

THE CHANGING LAWS: “IMMIGRATION AS A GLOBAL PHENOMENON, THE UNTIMELY FATE OF SYRIAN REFUGEES”

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Abstract

The Syrian Crisis has taken unexpected turns and has been on the news since its eruption in 2011. The crisis gained considerable momentum which led Syrian people to flee the country in masses. The neighboring countries like: Jordan, Lebanon and Turkey have taken the lion's share of the stricken refugees. As the country has been engulfed in chaos, the masses headed to Europe via Turkey or crossing the Mediterranean Sea.

The European countries were hit by refugees' waves not only Syrians but also from other countries too which led to the issuing of new norms and laws to host the unprecedented number of new comers. The process of taking in refugees as asylum seekers or individuals for need of protection until their country is safe again gathered many international powers to deal with the matter.

The European Law in compliance with international law had to face the situation of these refugees. It had to adapt and limit the overflow of refugees that eventually would pose an imminent threat to the host societies' stability. The flood of immigrants every year to Europe since conflict and war broke in the Middle East and North Africa left the E.U and the neighboring countries divided on how to approach the growing concerns over the refugees' crisis.

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JEL Classification: [K 30, K 33, K 37, K 38]

1. Introduction

International peace is a relative concept since the outbreak of conflict and war is unpredictable and unstoppable once it turns ugly and violent. 2011 marked unprecedented wave of outrage in the Middle East and North Africa (MENA). The MENA region since Tunisia set the example for other Arab countries to follow as well as it was the epicenter of Arab uprisings to call for the Archaic regimes to step down entered a new era of openness and change.

Syria like other fellow Arab countries was censured for lack of seriousness in dealing with the uprising at the outset. The country now is in its ninth year from what has started as a peaceful protest to a global crisis that gathered many powers to discuss Syria's future and its people's fate. The

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conflicting sides within the same country had taken the protest to turn to the level of a civil war with a religious dimension when ISIS (Islamic State in Iraq and Syria) took over in the country.

The aggravating situation in the country has made people flee the country to escape violence or move away from hot spots running for their lives. Migration has been a gateway to the fleeing masses from affected countries and at the same time an issue that has intensified and led to displace people internally or across borders fleeing their home country.

Europe to those people who escaped chaos seemed a better alternative and an opportunity to a dream life away from their repellent life conditions back home. The host continent was hit by the influx that reshuffled the European Union (EU) member states cards.

For Europe, the concept of immigration is not new as much as it became a burden that now all member states have to shoulder and share the responsibility to curb the exodus that target mainly Western Europe. Most southern states that are considered potential entries are taking all the blame for this no end.

2. The Axiomatic Shift in European Stance towards Immigration

The welcoming of new comers each year to the shores of European countries has shrunk and tightened since the host countries adopted new norms and laws to regulate the uncontrolled increase in the number of those comers. European immigration centers are not Refugees' detention centers and the unprecedented number of illegal immigrants from different countries that made Europe vulnerable in the face of this contemporary crisis has just complicated the situation for people who are in desperate need for an asylum.

From the signing of the Lisbon Treaty, Europe has faced many challenges and nothing could have been done to reduce or shrink the number of these immigrants. The Lisbon Treaty even if it started in 2001 as a constitutional project did not really cover all cases that face the union "The Treaty was signed at the European Council of Lisbon on 13 December 2007 and has been ratified by all Member States" (Panizza, 2018, p. 1) to join all member states under the same constitution. The treaty entered into force in December 2009 and since then "[EU] Parliament has been actively involved, as a full legislator, in the adoption of new legislation dealing with both irregular and regular immigration" (Schmid-Drüner, 2018, p. 6) As an outcome of all the hassle around immigration, the EU is still facing issues in the Mediterranean concerning illegal immigrants who come to Europe in overcrowded boats dreaming of a better life.

The affected countries of this global issue of immigration are European courtiers bordered by the Mediterranean Sea mostly Italy, Spain and Malta.

The issue of immigration is not recent and has been ailing the aforementioned countries for decades. In previous years especially with the beginning of the flow of refugees this phenomenon has taken another social and even human dimension.

At the end of September 2018, Italian Interior Minister Matteo Salvini, asserted that charity rescue ships were bringing “hundreds of thousands of immigrants each day” to Italian shores. This number is too exaggerated and far from being real even for each year. Those comments were made to the right-wing French news magazine *Valeurs Actuelles*. Catherine Nicholson for her show *Fact or Fake*, on France 24 news channel, checked and it turned out to be fake news. (Nicholson, 2018)

“In the absence of a common European policy, states have taken individual steps to address immigration. Spain and Malta, struggling to accommodate immigration from Africa, have called on the European Union to shoulder some of the responsibility” because they were both the easiest entry gate to the continent. Also, “Malta’s foreign minister announced that “Malta cannot become a holding area for all of Europe,” (*IHT*) while Spain’s justice minister has called for an increase in EU funds to secure his country’s borders” (Choe, 2007).

