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Citation: Schuster, L. (2011). Turning refugees into 'illegal migrants': Afghan asylum seekers in Europe. *Ethnic and Racial Studies*, 34(8), pp. 1392-1407. doi: 10.1080/01419870.2010.535550

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Link to published version: <https://doi.org/10.1080/01419870.2010.535550>

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Turning refugees into ‘illegal migrants’: Afghan asylum seekers in Europe

Each year refugees transit southern EU Member States (MS), where in theory they should claim asylum, but where in reality they have little chance of being able to make a claim, and almost no chance of having it examined properly, much less being actually granted asylum. This paper argues that the current EU regime turns some refugees into undocumented migrants – ‘illegal migrants’ in political and public discourse and shields EU MS from their international legal obligations. The article illustrates the effect of EU asylum policy through a case study of a group of young Afghan men in Paris.

Keywords: Asylum seekers; Afghans; Dublin II; Eurodac; France; Greece

Introduction

By 2008, the European Union had in place a European Asylum policy regime and a legal framework based on an “absolute right to seek asylum” and “full and inclusive” application of the 1951 Convention relating to the Status of Refugees (Commission 1999, see also Vedsted-Hansen 2005). However, EU legislation and policy seems to be largely an exercise in evading responsibility. There have been a number of critiques of the regime on a variety of grounds (Vedsted-Hansen 2005, Schuster 2005a, Spijkerboer 2007) but this article concentrates on one effect of the regime in particular – that is, the way in which the battle to combat ‘abuses of the asylum system’ turns some refugees into undocumented migrants, or ‘illegal migrants’ (see also Samers 2003). While accepting that not everyone who applies for asylum meets the definition contained in the 1951 Convention, I wish to stress here that it is not recognition that makes one a refugee, but the circumstances that caused one to flee. Throughout the sometimes very long process that leads to recognition (or refusal), someone forced to flee their country of habitual residence due to fear of or actual persecution does not cease to be a refugee, even though during and after that process one may be categorised as asylum seekers, failed asylum seekers or ‘illegal migrants’ⁱ. The critique of EU policy presented here relies on the experiences of Afghans in Paris.

For 18 months from July 2008 the author volunteered on a twice weekly basis with the *Collectif de soutien des exilés du 10ème*, a small group of Parisians from different walks of life who visit the places where these Afghansⁱⁱ gather to eat – usually Salvation Army food distribution pointsⁱⁱⁱ. They provide information and answer questions on the European regime, seeking asylum in France (and other EU countries), their rights to accommodation, where to get medical treatment, French lessons, legal advice and recognition rates across the EU. Working with this group has provided a sharp insight into how the European asylum system does and not work for a group of people coming from a situation of generalised violence and individual persecution. By exploring the impact of Dublin II and Eurodac on a group of young men who do not behave in the manner expected (ie claim asylum in the first safe third country they enter) we seek to demonstrate that Dublin II and Eurodac cannot achieve their putative goals (of distributing the asylum ‘burden’ more equitably) but instead turn refugees into ‘illegal migrants’.

The article is informed by direct conversations with young Afghan men at places where they gather (soup kitchens and parks), by Saturday afternoon meetings between them and volunteers, by observations and by the summaries of the conversations which volunteers, including the author, posted online each evening. The choice of interlocutors was dictated by the profile of the Afghans in the 10th arrondissement who were almost exclusively young men, ranging in age from about 13 to 30. This population constantly changes as people arrive and depart, some after just a few days, others after many months. Some are returning to Paris, having been deported to another EU MS, following the discovery of their fingerprints in Eurodac. Some have been returned to France from the UK, and of these, some are determined to return to the UK (even some who have previously been deported from the UK to Afghanistan) because they have family there or because they know they will be able to find work there. Others want to try somewhere else. Still others are in the French asylum system awaiting a

decision on their case. There are two other groups. The first has been refused asylum by the French government, so are 'rejected asylum seekers' but as France finds it difficult to deport to Afghanistan, they are stuck in France without status as 'illegal migrants'. The second group has applied for asylum but having been told that the French government is not obliged to examine their claim as their fingerprints have been found in Eurodac, knows that they face deportation to Greece, or Hungary or another EU MS. This group know that if returned to those countries they have no chance of being recognized as refugees, and that they risk deportation from, for example, Greece to Turkey. It is this group that are trapped, knowing they cannot go back, but knowing also that they cannot go on and that are the primary concern of this paper.

