

FHSMUN XXXI

EUROPEAN UNION MIGRATION AND ASYLUM ASSISTANCE

“Asylum applications do not receive equal treatment in the 27 EU Member States. Today, in which Member State you apply for asylum has more of an impact on your application than your grounds for protection. Changes must be made.”

—Tobias Billström, Swedish Minister for Migration and Asylum Policy,
July 13, 2009.¹

“The European model of integration is a very broad model. If we’re unable to integrate new citizens into the EU, then we wouldn’t be true to what our message to the world is: integration at (the) national, social and economic levels.”

—Mario Sepi, head of the European Union Social and Economic Committee,
July 15, 2009.²

Introduction

Together, the 27 member-states of the European Union constitute the world’s second-largest democracy (behind India), boast the largest economy in the world, and, if they formed a single country, the third-largest population (behind only China and India). The relatively high quality of life found in EU member-states, coupled with a myriad of political and personal freedoms absent in many other regions of the world, make the EU an attractive choice for immigration, both legal and illegal. According to statistics published in 2003, just over 3.5% of all legal EU residents were foreign nationals, that is from a country other than the country in which they live or another EU member-state, though recent statistics suggest that this number may be as high as 5%.³ This amount per member state ranged from a low of 0.67% in Malta to a high of nearly 20% in Estonia.⁴

According to the United Nations Declaration of Human Rights, all persons are entitled to the right to move freely from country to country and to request asylum in other nations.⁵ Because the EU is comprised of 27 different member-states, however, each with a different immigration policy, wide discrepancies exist in how each country handles the issue. For example, the Dutch require all immigrants hoping to obtain a residency visa to show proficiency in the Dutch language as well as a tolerance of the country’s liberal societal values by taking a cultural exam,⁶ while the United Kingdom requires a working knowledge of English and a “good character.”⁷

¹ Swedish Presidency of the European Union, “Five questions for...,” July 13, 2009.

² Deutsche-Welle, “EU conference on migration and integration kicks off in Berlin,” July 15, 2009.

³ Deutsche-Welle, “EU conference on migration and integration kicks off in Berlin,” July 15, 2009.

⁴ Eurostat, “National and Foreign Population in EU25 Member States, January 2003.”

⁵ United Nations Declaration of Human Rights, articles 13 and 14.

⁶ Radio Free Europe, “EU: Netherlands leading trend to more stringent immigration rules,” April 5, 2006.

⁷ Migrate UK, “British immigration requirements & rules.”

The EU defines asylum as “[the application] for protection on an individual basis, irrespective of whether [applicants] lodge their application on arrival at borders, or from inside the country, and irrespective of whether they entered the territory legally (e.g. as a tourist) or illegally.” In March 2006 (the latest data available) EU member-states reported that roughly 18,200 applications seeking political asylum were received, with approximately 72% of those coming from first-time applicants. Only 4,825 of the applications were approved, with a plurality of those approved emigrating from Russia.⁸ Even with the newer more severe rules for detaining asylum seekers whose requests were denied or for people who have entered EU countries illegally without pending asylum claims that were established in June 2008, the EU will continue to be a prime destination for asylum seekers and many other migrants. Critics of open border policies claim that the relative attractiveness of the EU for asylum seekers and other migrants, particularly from North Africa, Eastern Europe, and the Middle East requires that the EU develop even stricter asylum and migration policies to maintain the EU’s high standard of living and to preserve what they perceive to be its unique cultures.

Open, yet secure

Recently, the EU has worked to streamline the immigration and asylum process within and between each of its member-states. Adopted in 2004, The Hague Programme sought to “harmonize asylum practices with a view to improving the quality of decision-making” by creating a set of standard benchmarks for asylum applications as well as a system where those who have successfully obtained asylum benefits would have those recognized in each member-state.⁹ This program is set to expire in December 2009, and the Swedish Presidency of the European Union (from July 2009 to January 2010) has thus far sought to build upon the successes of The Hague Programme by implementing the Stockholm Programme.

Scheduled to be adopted in December 2009, the Stockholm Programme (hereafter referred to as ‘Stockholm’) further encouraged EU member-states to adopt common standards for managing asylum applications as well as spreading out the processing of said applications to ensure that each country plays an equal role in the process. It also encourages the introduction of “more immigrant [labor] so that bottlenecks in the labour market can be eliminated and more people can find work.”¹⁰

The provisions in Stockholm call for a strengthening of ties between local police forces and Frontex, an EU agency that works with member-states to improve border security.¹¹ With these improvements, EU policy makers believe that they can more effectively track and protect those seeking asylum given the relatively open borders between member-states under the Schengen Treaty. Particularly emphasized are the rights of children and women, who may be trafficked illegally

⁸ Eurostat, “Monthly statistics on Asylum in the EU25, the Candidate Countries, and Iceland and Norway,” March 2006.