European member states have had some disagreements over the issue of immigration and this led in one of the cases to a diplomatic strife especially the one in 2016 between Austria and Greece Greece’s foreign ministry said the ambassador was being recalled “in order to safeguard the friendly relations between the states and the people of Greece and Austria” (BBC, 2016) over migrant crisis and the flow of Syrian refugees to Greece crossing the sea.

The situation of illegal immigration in Europe led to the legislation of new norms and enforcement of pre-existing regulations in order to control the flow of individuals and the different countries from where the immigrants originate were also involved.

3. European Measures to Fight Illegal Immigration

Illegal immigration has caused many member states to disagree on how to deal with the issue. There were many attempts and plans first were at least to regulate the flow of illegal comers. The Lisbon Treaty has set the pillars to tackle the issue but with the rapid change that has happened, the situation needed a call for a new regulations and laws.

The Lisbon Treaty itself has changed to the Treaty on the Functioning of the European Union¹ (TFEU); this treaty helps to understand how each

¹ For more details on the Treaty on the Functioning of the European Union (TFEU) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

member state should act towards many issues such as immigration and asylum on legal basis that is unified for all the E.U States.

For immigration², both articles 79 and 80 of the Treaty on the TFEU deal with this issue without reference to the subjects of this policy: either people from E.U member states or third-country nationals which can be defined as ambiguous and unclear to properly address the issue. Article 80 is an example of this ambiguity, the EU policies and their implementation “...shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between member states.” So here no clear application of the article except general directives.

Irregular immigration as a phenomenon that affects mostly the countries that are considered the gate to Europe is not well-understood to be suitably dealt with. The next policy about asylum can partially help asylum seekers on the basis of their need to seek haven in any member state in the EU.

For Asylum³ also there is a need to clarify some issues around this matter, the aim of the Asylum policy is “offer appropriate status to any third country national requiring international protection in one of the Member States and ensure compliance with the principle of non-refoulement. To this end, the Union is striving to develop a Common European Asylum System” (Schmid-Drüner, 2018). There is no transparency in taking the category of Asylum seekers on the basis of their protection like with Syrian refugees that caused EU member states to really revise their existing policies.

For EU members the issue of immigration, either for individuals who across the sea undocumented to be in any state or those who seek a place to live away from war and death, could not have one definition or explanation in other words this phenomenon is a fact to be dealt with case by case which is far from being applied.

4. Running Away from Home Countries: the Deadliest Journeys despite Local Laws

There are many reasons that took young people to risk their lives on the hope to reach Europe and have a dream life. The Mediterranean Sea is the theatre of movement of opportunity seekers to straighten up their luck on the expense of their precious lives.

In the United Nations (U.N) Universal Declaration of Human Rights⁴ article 13 (2): “Everyone has the right to leave any country, including his

² For laws regulating immigration http://www.europarl.europa.eu/ftu/pdf/en/FTU_4.2.3.pdf.

³ For Asylum policy http://www.europarl.europa.eu/ftu/pdf/en/FTU_4.2.2.pdf.

⁴ Universal Declaration of Human Rights https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

own, and to return to his country”. As individuals leave the shores of their home countries to the unknown has become a burden on the shoulders of both the government of those migrants and the receiving countries.

Legal initiatives to combat secret immigration were put and enforced in the face of the growing numbers of migrants. Most supplier countries of migrants mostly from North Africa, Algeria here is taken as an example, tried to put a legal frame to this practice.

In the Algerian penal code article 175⁵ (bis 1): illegally leaving the national territory in violation of the laws and regulations in force in the country is incriminated and repressed. This text was implemented and people who leave the country, in any illegal way by: land, air or sea, are subject to this law.

The Algerian law is clear about the act of trafficking and helping illegal immigrants to cross the sea. In article 303⁶(bis 31): Anyone who commits an act of smuggling of migrants shall be punished with imprisonment from five years to ten years and a fine of 500 thousand to one million dinars, if one of the following conditions is present: a smuggled person is a minor, endangering the life or safety of smuggled migrants or potential endangerment, Smuggled migrants are treated inhumanely or degradingly.

The above laws and all section 5 (bis 2-1) of the Algerian penal code about smuggling immigrants did not deter immigrants or smugglers from acting to encourage and promote to illegal immigration as a gateway to a better life.

“*Harragas*” as the undocumented individuals are called; the word is also widely used by print media to report about the countless attempts made by young people to cross the sea to the other side of the Mediterranean, summed it all as the meaning is ‘those who burn’ which can be both, go undocumented or enter legally but stay after visa expiration.