Given the difficulties of obtaining informed consent under these circumstances, an early draft of this paper was translated into Dari and circulated to some of the Afghans for comment. The conversations took place with the author in Dari, Greek, French, English and Italian. The two national cases explored (i.e. Greece and France) serve as case-studies: Greece illustrates more generally the case of South-Eastern EU MS with low refugee recognition rates, while France is one of North-Western MS with a higher recognition rates. This group of young men is currently in France, and almost all have entered through Greece, which according to the Dublin Convention is where they should stay, and because the Dublin Convention serves to underline a distinction between countries of first entry, such as Greece, and countries presumed to be preferred destinations, such as France. While such a small study does not allow generalization, many of the experiences related here are common to all asylum seekers in the EU. In the final section, the author reflects on the consequences, intended or otherwise, of turning refugees into 'illegal migrants'.

Asylum law in the EU

The EU MS have put in place a series of asylum directives to ensure a harmonization of policy across the EU so that all those applying for asylum in the EU MS are guaranteed certain basic conditions of reception, and access to the asylum procedures, protections and rights (see Schuster 2011). The intention is to reduce the incentives for those seeking asylum to move from state to state. The core principle of this European system, embodied in Dublin II (the revised version of the Dublin Convention 1997) is that whichever state allows someone to enter or remain in their territory is responsible for examining that person's application for asylum – *and that no other state need examine that claim*. There are a number of problems with the Convention: it places heavy burdens on countries of first arrival, such as Greece, Italy and Spain (ECRE 2006); it allows the application of the safe third country concept (ie not the state of origin or the state in which the person wishes to make a claim, but the first safe country reached by the asylum seeker after leaving their country of origin or habitual residence), which permits MS to expel asylum seekers to states outside of the EU [Art. 3 (5)], such as Turkey, from where people are refouled to states where their lives and liberty are in danger^{iv}; and most seriously, by relieving all but one state of the duty to examine a claim, it turns refugees into 'Dublinized' asylum seekers, that is, those in limbo waiting to see whether and where their claim will be examined.

Most of the literature on the decision-making of asylum-seekers highlights their need to leave and the reliance of asylum seekers on smugglers who often make decisions on destinations (Robinson & Segrott 2002, Gilbert & Koser 2006). Others have pointed out that where asylum seekers (or their families) do plan where they are going, these decisions are based on factors such as family or social networks, language skills or cultural affinity (often the result of colonial links), which are at least as important in the choice of where to apply (Boyd 1989, Efionayi-Mäder *et al.* 2001, Gurak and Caces 1992, Koser 1997). Nonetheless, the young men encountered in Paris, whose daily lives are rendered very difficult by the legal constraints, continue to exercise a considerable degree of agency. The

differences that remain between EU MS mean they moved around Europe trying to find some way into regularity and some assistance with accommodation and rebuilding their lives. It seems that once they arrive in Europe they adjust their plans as they learn about differences in recognition rates and in reception conditions, meet other people further along in the process and see for themselves the treatment meted out by different EU states (see below). While in recent months, a small group of people have given up and agreed to return 'voluntarily' to Afghanistan, for some of the people encountered in Paris, deportation, whether to another EU state, to Turkey, Iran or even to Afghanistan itself, did not put an end to their journey. It had become just another hurdle to be overcome in the struggle to build a future. K had been returned five times from Turkey to Iran, each time spending about a month in prison, and twice from Greece to Turkey. He laughed: 'after the first time, when they pointed the Kalash at me and told me to lie on the ground, I just did as I was told. I got used to it. I knew I would get out and try again'. Five of the men met in Paris were making a second journey from Afghanistan, having already been through an asylum process in the UK, but been deported back to Afghanistan (one had been twice deported to Afghanistan over a period of three years). The responses of these men to their treatment by EU MS is a testament both to their determination and to the pressures that push them onwards. However, EU states punish those who try to exert some degree of control over where they make their claim by using the Dublin Convention and the Eurodac system to return them to other MS, or where this is not possible by placing them in accelerated procedures or refusing to examine their claim at all, or simply by leaving them in limbo as long as possible – if after six months trying the host state is unable to send someone back to a safe first country, they are obliged to take responsibility for the claim. However, it is not uncommon to find some, like K, who have had to wait 18 months before responsibility for examining his claim was accepted.

The numbers of asylum applicants who are successfully removed to 'safe third countries' are very few. Between September 2003, when Dublin II came into effect and December 2005, approximately 11% of the total number of applications made in the EU were examined under Dublin II, but due to fingerprints missing from Eurodac, a failure of MS to issue travel documents and the failure of some applicants to cooperate - only 2.8% were actually returned – raising questions about cost and efficacy. Nonetheless, the 11% asylum applicants 'under Dublin' equalled 55,300 people – that is a high number of people in limbo (Cimade 2008, 36). In some cases, they become caught between states in a no-man's land outside the law.

