

FORUM When Water Is Safer Than Land



Addressing distress migration
by JACQUELINE BHABHA

THE JUBILATION that accompanied the brief flowering of the Arab Spring is long gone as its deadly aftermath—in Libya, Syria, and elsewhere—spirals into transcontinental turmoil. We face the prospect of a grim winter. Hundreds of thousands of desperate people in flight from those indiscriminate civil wars (not to mention the chaos in Iraq and Yemen, the turmoil in parts of Africa, and the ethnic oppression in Myanmar) face arduous hurdles in search of safety and security in Europe and elsewhere, while potential hosts negotiate rising xenophobia (intensified by the November attacks in Paris) and increasing desperation in the face of apparently unending need caused by the continuing migrant arrivals. What alternatives exist? How can this apparent impasse be better tackled? And how should we think about the recurring migration and refugee “crises” that present themselves with almost predictable regularity on every continent? We need a new paradigm for thinking about twenty-first-century “distress migration,” because the post-World War II framework that still governs our laws and procedures is, in practice, defunct.

“...you have to understand,
that no one puts their children in a boat
unless the water is safer than the land...”

—Warsan Shire, “Home”



The Syrian Catastrophe

THERE IS no question about the gravity of the need. The plight of Syrians is most acute. The vast majority of that country’s population (recently estimated at more than 16 million people)

are trapped in situations of deadly conflict: flattened cities, escalating civilian casualties (more than 340,000 as of early November, according to the Syrian Observatory for Human Rights), and the disintegration of quotidian life. A substantial minority, more than four million Syrians, eke out lives of “temporary permanence” in underfunded, overcrowded, and increasingly squalid places of refuge in neighboring states, in and outside of actual refugee camps. The prospects of a speedy return home are nil—yet humanitarian

interventions are predicated on that assumption, as evidenced by temporary shelter arrangements and makeshift medical care.

Drastic shortfalls in international aid and constantly growing numbers and need have led to increasingly inadequate situations for refugees in the region. In 2014, three years into the conflict, less than two-thirds of the humanitarian aid budget required to address basic needs inside Syria was received.

The situation has since deteriorated further. The Regional Refugee and Resilience Plan, a regional planning and partnership platform developed by the five most affected neighboring countries in collaboration with the UN to cover immediate needs in and around Syria for 2015-2016, is less than half-funded. Resettlement, another indicator of international humanitarian solidarity, has also been shamefully low: by August 2015, only slightly more than 100,000 resettlement slots had been offered by countries willing to permanently accept refugees. That number was less than 3 percent of the size of the Syrian refugee population at the time—and less than 10 percent of those promised places have actually been utilized so far. In other words, efforts to address this predictable crisis at the source or in the region have been lackluster and ineffective.

The cost of inaction has been dramatic. One, perhaps unintended, consequence is that protection and aid have been disproportionately allocated to those who manage to *leave* the region, rather than to those

A Syrian refugee boy and girl in Ankara, Turkey, November 21, 2014; refugees in Serbia halted at the Hungarian border by a barrier of razor wire, September 15, 2015



trapped within it—a perverse incentive to migration if ever there was one. The migrants, for all their desperation and exposure to tragic hardship, are, perhaps surprisingly, a relatively privileged minority of at-risk Syrians: those with the physical ability, the financial means, the familial support, and, critically, the determination necessary to seek protection outside the region. It is well known in migration circles that those who flee abroad are typically not the most destitute or endangered.

But even the meager assistance made available has been slow in coming. Only after the startling image of drowned Syrian three-year-old Aylan Kurdi, pulled from the sea near the Turkish resort of Bodrum, went viral did this highly visible minority of refugees—including babes in arms, pregnant women, and young children—garner concerted high-level attention. The old device of using, or exploiting, child suffering to make a broader point worked.