The price those “*Harragas*” pay is far from being punished by any law: their lives and despite the tough regulations and norms about this phenomenon the Algerian government could not combat illegal immigration. Houari Kadour, in charge of the files of the Algerian League for the Defense of Human Rights that the only remedy to this problem is to “fight unemployment, bribery and nepotism, so that our young people enjoy a better life than searching for them by riding in death boats” because according to him there were dozens of immigrants who were imprisoned and returned to repeat the risk (Boudia, 2016).

⁵ Translated from the original text in Arabic of the Algerian Penal Code.

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5. Syrians movement as Scattered Groups, Destination Europe

Syria has entered its ninth year of the crisis with no clear end, transfer of power. The country has gathered many fronts and could not keep people safe from the ravaging war that destroyed most of the country's infrastructures and left people homeless. People are in search for a safe haven away from death that lurks around every corner and each part of Syrian soil.

Thousands of refugees fled across the borders to neighboring countries such as Lebanon, Turkey, Jordan, and Iraq. It is important to note that people were also displaced from area to area within the country to avoid spots of confrontations between the regime forces and the rebels. Refugees at that stage of the conflict lost hope of a peaceful solution. The Syrian government could do nothing to protect its own nationals.

Recent statistics about the number of refugees in the neighboring countries is still high even if the country for now is more stable than it was. The total number is 5,684,010 refugees according to a last update on 28 February 2019. The following figure shows the repartition of Syrian evacuees in the neighboring countries.

Location name	Source	Data date	Population
Turkey	UNHCR, Government of Turkey	7 Feb 2019	64.1% 3,644,342
Lebanon	UNHCR	28 Feb 2019	16.6% 946,291
Jordan	UNHCR	13 Jan 2019	11.8% 671,551
Iraq	UNHCR	28 Feb 2019	4.5% 253,085
Egypt	UNHCR	31 Jan 2019	2.3% 133,028
Other (North Africa)	UNHCR	30 Nov 2018	0.6% 35,713

Figure 01: Total Persons of Concern by Country of Asylum

Source: <https://data2.unhcr.org/en/situations/syria#>

As shown in the figure, Turkey has taken the largest share of refugees over 3.5 million refugees and this true from the first years of the crisis. The migration crisis started in Europe when Turkey could not regulate all the flow from Syria and things just went out of control.

2015 marked the mass migration towards mainly Western Europe “In 2015, Syrians represented 49 per cent of the over 1 million people who risked their lives crossing the Mediterranean” (Darwish, 2016, p. 3). With those Syrians there are other nationals two from Iraq and Afghanistan. In Bulgaria and Hungary, they approached the situation as “The main nationalities of detained asylum seekers in both countries are Syrians, Afghans and Iraqis” (Matevžič, 2019, p. 9) which made the Syrian situation even harder to tackle.

The nationals from Iraq, Afghanistan and immigrants from North Africa (Egypt, Libya, Tunisia, Algeria and Morocco) have aggravated the situation for Syrians to seek asylum in EU member states as most of them look for an escape, the receiving countries are dealing with them equally as the treatment of their applications take time.

The measures taken to detain refugees or other immigrants slowed down Syrians' movement toward other parts in Europe and eventually worsened their status as individuals in need of humanitarian aid. The following passage sums the route Syrians take to enter Europe:

In the period between March 2015 and March 2016, hundreds of thousands of destitute Syrians, Afghans, Iraqis, etc. made the short but life-threatening journey from the coast of Asia Minor to the nearby islands of Lesbos, Chios, Samos, Kos and Leros. From there they would reach mainland Greece by boat, and, helped by GPS technology available through smart phones, trekked all the way to the border with Macedonia, some 800 km to the west. Then they would head to Vienna or Munich via Serbia and Hungary or Serbia, Croatia and Slovenia. The Western Balkans became, in effect, Europe's refugee and migrant highway (Bechev, 2016, p. 2-3).

The Syrian refugees' movement has been under scrutiny for fear to destabilize the region and pose a threat to EU societies.

Conclusions

Syria's internal turmoil has been one of the most socially mediated political crises in the world's modern history. Syria's nearly nine-year-old internal strife has come to be described as the biggest humanitarian and refugee crisis of our time. Many players on the international arena approached the situation differently with mixing the Syrian case to other migration crises.

The receiving countries especially in Europe disagreed on how to address the issue of refugees and separate them from undocumented immigrants. The Syrian tragedy is far from being unfold as most Syrians are still scattered in refugees' camps, detention centers in different countries. Solidarity is the key to win the fight against injustice and to protect basic human dignity for those refugees.

Europe has become a difficult destination, issuing a visa for people who need to enter the European space is under heavy scrutiny, people in need for movement or even tourism are affected by the migration crisis implicitly.

Europe need to redefine its policies and the concept of immigration must be viewed accordingly without any bias or discrimination among nationals who seek a visit to any member state of the EU space. The responsibility sharing should take care of all obstacles in the way of refugees or legal immigrants.

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