Negotiating the European Asylum Regime: An Illustration

Afghanistan is the fourth most important source country of asylum-seekers in the industrialized world (most, approximately 5 million, are in Iran and Pakistan). 18,500 asylum applications were submitted by **Afghans** in 2008 in *industrialized* countries, the highest since 2002 (29,400 claims), with most in the United Kingdom (3,700 claims), Turkey (2,600), Greece (2,300), and Italy (2,000). UNHCR attributes the increase in the number of Afghans arriving to the deteriorating security situation in Afghanistan (UNHCR 2008a), but according to many of the Afghans in Paris who have lived in Iran and Pakistan, the hardening of the governments' attitudes in those two countries also plays a role. France hosts relatively few Afghans, with the number of asylum applications increasing from 184 in 2007 to 249 in 2008 (UNHCR 2008). The French Office for the Protection of Refugees and Stateless Persons (OFPRA) recorded a slightly higher number of Afghan applicants in 2008 (281) of whom 104 were granted either refugee status or subsidiary protection (OFPRA 2009). In Greece, none were granted asylum that year. In the table below, the second row of figures refers to the percentage of Afghan asylum applicants who are

either recognized as (Convention) refugees or are given some form of subsidiary status. In most EU MS, those Afghans allowed to make and pursue a claim have at least a 50% chance of being granted some form of status, but the wide variety in recognition rates inevitably raises the question of what criteria are being used to assess claims.

Table 1 Recognition rates (%) of Afghan asylum seekers in selected EU MS

	Aus.	Den.	Fin.	Fra.	Ger.	Gre.	Ita.	UK
Refugee status	44	4	0	36	29	0	12	8
Total positive decisions (ref status + subsidiary protection)	80	50	95	42	60	0	67	55

Source: Adapted from UNHCR (2009)

The role of Greece in turning refugees into illegal migrants

Yunnan and *angusht* are words that crop up again and again in conversation with the Afghans in Paris. They are the Dari words for Greece and for fingers. Almost all the Afghans have come through Greece^v, and many have had their fingerprints taken there, and so once they come to the attention of the authorities anywhere else in the EU, if their fingerprints are found in the Eurodac database, it is to Greece that they will be returned – whether or not they have applied, or been allowed to apply, for asylum in Greece. Despite a sharp increase in the number of asylum applications in Greece from 12, 267 in 2006 to 26,735 in 2007 (OFPRA 2008), and 38,000 by January 2009 (UNHCR 2009), these numbers are low compared to other MS given that Greece the first EU state reached by many potential asylum seekers, especially those coming from Afghanistan.

Asylum applications from Afghans are low in Greece both because the authorities make it very difficult for them to claim asylum, and because those who have tried to claim point out to newcomers that that they have no chance of recognition if they do apply. Over the course of the last two years, Afghans in Paris have described being arrested on crossing the border between the two countries and

thrown in jail near Alexandropoli, near the Turkish border. F recounted how 'after 20 days, when there was about 100 of us, Greek 'commandos' came and made us go to the river (the Evros). They put 10 of us in a boat and then went back for more'. On the Turkish side, they were forced off the boats at gunpoint. This is in sharp contrast to the claim made in response to a report from the Commission for Human Rights of the Council of Europe by the Greek authorities that:

None of the asylum applicants are removed from our country, unless the relevant procedure is finalized, according to article 33, par. 1 of the Geneva Convention, article 3 of the E.H.R.C. and other international legal instruments. Additionally, after the finalization of the asylum procedure, no alien is transferred to a third country, where it is presumed that their lives or liberties are endangered (nor refoulement clause). (Hammarberg 2009)

Given these figures, there is clearly a strong disincentive to claim asylum in Greece, since making such a claim means one risks being rejected and deported to Turkey (though Greece does not deport to Afghanistan). Since the recognition rates are much higher elsewhere, clearly many who would be recognised as refugees in other countries are being turned into 'illegal migrants' in Greece, a status that follows them intermittently around Europe. However, although making a claim does not lead to recognition in Greece, nor does it automatically lead to rejection. In most cases, applicants are left without a decision, but not allowed to try for refugee status anywhere else. Dublin II means that having made a claim, unless one is a minor, or travelling with children, no other EU MS is obliged to examine the claim unless Greece in this case refuses to readmit the applicant.