The situation has highlighted the best and worst of Europe, as emergencies often do. Germany's Angela Merkel has emerged as the surprising heroine of the humanitarian lobby, leveraging her country's ever-present past and robust economy to welcome more than one million refugees and to stress the potential demographic dividend of a healthy, youthful workforce for an aging continent. Her nemesis, Hungarian prime minister Viktor Orbán, has been the spokesperson for the fundamentalist, nativist Europe. Echoing fearmongering religious extremism elsewhere, he has warned, "Europe's Christian heritage is under threat."

Unlike the threat Orbán referred to, the murderous attacks in Paris on a grim Friday, November 13, do pose a grave threat to Europe's post-World War II universalist and humanitarian spirit. Traumatized citizens, witness to incomprehensible brutality and wanton disregard for human life within their midst, are easily recruited by European hatemongers intent on exploiting anxiety and fear to further a racist and nativist vision. This incitement of Islamophobia is part of the recruitment game plan of an expansive ISIS: the more Europe can be seen to hate Muslims, the more Muslims should accept that their future lies in running toward, not away from, the Caliphate.

The notion that the magnitude of refugee arrival, on the other hand, poses any sort of threat to Europe's future prosperity is laughable. The Syrians arriving represent less than 1 percent of the population of the European Union (EU), the world's richest continent. In Lebanon, an incomparably poorer

polity, *every fourth inhabitant* is now a Syrian refugee, and yet even that war-torn country is not at the brink of collapse. The current flow of refugees poses no objective threat to the future or prosperity of Europe.

This is not to suggest that short-term challenges are minor. Germany has absorbed hundreds of thousands of Syrian children into its school system, at huge expense. In Sweden, only 30 percent of the new refugee arrivals have been integrated into jobs or education so far. In Spain, following the plea of Pope Francis, hundreds of parishioners have welcomed Syrian refugees into their homes despite a still struggling economy and widespread unemployment. The fund of 2.4 billion euros allocated by the European Commission to frontline countries, including Greece and Italy, only partially alleviates the burden of coping with pressing human need.

An Eroding Refugee Regime

ANOTHER COST OF INACTION is destabilization of the EU's migration framework. The Dublin Convention regime, first adopted by EU member states in 2003 and regularly updated since then, is in significant measure suspended. This regime has been a linchpin of orderly EU asylum processing and management. It discourages asylum applicants from cherry-picking their preferred host state by forcing them to seek protection in the first safe country they

FROM LEFT: UNIT BEKTAS/REUTERS/CORBIS IMAGES; ARPAD KURUCZ/ANADOLU AGENCY/GETTY IMAGES

reach. Most asylum seekers entering the EU hope to stay in Germany, Sweden, or the United Kingdom, but they typically reach those countries only after having first crossed through the border countries closest to their homes (Greece, Italy, Spain, Malta) and then the transit countries (Romania, Slovakia, Poland, Hungary, France, Austria). Dublin has thus enabled countries such as Germany, Sweden, and the UK to send asylum seekers back to the border countries for processing. This explains why so many asylum seekers destroy their passports or other travel documents: to conceal their routes and reduce the chances of being sent back to their entry point.

But as of November, Germany and Sweden were no longer returning asylum applicants to Greece, Italy, or other first-entry points. The Schengen Agreement, which since 1995 has effected a movement area without border control or physical barriers within continental Europe, is also in tatters. Razor-wire fences now proliferate between eastern European countries. Border checks have been reinstituted at many crossing points.



The Wider Migration Emergency

IT IS TEMPTING but misleading to think of the Middle Eastern emigration as a circumscribed crisis. Certainly, as Jean-Claude Juncker, president of the European Commission, put it in his 2015 State of the Union speech to the European Parliament in September, “This is not the time for business as usual.” But the problem is deeper and wider than he implied. The current European situation is one episode in an enduring steady state of emergency distress migration that has global roots and reach.

