

Committee/Council: Social and Humanitarian Committee

Issue: The question of the rights of illegal immigrants and the impact on hosting countries

Student Officer: Konstantinos Lygouris

Position: Main Chair

Introduction

The term immigration refers to *the transboundary activity* of people, namely crossing countries' borders, which is illegal if *against the immigration laws* of the destination country. This process involves air, water and land crossing or alternatively, the expiration of the person's permission to stay in this country. There are miscellaneous questions associated with immigration and especially, illegal, which can have various effects on the hosting country, such as economic growth or even decline, societal prosperity or decay and issues concerning human rights, their violation or respect, which is of great interest for our committee. Moreover, there are certain aspects regarding their constitutional rights, which have to be amended, so as to balance the overall situation.

In addition, there are diverse factors which cause illegal immigration, such as the onset of a war declaration or an on-going armed conflict in their country of departure, poverty conditions and the interminable need for a higher and improved living standard.

It can be argued - and is highly debatable – whether the phenomenon of illegal immigration can work beneficially or detrimentally to the domestic economy of the destination country and how illegal immigrants should be treated (whether their rights should be respected or measures should be taken to combat this socioeconomic scourge).

In order to clearly define the problem, it should be mentioned that nearly 190 million people, about three percent of the global population, lived out of their country of birth, according to a study performed in 2005.

Definition of Key-Terms

Immigrant (illegal)

The term illegal immigrant, which can be found also as illegal alien, undocumented worker, paperless resident etc., refers to “a person, who has entered the country without official authorization. [National] immigration law provides means by which certain aliens can become naturalized citizens with full rights of citizenship. Immigration law determines who may enter, [the duration of their] stay and [the precise date of their departure].”

Source: <http://definitions.uslegal.com>

Stateless person / Statelessness

This term refers to a person who is not regarded as a (national) citizen by any state under the operation of its law. Since only states can have nationals, a person whose status is recognised only by a non-state entity (non - fully - recognized nation) is defined as stateless. A theoretical claim to nationality is insufficient to confirm that a person is not stateless if practically, he is not wholly recognised as a citizen by the state concerned.

Dual citizenship

Dual citizenship indicates the holding – by a person – of citizenship (nationality) of more than one state.

Naturalisation

It refers to a smoothly operated admission to citizenship.

Nationality Laws

This term is used with reference to all the laws concerned with the issue of nationality and citizenship and their status. A state has the right to determine who its nationals and citizens are. Such determinations are usually made by

custom, statutory law, or case law (precedent), or some combination. In some cases, determinations of nationality are also governed by public international law—for example, by treaties on statelessness and the European Convention on Nationality.

Citizenship/Nationality

Citizenship in law is defined somewhat differently than in social science, where it was firstly coined as a term. The legal relationship between the state and the individual is at the core of its meaning embodying the right to diplomatic protection by the state concerned. According to the International Court of Justice, citizenship is the following:

“According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.”

Nowadays, these both terms are used interchangeably in order to express this constitutional bond between an individual and a state, in which the state recognizes and guarantees the individual’s rights. Neither “citizenship” nor “nationality” is used to indicate the ethnic origin of the individual concerned.

Citizenship can be gained from birth or (can be) of origin, by decent or, lastly, by acquisition.

Diversity jurisdiction

This phrase refers to “a federal court’s exercise of authority over a case involving parties who are citizens of different states and an amount in controversy greater than a statutory minimum. This is known as “diversity jurisdiction”, because the plaintiff and the defendant have different, or diverse, state citizenships. There must be complete diversity in order for the federal court to exercise this type of authority.”

Source: <http://definitions.uslegal.com>

Background Information

Immigration and mostly illegal immigration denotes a far-reaching *turmoil* of paramount importance on prime areas of social cohesion and welfare such as employment levels, cultural diversity and financial growth, as well as border controls, law enforcement, and national security. However, there is an imminent debate taking place concerning immigrants' rights, their violation and the impact of such vast influxes in specific countries – or how this could be avoided, or at least, alleviated.