It is not only the impossibility of being recognised as a refugee that causes people to move deeper into Europe, it is the daily experience of living without rights. Without a secure status, people are at the mercy of criminals and of the police. The Afghans in Paris tell of daily harassment by the Greek police: F had had twice been run over by a police car, suffering a broken leg and a broken ankle, one had been picked up and put in cells three times in ten days; another aged fourteen had been kept in a cell

for three days, and imprisonment for 3 months is not uncommon. Two Afghans reported having spent 3 months in a prison near Alexandropoli without having been allowed out of their cell once – a cell they shared with 13 others. Almost all told of physical beatings – some retaining the scars.

Nonetheless, the picture that emerges of the Afghans' experience in Greece is not straightforwardly bleak. Many of the Afghans had found work in Greece, managed to save enough to continue their journey and some had established warm relations with their employers, including one who said that he missed his employer who had treated him like a son. Others told of young Greek men and women who would visit the squatter camps in Patras and speak to them and try to assist in any way they could, one visiting a police station to argue for the release of an Afghan minor. Some have said they would have been happy to stay in Greece where they had work, learnt the language, experienced some integration, made some friends, but being 'illegal', having no papers, security, access to regular employment or welfare rights, of protection from arbitrary arrest, and harassment by police wore them down and encouraged them to move on in the search for recognition and a way out of 'illegality'.

Most of the Afghans seem to have mixed motives for moving on – negative experiences in Greece plus stories from contacts further afield, from contacts in other EU MS that promise things will be better. A significant number know, or know of, members of their extended families or friends around Europe who have received papers and who are working, or who are working without papers. In some cases, they are expected and encouraged to come join them. The port of Patras on the west coast of Greece was an important staging post for those heading to Italy, with between 2,000-3,000 Afghans camped in squalid squatters camps. In early summer 2009, these were again destroyed by the police in preparation for a concerted effort to reduce the numbers of undocumented migrants in Greece. Of those who try to make it across the Adriatic Sea, some are intercepted and returned to Greece. Others are found in Italy and if they can be identified – e.g. through Eurodac – as having transited Greece will

be returned there. Some of those in Paris say that they have been waved through – the Italian authorities have little desire to detain them. In the summer of 2009, I met two small groups of Afghans (4 & 5 people) who had spent up to 5 years in Italy. All had either refugee status or subsidiary protection. They told me had left Italy because they are frequently mistaken for Rom and as a result had experienced physical and verbal abuse. Their response to problems in Italy was to move on. As N explained in fluent Italian – ‘why should I stay if they do not want me? How can I stay if I cannot work?’, or in the words of another ‘papers don’t matter there, the police still arrest me and beat me because I had no money to give them’. None I spoke to had thought to apply through legal channels for permission to change residence; ‘why should I ask – I want nothing, just work’.

Of course, it is not only negative experiences in first countries that cause people to continue their journeys. Among those who travelled through Greece or Italy were Z and M who had family members in Britain, and J who had friends in Switzerland. Dublin II allows for family reunion, but this is only if immediate family members and only for those who already have status as either a refugee or asylum applicant. Sometimes it is family members back home who dictate the destination. Others are drawn onwards by phone calls from friends, sometimes made on the journey. G told me that he was on a train in Italy, heading for Switzerland when a friend he hadn’t seen for a year phoned him on his mobile and said he was in Paris, so he had changed his plans and come to join his friend. H, having spent three years in Greece and speaking good Greek complained bitterly that what he had seen of France on Greek television and heard from his friends was a lie, that in France Afghans were treated worse than the small dogs cosseted by the Parisians, and that he couldn’t wait to be deported back to Greece where he had already initiated a claim.

The Role of France in turning refugees into illegal migrants

All of the young men over 18 to whom I spoke, with the exception of three who had worked as translators for the French forces in Afghanistan, had had to go through the Dublin II process, regardless of the strength of their claim to refugee status. Before being able to apply for asylum in France, an applicant must request a temporary residence permit from the Prefecture. Immediately, before a claim is made, a search of the database will be made, and if a match is found, an application will be made to the MS where the fingerprints were taken to return the person under the Dublin Regulation and they will not be issued the temporary (usually one month renewable) permit^{vi}. During this period of waiting, the individual is obliged to return regularly to the Prefecture. If the other state refuses the transfer request, the person is issued a temporary permit and allowed to make an asylum claim. Of those Afghans who are allowed to make a claim, about 42% will be granted some form of status (see Table 1). If the other state agrees to the transfer request, which only happens in the minority of cases, the applicant may be detained to await the issuance of the necessary *laissez-passez* and to facilitate the transfer. The disparity between recognition rates in Greece (0%) and in France (42%) means that returning people to Greece effectively turns some refugees into illegal migrants.

