agrees that in their eagerness to bar illegal immigrants, West European governments are weaving a net so tight that legitimate refugees may not be able to get through. "Nobody - not a single politician - is saying that there is a difference between a refugee and someone who is an illegal migrant," McNamara says.

"Nobody acknowledges that there are actually very few refugees knocking at their door and that they should be making every effort to find places for them. Instead, they're all being lumped together."

This overreaction is a major concern of UNHCR. "Let's not exaggerate - let's keep it in perspective," McNamara cautioned. "With 300,000 asylum-seekers per year in Europe, most of whom are not refugees, the figures aren't that high. This situation could be managed easily - without panic if there was the political will to do so."

Today, Europe is at a crossroads. If it was in Europe that asylum was born, it is also in Europe that the principle is now most menaced. Will the warning be heard? If not, the consequences will be felt not just in the region, but worldwide. How can poor countries be convinced to accept refugees if the richest nations close their doors to the few still knocking? One thing is certain: If Europe sets the example, the rest of the world will follow.

"We hope our point of view will triumph," said Kpenou. "Any restriction of the definition of a refugee by the states of Western Europe will manifestly influence the decisions and the good will of countries in Africa and Latin America, who until now have been so generous."

Christiane Berthiaume