Interestingly enough, the distinctions between immigration, organised crime, and terrorism have been gradually assimilated thus forming a new working group considered a part of security and defence policy. In conclusion, immigration policy is imposed with consideration to freedom, security and justice, as established – for the European Union – in the *Treaty of Lisbon (title IV)*.

i. Rights of illegal immigrants

It is argued whether illegal immigrants have the same rights as people with a full citizenship and what exactly rights do they have, because of the repeated references to the rights of the illegal immigrants. It is a common belief that the fact that someone lives in a country renders him entitled to the full benefits and rights granted to a legal resident of this country. In some countries, such as the United States, they do not have unfettered access to the welfare system, health care and/or public education system, whilst the Constitution is quite clear as to what rights everyone possesses in this country, depended on whether they are a legal citizen, foreign visitor or illegal aliens. At the same moment, Amnesty International urges for international attention on the subject of promoting and ensuring the rights of illegal immigrants.

- ii. Hosting countries (labour capacity, financial repercussion, security aspects etc.)

In the past, there was a precipitously rising demand for a cheap, unskilled *labour force* in the westernized world (EU and USA), which caused many unwanted immigration waves. The situation that emerged from this phenomenon was exceedingly grave and crucial for these countries' financial future. Therefore, action was taken on their behalf to combat this growing problem.

Due to the fact that only in EU countries between *4.5 and 8 million* illegal immigrants work in the construction, farming, hotel and other sectors, a new draft directive called for the penalization of illegal immigrants' employers, while the illegal immigrants would be granted legal conditions of employment. Furthermore, the effective enforcement of expulsion measures, detention, and deportation

Major Countries and Organizations Involved

United States of America

In recent decades, the country has experienced another great wave of immigration, the largest since the 1920s. Yearly, more than 600 million immigrants are crossing the borders with Mexico. This was very concerning in combination with the fact that for the first time in the country's history illegal immigrants *outnumbered* legal ones. The number of illegal immigrants peaked at an estimated 11.9 million in 2008, and a 2010 study shows that the figure declined to about 11.1 million in 2009, the first discrepant drop in the last two decades.

Many laws have been enforced in order to secure the American – Mexican borders, such as the Arizona Law, the Immigration and Nationality Acts of 1952, 1965, and 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and lastly, the Real ID Act of 2005.

USA's immigration enforcement at the border and at a domestic level are often *disapproved* by Amnesty International, which claims that the United States have failed in fulfilling their 'obligations under international law to ensure human rights of immigrants.'

European Union

Member States of the European Union experience a *great influx* of immigrants on a daily basis, which constitutes a problem still being one of the most challenging and divisive issues among them. The EU is trying to tackle its decreasing demographic and the need for skilled and masterly labour whilst implementing national policies to deal fairly with asylum seekers and generally, to confront this immense wave of immigrants.

Trying to maintain a *common framework* on the management of migration and asylum and to harmonise existing national legislation on immigration in order to moderate migration applicants with reference to the EU member states'

economical capacity and ability to absorb and integrate new immigrants, the EU established a common immigration policy, which was conferred about in October 1999 at a European Council meeting in the city of Tampere and aimed at the promotion of economic, social and political coherence throughout Europe and the integration of new immigrants, which remained a very promising goal never utilized completely.

This was partly caused due to the reluctance of most member states, and mostly the hosting countries, to give away too much authority on immigration policy areas, which are, according to them, of high sensitivity and remain at the basis of national sovereignty for the majority of EU members.

In May 1999, the Treaty of Amsterdam, which emphasized on the flexibility of citizenship and the rights of individuals, was signed and announced the beginning of a common foreign and security policy (CFSP).

In particular, the United Kingdom and Ireland – not part of the EU's common travel area, known as the Schengen area – have acquired the right of *not accepting EU legislation* and retaining their national right to decide on cases without taking the common European framework into consideration.

On the other hand, France has accepted a lot of criticism by ethnic groups, NGOs and some political parties because of retaining the anti-immigrant legislation, which criminalises anyone assisting illegal immigrants by providing shelter, for example.

The Third Annual Report on Migration and Integration in Europe, which was published in 2007, referred to a great increase in the numbers of immigrants in Europe. In January 2006 the number of 'third-country nationals' residing in the EU was almost *18.5 million*, which in proportion with EU's total population (493 millions) is almost 3.8%.

