



Written by [Warren Mass](#) on September 15, 2015

Germany Changes Policy and Halts Massive Influx of Middle Eastern Refugees

Germany, which has so far taken in the lion's  share of refugees fleeing to Europe from the turmoil in Syria, Iraq, Libya, and Afghanistan, has made a sudden change in policy and decided to restrict the flow of migrants across its borders. Germany has taken in more than half a million of these refugees from the Middle East, more than twice as many as the next-highest European Union nation — France.

When word of the German government's decision reached Salzburg, Austria, where most migrants crossing Southeastern Europe on their way to Germany stop, a sign was posted in the railway station: "No railway service by order of German authorities due to the German migrant crisis."

Germany's Interior Minister Thomas de Mazière announced the change in policy on September 13, in a statement quoted by Reuters:

At this moment Germany is temporarily introducing border controls again along [the EU's] internal borders. The focus will be on the border to Austria at first.

The aim of these measures is to limit the current inflows to Germany and to return to orderly procedures when people enter the country.

De Mazière explained that the new restrictions were partly necessary for security reasons and added: "This step has become necessary. The great readiness to help that Germany has shown in recent weeks ... must not be overstretched."

The new policy represents a suspension of the Schengen Agreement, which was originally signed in 1985 by five members of what was then called of the European Economic Community — a predecessor to the EU. The Schengen area now includes 26 European Union countries, extending from Scandinavia to the Iberian peninsula, and from Iceland to Greece. A key provision of Schengen area rules is eliminating internal border controls with the other Schengen members, while strengthening external border controls with non-member states. Britain's *Daily Mail* reported on September 13 that officials were seen on that evening carrying out the first passport checks at the German-Austrian border.

De Mazière said that the Schengen area rules allow the reinstatement of border restrictions in cases of crisis and national security, reported the *New York Times*.

In an address to members of the European Parliament in Strasbourg, France, on September 9, Jean-Claude Juncker, president of the European Commission, asked EU members to accept 160,000 of the migrants who have fled the Middle East and North Africa. During his address, Juncker proposed that the EU change the way it presently handles refugee asylum applications — specifically the Dublin system that requires that asylum applications be processed by the first country of entry — and, instead, institute a uniform, centrally controlled system throughout the EU, thereby denying member states the right to accept or reject migrants who want to cross their borders.



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Germany, because of its strong economy and previously welcoming policy toward migrants, became the most favored destination for them, but the large number of migrants destined for Germany have caused problems in some nations along the way, including Hungary. Hungarian Prime Minister Viktor Orban, in a September 7 speech, criticized efforts by EU leaders to impose immigration quotas before the continent's borders are made secure, stating:

As long as we can't defend Europe's outer borders, it is not worth talking about how many people we can take in....

The quota system wants to treat the effects before it treats the causes of immigration. The main reason for this is because (the EU) cannot control its outer borders.

In an interview with Austrian public television (ORF) on September 6, Orban placed blame for the massive flow of migrants across his country on Austria and Germany, stating:

As long as Austria and Germany don't say clearly that they will not take any more migrants, then many millions of new immigrants will come to Europe. If we don't change our position and instead keep inviting them, then they will keep coming and we won't be able to protect our borders.

Germany, at least, has apparently decided that enough is enough.

Even as the EU's Juncker has asked EU members to accept 160,000 from the Middle East and North Africa, the Obama administration has announced a plan to admit 10,000 Syrian refugees to the United States. During a White House press briefing on September 10, Press Secretary Josh Earnest, said:

This year, the fiscal year that will end at the end of this month, the United States is on track to take in about 1,500 Syrian refugees. The President has directed his team to scale up that number next year. And he's informed his team that he would like them to accept — at least make preparations to accept at least 10,000 Syrian refugees in the next fiscal year.

Just prior to that statement, Earnest also stated:

The United States, at the direction of the President of the United States, has played a leading role in addressing the dire humanitarian crisis in the Middle East and North Africa. And the best evidence I can direct you toward is the \$4 billion in financial assistance that the United States has provided to relief agencies and others who are trying to meet the humanitarian needs of those who are fleeing violence in Syria.

In the course of the question-and-answer exchange between Earnest and member of the press, Earnest confirmed that the United States was already committed to taking in 75,000 refugees from around the globe.

Humanitarian considerations aside, a strict constitutionalist might well ask whether the \$4 billion in financial assistance or the acceptance of these tens of thousands of refugees is authorized by the Constitution.

The Constitution is silent on the subject of granting refugee status, though it does give Congress the power to establish a "uniform Rule of naturalization," which implies having some power to control who is admitted to the United States, at least for the purpose of establishing citizenship. Congress exercised that mandate though a series of laws over the years, starting with the Naturalization Act of 1790. However, prior to 1890 the individual states regulated immigration into the United States, after which the federal government assumed such control.



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It could be said that the granting of refugee status is an extension of the right to regulate immigration, but this is an authority that has more or less evolved over the years, rather than being specifically granted by the Constitution.

More troubling, however, is the U.S. participation in the Protocol Relating to the Status of Refugees (also known as the New York Protocol) — a key treaty in international refugee law, which entered into force on October 4, 1967. Since the Protocol is an extension of the 1951 UN Convention Relating to the Status of Refugees, it can be used to assert that the United States is obligated under international law to accept refugees. It is one thing for Congress to decide that the admission of refugees is a natural extension of U.S. immigration law. It is quite another to claim that U.S. sovereignty is subservient to a UN treaty.

There is also the matter of the \$4 billion in financial assistance that the U.S. government has provided to international relief agencies. Earnest stated that this “makes the United States the largest bilateral donor of humanitarian assistance in the world.”

While no one can maintain that the plight of these refugees from war and terrorism in the Middle East is not dire and that they are not in need of humanitarian assistance, that is precisely why many private and church-affiliated humanitarian agencies exist. Americans have a history of being extremely generous and, to use one example, an article in *USA Today* in 2007 noted that Americans had given nearly \$300 billion to charitable causes in the previous year. Americans should, and routinely do, help those in need, including the refugees fleeing their homes in the Middle East. But the U.S. Constitution does not authorize our government to spend a single cent for this purpose.

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