Afghans arriving in Paris for the first time are shocked by reception conditions of earlier arrivals in Paris. In response to a question about staying in France, C pointed to the others gathered around a fire under the Pont Jean Jaurès and said 'my friends have been here for months – I did not come for that'. France's inhospitality to Afghans is evident to new arrivals, who are shocked and disheartened to find friends and fellow Afghans sleeping in parks, under canal bridges and in the streets, suffering from lice and scabies, or accommodated with alcoholics and drug addicts in emergency hostels that resemble Bedlam. The winters of 2008/9 saw temperatures drop to -10C, to which the City of Paris's response was the provision for minors of 25 beds in a hall. Each night there were approximately 60 Afghans, many

without blankets or sleeping bags, trying to sleep along the canal St-Martin. On three or four occasions, I met exhausted young men who had walked all night, afraid that the cold would kill them if they lay down. Those left outside include some who have applied for asylum, so that L, for example, asked 'what's the point of trying to stay in France?'. Some decide to travel on and ask for asylum elsewhere. However, it is not just the lack of accommodation that pushes people to try elsewhere. Among the other push factors are the lack of training opportunities, the lack of work permits and a growing anger and bitterness at their treatment. Some decide within days to continue their journey, unable to believe that they would be not be allowed to ask for asylum in other EU MS, but others are forced to wait sometimes for months either because they have no money to continue their journey, or because they have been picked up and finger-printed by the French police so that should they make it to England, Denmark, Finland, Norway or Sweden, they would be returned to France.

The complexity of European asylum regimes leads to a profound lack of comprehension among most of the Afghans about how the system works – even when they have already been through that system, something that chimes with the finding of Gilbert & Koser (2006). The different documents people are given are rarely – contrary to European guidelines – translated into a language they understand. Even where the documents have been translated into Farsi (closely related the Dari of Afghanistan), some, like K are not literate in Dari or Farsi. It was common to have people pull out official documents from their transparent plastic folders and ask, not just for a translation, but for an explanation about what the document meant for them and advice as to what they should do. Support organizations in all EU MS, like the *Collectif* in Paris, are overstretched and few have the language skills to explain to Afghans what the different pieces of paper, and or the terminology used, mean. The language difficulties are inevitably compounded by the strangeness of this system and the difficulties in orientating oneself.

The reports of the *Collectif* each evening almost invariably record ‘the usual questions about fingerprints’. The author has met six different Afghan men who having applied for asylum in the UK, and been rejected, were in Paris having returned from Afghanistan, trying to decide where to go next, unable to believe that their fingerprints would follow them wherever they go in Europe. On being told that on applying in France, they will be placed ‘under Dublin’ because they have fingerprints in Eurodac, the same person will ask ‘what if I go to Austria? Or Sweden? Or Spain?’. About 3 months after I last saw him, M arrived at the soup kitchen. He told me he had made it to London, but been picked up almost immediately by the police and deported to Hungary. I asked him what his plans were and he told me that he would now try to get papers in France. When I said that the French authorities would probably also find his fingerprints in Eurodac, his companion said ‘that’s okay – you only get deported once. After that they let you stay’. On being told that some people had been deported two and three times, including to Afghanistan, they looked shocked but then recovered to say – ‘we will keep trying. What choice do we have? Don’t worry – we will do something’. R, still waiting for a decision after two years in France, told me that if he was rejected he would go to England. Surprised I said ‘but you’ve made a claim here – you’ll just be returned to France’, to which he responded ‘I’ll change my name’. When I asked, what about your fingerprints, he smiled ‘they took my fingerprints in Greece and in Italy, but the police here didn’t find them, so maybe I will be lucky again’. A recurring question is why, if one country does not want them, they cannot travel to another to seek asylum.

Dublin II contains a humanitarian clause allowing MS to choose to take responsibility for claimants with extended family in France, or in the event of illness etc. In other words, France could decide to process the claims of those known to have passed through Greece on the grounds that contrary to the assumptions of the Dublin Convention, Afghan refugees will not be recognized as such in Greece, and risk being *refouled* to Turkey and beyond. Norway took that decision in 2008 and stopped

returning Afghans to Greece in recognition of the likelihood that refugees would suffer, an action for which it was commended by Amnesty International (2008)^{vii}.