Amnesty International

Amnesty International's stance towards illegal immigrants is much *friendlier* than EU's or USA's. It is concerned that measures proposed by both above

mentioned parties will 'impose significant prison sentences on those who help anyone enter the EU in breach of immigration laws.' In addition, Amnesty International *does not welcome the criminalization* of people assisting immigrants – it is nowhere mentioned whether they are legal or illegal – and frowns upon the imposition of such measures and laws. Particularly, it states that 'Amnesty International is deeply concerned that these proposals [referring to proposals and measures against illegal immigration discussed in a recent meeting in Brussels] may criminalise those who are acting on humanitarian grounds, to help people who flee human rights violations.' Amnesty International warns of any alleged infringement on the EU's international human rights obligations and encourages a more humanistic approach. Its prime concern is everything to be viewed from a different standpoint, respecting human rights, and to remind the Member States of their responsibilities regarding human rights.

Source: <http://www.amnesty.eu/en/home/>

IOM (International Organization for Migration)

IOM, established back in 1951, is the *principal inter-governmental organization in the area of immigration* – “dedicated to promoting humane and orderly migration for the benefit of all”, mainly by offering services and advice to governmental and immigration units - and is comprised of over than 140 member states, 146 namely, with a further 13 states being observer and offices in more than 100 countries worldwide. Its four main goals and fields of managerial expertise are:

- Migration and development
- Facilitating migration
- Regulating migration
- Forced migration

Moreover, it expands its activities to “the promotion of international migration law, policy debate and guidance, protection of migrants' rights, migration health and the gender dimension of migration.

Timeline of Events

<u>Date</u>	<u>Description of event</u>
<i>1951 July 28</i>	United Nations approves Convention Relating to the Status of Refugees.
<i>1967</i>	United Nations approves Protocol Relating to the Status of Refugees (alternatively called '1967 Protocol').
<i>1994</i>	The passage of the North American Free Trade Agreement (NAFTA), coupled with the Mexican economic collapse of 1994, bringing an estimated 13 million new undocumented immigrants to the United States over the next 15 years.
<i>2007 May</i>	European Union launches European Border Patrols Network.
<i>2007 September</i>	The European Parliament called for more legal immigration into the EU, citing aging population and low levels of skilled labor.
<i>2007 October</i>	The doubling of Frontex (the European border agency) budget's was approved by the European Parliament's budgetary in an effort to reduce the influx of illegal immigrants.
<i>2007 October</i>	The UK government through the British Foreign and Commonwealth Office states that it would interfere in the immigration policy of an overseas territory government, if that policy breached constitutional guidelines, legal

	provisions, or human rights obligations.
<i>2006 November 30</i>	In Netherlands, more than 30,000 asylum seekers are granted general amnesty by the recently elected Dutch parliament, backed by left-wing parties.
<i>2010 April</i>	A new law in the state of Arizona is introduced allowing police officers to check for legal papers of people being suspected of committing an illegal act concerning immigration.

Relevant UN Treaties, Resolutions and Events and previous attempts to solve the Issue

- Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws
- United Nations 1951 Convention Relating to the Status of Refugees
- Treaty of Lisbon 2007
- International Covenant on Civil and Political Rights (ICCPR)
- UN Refugees Convention
- UN Convention on the Rights of the Child
- Universal Declaration of Human Rights

Many attempts by EU and USA have been made in the past few years, regarding the rising, arbitrary influx of illegal immigrants in these countries, which have ended up rather unavailing. However, their policies are continuing aiming at reducing the problem to a satisfying level, able to be accommodated by current EU and US economy.

Possible Solutions

- Creation of a clear and to the point *definition* of terms concerning immigration, habitual residence and other topics mentioned above;
- The consolidation of a *common international framework*, with the cooperation of Amnesty International – and all Member States, both hosting countries and countries of departure- so as to assure the protection and promotion of human rights;
- The implementation of a *worldwide legislation* – accepted, respected and imposed by all Member States – concerning immigrant’s rights (their potential permitted access, the exact duration of their allowed stay etc.) including the probable criminalization or acquittal of people assisting illegal immigrants entering a country; all the above viewed with utter respect, as the Universal Declaration of Human Rights calls for;
- The possible *stricter securement of borders* as part of a two-pronged plan; while strengthening international boundaries, immigration should be facilitated and monitored so as to locate and record all illegal immigrants and confront, at last, this problem. Immigration centres should monitor the migration influx in proportion to the country’s needs concerning labour;
- *A balanced approach* to dealing with illegal immigration, which embodies the proper management and closer regulation of migration flows, the implementation of enhanced measures to combat illegal immigration, as well as further cooperation with all Member States in all fields;
- The creation of *an international programme* monitored by IOM (International Organization for Migration) which will introduce a new

scheme consisting of a short-term stay in a country, reintroducing the 'guest worker' scheme;

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