'Refugee Crisis' – 'EU Crisis'? The Response to Inflows of Asylum-Seekers as a Battle for the European Soul

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Executive Summary

➢ Labelling the current high inflow of asylum-seekers to the EU a 'refugee crisis' shifts the focus from the EU's lack of a coherent response to the alleged 'burden' that refugees represent for Europe.

➢ Member states' security-oriented approach is not effective in curbing arrivals and indeed does not remove the long-term causes of people's decisions to leave their homes.

➢ The EU needs to reframe the issue of refugee/migrant inflows in more comprehensive terms so as to live up to its core values and legal obligations regarding the humanitarian protection of people in need.

➢ Firm political commitment is necessary to align values and action, and provide a durable solution to the EU's current identity crisis.

➢ In practical terms, EU and member state officials from the foreign affairs and development fields as well as stakeholders from civil society need to work alongside justice and home affairs officials to shape and implement appropriate measures.

With 135,711 people reaching Europe by sea since the start of 2016, adding up to the 1,321,560 asylum claims in 2015, the European Union (EU) faces a serious challenge to its reception system. Decision-makers in the member states, as well as EU officials and media pundits, have been using the expression 'Refugee Crisis' to refer to the high inflows of asylum seekers.[1] However, the current phenomenon is neither new nor exclusive to the EU. This Policy Brief argues that the term 'refugee crisis' forms part of a revealing discourse that has developed around the EU's security-oriented strategy of migration management and discusses the implications of such an approach for the European integration project.

Refugees and Europe – old story, new shock

The war in Syria and the enduring political instability in Libya, Afghanistan and Iraq have triggered high inflows of asylum-seekers into the EU. This phenomenon, albeit unusual, is not unprecedented in European contemporary history.

In the years immediately after the Second World War, millions of displaced people had to resettle in different states from those which they had been living in before. The 1951 Geneva Convention on the Status of Refugees was agreed to address that issue, as a very 'European' document in spirit. During the Cold War, the members of the European Communities adopted an open-door policy towards asylum-seekers from the East. More recently, the collapse of the Soviet Union and Yugoslavia entailed a period of regional instability that triggered remarkable inflows of asylum-seekers into EU countries.

All EU member states have sought to grant formal recognition to the their obligations towards refugees, not only by ratifying the 1951 Convention and the related 1967 Protocol,

[1] For the purpose of this paper, "migrants" are understood as all individuals moving with the goal of long-term establishment in another country; "asylum-seekers' are individuals who have lodged an asylum application; "refugees" are individuals who have been granted asylum.

but also by inserting direct references to the two documents in the Treaty on the Functioning of the EU (Art. 78) and the EU Charter of Fundamental Rights (Art. 18-19).

Despite the EU's familiarity with the migration of people in distress both from the outside and within its borders, the political and media reaction to the current events is unprecedented. Nationalistic and xenophobic calls to 'stop the invasion' have resounded all over Europe, including from those Central and Eastern European countries whose citizens greatly benefitted from the member states' policy of humanitarian protection during the Cold War.

To understand this reaction, the anti-refugee backlash has to be put into the context of the persisting economic and political crises experienced by many European countries: the so-called 'sovereign debt' crisis, the general difficulties of the Eurozone, the Brexit and Grexit scenarios, the tensions in the East given Russia's pressure on Ukraine, the Da'esh threat to the Southern neighbours, and the rise of right-wing, populist movements in EU countries are all interlinked factors that affect the perception of the phenomenon of migratory flows and shape the current security-oriented response. Faced with several, simultaneous challenges, many EU member states have favoured protecting their national security interests over fulfilling their communitarian obligations.

Which 'crisis'? Reframing the issue of refugee inflows

'Refugee crisis' is not a language-neutral expression. The juxtaposition of the concept of 'crisis' to the reference to 'refugees' identifies a sole source for the 'problem' – the uncontrolled arrival of desperate foreigners – and implicitly suggests which actors are most apt to deliver a 'solution', namely those professionals perceived to be able to stop the migrant flow, most notably from the defence and police sectors.