In Afghanistan, many of these young men have worked and contributed to their families from their early years. Even the youngest has made an exhausting journey, demanding high levels of resilience and resourcefulness. They are used to having a role, to taking responsibility for themselves and their families, rather than having to wait to be told what to do by a state. K had left Afghanistan for Iran aged 10 with his three older brothers, and had started work in a factory aged 11. Aged 24, A had already been economically active for 10 years, working in a restaurant. Some tell of families waiting for financial help. M, already four years on the road, explained sadly that he had given up phoning his mother and sister who were living in Iran because he couldn't bear them crying and asking when he was going to help them. Writing on young refugee men in Nairobi, Jaji considers the implications 'of exile on the men's quest to live up to identities, responsibilities and statuses assigned to men in African contexts'(2009: 177). While there are clear differences between the largely Christian young men in Nairobi^{viii}, exile represents similar challenges to Afghan asylum seeking men in Europe. Among the Afghans are traders, teachers, students, soldiers, welders, tailors, mechanics, labourers, farmers and chefs. All are desperate to work and or study. Like asylum seekers all across Europe from whatever nationality and of whatever gender, all the young men spoken to resented this period of enforced idleness, their dependence on handouts and being grouped together with those who cannot fend for themselves^{ix}.

For some, this attack on their pride, their self-esteem and qualities they have been taught to value, such as working hard and looking after one's family, is also an attack on their masculinity and leads to depression and psychological damage (see Jaji 2009). During the last eighteen months, there have been incidences of self-harm, threats of and attempts at suicide which have necessitated

interventions by psychologists from *Médécins Sans Frontiers*. In Paris, they have no place, no purpose. They may still be needed at 'home' (though life there is continuing without them), but here in Europe they are treated as a burden, something that, once it can no longer be ignored, should be disposed of as quickly as possible.

Conclusion – taking and not taking responsibility

Every year hundreds of thousands of migrants, including refugees, from around the world, enter the MS of the European Union. Many, perhaps the majority, will succeed and will build lives and families. They come looking for work, but also freedom of various kinds, rights and security. The MS of the EU are engaged in a struggle to evade responsibility for those seeking asylum, though some are prepared to go to harsher lengths than others. Those MS who are the primary first entry points, such as Greece, carry a particularly heavy responsibility, one that for a variety of reasons, they are clearly failing to meet. Some MS recognise this and do not return children or families to Greece, but Dublin II allows MS that are not first entry states, such as France, to evade responsibility for young men who are left in limbo. Eurodac and the Dublin Convention combined mean that a number of those Afghans in Paris stand little or no chance of making a claim and being accepted anywhere in Europe. This does not mean that they will be returned to Greece – in fact only a small number are – but that their chances of making a claim for asylum in France (or Britain, or Germany or Austria) are limited. Less than half of these will be granted refugee or humanitarian status (OFPRA 2009) – but very few will be returned to Afghanistan. Instead they will swell the ranks of the *Sans Papiers*, the undocumented, the so-called 'illegal migrants'.

On the other hand, EU MS expect them to cross the external borders of the EU furnished with authoritative documentary evidence of their ages, of where they have lived, of the persecutions that

they have suffered, to make themselves known to the authorities, to wait patiently, surviving without recourse to public funds, without being visible, to accept whatever decision is made about their future and to go where they are told, including back to Afghanistan. They are emphatically not expected to make choices or decisions, but instead to present themselves as passive victims, grateful for whatever minimal tolerance they are shown. These expectations are so far removed from the realities of these young men that they find them intolerable and unacceptable.

In an evaluation of Dublin II and Eurodac, the European Commission concluded that ‘the Dublin Regulation is in general being applied in a satisfactory manner and that it does provide a workable system for determining responsibility for the examination of asylum applications’, although the ‘low rate of effected transfers of asylum seekers compared to accepted ones undermines considerably the effectiveness of the system’ (2007). The report makes clear that MS often transfer similar numbers between themselves raising questions about the point of the system, especially in the light of the damage caused to the individuals, whose interests were not considered.

Generally, the EU regime is inefficient in its own terms – costly, unwieldy and doesn’t achieve the goals for which it was designed. Many fail to gain the protection they need, not because they do not meet the criteria of the Geneva Convention, but because of systems like Dublin II and Eurodac, which allow states to delay the examination of claims for months and years, leaving thousands without legal protection. Nonetheless, tens of thousands of people are given refugee status every year (though relatively few given the numbers globally), but often only after long and damaging periods in limbo, and long, expensive and wasteful procedures. MS insist that asylum seekers cannot be allowed to choose where they make their claims and this would lead to unfair ‘burdens’ on some MS. Aside from the hypocrisy of such claims emanating from Europe, which takes such a relatively small percentage of

asylum seekers, currently the so-called asylum burden fall disproportionately on those MS least equipped to cope – Greece, Cyprus, Malta, Spain and Italy.