Massive forced migration in sub-Saharan Africa, Southeast Asia, and both within and across Central America and the Caribbean Basin has been a constant feature of the recent past. The so-called “surge” of Central American children and their families across the U.S. border, making global headlines during the summer of 2014, was—as President Obama claimed—a “humanitarian crisis.”

But what he failed to note was that this crisis had been under way for at least a decade, as intense drug wars, gang violence, and failing infrastructure have turned Honduras and El Salvador into the murder capitals of the world. The “crisis” includes the distress migration of Somalis to Kenya, of Sudanese and South Sudanese to Egypt, of Zimbabweans to South Africa, of Eritreans to Israel and Italy, of Libyans, Iraqis, and Afghans to multiple destinations. These forced movements have contributed to the current official

UN tally of 19.2 million “registered” (officially certified) refugees with UN identity documents—a figure that does *not* include the millions more who are waiting to be registered, the millions who are not “of concern” to the UN but are nevertheless internationally displaced, and the even larger numbers who are “internally displaced persons” within their own countries.

A Broken International System

WE ARE WITNESSING tragic symptoms of a now-broken international system intended to ensure that those who need to can safely migrate to a place where they can get protection. The system we inherited from World War II addressed the tension between the right of sovereign states to control the entry of non-nationals and individuals’ need for international sanctuary from their own barbarous or collapsed governments. It established mechanisms—national, regional, and international—not only for making protection available, but also for recruiting foreign workers; reuniting divided families; promoting short- and medium-term stays (for study, entrepreneurship, post-college exploration, and cultural exchanges); and for granting long-term legal immigration status, in many cases leading to citizenship in the new country.

The factors that promoted support for that postwar system—political advantages for Western countries in providing sanctuary to refugees from communist governments; economic advantages in recruiting large numbers of formerly colonized unskilled workers to fill unpopular jobs; the social benefits of ensuring that migrant workers were joined by their families and invested economically and culturally in their new countries—are all now under attack by countervailing forces. The most important of these factors is the hostile domestic reaction to the very large flows of distress migrants caused by growing and radical global inequality.

Such inequality extends beyond economic insecurity—it encompasses the lack of access to physical safety, civil order, and the social and cultural attributes of a full and rewarding life that everyone aspires to. The glaring inequality is more evident than ever before, thanks to the omnipresence of global media and information technology. The relationship between inequality and powerful migration pressures has been made equally evident. Finally, news coverage and political attention have highlighted the irrationality and inefficiency of our outdated legal and administrative system of migration management—a system now manifestly premised on incoherent dichotomies and false assumptions.

The most fundamental dichotomy lies at the very root of modern migration law, separating bona fide “refugees” with a “well-founded fear of persecution” under the 1951 UN Convention on the Status of Refugees, from spontaneous “economic migrants” seeking to take advantage of greater prosperity and opportunity outside their home countries. The former are considered legitimate recipients of international protection, the latter unlawful border-crossers.

But for more than a decade, migration experts within the United Nations, in the immigration and justice ministries of many countries,

Syrian refugee Nofal Halab at a camp for asylum-seekers, Berlin, September 15, 2015; Syrian children in a refugee-camp school, Kilis, Turkey, September 30, 2015

FROM LEFT: AXEL SCHMIDT/AP/GETTY IMAGES; KEREM KOCALAR/ANADOLU AGENCY/GETTY IMAGES

and civil-society organizations such as the Women's Refugee Commission, the International Rescue Committee, and Human Rights Watch, have acknowledged the artificiality of this dichotomy, given the reality of "mixed migration"—distress migration prompted by multiple, interconnected factors, including survival fears and economic desperation. As a result, artificial political decisions distinguish countries that are "refugee"-producing from those that are not, in ways that confound sense or sensible response. For instance, at the moment Syria is and Sudan is not, Afghanistan sometimes is, Eritrea is not, Iraq may be, Somalia usually is not. Individual asylum applicants are rarely able to overcome these broad-brush and arbitrary classifications, so at the moment there is a brisk trade in forged Syrian passports. Millions are spent in determination proceedings to explore whether someone is indeed a "real refugee" or an "illegal migrant," as if this were an immutable biological fact.