Justice and Home Affairs 'technical' agencies assuming political roles

The question of the reception and integration of people in distress into European countries is politically sensitive. Caught between the conflicting pressures of xenophobic parties and humanitarian NGOs, member state officials have been trying to avoid taking a clear stance on the issue by outsourcing the responsibility to deal with refugees and migrants to EU 'technical' agencies and third-country governments.

Established in the framework of the EU's 2004 'big bang' enlargement, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) was conceived as a trade-off for member states' alleged loss of control over their borders. Although its tasks are formally limited to "improving the integrated management of the external borders" and "promoting solidarity between member states", in practice FRONTEX activities have been stretched to include tasks of a more operational nature. The agency has increasingly coordinated joint operations aimed at deterring migrants from crossing EU air, land and sea borders. For instance, FRONTEX mission *Triton* in the Mediterranean Sea has recently replaced Italy's search-and-rescue mission *Mare Nostrum*, whose humanitarian action had contributed to saving thousands of lives at sea. *Triton* has been criticised by the European Council on Refugees and Exiles for its strong focus on internal security.

Similarly, the European Police Office (EUROPOL) has been expanding its functions since its creation in 1995, so as to include areas relevant to border protection such as the trafficking of human beings. In addition to facilitating information exchanges between member states and with third countries, EUROPOL has also been increasingly granted operational powers. It can now participate in criminal investigations conducted by Joint Investigation Teams, made up of representatives of national police forces. The actions of EUROPOL in this domain seem thus to be in line with EU priorities on migration control. However, by restricting organised entry into the Union, EUROPOL also prevents access to a broad range of individuals, some of whom may be in genuine need of international protection.

In synthesis, FRONTEX and EUROPOL have been expanding the scope of their functions to an extent that goes beyond the coordination duties originally designed for them. While the dominant institutional and media framing portrays the agencies as de-politicised actors performing technical duties of public utility, the 'home affairs focus' of these agencies is intrinsically political and affects both their vision and practices.

Outsourcing responsibility to third states as a tool for EU burden-shifting

According to the figures provided by the UN Agency for Refugees (UNHCR), Turkey is hosting more than 2.7 million refugees. Iran and Pakistan are hosting one million each, while inflows of refugees to Jordan and Lebanon have increased the populations of these two countries by 20%. EU member states, on their side, are facing the challenge to integrate 1 million refugees into a population of 510 million, which amounts to a demographic impact of less than 0.3%. Evidence shows that if a 'refugee crisis' is really happening, it is taking place outside the EU. Nevertheless, European

leaders refrain from stepping up their political commitment to address the current events.

At the EU-Turkey summit on 7 March 2016, EU Heads of State and Government struck a deal that confirms the recent trend in migration management. The agreement foresees that all new, irregular migrants crossing from Turkey to Greece will be sent back. In exchange, EU leaders agreed on the progressive resettlement of up to 72000 Syrian refugees from Turkish camps into EU countries. Donald Tusk, the President of the European Council, called the deal a "breakthrough" and "a very clear message that the days of irregular migration to Europe are over". However, the EU-Turkey deal is only the last of many agreements sealed between the EU and third countries in the last decade. The goal is always the same: outsourcing the control of member states' borders and shifting the responsibility for migrants' destiny from European political leaders to actors not accountable to the European citizens.

Well-aware of Europe's anxieties over migrant inflows, neighbouring states have been developing remarkable negotiation skills to extract political gains from deepening border cooperation. Prior to the Arab Spring, and despite widespread concerns over human rights violations in Libya and Tunisia, Italy and France ensured then-presidents Ben Ali's and Gaddafi's commitment to curb departures in return for political recognition and economic aid. More recently, Morocco has been exploiting its newly acquired status as 'transit state' to gain concessions from the EU in fields such as fishing rights, acquiescence over the occupied Western Sahara and migration rights for its citizens through the Mobility Partnership agreed with the European Commission. Lastly, following the freshly sealed EU-Turkey deal, Ankara will receive a significant financial contribution and the guarantee of new political impetus for its EU accession process, on top of the compulsory relocation of Syrian refugees from its territory to the EU.

