



ODU United Nations Day 2017 Issue Brief



Towards Universal Principles on International Undocumented Migration

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Introduction

How can the world make peace with the seemingly continuous traffic of migrants looking for better lives? Unlike international refugees, who have been forced from their homes, migrants come by choice. While the international community has legal procedures for dealing with refugees, illegal migration is different. Most countries welcome some migration; it enlarges the population and—over time—brings greater wealth for all. But undocumented migration can bring enormous political stress. What to do?

What is undocumented immigration?

Irregular or undocumented migration is rather simple to define: it is the event that happens outside the regulatory norms of the sending, transit, and receiving countries¹. This concept occurs in four main forms: as unauthorized entry, entry with false documents, visa overstaying, and violations of the terms and conditions of a visa². The same reasons for legal migration apply to irregular migration: overpopulation, poor living conditions, persecution due to ethno-political conflict, and environmental disasters³. What encourages migrants and asylum-seekers to skip the legal procedures is the extensive bureaucracy

involved with the migration policy of some countries. Instead of waiting for months to issued or renew legal documentation, migrants and asylum-seekers find other ways to cross the border and slip under the government's radar.

Undocumented migration is migration, by *choice*, typically for economic reasons or pursuit of individual opportunity. Migrants must be distinguished from international *refugees*, who are *forced* to leave for fear of personal security, and Internally Displaced Persons (IDPs), also *forced* to leave but who do not cross an international boarder.

Refugees and IDPs have specific rights under international treaties and international humanitarian law (IHL). Some of these rights apply to migrants, but the domestic law of the countries they come to can be more important determining their fate. As a result, undocumented migrants can find themselves subject to arbitrary, exploitative and often cruel treatment, depending on the policy of each host country.



Assisting migrants stranded in the Mediterranean

¹ International Migration Law. "Glossary on Migration." International Organization for Migration. (Geneva: International Organization for Migration, 2004), 34-35.

² Martin Baldwin-Edwards. "Towards a Theory of Illegal Migration: historical and structural components." *Third World Quarterly* 29, no. 7 (October 2008): 1450. Business Source Complete, EBSCOhost.

³ *Ibid.*, 1453-1454.

Illegal immigration fosters the emergence of criminal economic activities, such as migrant smuggling, or activities with social impact, for example illegal employment. Unarguably, the most important of those by-products of official policy are humanitarian crises taking place on



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the borders. Loss of migrant lives in the ocean, human rights violations in detention centers, and the exploitation of migrants by smugglers and employers are pressing issues that a single government, whether a sending, transit, or receiving country, cannot solve on its own.

For the United Nations, undocumented migration raises difficult issues of national sovereignty and different legal systems. Countries are free to establish and enforce their own laws and policies. The role of the UN is to help ensure those laws and policies are consistent with international law, that they meet basic humanitarian standards, and do not discriminate against particular ethnic, racial or national groups.

Recent history

Some of the largest migration routes lead people from Africa, Asia and the Middle East to Europe. Migrants from the Middle East often made their way to Northern Europe, especially Germany, Sweden, and to a lesser extent Norway, which received mass migration from Iraq in the early 2000s, and from Libya and Syria after 2011. Germany and Sweden became the preferred destination in 2014-15, when some 1.6 million migrants, mostly from Syria, were received on humanitarian grounds. Other countries such as Hungary, Russia and the United Kingdom were more antagonistic.

Southeast Asia and the United States also are important destinations.

