

Handling the Refugee Influx

Between the Laws, Borders, and Political Discourses

When speaking about the refugees currently arriving in Europe, it is rather difficult to focus on one relevant dimension: the legal framework, border policy, and political discourse all converge to affect both how we speak and act on the issues arising from the mass influx of refugees on the territory of the European Union (EU). This article attempts to deconstruct the EU's response to the current 'crisis' and outline its relevance for Serbia's asylum strategy. The focus will be on relevant EU legislation, such as the Dublin III Regulation, and ensuing issues, as well as the response taken regarding border policies and political discourse.

Asylum Legislation: The Basics, the Problems

Asylum is a fundamental right and granting it is an international obligation,¹ which does not cease to exist because of a large number of people seeking its protection. The founding stone of refugee law is the [1951 Convention relating to the Status of Refugees](#).

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When it comes to the legal framework intended to deal with asylum seekers in the European Union (and in Serbia, as almost all provisions have been transposed into national law due to the ascension of Serbia to the EU), the main issues arise out of a *de facto* lack of a cohesive European asylum system. Unlike the norms on the movement of goods or people, provisions held in the [principal documents on EU asylum law](#) have never been fully implemented.

The Dublin III Regulation enabled most Member States to avoid having to process asylum applications, while leaving countries at the periphery to deal with most of the problems. It prescribed that the EU Member State the asylum seeker enters first is required to process their application, and that other Member States could return that asylum seeker to the country of first entry if they find that an asylum seeker on their territory came from another EU Member State. The Regulation was meant to stop "asylum shopping", i.e. asylum seekers moving from one Member State to another and lodging multiple asylum claims, hence abusing the system. If the system in place were cohesive and different Member States granted asylum at similar rates, or if asylum seekers could, once granted refugee status, have some sort of choice as to which country to reside in, this would be a legitimate way of preventing abuse.

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¹ Basic rights of asylum seekers in the European Union can be seen at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

The practice of implementation of the EU asylum package shows that the provisions of its regulations have essentially had the effect of keeping people out of the EU, rather than providing for their treatment with dignity. Due to geography and visas there are several countries which will always be the ones receiving first, while others will have the option of denying any obligation to process asylum claims. Countries of first entry are coincidentally those with the lowest acceptance rates in the Union, i.e. Hungary at 9%, Croatia at 11%, Greece at 15%. Once asylum seekers are rejected in these countries, they cannot proceed to another Member State which has a much higher acceptance rate and ask for a re-examination of their claim. Considering that rates of acceptance vary greatly, with Sweden (77%) and the Netherlands (67%) being at the top, and the aforementioned peripheral states at the bottom, the Dublin Regulation in reality prevents people from having their applications processed in countries which are much more likely to recognise the persecution they went through and accept their claim for refugee status. For many, being denied asylum is a life threatening matter, and therefore attempting to reach the countries with higher acceptance rates (usually Western European ones) is paramount.

With legislation that allows for such different implementation by each Member State, and leaves certain peripheral Member States on their own to deal with hundreds of thousands of people, the EU has made it easy for its politicians to exploit asylum seekers to further their own agenda. European decision-makers have used the ambivalent legal concepts and the language surrounding the mass influx to enact repressive measures which strongly affect the basic human rights of refugees.

The Roles of Borders and Those who Guard Them

Apart from the legal framework, there are several other relevant dimensions of Eu-

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rope's dealing with refugee-related issues. Although the EU member states have removed the borders within the Union, thus allowing unrestricted travel within the Schengen area, with the ongoing mass refugee influx, some inner borders have been reintroduced. Borders have become a dangerous tool in light of the recent refugee influx. While Hungary has erected a 175km long razor-wire fence with [Serbia](#) and began doing the same with [Croatia](#), [Germany](#) first opened up its borders vowing not to apply the Dublin Regulation to Syrian refugees, only to promptly [reinstate border controls](#) and slow down the refugee influx. Croatia has been going through its own phases, most notably [blocking all traffic on its border with Serbia](#).

Another potentially repressive tool which can be directed at refugees is police action. Hungarian police [have used tear gas and water cannons against refugees](#) protesting and demanding entry into Hungary, while Slovenia's riot police [have used pepper spray against refugees](#) attempting to cross the border. To say the least, these methods are inhumane and inconsistent with both EU law and European values. But violence has not been the dominant response across EU states, rather the overall EU response to the refugee influx can be mainly characterised as inconsistent, lacking in agreements, and generally confused. What should have been uniformly regarded as a humanitarian crisis, has been portrayed by many EU decision-makers as a security crisis. This leads to the third and last dimension of the EU's response to the refugee influx, namely discourse.

The Power of Nomenclature: How Speech Precedes Action?