⁹ European Union, “Green Paper on the future Common European Asylum System,” June 6, 2007.

¹⁰ Swedish Presidency of the European Union, “The Stockholm Programme: towards an open and more secure Europe,” July 13, 2009.

¹¹ European Union, “Communication from the Commission to the European Parliament and the Council,” June 10, 2009.

across country borders, and of the Roma, an ethnic group that has been discriminated against for centuries. Violeta Moreno Lax notes that “it becomes critical to elucidate whether from those principles to which EU law refers there ensues an obligation for EU Member States not to obstruct physical access to protection; whether it is necessary, as a matter of legal duty, to distinguish refugees from other aliens seeking admittance at the frontiers of the EU *Single Protection Area*.”¹²

Stockholm also notes that immigration laws are not decisions that can be left as static benchmarks, but rather that they must be able to evolve over time. It suggests that there should exist a common framework, application and review process, and status for all those who seek asylum or who wish to migrate to the EU. With such commonalities, the EU would maintain its desire to be open to all those who wish to visit, work, or reside within its borders, all while making sure that the process was done expeditiously and securely.

Not in my backyard, thank you

Some EU member-states, though, are not as keen as the backers of Stockholm are to increase the flow of foreign immigration. Member-states along the Mediterranean Sea, like Greece, Italy, and Malta, are faced with the dilemma of protecting their coastlines or allowing prospective immigrants to dock in their harbors. The United Nations High Commissioner for Refugees (UNHCR) estimated that over 67,000 people attempted to move into the EU via the Mediterranean Sea in 2008, the majority of which came from northern Africa.¹³

Italian and Maltese authorities have frequently disagreed over which country has territorial jurisdiction in certain parts of the Mediterranean with respect to managing migrants seeking to land in the EU. During one incident in April 2009, a Turkish cargo ship rescued roughly 140 asylum seekers after their boat sank off the coast of the Italian island of Sicily. While the cargo ship rescued the stranded migrants at the behest of the Maltese government, it refused them passage into the country. When the ship turned toward Italy, the nearest alternative port-of-call, the Italian government also denied the cargo ship docking rights, keeping the migrants in a state of limbo. Their inaction was in violation the provisions of the United Nations International Convention on Maritime Search and Rescue, which mandates that any state must provide assistance to those distressed at sea.¹⁴ The migrants remained on the cargo ship for four days without adequate food or water until the Italians relented and allowed the ship to dock, according to reports from Amnesty International.¹⁵

When the Italian government chooses to act upon cases of distressed migrants needing assistance while attempting to reach the EU, it will at times decide to ‘rescue’ them by deporting them to Libya. Libya is often the starting point for migration forays across the Mediterranean given its close proximity to Lampedusa, an Italian island approximately 170 miles from Tripoli (or,

¹² Violeta Moreno Lax, “Must EU Borders Have Doors for Refugees? On the Compatibility of Schengen Visas and Carriers’ Sanctions with EU Member States’ Obligations to Provide International Protection for Refugees” *European Journal of Migration and Law* 10 2008 pp. 318-19.

¹³ Deutsche-Welle, “EU-member states debate illegal immigration,” July 16, 2009.

¹⁴ United Nations International Convention on Maritime Search and Rescue.

¹⁵ Amnesty International, “Italy/Malta: Obligation to safeguard lives and safety of migrants and asylum seekers,” May 7, 2009.

roughly the distance between Paris, France and Brussels, Belgium).¹⁶ Immigration to the EU via Lampedusa is so prevalent—nearly 37,000 immigrants came to Italy via the Mediterranean in 2008¹⁷—that the Italian government constructed an immigration facilitation and detention center on the island to process all applications coming through that route.



Common migration routes to Europe via Libya.¹⁸

In May 2009, the Italian navy oversaw the transport of over 200 migrants who were in a state of distress off the coast of Malta to Libya. The transport was conducted per a bilateral accord between the two countries which allows for the transfer of any migrants found en route to the EU whose journey began in Libya to be sent to the North African country without respect to their country of origin.¹⁹ Shortly thereafter, the Italian government presented Libya with three patrol boats to be in joint Italian-Libyan efforts to monitor the Mediterranean for signs of illegal immigration. In addition, the Italian government passed legislation that levies a fine of €10,000 to anyone convicted of being an illegal immigrant and up to three years' jail time for those found to accommodate them.²⁰

The UNHCR's representative in Rome expressed concern over this pact given Libya's political history and lack of a functioning mechanism to cope with asylum seekers. The UNHCR also worried that migrants would not be able to be properly screened for illnesses or legitimate needs to seek asylum if they were merely deported to Libya at the first chance. However, others thought

¹⁶ Distances are approximate and were calculated using Google Earth.