Moreover, the current system simultaneously blocks lawful means of escape for refugees and punishes irregular entry methods. Lawful migration has become nigh impossible because the moment a country spirals into conflict or civil war, Western governments impose visas on nationals of that country—visas that in practice are never granted, so the only way to get a visa to facilitate border crossing is to buy a forged document with a visa stamped on it. As a result, a flourishing industry of forged and false documents develops—and with it, a lucrative and often brutally extortionate people-moving industry that exploits legal loopholes, corrupts border guards, and uses unsupervised (even if dangerous) entry points to deliver border crossings. But the operators of official carriers caught transporting passengers with false documents into new countries are fined heavily by those countries, while the hapless passengers are denied entry and forced back to where they started; the carriers are legally compelled to do this, and bear the cost.

Thus bona fide refugees are denied legal exit to a place of safety. At the same time, official carriers are required to become experts on detecting forged passports and visas to save their companies from the fines: they become de facto immigration officers, but immigration officers with a vested financial interest in erring on the side of caution to exclude refugees whose documents they find confusing or unclear.

The higher the obstacles to escape, the greater the price of securing it, ensuring humanitarian disasters. Destruction of smuggler vessels and aggressive patrolling of direct escape routes (whether via the Mediterranean or the Mexico/U.S. border) generate itineraries with higher likelihood of death or injury, more cost, and more dependence on unscrupulous "guides."

In short, our current system ensures that refugees arrive penniless and that the journey to safety exacerbates the preexisting trauma from war. Nor does arrival in a destination state bring hardship to an end. "Distress migrants" who enter with false documents or concealed in car trunks or trucks are regularly detained. Children whose ages are disputed often end up in adult jails, where overcrowding and harsh conditions are routine. In the United States, even women traveling with young children are detained for weeks on end.

Toward a New Migration System

WHAT WOULD THE ELEMENTS of a reformed migration system look like? The starting point is the urgency of preventing mass

atrocities and the spiraling decline into endemic violence—a seemingly utopian aspiration at the moment, but in reality an essential precondition for sustainable recalibration of current global migration. No reformed migration system can solve the humanitarian problems caused by pervasive brutal conflict. Migration management depends on majority populations having prospects of hope at home, which in turn depend on negotiated solutions to end the conflict or violence that precipitates flight: Syria's barbarous civil war, the murderous criminal violence in Honduras, El Salvador, Guatemala, and Mexico, the endemic lawlessness and destitution in Somalia, the religious and ethnic anti-Rohingya brutality in Myanmar.

This imperative brings with it another set of obligations, because ending acute violence is a necessary but not a sufficient condition for sustained peace and public security. Humanitarian interventions to rebuild societies riven with violence must be coupled with long-term investment in development:



creating infrastructure, delivering public services, supporting economic reconstruction, social networks, and community engagement. Growing regional inequality—especially in an age of hyperconnected publics and increasingly pervasive social media—will continue to generate unstoppable migration in the absence of tangible prospects for dignified personal survival. Robust development, rather than ever-escalating militarization of borders, should be considered an essential component not only of any plausible peace treaty but of any migration-control program, and should be marketed as such to reluctant, fearful publics.

Some element of distress migration and urgent need for foreign relocation will endure. It makes little sense to address this only after refugees arrive at the destination border, physically and psychologically depleted and having been forced to hand over all their savings to smugglers. Yet this is what our current asylum system does: it largely allocates protection only once someone has made it to the border of a safe country. Instead, we need to intervene *before* people spontaneously embark on dangerous cross-continental voyages. Vigorous, generous, and transparent resettlement programs that preemptively move victims of conflict from refugee camps or informal settlements in adjacent

MOHAMED ABDIWAHAB/AF/GETTY IMAGES

countries to destination states are the most effective and humane way to address this undisputed need for protection.