Current situation

What historical data sometimes conceals is the humanitarian aspect of immigration policies. There are a plethora of events and ongoing situations that concern undocumented migrants,

for example the Roma people in Eastern Europe or the Calais migrant crisis in France. This past year alone the world has experienced several humanitarian crises concerning migrants. Two such cases are reviewed below:

The Mediterranean Migrant Crisis

Over 1,900 migrants lost their lives while crossing the Mediterranean in the first half of 2015, over twice the number recorded in 2014, overwhelmingly the result of overweight boats



sinking before reaching shore.⁴ National coastguards in cooperation with EU border control ships (Frontex), part of the EU Operations 'Triton' and 'Poseidon', have managed to save thousands of migrant lives.⁵

According to BBC, the European Commission wants to redistribute 40,000 of these migrants more equally across the EU based on a distribution key that takes account of the population, gross domestic product, unemployment, and number of refugees already taken in.⁶ This plan, though applauded by the

⁴ Ibid.

⁵ Ibid.

⁶ Paul Adams. "Migrants: What Europe Can Achieve." BBC News.



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United Nations⁷, triggers many reactions from the members of the EU.

Fair sharing of migrants is a massive problem. France and Germany together receive more than 30% of the redistributed migrants, and seek “fairer burden-sharing.”⁸ Hungary, Poland and Spain oppose the idea claiming that member states should be able to make their own decisions.⁹

Another controversial proposal, by EU foreign policy chief Federica Mogherini, involves the destruction of boats to curb smuggling networks¹⁰. The UN has urged the commission to refrain from risking migrant lives while pursuing anti-smuggling initiatives, and to always confirm with international law.¹¹

Southeast Asia Migrant Crisis

Migration within Asia has historically been primarily illegal due to the governments’ unwillingness to manage it. Especially in the Southeast Asia, flows of undocumented immigrants cross the border between Thailand and Malaysia, while Thailand has also been the destination country for 1.7 million illegal workers mainly from Myanmar.

For several years, the largest groups of migrants in the region have been the Rohingya, a Muslim minority in predominantly Buddhist Myanmar, where they are denied basic human rights and citizenship. Previously regarded largely as migrants, today they are seen more as refugees.

The huge number of Rohingya, over 500,000, to flee since August 2017, are fleeing military attack. Forced to flee their homes in Myanmar, are regarded as refugees, and have a different legal status.

Smugglers take advantage of refugees and migrant alike. One of the major single events of the crisis was when smugglers abandoned ships with thousands of people at sea in response to a Thailand-launched crackdown; thousands of migrants were left stranded at sea.¹² The governments of Indonesia, Malaysia, and Thailand refused to accept the migrants and refugees, discouraging local fishermen from offering help and shelter.¹³

The United Nations High Commissioner for Refugees (UNHCR) and the IOM have provided humanitarian aid to injured and famished migrant. Indonesia and Malaysia have agreed to provide shelter for the immigrants for a year, but Bangladeshis were asked by the Indonesian government to return to their home country.¹⁴ During an emergency meeting of the Association of Southeast Asian Nations (ASEAN), law enforcement actions against trafficking and smuggling were established and discussions about alternatives to detention centers have taken place.¹⁵ The UNHCR has reaffirmed its willingness to share technical expertise in screening and seeking solutions for

⁷ UN News Center. “UN welcomes European Union proposals for ‘visionary’ migration reforms.” UN News Center.

⁸ Adams, “Migrants: What Europe Can Achieve.”

⁹ Ibid.

¹⁰ Ibid.

¹¹ UN News Center. “UN welcomes European Union proposals...”

¹² Agencies. “South-east Asia migrant crisis: numbers are now ‘alarming’, talks told.” The Guardian.

¹³ UN News Center. “In talks with Southeastern Asian leaders, top UN officials stress need to protect migrants stranded at sea.” UN News Center.

¹⁴ Agencies. “South-east Asia migrant crisis: numbers are now ‘alarming’, talks told.” The Guardian.

¹⁵ UN News Center. “UN agency welcomes new proposals by Southeast Asian States on region’s refugee and migrant issues.” UN News Center.