¹⁷ BBC News, "Italy turns rescued migrants back," May 8, 2009

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ BBC News, "Libya given migrant patrol boats," May 15, 2009.

that the joint Italian-Libyan measures were not strong enough. Nick Griffin, a Member of the European Parliament representing North West England and the leader of the far-right British National Party that, among other things, calls for the end of all immigration into the United Kingdom, said in an interview with the BBC that “boats [with illegal immigrants] should be sunk. They can throw them a life raft and they can go back to Libya. . . Europe has sooner or later to close its borders or it is simply going to be swamped by the Third World.” When asked to clarify his position, Griffin stated that he did not think the migrants should be killed, but reaffirmed that their boats should be sunk en route to the EU.²¹

Engendering Asylum and Migration Policies

An emerging criticism of traditional asylum and migration policies is that they have ignored the concerns and particular circumstances of female asylum seekers and migrants. Cultural, economic, legal, political, and social circumstances often impose even greater difficulties for female asylum seekers and migrants than for males seeking asylum or to emigrate. Furthermore, female asylum seekers and migrants are especially vulnerable to victimization by unscrupulous asylum and migration officials, by prospective employers, and by organized criminal syndicates that engage in human trafficking and/or prostitution.

In the twenty-first century, European countries are now confronting issues that had previously not arisen in asylum requests, including fleeing gender-based violence (GBV) such as female genital mutilation (FGM); in 2006, the UK granted a Sierra Leonean teenage girl asylum because of her fears that she would be subjected to FGM.²² With the disturbing prevalence of sexual violence against women and girls, including rape, it would appear reasonable to consider whether or not fear of such terrible crimes would constitute sufficient grounds for asylum requests. Traditionally, these fears, or even the actual victimization and rape of women and girls, have not been considered sufficient grounds for granting asylum requests because these crimes are treated as being essentially “private” and not “public” in nature.²³ Recent changes in European Union (EU) asylum policy may even expand the differences in circumstances between male and female asylum seekers; EU delegates may wish to examine whether contemporary asylum policies are “gender-neutral” or whether they particularly privilege male asylum seekers at the expense of female asylum seekers. If the latter turns out to be the case, EU delegates may find it expeditious to examine and/or rectify these gender imbalances.

Conclusion

Following the 2009 European parliamentary elections, voters across the EU supported more center-right parties that tend to be more skeptical towards the EU and more receptive to toughening immigration laws to limit the amount of people permitted to obtain asylum and residency. This perhaps was best illustrated in the United Kingdom, where the aforementioned British

²¹ BBC News, “Sink immigrants’ boats - Griffin,” July 8, 2009.

²² BBC News, “S Leone anger at FGM asylum in UK” October 19, 2006.

²³ Jane Freedman, “Women’s Right to Asylum: Protecting the Rights of Female Asylum Seekers in Europe” *Human Rights Review* 2008 (9) p. 417.

National Party gained two seats in the European Parliament and the ruling Labour Party, which supports European integration, came in third place behind the opposition Conservative Party and the UK Independence Party, which favors removing the country from the EU altogether. The largest bloc in the European Parliament, the European People's Party—European Democrats, consists of parties that both favor Stockholm and that are against the EU in general.²⁴

As countries like Italy continue to assert their right to territoriality and to sovereignty with respect to the immigration issue, EU member-states will likely face more debate over this contentious issue for years to come. While more socially liberal countries may support plans to allow further immigration into the EU, those that lean more conservatively will continue to argue that immigration drains resources and takes jobs away from native citizens. If Stockholm is successful, it will be a marked victory for those who believe that the European Union can be both open and secure; if it fails, it could mark the beginning of a sea-change in immigration policy across the continent.

Guiding Questions

What is your country's stance on legal immigration? Does your country use a quota-based system to allow for immigration, or is each case dealt with on a person-by-person level?

Is illegal immigration a major issue for your country? Does your country favor a tightening or lessening of immigration laws and restrictions?

Does your country foster a sense of multiculturalism or does it promote cultural assimilation through language training, job opportunities, or cultural classes and examinations? To what extent should immigrants be integrated into the traditional culture of your country?

What influence should the European Union have over a traditionally sovereign issue such as immigration?

Do female asylum seekers and migrants face greater obstacles than male asylum seekers and migrants? If so, how many of these obstacles result from laws and policies originating from within the European Union? How might these laws and policies be amended to eliminate these gender imbalances?

²⁴ BBC News, "European election results."