Although the cost of these agreements in terms of political concessions and financial contributions is high, member states seem willing to pay. Outsourcing police control to third states allows for a de-politicisation of the issue, producing short-term electoral gains for European leaders. The rhetoric of 'preventing deaths at sea by preventing departures' abides by the same logic of shifting risks and responsibilities over to neighbouring countries, under the guise of a humanitarian concern for the safety of migrants.

Short-termed, short-sighted: the EU's trade of values for security

By delegating political responsibility to supposedly 'technical' agencies, and using neighbouring states as filters to curb migration inflows into Europe, the EU is narrowing its room of manoeuvre both internally and externally. At the EU level, the choice to prioritise internal security over fundamental rights allows for a strong comeback of national interests over mutual solidarity. On the international stage, the Union renounces to play a leading role in its geopolitical neighbourhood and risks to compromise its relations with regional partners. Under these conditions, the very existence of the European integration project is in danger.

Crossed wires: the Dublin system and the European integration project

The Schengen Agreement, which abolished internal borders between 22 of the 28 member states, is key to the EU pillar of free movement of persons inside the Union. The agreement, initially signed in 1985 by 5 of the 10 member states at the time, triggered widespread harmonisation of national legislations. The 1990 Dublin Convention was signed in the context of such renewed impulse towards deeper integration. Aimed at guaranteeing that an asylum seeker's claim would be examined by one member state only, the Convention was essentially about allocating responsibilities. At a moment when wealthy member states were losing grip over the control of flows of individuals crossing their territories, commitment from comparatively poorer member states at the European borders was much needed to ensure that asylum-seekers would not be left free to wander throughout Europe towards their most preferred destinations.

An uneasy relationship exists between the Schengen rules and the Dublin rules, since it is obviously harder in practice to enforce the latter rules without border controls between countries. As it is conceived today, the Dublin system is highly ineffective. Criteria associated with border control mean that responsibility for an asylum claim becomes a burden for the member state which allowed the individual to arrive in the Union. This imbalance risks creating a dangerous race to the bottom, as member states develop policies aimed not at ensuring access to the procedure but rather at preventing asylum-seekers from entering *their* territory. Consequently, it is in migrants' interests to refrain from applying for the status of refugee in the country of first entry, which is likely to apply stricter asylum criteria compared to Western and Northern member states. The paradox is that the Dublin system not only fails to prevent so-called 'asylum-shopping', but it may well encourage it.

Originally designed to foster harmonisation of rules and increased cohesion, the Dublin system has in fact proved to be detrimental to solidarity among member states. The unusual inflows of asylum-seekers escaping conflicts in the Middle East have led to the resurge of strong calls from some

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member states for the 'protection of national interest'. Their firm opposition to accept the relocation scheme proposed by the Commission, as well as to an increased financial contribution targeting a better tackling of the humanitarian issue and a fairer burden-sharing, has to be read in this context. The current prolonged stalemate constitutes indeed a tangible threat for the integration process.

However, national politicians - whose legitimacy has come under pressure by recent crises - are prioritising short-time electoral goals over the long-term benefits of a strong and united Europe. Although the Dublin system has proved incapable of solving the issues it had been established for, weakened leaders may be willing to accept a costly, inefficient and morally questionable system in order to be able to signal to their constituencies that they are in control.

Normative Power no more: the EU's retreat from its moral agency in the neighbourhood

Geopolitical opportunities such as the collapse of the Soviet Union or the Arab Spring have incited the EU to assert its role as a strong political actor in the neighbourhood. A huge investment has been made to diffuse so-called 'European values', which include democratic governance, rule of law and respect of human rights. Thanks also to a rather effective communication strategy, the 'European welfare state' model has long been regarded from Ukraine to Morocco as a textbook example for progress, social protection, freedom and security.

European norms and values are more than constructivist ideas useful for the cause of Europe's cultural diplomacy. They constitute a recognisable brand which helps the EU to compete in the international arena with actors otherwise economically, militarily and demographically superior. One of the reasons why so many asylum-seekers are engaging in risky journeys to come to the EU instead of going elsewhere is the appeal of that brand and the desirability of that model.