One is left with the distinct impression that EU MS are engaged in a largely symbolic battle, with Dublin II and Eurodac symbolic weapons. However, the wounds inflicted on living, breathing human beings are all too real.

REFERENCES

Ahmad, N. A. (2008) 'The Romantic Appeal of Illegal Immigration: Gender, Masculinity and Human Smuggling from Pakistan' in Schrover, M., Leun, J., Lucassen, L. & Quispel, C. (eds) *Illegal Migration and Gender in Global and Historical Perspective* Amsterdam, IMISCOE/Amsterdam University Press

Amnesty International (2008) *Amnesty International Report 2008: State of the World's Human Rights* available at <http://thereport.amnesty.org/eng/regions/europe-and-central-asia/greece>

Bauman, Z. (2004) *Wasted Lives: Modernity and its Outcasts* Oxford, Blackwell

Bosquet, E. (2006) 'Le Droit d'Asile en France: Politique et Réalité' *New Issues in Refugee Research*, No.138, UNHCR, Geneva

Boyd, M. (1989) 'Family and Personal Networks in International Migration: recent Developments and New Agendas' *International Migration Review*, 23(3): 638-672

Cimade (2008) *Le Gens du Dublin II : Parcours juridiques de demandeurs d'asile soumis à une réadmission selon le règlement Dublin II* (<http://www.cimade.org/assets/0000/1266/dublin2.pdf>)

Commission des Communautés Européennes (1999) *Conseil Européen – Tampere: Conclusions de la Présidence* SI (1999) 800 ; Bruxelles

ECRE (2006) *Report on the Application of the Dublin II Regulation in Europe* Brussels; Europe Council on Refugees and Exiles, available at <http://www.ecre.org/files/ECRE%20Dublin%20Report%2007.03.06%20-%20final.pdf>

Efionayi-Mäder, D. et al. (2001) *Asyldestination Europa - Eine Geographie der Asylbewegungen*, Seismo, Zürich.

Europa (2007) 'Transposition of the Procedures Directive' Press Release, accessed at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/538&format=HTML&aged=1&language=EN&guiLanguage=en>

European Commission (2007) *Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system* {SEC(2007) 742} available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0299:EN:NOT>

Geddes, A. (2009) *Migration as Foreign Policy? The External Dimension of EU Action on Migration and Asylum* Swedish Institute for European Policy Studies, Stockholm Issue 2

-2009

Gurak, D.T. and Caces, F. (1992) 'Migration Networks and the Shaping of Migration Systems' in *International Migration Systems; a Global Approach* Kritiz, lim and Zlotnik (eds) Oxford: Clarendon Press

Hammarberg, T. (2009) 'Report of the Human Rights Commission of the Council of Europe into the Human Rights of Asylum Seekers in Greece' available at <http://www.statewatch.org/news/2009/feb/coe-chr-greece-report.pdf>

Human Rights Watch (2008) *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union* available at: http://www.hrw.org/sites/default/files/reports/greeceturkey1108web_0.pdf

IAB (2009) *Press Release: Conditional Returns to Greece* Norwegian Immigration Appeals Board available at <http://feed.ne.cision.com/wpyfs/00/00/00/00/00/0E/CA/2C/wkr0003.pdf>

Gilbert, A. & Koser, K. (2006) 'Coming to the UK: What do Asylum Seekers know about the UK before Arrival?' *Journal of Ethnic and Migration Studies* 32(7) pp.1209-25

Jaji, R. (2009) 'Masculinity on Unstable Ground: Young Refugee Men in Nairobi, Kenya' *Journal of Refugee Studies* 22(2) pp. 177-94

Koser, K. (1997) 'Social Networks and the Asylum Cycle: the Case of Iranians in the Netherlands' *International Migration Review* 31(3): 591-611

Lloyd, C. (2003) 'Anti-racism, racism and asylum-seekers in France' *Patterns of Prejudice* 37, 3: 323-339

OFPPA (2008) *Rapport 2007* Paris, Office Français de Protection des Réfugiés et Apatrides available at http://www.ofppa.gouv.fr/documents/Rapport_OFPPA_2007_BD.pdf

OFPPA (2008a) *Rapport d'Activité 2008* Office Français des Protection des Réfugiés et Apatrides available at http://www.ofppa.gouv.fr/documents/Rapport_OFPPA_2008_BD.pdf