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refugees and help rally support for ASEAN's efforts.¹⁶

Central America Migrant Crisis

Ever since the number of undocumented immigrants in the United States stabilized at about 11 million after the Recession of 2007-08¹⁷, some officials maintain the problem has declined. Most unauthorized migrants in the United States are long-term residents of the country, with a median residency of almost 13 years. While President Barak Obama led efforts to give them legal status or relieve the fear of deportation that makes them vulnerable to economic exploitation, President Donald Trump has reversed those policies, and is searching for ways to depart them.¹⁸

Trump speaks for a popular movement in the United States that see undocumented migration as a threat to national security, bringing a risk of terrorism, crime and exploitation of current residents. This fear resulted in greatly expanded spending on border security, especially on the Mexico-United States border, now one of the most militarized borders in the world. One result is fewer people caught crossing that border. The decline also is affected by economic growth in Central America and Mexico, supporting arguments that international economic development is the key to the problem.¹⁹

A related problem is people from Central America, especially El Salvador, Honduras, and Guatemala, fleeing gang violence, extreme

poverty and persecution. Their motives make them eligible for consideration as international refugees, although domestic politics in the United States rules most humanitarian considerations, a point of contention with the United Nations



The principle United States policy response has been to encourage economic growth in Central America. Under Obama, the US granted USD 300 million annually for foreign aid in Central America.²⁰ This is not trivial, but critics maintain it is relatively small compared to the scale of Central American economics and unlikely to make a substantial difference.

Another approach favored by important constituencies in the United States focuses on regional crime and law enforcement, stressing not humanitarian issue but the danger of crime, especially fears of terrorist attack, gang violence, drug and human trafficking. The response they prefer is law enforcement, building a larger wall along the border, preventing all but a small number of migrants from reaching the United States. Such policies have great popularity, but also clash with international humanitarian law and moral norms, setting up the United States for major disputes with other UN member states.

¹⁶ Ibid.

¹⁷ Jeffrey S. Passel, D'Vera Cohn, Jens Manuel Krogstad, and Ana Gonzales-Barrera. "As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled." Pew Research Center.

¹⁸ Ibid.

¹⁹ The Editorial Board. "Central America's Unresolved Migrant Crisis." The New York Times.

²⁰ Ibid.



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United Nations Action

One of the most fundamental documents in the UN, the Universal Declaration of Human Rights (UNDHR), guarantees that everyone has the right to leave any country, including his/her own, and to return to his/her country.²¹ In urgent situations like the ones described above, different documents take effect. The General Assembly includes the subject of migration and its effect on countries' development in its agenda frequently. Among the key guidance is the UN's

International Convention on the Protection of the Rights of All Migrant Workers and their Families

A milestone in international attempts to protect migrants regardless of their legal status, reaffirms that the rights of migrant workers and their families include free movement, prohibition of torture and slavery of migrants and their families, freedom of thought, religion, and expression of such beliefs and opinions.²²

Under a resolution passed in 2103, The Members States of the UN General Assembly accepted the notion that international migration relates to the development of countries of origin, transit and destination and committed to creating an agenda promoting development through international migration.²³

This agenda includes establishing ways to improve the performance of existing institutions and frameworks to integrate development while respecting human rights, as well as addressing

the challenges that countries of origin, transit, and destination face. Reducing irregular migration through states' cooperation on mobility programs and battling migrant smuggling and trafficking are among the topic being discussed. Public perceptions of migrants are given special attention to condemn racism, discrimination, xenophobia, and stereotypes often applied to migrants, and allow for better living conditions for the migrants. Lastly, the body agreed to protect the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially for vulnerable groups such as women and children.

In 2014 the Member States of the General Assembly agreed to emphasize protecting migrants' human rights. Referring to the Universal Declaration of Human Rights and the International Covenant on Human Rights, the members of the General Assembly agreed to: a) condemn racism and encourage governments to reinforce laws against hate crimes, b) create mechanisms that allow immigrants to report abuse by authorities or employers without fear of retaliation, and c) call for states to ensure that existing legislation does not violate the migrants' human rights, including counter-terrorism policies and when combating international organized crime.²⁴

The next year, the General Assembly went further, calling for the cooperation between governments and NGOs to better deal with the migrations flows.²⁵ Recognizing that the number of migrants is growing, it points out the vulnerability of migrants attempting to cross

²¹ United Nations. "The Universal Declaration of Human Rights." United Nations.