However, recent actions undertaken by EU institutions and member states call the commitment to this European model into question. The EU is failing to live up to the Geneva obligations with regard to providing relief to displaced people in distress, and several member states have been caught in blatant breach of international provisions against *refoulement* and collective expulsions of ethnic and social groups. The EU-Turkey deal, which foresees the forced resettlement of migrants from Greece to a country with a very questionable human rights record, may just represent the last such example.

Altogether, the EU risks losing its moral credibility due to the inconsistency between its proclaimed values and the decisions taken. At the 2014 Valletta Summit on Migration,

African leaders noted how statistically insignificant the demographic impact of asylum-seekers on Europe is compared to the situation in Africa. And yet, according to the UNHCR, "in Africa, the right to seek and enjoy asylum is largely respected - with some 3 million refugees having found in exile the safety and protection they have lost at home". This discrepancy in its response to humanitarian crises does no good to the EU's prestige.

More specifically, the treatment reserved to the countries taking part in the European Neighbourhood Policy (ENP) is even more appalling. At a time when the ENP has undergone a supposedly deep review to ensure that neighbours' interests are taken into greater account, the EU is once again using the neighbourhood as a buffer area to prevent unwanted migrants from its soil. By allocating economic aid and visa facilitation to its partners in exchange for a commitment to halting migration inflows, the EU has got it wrong twice. On the one hand, it shows that neighbouring states are service suppliers rather than real partners, thus undermining the notion of joint ownership which is at the core of the ENP project. On the other hand, the EU makes a perverse use of conditionality, appealing to ENP states' political realism rather than upholding the universal rights of protection.

Never Waste A Good Crisis: the European Phoenix and the Rise from the Ashes

Against the backdrop of the discussion that precedes, it is time for the EU to act and shape the future it wants for itself. The naïve belief that renouncing to Schengen would put a halt to migratory flows denies the reality of the situation. If member states really want to curb the arrival of irregular migrants and refugees, they will have to bring back internal border controls with fences and border guards across many thousands of kilometres of common borders. The likely outcome will then be the multiplication of 'Calais' and 'Ceuta' – dramatic deadlocks at the EU's internal borders.

Alternatively, the EU can decide to step up its political engagement and develop a comprehensive solution to address the issue of the inflows of asylum-seekers. Indeed, the history of European integration is full of 'insurmountable crises' turned into propitiatory moments for further integration. However, a U-turn from the current practices of responsibility shifting is deeply needed. Instead of relying on the sole expertise of technical agencies, other relevant stakeholders must be brought to the table. The voice of representatives from civil society calling for the respect of European values and obligations needs to be listened to at least as much as the conservative media. Professionals from the police and defence sector need to be flanked by their colleagues from the area of development policies so as to

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help establishing favourable conditions for the return of migrants to their countries.

Most of all, the EU must address the main root cause of the current flow of people: the ongoing war and political instability ravaging the Middle East. Minor arrangements in the way member states resettle a handful of refugees inside their borders will not prevent Libyans, Afghans, Iraqis, Syrians and others to keep seeking for shelter in European countries. It is essential for the EU to upgrade the role of the European External Action Service in order to include competences of internal security in the scope of its external relations. To do so, the Common Security and Defence Policy must be strengthened and enhanced to make a meaningful impact in the region, scaling up its engagement in conflict resolution and conflict prevention. In addition to this, other root causes, especially those related to the socio-economic development and environmental degradation processes in third countries, need to be comprehensively tackled.

To do so, the EU will need to develop a strategic vision of a more integrated long-term policy on matters related to migration. The central role in forging such a vision falls to national politicians. European leadership has proved divided and reluctant to take decisive political steps due to fear of negative spill-overs at the national level. Recent elections in Germany show that even a timid stance in favour of the respect of European humanitarian obligations can be politically costly.

However, at this historical moment, Europe needs political personalities with a vision and the authority to invest in the project of a united EU that protects its soul by living up to its founding values. The next political cycle at the EU level and in many key member states will begin in 2018-19. The time to start developing a strategy geared towards building a future for Europe is now.

Further Reading

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