Papadimitriou, P. N. and Papageorgiou, I. F. (2005) 'The New 'Dubliners': Implementation of European Council Regulation 343/2003 (Dublin-II) by the Greek Authorities', *Journal of Refugee Studies*, 18, 3: 299-318

- Robinson, V. & Segrott, J. (2002) *Understanding the Decision-Making of Asylum-Seekers* Home Office Research Series Paper 243 (74pp). <http://www.homeoffice.gov.uk/rds/pdfs2/hors243.pdf>
- Samers, M. (2003) 'Emerging Geopolitics of Illegal Immigration in the European Union', *European Journal of Migration and Law* 6:1, 27-45
- Schuster, L. (2011 forthcoming) 'Dublin II and Eurodac: Examining the (un)intended(?) consequences' *Gender, Place and Culture*
- Schuster, L. (2005a) 'A Sledgehammer to Crack a Nut: Deportation, Detention and Dispersal in Europe' *Social Policy and Administration* 39:6, 606-621
- Schuster, L. (2000) 'A Comparison of Asylum Policy in Seven European States', *Journal of Refugee Studies* Special Issue 13: 1, 118-132
- Spijkerboer, T. (2007) 'The Human Costs of Border Control' *European Journal of Migration and Law* 9 (2), pp.
- UNHCR (2009) *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons* UNHCR, Geneva (see Excel data sheets).
- UNHCR (2008a) *UNHCR Statement Subsidiary protection under the EC Qualification Directive for people threatened by indiscriminate violence* (January 2008), available at [UNHCR_Statement_on_Article_15\(c\)_QD\[1\].pdf](#)
- UNHCR (2008b) *UNHCR Position on the Return of Asylum Seekers to Greece under the "Dublin Regulation"* available at <http://www.unhcr.org/refworld/docid/4805bde42.html>
- Vedsted-Hansen, J. (2005) 'Common EU Standards on Asylum - Optional Harmonisation and Exclusive Procedures' *European Journal of Migration and Law* 7:4, 369-376
- Yaghmaian, B. (2005) *Embracing the Infidel: Stories of Muslim Migrants on the Journey West* New York, Delacorte Press

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ⁱ It would be just as possible and valid to write a paper about how the EU asylum system turns people in search of work into 'illegal migrants', 'bogus asylum seekers' and liars but that would be a different paper.

ⁱⁱ Although the volunteers refer to this group as the 'Exilés', they tend to refer to themselves as Afghans, so this is the term used here. Over the last 18 months, I usually spend two evenings a week at two or three locations where between 50-100 young Afghan men gather. With most, I converse in English, French or Greek, though we also use Italian and Dari.

ⁱⁱⁱ More on the work of the collective can be found at <http://www.exiles10.org/> I am a member of the collective, but the other members know that I am also a researcher writing on asylum and migration policy and practice.

^{iv} UNHCR have regularly criticized Turkey's practice of deporting people to Iran and Iraq (see e.g. <http://www.unhcr.org/4811e23c4.html>).

^v This appears to be changing, as word of the difficulties in Greece spreads, and at the end of 2009 more and more young men in Paris had chosen to travel via Bulgaria and Serbia into Austria.

^{vi} Since originally, Dublin II conflicted with the French constitution, which guaranteed the right to claim asylum, the constitution was modified in 1993 (Bosquet 2006: 9).

^{vii} However, in July 2008, this decision was partly reversed and Norway decided to resume returning adults to Greece, though on a case by case basis, and began to discuss tightening its procedures to deal with the increasing numbers. This decision was confirmed by the Norwegian Immigration Appeals Board on May 7th, 2009 (IAB 2009). Grounds for the decision included the 'resourcefulness of the 'appellants', the decision of other Nordic countries to return, and the decision of the European Court of Human Rights, 'where it was decided that return to Greece in accordance with the Dublin II Regulation is not a violation of the European Convention of Human Rights, article 3'. These were held to outweigh the concerns voiced by UNHCR, by the European Council and the IAB members themselves.

^{viii} It would be interesting to reflect elsewhere on the contrast between the subjects of Ahmad (2008) and Jaji's (2009) research, to ask whether flight from Afghanistan is seen as feminizing, but travel to Europe as masculine.

^{ix} For most, the only accommodation available is in the emergency shelters, one of which in Nanterre is referred to as the *Camp-e-diwan*, the madmen's camp. Even at the end of December, with temperatures below freezing, some preferred to sleep beneath the bridges of Paris rather than endure a night among alcoholics, drug users and the mentally ill.