²² Ibid.

²³ United Nations. "Declaration of the High-level Dialogue on International Migration and Development", General Assembly Resolution A/RES/68/4

²⁴ United Nations. "Protection of migrants", General Assembly Resolution A/RES/69/167 (New York: United Nations, 12 February 2015).

²⁵ United Nations. "International migration and development", General Assembly Resolution A/RES/69/229 (New York: United Nations, 4 February 2015).



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international borders without proper documentation. It urges states to ensure respect for the human rights for migrants.²⁶ The most interesting item in the resolution is the invitation to reduce the costs of migration, enhance the ability of migrants to transfer security entitlements, and promote recognition of educational and professional qualifications of migrants.²⁷

Key issues and arguments to consider

Reducing Required Legal Documentation: Advocates of this policy encourage states to speed up acquiring proper travelling documents. This seems simple, but there was reaction from states. Individual states may find it hard to reduce the paperwork because of fear for mass migration. For sending countries, this could mean severe loss of labor, while for destination countries, this could lead to increase in the unemployment rates and hostility against migrant groups.

Addressing the causes of irregular migration: The causes of irregular migration, as discussed above, include: overpopulation, poor living conditions, persecution due to ethno-political conflict, and environmental disasters. Controlling these factors can allow sending governments to reduce the levels of undocumented migrants and refugees and increase the well-being of individual states overall. If people are prosperous within their own country, they will not attempt to migrate in search of a better future.

Everyone recognized the importance of work on the reasons for migration, but the costs are substantial. Cooperation and willingness to spend more on aid and development have been

limited. The non-binding character of UN action—the UN General Assembly cannot order its sovereign Member States to do anything—makes it hard for the organization to influence domestic affairs without consent from the affected government.

Battling migrant smuggling networks: The Protocol against the Smuggling of Migrant by Land, Sea, and Air outlines the steps governments should take to tackle migrant smuggling. States should be largely encouraged to enforce it and foster excellent regional relations. Border controls, better tracking networks and appropriate punishments could be established with the help of the UN, the IOM, and pertinent NGOs. Suggestions that could harm the migrants or violate their fundamental human rights, such as firing at the boats or detaining the migrants and smugglers in overcrowded and unhealthy detention centers, would rather be avoided. Cooperation among states and organizations can make use of the media in launching campaigns discouraging people from contacting and hiring smugglers for their transportation.

Country and Bloc Positions

African Union (AU): The Member States of the AU have agreed to cooperate on a) adopting common policies to counter migrant smuggling, b) information sharing, c) joint cross-border patrols for neighboring states, and d) consultative mechanisms and dialogue on irregular migration.²⁸ They also are working to ease re-admission of irregular migrants to the

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ African Union. “Statement by Dr. Mustapha Sidiki Kaloko (AU Commissioner for Social Affairs) at the Global Forum on Migration and Development”, African Union (Mauritius: African Union, 21-22 November 2012).



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country of their origin.²⁹ The AU encourages states to accept their nationals who illegally migrate to other countries in a manner that respects their human rights and facilitates a smooth re-integration.

China: The 1985 Law of Administration of Entrance and Exit of Foreigners encouraged immigrants to enter China, causing a sharp increase in the number of immigrants in the country.³⁰ However, the fear of social instability due to the immigrants' presence led to the adoption of the 2012 Exit and Entry Administration Law. Aiming at combating illegal entry, residence, and work in China, this law raises the penalties for all immigration offenses including aiding undocumented migrants.³¹ Illegal aliens unable to pay for their repatriation are being detained for long periods of time. It also identifies the groups of migrants mostly welcome by the government, which include: ethnic Chinese living outside of China, high-level professionals, refugees and asylum seekers.³²

European Union: There are sharp disagreements among EU member states on migration issues. Generally, the EU is the strongest advocate of humanitarianism in the international community. But many EU counters have witnessed a nationalist political backlash against migration, too.