The relevance of how the discourse surrounding the current refugee situation is constructed has been extensively disregarded. Is this a crisis or a mass influx of refugees? The consensus is on the term crisis, but some have argued that it all began as an influx, whereas it was the EU's insufficient and inappropriate response that has

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turned it into a crisis.¹ What we now have in front of us is both a humanitarian crisis and a crisis of European values, and this was caused by the use and abuse of basic concepts surrounding refugees. Refugee or illegal immigrant? Influx or crisis? Humanitarian disaster or a security threat? If we accept the viewpoint that threats are concepts socially constructed through speech acts, then the process currently happening in certain EU states would be called *securitization*.²

In the narrative of securitization, governments can interpret and present a specific issue as an existential threat to national security, thereby convincing the public that extraordinary measures such as the closure of borders or the inhumane treatment of refugees and migrants are justified. This line of thinking clearly corresponds with the behaviour and reasoning of certain EU politicians, with Hungary's Prime Minister, Viktor Orbán being the prime example. Hungary's government has securitized refugees and immigrants in general not only through their speech, but also through actions such as sending out a "[National Consultation on Immigration and Terrorism](#)" questionnaire to 8 million of its citizens (perniciously attempting to connect immigration with terrorism in people's minds), or [placing anti-immigration posters](#) across the country with messages such as "If you come to Hungary, you cannot take the jobs of Hungarians!" These types of securitizing acts can, at least to a certain extent, explain the prevailing [anti-immigration and anti-refugee sentiment](#) in Hungary, the infamous case of the camera operator tripping and kicking refugees being one of the more extreme examples of these sentiments. Conversely, political discourse showing sympathy with the plight of refugees and other migrants may help calm down the general public in the context of the mass influx, and make it clear that violent behaviour towards these individuals is unacceptable.

Conclusion: What this all means for Serbia and the Refugees Traversing It?

There is widespread consensus that the lack of a unified and comprehensive EU response to the refugee influx and accompanying humanitarian crisis has left the Balkan countries, Serbia in particular, [to bear a burden incongruent with their capacities](#). Serbia, surrounded by EU states but still in the process of accession, has had to choose its own strategy for dealing with the mass influx of refugees transiting its territory. [Its own asylum provisions](#), although mirroring the EU's asylum law package, [has rarely been implemented properly](#). This is one of the reasons why Serbia is usually evoked as a transit, rather than a destination country for asylum seekers. By letting refugees move freely within its borders, it breaks none of the EU rules. However, it is put in a difficult position when its EU neighbours, contrary to both EU and international law, close their borders and prevent people from lodging asylum claims. Nonetheless, Serbia's actions in terms of police behaviour and open borders, as well as its political discourse, have been overwhelmingly refugee-friendly.

¹ Bieber, Florian. "Europe's Inertia Has Made a 'Crisis' of an Influx." Balkan Insight. N.p., 23 Sept. 2015. Web.

² In academic theory, the concept of securitization was introduced in the debate on whether threats are objective or subjective. The Copenhagen school of security studies gave a new take on this debate, claiming that certain issues are constructed as threats through specific rhetorical structures. Thus a state can, by constructing a certain issue as a threat, justify using extraordinary measures against the particular issue it has securitized. More information is available at: <http://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0091.xml>.

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The rhetoric taken by Serbia's politicians so far has been not only politically correct in terms of using appropriate terminology, i.e. discussing refugees rather than illegal immigrants, but also calling for solidarity, tolerance, and consistently evoking the importance of European values. For example, Serbia's Prime Minister [recently commented](#) the lack of xenophobia in Serbia, arguing that people should not be scared by numbers and theories, and that refugees should be treated decently. The absence of securitization and clear emphasis on humanitarian aspects of the mass influx in Serbian political discourse may, along with the open border policy and respectable police behaviour, help explain a large part of Serbia's humane response to the 'crisis'.

However, winter is coming and the humanitarian risks are increasing. The question remains whether Serbia can maintain its strategy without EU member states contributing their own cohesive and appropriately humanitarian policies and discourse? Certainly, it should not be that a candidate state acts as an example of the respect for basic EU values enshrined in the Treaty on the EU (Article 2), while full-fledged members are blatantly disregarding them? Once the EU "gets a grip" and develops a unified response to the evidently long term issue of a mass refugee influx, it will be imperative for Serbia not only to keep up its humane refugee discourse, open border policy, and respectable police behaviour, but also work extensively on improving how it implements its asylum policies. Taking into consideration the possibility of EU accession in the near future, Serbia might have to accept the burden of taking in refugees rather than transporting them to the nearest EU member state border. Hence, it is essential for Serbia to think about the long term and start improving the functioning of its asylum system.

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