But such official resettlement is sustainable only if it is a joint endeavor, agreed upon by countries that are willing to host relocated refugees and share the responsibility for doing so with others in their region. The current intransigence of relatively prosperous EU member states such as France, the UK, Slovenia, Hungary, and the Czech Republic vitiates this sort of collective humanitarian endeavor and unreasonably leaves the protection “burden” only to the exemplary few (Germany and Sweden at present). The EU could support a more vigorous and equitable resettlement program among member states by creating incentives for compliance, such as joint skill-training and employment-generation projects. But these measures depend on the prior political will of the member states themselves, a critical element not now in evidence.



FROM LEFT: OMAR TORRES/AP/GETTY IMAGES; JOHN MOORE/GETTY IMAGES

Acknowledging up front that hundreds of thousands of people urgently need to relocate in the face of a conflict like the Syrian war, and creating a system for managing this reality, requires powerful leadership and a vigorous partnership among civil society, progressive municipal authorities, and federal and regional bodies. In this context, the U.S. government’s proposal to increase the country’s overseas-refugee-resettlement quota from 70,000 to 100,000 betrays a dramatic failure of vision and leadership. The same can be said for the EU’s proposal to offer only 160,000 resettlement slots for refugees already in Italy or Greece. Millions in Lebanon, Jordan, Egypt, and Turkey have waited patiently for more than three years for international help that has not been forthcoming. Now they are voting with their feet. Given the failure to change the incentives for distress migrants, for smugglers and traffickers, and for reluctant regional partners, hundreds of thousands of traumatized people will continue to leave their troubled homelands and take a chance at reaching a better life in Europe through hazardous and extortionate routes. We would all do the same.

Both a prompt end to the murderous Middle East conflicts and generous and large-scale economic development in the area are, for now, remote prospects. What other revisions to the current international migration architecture are necessary? I suggest three.

First, in addition to much more generous resettlement of distress migrants, we need more capacious categories for legal mi-

gration—for family reunification, for education and skill-training visas, for work permits and for opportunities for entrepreneurs, small and large, to access places of safety and contribute to their

economies from a position of confidence and strength rather than as destitute supplicants. Hundreds of thousands of hardworking and competent people would qualify, if the authorities in Western states had the courage and vision to enlarge their legal migration categories, rather than place most of their resources in futile deterrence, punitive detention, and post facto humanitarian assistance. Priority in these entry categories should be given to “distress migrants,” a category that should replace the now unworkable distinction between “legal” refugee and economic but “illegal” forced migrant.

Somali refugees wait at the Sayyid camp south of Mogadishu, October 30, 2014.
Tensions on the U.S.-Mexican border: beginning a desert crossing in 2006, and Border Patrol agents checking Honduran immigrant Melida Patricio Castro’s birth certificate for her two-year-old daughter in 2014



Second, high-quality, well-funded systems need to be put in place for the most vulnerable: survivors of trafficking, children separated from their families, and migrants with urgent health needs (physical or psychological). Short-term investment in quality legal representation, skilled care, and sustained support will generate dividends down the line—in terms of employability, inclusion, and loyalty to host states rather than to dangerous and destructive alternatives.

Finally, and most critically urgent, making borders *more* permeable, not less, will ensure that people can come and go with more ease, moving to safety when they need to but returning home when this seems feasible, without the current fear that a decision to return home is irrevocable.

Without energetic steps to institute these changes, the prospects for the coming winter, and beyond, are indeed grim. ▽

Jacqueline Bhabha is professor of the practice of health and human rights and director of research for the FXB Center for Health and Human Rights at the Harvard Chan School of Public Health. She is also the acting chair of the Faculty of Arts and Sciences Committee on Ethnicity, Migration, and Rights. Her most recent books are Child Migration and Human Rights in a Global Age (Princeton) and an edited volume, Human Rights and Adolescence (University of Pennsylvania).