In 2008, the approximate number of illegal migrants within the European Union was estimated at 1.9 to 3.8 million³³. Due to recent

unrest in the Middle East and African this number has grown considerably. Responses to include the migrant redistribution plan and regular boat inspections to curb migrant smuggling.³⁴ Initiating talks with the African Union about addressing the roots of irregular migration has also been among the plans of the EU, unfortunately with limited results so far.

Non-Aligned Movement: The 120 Member States of the UN's largest voting bloc, the Non-Aligned Movement (NAM), have other concerns. Countries of the Middle East consider their levels of immigration to be too high and have launched efforts to restrict migration through restrictions on immigrant employment.³⁵ NAM member states also are concerned with the treatment of their own citizens abroad, and work hard to ensure they are treated well in countries of arrival. Many also are unhappy allowing new development programs to benefit migrating populations. They want control over any development spending themselves.

Russia: Russia struggles with irregular migration due to the great length of its border and the lack of adequate border controls, encouraging migrants to resolve to illegal entry.³⁶ Under President Vladimir Putin, Russia has become more nationalist, making the situation for migrants more delicate.

The largest numbers of irregular migrants in Russia come from Kazakhstan and other Central Asian states in the east, as well as countries of

²⁹ Ibid.

³⁰ Heidi Østbø Haugen. "Destination China: The Country Adjusts to its New Migration Reality." Migrationpolicy.org

³¹ Ibid.

³² Ibid.

³³ United Nations. "International Migration Policies: Government Views and Priorities 2013." (New York:

United Nations Department of Economic and Social Affairs | Population Division, 2014) p. 91.

³⁴ Paul Adams. "Migrants: What Europe Can Achieve." BBC News.

³⁵ Martin Baldwin-Edwards. "Migration in the Middle East and Mediterranean." Global Commission on International Migration (GCIM).

³⁶ Eugene Krassinets. "Illegal migration and employment in Russia." Informal Network on Foreign Labour in Central and Eastern Europe.



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the former Soviet Union in the west.³⁷ Due to the lack of funds, the government is unable to prevent illegal entry of migrants and deport the violators. Some of the long-discussed policies to be taken up by the government include the strengthening of sanctions against employers who hire illegal migrants as workers and the legalization of migrants that could benefit the country economically.

United States of America: The United States is highly divided on migration issues and tends to act cautiously, ceding leadership on this issue to others, especially the European Union globally and Canada in inter-American affairs. Some of the strongest critics of migration in the United States also are extremely suspicious of the United Nations.

Current United States immigration policies include increased border controls and cooperation with Mexico in discouraging migrants from heading north.³⁸ The Obama administration looks favorably upon granting temporary relief from deportation or even amnesty to certain illegal migrants. Nevertheless, elections are coming up. Some candidates approve Obama's vision, but others take a very different stand. Ideas such as immediate deportation of all illegal aliens or building a physical wall on the southern border could materialize in case a change in power occurs. Regardless of the government in power, there is always the possibility of a new wave of immigration happening on the southern border.

Essential Questions for the UN

Besides answering the central issue of how to eliminate irregular migration overall, there are

some pertinent questions that need to be addressed:

- How can the UN help states prepare for sudden waves of irregular migration?
- What can be done to ensure that migrant rights are not violated?
- What are the best ways to curb undocumented migration long term?
- How does current UN action address the issue? What other actions should the UN adopt?
- What can the UN encourage states to do to prevent migrants from pursuing illegal options?

Each UN Member State will have their own policies on these issues. The job before the General Assembly is help make those policies as consistent, fair and effective as possible

³⁷ Ibid.

³⁸ "Central America's Unresolved Migrant Crisis."
The New York Times.



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